

COMPLAINT NUMBER	21/197
ADVERTISER	New Zealand Taxpayers' Union
ADVERTISEMENT	Taxpayers' Union, Twitter
DATE OF MEETING	17 May 2021
OUTCOME	No Grounds to Proceed

Advertisement: The Taxpayers' Union Twitter advertisement includes an image from the New Zealand Herald newspaper which features a fake letter written by a child named Sally to the Prime Minister about the Speaker of the House, Rt Hon Trevor Mallard. The letter states he is a bad man and should be let go from his job and made to pay money back. The headline on the Twitter post says "In today's NZ Herald, Sally (age 10) has written to the PM about a very naughty boy at Parliament who cost taxpayers \$333,000 (and counting). Let's home (sic) Jacinda Ardern gets the message!"

The Chair ruled there were no grounds for the complaint to proceed.

Complaint: Fraudulent advertisement which exploits a fake child's fake letter to make a political accusation on an issue that has already been litigated.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

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 Chair said the advertisement 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 Chair noted her 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 Chair 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 Chair 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 Chair 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.

The Chair noted the Complainant's concerns the advertisement was misleading to use a fake child's letter to make a political point.

The Chair carefully reviewed the advertisement confirmed the identity and position of the Advertiser was clear. The advertisement on the Advertiser's Twitter feed contained the Taxpayers' Union name and logo. The Chair confirmed the advertisement met the identity requirements of the advocacy rule and a more liberal interpretation of the Code applied.

The Chair said the Advertiser had used the image of a fake child's letter to the Prime Minister as a vehicle to portray its political opinion of the Speaker of the House, Rt Hon Trevor Mallard. The Chair said the matter referred to in the advertisement had been widely reported and debated.

The Chair said in the context of advocacy, the advertisement was not misleading and ruled it was not in breach of Principle 2 or Rules 2(b) or 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.