

<b>COMPLAINT NUMBER</b>	21/535
<b>ADVERTISER</b>	Taxpayers' Union
<b>ADVERTISEMENT</b>	Taxpayers' Union, Television
<b>DATE OF MEETING</b>	29 November 2021
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** The television advertisement from the New Zealand Taxpayers' Union advocates against the government's Three Waters reforms. The advertisement features stylised images of coronavirus, the Beehive, Jacinda Arden, Nanaia Mahuta, and critical news headlines, with text highlighting key points. The advertisement ends with the on-screen statement, "Three Waters? Zero Gain". Underneath is a website address for "www.StopThreeWaters.nz" with small text below stating, "Authorised by the New Zealand Taxpayers' Union Inc, Level 4, 117 Lambton Quay, Wellington".

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

**Complaint:** The New Zealand Taxpayers' Union's (NZTU) is currently running an advertisement against the proposed government policy, Three Waters. It begins by showing the symbol commonly used for the Covid virus alongside a photo of the Prime Minister. But Covid is nowhere mentioned in the advertisement and no attempt is made to justify a link with the Three Waters policy. The NZTU is thus attempting to create a false sub-liminal association in viewers' minds between the Three Waters policy and the Covid virus for their own political ends. It should be removed from all broadcasting outlets.

**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 whether any factual claims require substantiation from 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 Complainant was concerned that by using an image of the symbol associated with COVID-19 alongside an image of the Prime Minister, the advertisement was trying to make a false subliminal connection between COVID-19 and the Government's Three Waters reform proposal.

The Chair confirmed the advertisement was an advocacy advertisement and the Advertiser's identity and position on the issue was clear. The advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code. It included a website address and an authorisation statement with details for the Advertiser.

The Chair confirmed a more liberal interpretation of the Advertising Standards Code was provided for under the Advocacy Principles in recognition of the protection for freedom of expression in the New Zealand Bill of Rights Act.

She carefully reviewed the advertisement and said the likely consumer takeout is that it presents the Taxpayers' Union's view opposing the proposed Three Waters policy.

The Chair said it was clear the statements in the advertisement reflect the Advertiser's interpretation of and opinion about the Government proposal on water reform. She noted this is a matter which is the subject of significant public debate with information in support of the reform and in opposition widely available. This context is a key part of the assessment of Code compliance.

The Chair considered the issue raised by the Complainant about the use of the imagery associated with COVID-19 in the advertisement. The Chair noted the voice-over in the advertisement in conjunction with the image states: "In the middle of a pandemic, the Government has decided...". She said the advertisement specifically refers to the timing of a government policy announcement during the COVID-19 pandemic, and therefore the imagery was not misleading.

The Chair said in the context of advocacy advertising, the advertisement was not in breach of Principle 2 or Rules 2(b) and 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](http://www.asa.co.nz). Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.