

COMPLAINT NUMBER	20/531
ADVERTISER	NZ National Party
ADVERTISEMENT	NZ National Party, Facebook
DATE OF MEETING	28 October 2020
OUTCOME	Settled – advertisement removed

Summary of the Complaints Board Decision

The Complaints Board settled a complaint about a sponsored Facebook advertisement for the NZ National Party which contained an unsubstantiated claim that retirees could be taxed \$140 per week under a Wealth Tax. This is because the Advertiser removed the advertisement and agreed not to use it again in its current form.

Advertisement

The sponsored Facebook National Party advertisement says, “STOP THE WEALTH TAX.” The accompanying text says “A wealth tax would be disastrous for retirees in New Zealand. If you’ve worked hard to pay off your home and save for your retirement you could be pinged \$140 PER WEEK. Only a Party Vote for National will protect your retirement.”

The advertisement contains a promoter statement and a “Learn More” button which links to details about the National Party tax policy.

Summary of the Complaint

The Complainant is concerned the advertisement does not provide any evidence to back up the claim that retired people could be forced to pay a wealth tax of \$140 per week.

Issues Raised:

- Truthful Presentation
- Advocacy Advertising

Summary of the Advertiser’s Response

The Advertiser said the advocacy advertisement relates to a well discussed policy of the 2020 election relating to a Wealth Tax. The Advertiser provided links to two press releases and an article “Stopping the Wealth Tax” which had examples of how the Wealth Tax might work in various scenarios. The Advertiser agreed the advertisement should have contained source information, however once clicking on the [Learn more link](#) viewers went to the party website which contained the supporting information.

The Advertiser said the advertisement was taken down early and would not be used again. The Advertiser asked that the complaint be considered settled.

Relevant ASA Codes of Practice

The 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 Decision 20/512, which was 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 flyer advertisement for the New Conservative Party.

The Complaints Board upheld the complaint in part because the statement “Drugged drivers already cause more deaths than drunk drivers” was a factual statement, not an opinion and had not been adequately substantiated.

Decision 20/512 concerned a Facebook advertisement for the NZ Social Credit Party.

The Complaints Board upheld the complaint because the Advertiser had not substantiated the claim that charities support approximately 400,000 children.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was a call to action to vote for the NZ National Party. The advertisement says that voting for any other major party could result in the implementation of a Wealth Tax and retirees could be taxed \$140 per week on their assets.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been adequately identified as an advocacy advertisement.

The Complaints Board said the advertisement is a sponsored Facebook post for the NZ National Party in the 2020 election campaign. The Board said the identity of the Advertiser was clear. The Board also said the Advertiser's position on the potential consequences the introduction of a Wealth Tax was clear.

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.

Procedural matter

The Chair noted the ASA had run a fast-track process to deal with election complaints in the last month of the campaign from 13 September to 14 October. The complaint was received at 4.56pm on 14 October. The Chair said it was not possible to process the complaint, obtain a response and publish a decision with 48 hours prior to the election on 17 October. The complaint was therefore processed under the normal ASA timeframe.

Is the claim made in the advertisement fact or opinion?

The claim was "If you've worked hard to pay off your home and save for your retirement you could be pinged \$140 PER WEEK."

The Complaints Board agreed the claim is presented as a statement of fact and required substantiation.

The Complaints Board ruled the Advertiser had not substantiated the claim. It noted the information provided by the Advertiser included links to two press releases on the Wealth Tax issue as well as a paper which discussed how the Wealth Tax might work in practice, including examples.

While the Complaints Board acknowledged the "Learn More" link on the advertisement did take the consumer to the National Party website where more information was available, the figure of \$140 per week quoted in the advertisement was not substantiated or explained in this information. The Complaints Board said the inclusion of this number without substantiation was misleading.

The Complaints Board noted the Advertiser confirmed the advertisement had run from 12-15 October and was removed by the Advertiser earlier than planned.

Given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in removing the advertisement and agreeing not to run it again, in accordance with the principles of self-regulation, the Complaints Board unanimously ruled the complaint was settled.

Outcome

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

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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT

<https://www.facebook.com/ads/library/?id=3394919107295125>

No evidence given; there's been 1.5k spent on the ad which suggests all retired people could pay \$140 a week in wealth tax with no supporting evidence whatsoever to back that up.

Appendix 2

RESPONSE FROM ADVERTISER, NZ NATIONAL PARTY

Thank you for your email dated 15 October 2020, regarding complaint 20/531 which details a complaint about an advocacy advertisement on our Facebook Page. You note in your email that the relevant sections of the ASA Code in breach “appears to be Principle 2, Rule 2(b), Rule 2(e)..”Our response is as follows to address the issues you raise on their behalf:

Background

In regards to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.

Furthermore, in recent previous rulings the Chair of the ASA Board noted that political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society. The Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities 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.

The advocacy advertisement in question relates to a well discussed policy of the 2020 Election known as a Wealth Tax. Many political parties advocated for such a tax in one form or another and the purpose of this ad was to highlight the negative effect on retirees who had saved for their retirement.

This ad was published at the time of the release of several Press Releases in the public domain, and detailed heavily on our website at the time which detail the scope and detail of a Wealth Tax here:

<https://www.national.org.nz/more-than-a-million-kiwis-would-pay-wealth-tax>

<https://www.national.org.nz/a-labour-greens-qovt-would-introduce-a-wealth-tax>

And a copy of the Wealth Tax Factsheet that was distributed at the time is **attached** for your information.

We agree that the advertisement in question should have contained source information on the face value of the advertisement to inform the viewer, however once clicking on the ad you would have been brought to our website at the time to be able to view the material in support.

No ad ran without a direct link click to the supporting information as above.

In regard to the sections of the Code you believe “appear to..” be in breach:

Rule 2 (b) relates to truthful presentation, and as such the advocacy advertisement in question directly relates to information in the public domain and available on the directly linked website to the ad. We disagree that the advertisement is misleading based on the calculations offered in the supporting information. But the ad ran for a short period of time and is no longer in distribution unless you specially come to our website to view the supporting material. Specifically the ad ran from 12th October till 15th October and was not re-activated.

Rule 2(e) is not relevant in this case as the unnamed complainant has sought to address the concern to the National Party (through the ASA). As such, it is clear who the advertiser is, and the advert contains our correct authorisation, and was displayed on our publicly available Facebook page.

I thank you again for your email and trust the above settles the matter in question. Should you need more information I would be happy to provide it.

Further from Advertiser

Apologies for the delay on this response.

Have now attached for the Board of the ASA to discuss.

We would like to consider the matter **Settled**. The Ad ran for 3 days, and was ended early on 15th October. The ad is no longer running and will not be re-used.