

COMPLAINT NUMBER	21/170
ADVERTISER	New Zealand Labour Party
ADVERTISEMENT	New Zealand Labour Party Facebook
DATE OF MEETING	11 May 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Labour Party Facebook advertisement. The Board said the advertisement did not meet the threshold to be misleading, in the context of an advocacy advertisement via a Labour Party Facebook post.

Advertisement

The New Zealand Labour Party Facebook advertisement included the text "...We're announcing a package of urgent and long term changes that will increase housing supply, relieve pressure on the market and make it easier for first home buyers..." Below this text was a series of bullet points under the heading "We're taking urgent action to tackle the housing crisis by: ..." One of the bullet points said: "Closing a long-standing tax loophole that benefits property speculators."

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because it said the Labour Party has "addressed a housing crisis by closing a long-standing tax loophole that benefits property speculators." The Complainant said the policy is a "tax on tenants" and will not in any way address the housing crisis.

Issues Raised:

- Truthful presentation
- Advocacy advertising

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said it is an expression of opinion. The Advertiser said the Labour Party is within its rights to advocate for Government policies, including the expression of opinion about the future outcomes that will result from housing policy announcements.

Relevant ASA Codes of Practice

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

ADVERTISING STANDARDS CODE

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.

About Advocacy Advertising

The Complaints Board said the advertisement 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. It 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

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 a precedent decision, Decision 20/465, which was No Grounds to Proceed.

The full version of this decision can be found on the ASA website:

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

Decision 20/465 concerned a Google Ad for the New Zealand Labour Party promoted their record in tackling child poverty. The heading states: “We are tackling child poverty – 7/9 indicators have improved.” Under the Labour Party website address is the statement: “Our policies have lifted thousands of children out of poverty but there’s more to do.”

The Chair noted the Labour Party promoted statistics comparing 2018 with 2019, whereas the Complainant compares 2017 and 2019 in their complaint. The Chair confirmed the advocacy nature of the advertisement during an election campaign meant the Advertiser could present factually correct statements with a bias in its favour. The Chair observed that 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.

Complaints Board Discussion

The Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised:
 - Context: The New Zealand Labour Party Parliamentary Office announcing the Labour Government's new housing policy, which includes an extension of the bright line test
 - Medium: Social media: Facebook
 - Audience: Facebook account holders, who receive this post
 - Product: Party political advertising

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the Labour Government is announcing a package of policy changes to address the housing crisis.

Has the advocacy advertisement been adequately identified?

The Complaints Board agreed the advertisement had been identified as an advocacy advertisement. The Board said the identity of the Advertiser, the New Zealand Labour Party, was clear, along with its position that the announced changes will increase housing supply and make it easier for first home buyers.

Is the advertisement misleading?

The Complaints Board agreed the advertisement, in the context of political advocacy advertising, did not reach the threshold to be misleading.

The Complaints Board considered the statement that the Labour Party is taking urgent action to tackle the housing crisis by "Closing a long-standing tax loophole that benefits property speculators", to assess whether it was a statement of fact supported by adequate substantiation, or opinion.

The Complaints Board agreed this statement is opinion and reflects the Advertiser's position on the new housing policy. It does not require substantiation.

The Complaints Board noted that the Complainant has a different opinion from the Advertiser and views the policy as a "tax on tenants" which will not in any way address the housing crisis.

The Board confirmed a more liberal interpretation of the Advertising Standards Code applies to political advertising, in recognition of section 14 of the Bill of Rights Act. The Board also took into account the post was from the Labour Party Facebook account to people who have chosen to follow the party and its views via Facebook.

The Complaints Board said the advertisement did not meet the threshold to be misleading, taking into account context, medium, audience and product and was not in breach of Principle 2, Rule 2(b) or Rule 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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

Appendix 1

COMPLAINT

I would like to complaint about being subjected to false, deceptive and misleading advertising by the labour party via Facebook.

In particular (See photo below) they have advertised that: They have addressed a housing crisis by closing a long-standing tax loophole that benefits property speculators.

- Firstly, interest deductibility for a business cost is not a loop hole and was a legitimate expense that forms part of the cost of providing such a service. It is a fair way offsetting legitimate costs incurred when passing these on to a tenant in exchange for taxable income. By not allowing these deductions they are adding to the cost of providing a service in a way that is not incurred for a home owner. Therefore, punishing renters.
- There is a large amount of tax rules regulating speculators that require them to pay tax on property gains already.
- The rule change goes far beyond property speculators and impacts people who provide accommodation services to the needy.
- There is no evidence that this benefits property speculators or landlords over and above any other stakeholder in the business.
- This a is a tax on tenants who choose to rent from a private landlord over a government or corporate provider.

This is evidenced by way of an example if I was to buy a house and either use this myself or to rent it out at cost, ie no profit, then If the house costs \$800 a week to own (including interest, rate, insurances and allowance for R&M etc) a home owner would pay \$800 with the potential of some capital appreciation over time, offset by the risk unforeseen maintenance, falling house prices or increased interest costs and other risk factors

If on the other hand the home was to be rent this property out under the new proposal the landlord will now be required to pay an addition approx \$100 in taxes meaning the cost to the tenant, if rented at cost, will now be \$900 per week for the same property and puts tenants at a disadvantage over home buyers, rather than making it more fair and equitable as suggested by labour.

However, historically the market rate would generally be below the cost of ownership, therefore making even more disadvantageous to landlords. Therefore, it is false, wrong and misleading to suggest that this interest deductibility is to correct a misaligned loophole that favours landlords and or property speculators over first home buyers or any other market participant.

Nothing in the above example would help address a housing crisis. There are only two possible outcomes of this one being rents go up (ie the tax is passed on to landlords), the other being supply goes down (investors absorb the tax and therefore have reduce incentive

to invest), with no possibility of any relief to the housing crisis that has been caused or exasperated by this government.

The fact of the matter is this is a tenant tax, taxing tenants for renting off private landlords to favour the government and corporates with complex tax structures to have an advantage over private landlords and the tenants who rent off them.

It is no different to applying a GST tax and saying the merchant will absorb the tax and will not pass this on to consumers. But is just done in a nasty and unfair manner. It is no different to claiming that there is a loophole that allows a restaurant to have for deducting the cost of food, as this is a deduction that is not available to people who eat at home.

Along with the many media statements that the prime minister and other ministers have made are totally misleading and deceiving to anyone who does not have a reasonable grasp on the economics of this policy and cannot see how this does not do what the Labour Party have claimed. For example that the interest deductibility gave landlords an advantage over home buyers, which is just not true. While many first home buyers may feel this way, investors are often people with greater resources and market knowledge which gives them an advantage over first home buyers.

This is not urgent action that has been taken to address a housing crisis. It is a means of exasperating a housing crisis by pushing up the cost of housing for those that can least afford it, adding to the unaffordability of housing, poverty and homelessness and making it harder for those who rent to ever save enough to buy a house. Making more people dependent on the government for grants and handouts, undermining people's mental wellbeing. It is a policy that is designed to shift wealth from those in the business of providing housing services to favour the government and large organisations at the expense of anyone who chooses to rent from a private landlord.

While the additional renters tax may create a wealth shift in favour of those who are cash up and ready to buy now or in the near future, this tax is detrimental to home ownership (especially those that are wanting to sell), anyone wanting to build or develop homes and pushes up the cost of living for most New Zealanders. It appears to be done as a way of nationalising the rental market as it is a tax only on those who rent off private landlords and not those who rent off government or other non-tax paying entities. By advertising this as a move to elevate a housing crisis is misleading propaganda that preys on the vulnerable who do not have the skills to see that adding \$625 million (the expected tax take) will only add to the crisis.

I would like the Labour Party to acknowledge that their policy is a tax on tenants and that their advertising on Facebook was misleading and deceptive and that this policy is one that exasperates the housing crisis and is not one that in any way addresses the housing crisis. And put out a contra ad saying that this will worsen the housing crisis.

Please sanction this deceptive behaviour as soon as practical

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND LABOUR PARTY

This advertisement was placed by Labour's Parliamentary office.

I write to respond to complaint 21/170. The Labour Party requests that the Board reject the complaint.

The subject of the complaint is a Labour Party Facebook advertisement advocating for recent housing policy announcements made by the Government.

The advertisement presents aspects of the Government's housing policy announcements, and the Labour Party's opinion about future outcomes of the policies.

The aspects of the Government announcements highlighted by the Labour Party in the advertisement are:

- [Announcement by the Government that it is lifting the income caps on First Home Grants](#)
- [Announcement by the Government that it is lifting the price cap in targeted regions on houses able to be purchased through the schemes](#)
- [Announcement of a \\$3.8 billion Housing Acceleration Fund](#)
- [Announcement of an extension to the Apprenticeship Boost payment](#)
- [Announcement that the Government will create incentives to build new houses](#)
- [Announcement by the Government that it will extend the Bright Line Test from 5 to 10 years](#)
- [Announcement by the Government that it is closing a long-standing tax loophole that benefits property speculators](#)

We have provided links in the bullet points above to each of the aspects of the Government's announcements which the Labour Party is advocating for in the advertisement.

The Labour Party acknowledges that the complainant has outlined their opinion about what certain future outcomes of the announced policies might be. They base their opinion on a hypothetical example of how they would respond to these policies if they were a property investor and landlord with a specific set of hypothetical circumstances.

The complainant essentially argues that the Labour Party advertisement is false, misleading and deceptive because of their opinion on these matters and the hypothetical example presented by them.

The complainant is perfectly within their rights to present an opinion about the potential future outcomes of certain Government policies. The Labour Party is also within its rights to advocate for Government policies, including expression of opinion about future policy outcomes.

In the Labour's Party's opinion, the Advertising Standards Authority complaint process is not the appropriate forum for parties to debate the relative merits of Government policy announcements, nor the potential outcomes.

For this reason, the Labour Party maintains that the Board must reject the complaint.

Appendix 1: Labour Party Digital Marketing – Complaint 21/170

1) Your response to the information requested below and any other information you provide will be included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the writer if this is an issue.

If you are sending a pdf version of your response, please send a Word version as well, as it is easier to incorporate into the published decision.

2) In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters including:

- *Generally prevailing community*

- *Pervious decisions*
- *The consumer takeout from the advertisement*
- *The context, medium and intended audience*
- *The product or service being advertised*

3) *Please provide the ASA digital media file(s) copy of the advertisement. If the complaint relates to on-screen graphic in a video, provide a broadcast quality version.*

Attached.

4) *Is the advertisement still accessible – where and until when?*

The original organic Facebook and Instagram posts from New Zealand Labour Party are still published, but will likely not be being promoted into anyone's newsfeeds as content tends to only have 24-48 hour lifecycle, according to Facebook.

The original posts will also still be on the pages of those who decided to share the content at the time, but again, will not still be being promoted to their followers.

The paid advert will also still be visible in our Facebook ad library, as per Facebook's own transparency requirements.

This ad is no longer being promoted from our channels and was only live as a paid advertisement between 23/03/21-26/03/21.

5) *List all media where the advertisement is placed e.g. TV, Radio, Outdoor, Newspaper, Cinema, Website, Social Media, App, and Email.*

Facebook and Instagram

6) *For Broadcast advertisements, provide: a copy of the script; a copy of the media schedule and spot list (please remove all financial information); CAB key number and rating*

N/A

7) *Who is the target audience for the product / brand / service? And what tools and/or data were used to target this audience?*

People who follow the NZLP page and people aged 18+ living in NZ, (who were interested in housing). This audience was created using Facebook's native targeting options.

8) *If the complaint is about unsubstantiated claims please provide appropriate substantiation.*

You will need to provide the ASA with full copies of relevant information that you have highlighted to support the claims raised in the complaint. For more information please read the ASA's Guidance Note on Responding to a Complaint about Misleading Claims)