

COMPLAINT NUMBER	16/088
COMPLAINANT	J. Browne and J.Masons
ADVERTISER	New Flag New Zealand Inc.
ADVERTISEMENT	New Flag New Zealand Inc. Television
DATE OF MEETING	22 March 2016
OUTCOME	Not Upheld

SUMMARY

The television advertisement by New Flag New Zealand Inc. featured politician Fran Wilde and sports people Maria Tutaia and Dan Carter who asked viewers to join them and vote to change the New Zealand flag in the upcoming referendum. At the end of the advertisement it stated: "Authorised by L. Holden, 98 Gibbons Street, Upper Hutt for New Flag New Zealand Inc."

Complainant, J. Browne said the advertisement went against the democratic process by using celebrities to advocate for a change in the upcoming New Zealand flag referendum. J. Browne also said of the advertisement was paid for by New Zealand taxpayers without their permission.

J. Mason expressed similar views adding an advertisement has not appeared using celebrities to advocate to keep the current flag.

The Complaints Board said it was clear the advertisement was an advocacy advertisement featuring the opinions of three well-known New Zealanders who were encouraging people to vote to change the New Zealand flag in the upcoming referendum. It confirmed the identity of the Advertiser was clear and included the promoter statement required by the Electoral Commission for advertisements of this nature.

The Complaints Board said the advertisement was by the advocacy group, New Flag New Zealand Inc., not a taxpayer-funded advertisement by the government.

The Complaints Board ruled the complaints were Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 2 and 11 of the Code of Ethics. This required the Complaints Board to consider whether or not the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer, and if it had been prepared with a due sense of social responsibility to consumers and to society.

Complainant, J. Browne said the advertisement went against the democratic process by using celebrities to advocate for a change in the upcoming New Zealand flag referendum. J. Browne also said of the advertisement was paid for by New Zealand taxpayers without their permission.

J. Mason expressed similar views, adding the celebrities used would have a significant influence on a certain population and said such influence was totally inappropriate. This Complainant also said they had not seen an advertisement advocating to keep the current flag.

The Complaints Board ruled the complaints were Not Upheld.

The Complaints Board noted Rule 11 of the Code of Ethics allows for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. The identity of an Advertiser in matters of public interest or political issues should also be clear.

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

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 right 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.

The Complaints Board noted the response from the Advertiser where it stated: "I struggle to understand how it is not clear that the advertisement has been created by the Change the NZ Flag campaign, given that it clearly carries the authorisation statement, and is a series of opinions from various New Zealanders as to why New Zealand's flag should change."

The Complaints Board said it was clear the advertisement fell into the category of advocacy, featuring the opinions of three well-known New Zealanders who encouraged people to vote to change the New Zealand flag in the upcoming referendum. The Complaints Board confirmed the identity of the Advertiser was clear and met the identity requirements under Rule 11 and included the promoter statement required by the Electoral Commission for advertisements of this nature.

Accordingly, the Acting Chair said the advertisement fulfilled that requirement in Rule 11.

The Complaints Board noted **J. Browne's** concerns that such an advertisement went against the democratic process and, if taxpayers' money had been used to produce the advertisement, it had been done so without their permission. The Complaints Board noted the Advertiser's response where it stated: "The advertising was paid for by Change the NZ Flag's supporters, and not by taxpayers." The Complaints Board also said the use of celebrities to endorse the views of an organisation was provided for under the rules of advocacy.

In response to **J. Mason's** concerns at the absence of an advertisement encouraging people to vote to retain the current flag, the Complaints Board said robust debate in a democratic society is to be encouraged. It said if an organisation or individuals chose to privately fund an advertisement to encourage people to vote to retain the current flag, it could. However, the absence of an oppositional advertisement was not misleading.

In light of these observations, the Complaints Board said the identity of the advertisement was clear and there was nothing in the advertisement that was likely to mislead or deceive consumers. As such, the Complaints Board said the advertisement had been prepared with a due sense of social responsibility and ruled the advertisement was not in breach of Basic Principle 4 or Rules 2 or 11 of the Code of Ethics.

Accordingly, the Complaints Board ruled to Not Uphold the complaints.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for New Flag New Zealand Inc. encouraged people to vote to change New Zealand's flag in upcoming referendum. The advertisement featured politician Fran Wilde and sports people Maria Tutaia and Dan Carter asking viewers to join them and vote to change the New Zealand flag in the upcoming referendum. At the end of the advertisement it stated: "Authorised by L. Holden, 98 Gibbons Street, Upper Hutt for New Flag New Zealand Inc."

COMPLAINT FROM J. BROWNE

This Ad goes against the due democratic process by trying to influence which way people vote due to the opinions of known celebrities, sports people etc, some of which don't even live within NZ. If these ads are paid for by the NZ taxpayers, it has been done so without their expressed permission.

COMPLAINT FROM J. MASON

I have just watched an advert regarding the flag change featuring celebrities such as Dan Carter advocating the flag change.....how can this be allowed to happen??? Since the issue of a flag change began....I cannot remember seeing an advertisement featuring a famous celebrity telling us to NOT vote for change. Knowing how much influence people

such as Dan Carter have on a certain population, I feel this is totally inappropriate.....now much is John Key paying for this publicity?? How can this be fair.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 11: Advocacy Advertising - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

RESPONSE FROM ADVERTISER, CHANGE THE NZ FLAG

This letter responds to two complaints the Advertising Standards Authority (ASA) has received and accepted regarding Change the NZ Flag's television advertisements.

The complaints relate to alleged breaches of rules (2) and (11) of the Advertising Code of Ethics.

On the rule 2 issue, I am unsure how the rule has been breached by this advertisement and seek clarification from the ASA on this breach.

The advertising is allowed under the relevant legislation, the New Zealand Flag Referendums Act 2015. The legislation makes it clear that the legal requirements for advertising during the referendum are that an authorisation statement accompany the advertisement, which was the case with the advertisements in question. There is no restriction in the legislation covering the referendum – as there is for general elections – on when the advertisements could be broadcast.

The Electoral Commission has further clarified this on their website:

<http://www.elections.org.nz/events/referendums-new-zealand-flag-0/referendum-advertising-rules>

On the rule 11 breach, I struggle to understand how it is not clear that the advertisement has been created by the Change the NZ Flag campaign, given that it clearly carries the authorisation statement, and is a series of opinions from various New Zealanders as to why New Zealand's flag should change. The advertising was paid for by Change the NZ Flag's supporters, and not by taxpayers.

RESPONSE FROM COMMERCIAL APPROVALS BUREAU ON BEHALF OF THE MEDIA

In response to the complaints about the above advertisement, I can confirm that the advertiser of record is New Flag New Zealand Inc. The advertiser is identified in the commercial (as required by Rule 11) and the advertisement includes a promoter statement in the format prescribed by the Electoral Commission.

In our opinion there are no grounds to uphold these complaints.