

COMPLAINT NUMBER	20/441
ADVERTISER	The Advance New Zealand Party
ADVERTISEMENT	Advance NZ Party, Print
DATE OF MEETING	28 September 2020
OUTCOME	Upheld
	Advertisement not to be used again

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about the print advertisement for the Advance New Zealand Party. The Board said the statements the Advertiser said were sourced from the World Health Organisation and the Centre for Disease Control (US) had not been substantiated.

Description of Advertisement

The print advertisement for the Advance NZ Party was published in The Northern Advocate newspaper. The advertisement is headed "Party Vote" and said in part: "Last time you voted, did you think you were voting for a Labour-led government which would destroy your country and:

- Would act defiant in the face of updated information about Covid-19 from the WHO and Centre for Disease Control (US) that says rolling lockdowns won't work, and show the virus as comparable to seasonal flu? ...
- Lock you down, make you a prisoner in your own home or put you in a detention centre, when the WHO says lockdowns are not a long term solution. ...

The advertisement asks voters: "Did you vote for all of this? We didn't think so! PARTY VOTE ADVANCE NZ for a new strategy and direction." The advertisement contains the Advance NZ Party logo and a promoter's statement.

Summary of the Complaint

The Complainant said the advertisement contained false and misleading information.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser's Response

No substantive response was received from the Advertiser.

Summary of the Media Response

NZME said the advertisement was a political advocacy message critiquing the measures adopted by the Labour-led Government to combat COVID-19. NZME said there has been widespread debate about the best way to tackle the virus reflected in different approaches throughout the world. NZME says it is not false or misleading to appraise the response through a series of rhetorical questions. The clear takeout will be the Advertiser views the Government's approach to be overly restrictive with severe economic consequences.

Relevant ASA Codes of Practice

The Acting Chair directed the Complaints Board to consider the complaint with reference to the following codes:

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2 (b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2(e): Advocacy Advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Complaints Board said the advertisements before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under rule 11 of the Code of Ethics remain relevant. They say:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

Role of the ASA when considering an advocacy advertisement

The Complaints Board noted its role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Board will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion. The Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles.”

The Complaints Board observed that in a free and democratic society, issues should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/358 which was Upheld in part and 20/377 which was Not Upheld.

The full versions of these decisions (since 2015) can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 20/358 concerned a brochure advertisement from the New Conservative Party. The two-sided brochure poses the question "Did you know?" and lists a number of statements, including "Babies can be lawfully and easily aborted up to full term", "Every New Zealander owes \$32,000 in Government debt" and "Drugged drivers already cause more deaths than drunk drivers." The Complaints Board upheld in part a complaint about a flyer for the New Conservative Party. The Board said the statement "Drugged drivers already cause more deaths than drunk drivers" was a factual statement, not an opinion, and it had not been adequately substantiated.

Decision 20/377 concerned a billboard advertisement from The New Zealand Public Party (NZPP) promoting party policies for the 2020 Election. The advertisement shows Co-leader Billy Te Kahika and the words: "Its time" followed by three policy statements. One statement says: "to protect our tamariki from forced medical tests". The Complaints Board did not uphold the complaint. The Complaints Board agreed the opinion statement was not misleading and reflected the Advertiser’s position on the Covid-19 Public Health Response Act 2020, which provides for Orders "requiring persons to do any of the following: (viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances".

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout was the election advertisement for the Advance New Zealand Party promoted its view that the Government's response to the COVID-19 pandemic approach is overly restrictive and has major economic consequences.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had met the identity requirements of Rule 2(e) and was an advocacy advertisement. The Board said the identity of the Advertiser, the Advance New Zealand Party, was clear along with its position on the Government's response to the COVID-19 pandemic.

Are the statements in the advertisement likely to mislead?

The Complaints Board noted the five rhetorical questions set out Advance New Zealand's view about the Government's response to the pandemic and the impact of that response on New Zealanders.

Two of the questions referred to information or statements from the World Health Organisation (WHO), a global body with a high level of involvement advising on the international response to the pandemic and one of the questions referred to information from the Centre for Disease Control (US). The Board confirmed the reference to the position taken by these third parties was a factual statement which required substantiation. The statements said in part that it was the view of these third parties that: "rolling lockdowns won't work, and shows the virus as comparable to the seasonal flu" and "lockdowns are not a long term solution".

The Board acknowledged the Media's view the advertisement was clearly advocacy advertising from a political party in the context of an election and the Government's response to the pandemic is a matter of public interest and current debate.

The Complaints Board confirmed the importance of open debate during an election campaign. However, under the ASA complaints process, the onus is on the Advertiser to support factual statements made in advertisements, if challenged.

The Board noted the Advertiser had not responded to the complaint and no substantiation had been provided to support the statements in the advertisement, particularly in relation to the claim comparing COVID-19 to the seasonal flu.

The Complaints Board said in the absence of any substantiation, the advertisement was in breach of Principle 2 and Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again in its current form.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. **NOTE:** Under the fast track process one month prior to the Election, appeals must be made in writing via email or letter within three (3) calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT

The advertising includes false and misleading advertising.

Appendix 2

RESPONSE FROM ADVERTISER,

On receipt of the complaint, the Advertiser responded with the following query:

What exactly am I expected to respond to? All I can see is the one line claiming the advertising contains false or misleading information. Is there anymore more substantive that I have missed?

The Secretariat confirmed the complaint was one line stating the advertisement includes false and misleading information.

No substantive response from the Advertiser was received.

Appendix 3

RESPONSE FROM MEDIA, NZME

We write on behalf of NZME (the Publisher) in response to the above complaint regarding The Advance New Zealand Party's advertisement in The Northern Advocate.

This advertisement was designed and submitted on behalf of the client, but accepted by NZME for publishing, as we believe it does not contravene ASA codes.

The ASA has identified Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e) as potentially being relevant.

Advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

Obvious hyperbole identifiable as such is not considered to be misleading.

Rule 2(e) Advocacy advertising: Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

Firstly, we note that the advertisement is advocacy advertising because it promotes the views of a political party¹. The advertisement advocates support for the advertiser, a

¹ Complaint 20/348 New Conservative Party, Addressed Mail, No Grounds to Proceed

registered political party, by critiquing the measures adopted by the current Labour-led government to combat COVID-19. The identity and position of the advertiser is clear, therefore, the advertisement meets the requirements of Rule 2(e) and a more liberal interpretation of ASA Code is allowed.

We note that there has been widespread debate over the best way to tackle Covid-19 and significant media coverage of the differing approaches adopted by countries around the world. Sweden in particular has attracted media attention for eschewing a strict lockdown approach². In this context we wish to respond as follows:

1. We disagree that this advertisement 'includes false and misleading advertising'. The advertisement presents a critical appraisal of the current Government in the guise of a series of rhetorical questions. The likely takeout from the advertisement is that the advertiser views the approach taken by the current Government to combat COVID-19 as overly restrictive with severe economic implications for many New Zealanders and that the advertiser would take a different approach.
2. Finally, we again note that the advertisement is clearly advocacy advertising; the advertiser's identity is clear, and the advertiser's website address is clearly displayed. As the Complaints Board has recognized in previous decisions, in the context of advocacy advertising, *"political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society"* and *"in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations."*³ It is to be expected that in the context of a general election political parties such as the advertiser will critically assess the measures taken by the Government to combat COVID-19.

Please let the writer know if you have any queries or concerns.

² <https://www.medpagetoday.com/infectiousdisease/covid19/87812> ;
https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=12364331

³ Complaint 20/336; Complaint 20/037.