

COMPLAINT NUMBER	18/200
COMPLAINANT	P Bruce
ADVERTISER	New Zealand National Party
ADVERTISEMENT	New Zealand National Party, Digital Marketing, Facebook
DATE OF MEETING	24 July 2018
OUTCOME	Upheld in part, Not Upheld in part

SUMMARY

The New Zealand National Party posted an advertisement on its Facebook page which read “This Government is costing Kiwi families over \$100 a week: \$15 a week in extra fuel taxes, \$20 a week in more expensive groceries, \$20 a week in rent increases, \$40 a week in cancelled tax cuts, \$10 a week lower wages from slowing economic growth.”

The Complainant said the Advertiser is attempting to draw a comparison between what is happening under the current Government and what would have happened if a National Government had been elected.

The Complainant said the advertisement is misleading because there is no detail about where the amounts quoted came from, showing a cause and effect relationship between these amounts and the Government’s policies.

The Advertiser said they completely reject the basis of the complaint and there was no intention to mislead. The Advertiser said the figures used were all factually correct.

The Complaints Board said the advertisement was an advocacy advertisement and met the identification requirement under Rule 11 of the Code of Ethics. The Complaints Board said this means opinion should be clearly distinguishable from factual information.

The Complaints Board decided to examine each of the five statements in the advertisement in turn.

The Complaints Board unanimously agreed insufficient evidence was provided to support two of the statements in the advertisement: “the Government had cost New Zealand families \$15 a week in extra fuel taxes” and “\$20 a week in rent increases”.

A majority of the Complaints Board agreed the Advertiser had not provided sufficient evidence to support the statement “the Government had cost New Zealand families ... \$20 a week in more expensive groceries”.

A minority disagreed. It said the statement should be viewed in the context of an advocacy advertisement and as such this statement was expressing a political perspective and could not be considered misleading.

A majority of the Complaints Board agreed the remaining two statements, suggesting the Government had cost New Zealand families “\$40 a week in cancelled tax cuts” and “\$10 a week lower wages from slowing economic growth” did not reach the threshold to mislead consumers.

A minority disagreed. It said that as the tax cuts promised by the New Zealand National Party had not been granted to New Zealand tax payers, as it was not in Government, it was not accurate to describe this as a “cost” to New Zealand families. A minority said many factors impact economic growth, and it was misleading to say that the current Government was responsible for this decrease in income.

In accordance with the majority, the Complaints Board ruled the complaint was Upheld in part and Not Upheld in part.

[Advertisement to be amended/removed]

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

COMPLAINTS BOARD DECISION

The Acting 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 the advertisement contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim was misleading or deceptive, was likely to deceive or mislead the consumer, made false and misleading representation, abused the trust of the consumer or exploited his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

The Complaints Board was also required to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 11 of the Code of Ethics. The Complaints Board noted Rule 11 allowed for expression of opinion in advocacy advertising, provided that the expression of opinion is robust and clearly distinguishable from fact. 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 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.

The Complaints Board ruled the complaint was Upheld in part and Not Upheld in part.

The Complaint

The Complainant said the Advertiser was attempting to draw a comparison between what is happening under the current Government and what would have happened if the National Party had been elected.

The Complainant said the advertisement is misleading because there is no detail about where the amounts quoted came from, showing a cause and effect relationship between these amounts and the Government's policies.

The Advertiser's response

The Advertiser said the advertisement had been removed from the National Party's Facebook account while the ASA considered the complaint.

The Advertiser said they completely reject the basis of the complaint and there was no intention to mislead. The Advertiser said the advertisement was an untargeted, non-funded Facebook post, based on a press release issued by the National Party Leader Simon Bridges. This press release was issued on the same day as the Facebook post and outlined how all the figures were reached.

The Advertiser said the figures used were all factually correct. Further detail on how each of the figures was calculated was provided.

Complaints Board Discussion

Advocacy and Identification

The Complaints Board agreed the advertisement before it fell into the category of advocacy advertising by the New Zealand National Party.

In considering the challenges the Complaints Board can face in dealing with complaints about political advertising, the Complaints Board agreed that clear identification of the Advertiser and their position is essential to provide context for the consumer.

The Complaints Board acknowledged care must be taken to ensure the reader would readily be able to identify the material was an advertisement containing the opinions of the National Party. The Complaints Board said this was primarily indicated by:

- The advertisement was displayed on the New Zealand National Party Facebook page
- The New Zealand National Party logo is at the bottom left-hand corner of the advertisement
- An authorisation statement which reads "Authorisation by Simon Bridges, Parliament Buildings, Wellington".

Taking into account the above information, the Complaints Board said the identity of the Advertiser, the New Zealand National Party, was clear and ruled the Identification requirement of Rule 11 had been met.

The Complaints Board noted that advertisements of a political nature were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society. The Complaints Board 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. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

Consumer Take-out

The Complaints Board considered the likely consumer take-out of the advertisement. The Complaints Board said the advertisement presented the opinion of the New Zealand National Party that Government policies had resulted in increased costs to New Zealand families.

Was the advertisement misleading?

The Complaints Board then considered whether the advertisement was likely to mislead or deceive the consumer.

The Complaints Board noted there were five examples in the advertisement illustrating how “this Government is costing Kiwi families over \$100 a week”. These were as follows: \$15 a week in extra fuel taxes, \$20 a week in more expensive groceries, \$20 a week in extra rent increases, \$40 a week in cancelled tax cuts and \$10 a week lower wages from slowing economic growth.

The Board decided to examine each of these statements in turn, with reference to the information provided by the Advertiser both in the press release from the Leader of the New Zealand National Party, Simon Bridges and in the Advertiser’s response.

\$15 a week in extra fuel taxes

The Complaints Board said the level of fuel taxes varied from region to region and it was not accurate to say there was a \$15 increase in fuel taxes across the board. The Board said the recently introduced Auckland regional fuel tax was specific to that region.

The Complaints Board unanimously agreed that the Advertiser had not provided sufficient substantiation to support this statement in the advertisement which referred in general to “New Zealanders” and therefore it was misleading.

\$20 a week in more expensive groceries

A majority of the Complaints Board agreed that other factors, such as adverse weather conditions, may have had an impact on grocery prices, and that it was misleading to say that the Government was responsible for this increase. A majority of the Complaints Board said the Advertiser had not provided sufficient substantiation to support this statement and it was misleading.

A minority disagreed. It said the statement should be viewed in the context of an advocacy advertisement and as such this statement was expressing a political perspective and could not be considered misleading.

\$20 a week in extra rent increases

The Complaints Board noted there has been significant regional variation in average rent increases, ranging from around 20% in Auckland to 10% in Wellington, while in Christchurch, average rents have decreased.

The Complaints Board unanimously agreed that the Advertiser had not provided sufficient substantiation to support this statement and it was misleading.

\$40 a week in cancelled tax cuts

The majority of the Complaints Board agreed this statement should be viewed in the context of an advocacy advertisement and as such this statement was expressing a political perspective. It noted the positioning of the advertisement, on the New Zealand National Party Facebook page. A majority agreed this statement did not reach the threshold to be misleading when the overall context, medium and political nature of the advertisement were considered.

A minority disagreed. It said that as the tax cuts promised by the New Zealand National Party had not been granted to New Zealand tax payers as it was not in Government, it was not accurate to describe this as a “cost” to New Zealand families.

\$10 a week lower wages from slowing economic growth

A majority of the Complaints Board agreed the statement should be viewed in the context of an advocacy advertisement and as such this statement was expressing a political perspective. A majority agreed this statement did not reach the threshold to be misleading when the overall context, medium and political nature of the advertisement were considered.

A minority disagreed. It said many factors have an impact on economic growth, and it was misleading to say that the current Government was responsible for this decrease in income.

Summary

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement under Rule 11 of the Code of Ethics. The Complaints Board said the advertisement presented the New Zealand National Party opinion that the election of the current Government had resulted in increased costs to New Zealand families.

In recognising that the advertisement was an advocacy advertisement, the Complaints Board said a more liberal interpretation of the Code was appropriate. At the same time however, the Complaints Board said quantifiable claims should be able to be supported.

The Complaints Board agreed the Advertiser had not provided sufficient evidence to support the view that the Government had cost New Zealand families in three of the five examples provided.

The Complaints Board unanimously agreed insufficient evidence was provided to support the statements that the Government had cost New Zealand families “\$15 a week in extra fuel taxes” and “\$20 a week in rent increases”.

A majority of the Complaints Board agreed the Advertiser had not provided sufficient evidence to support the statement the Government had cost New Zealand families “\$20 a week in more expensive groceries”.

A majority of the Complaints Board agreed the remaining two statements, suggesting the Government had cost New Zealand families “\$40 a week in cancelled tax cuts” and “\$10 a

week lower wages from slowing economic growth”, did not reach the threshold to mislead consumers and were not misleading.

Overall, the Complaints Board agreed the advertisement was in breach of Rule 2 of the Code of Ethics and had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

In accordance with the majority, the Complaints Board ruled to Uphold the complaint in part and Not Uphold it in part.

DESCRIPTION OF ADVERTISEMENT

The New Zealand National Party posted an advertisement on its Facebook page which read “This Government is costing Kiwi families over \$100 a week:

\$15 a week in extra fuel taxes, \$20 a week in more expensive groceries, \$20 a week in rent increases, \$40 a week in cancelled tax cuts, \$10 a week lower wages from slowing economic growth.”

COMPLAINT FROM P BRUCE

No details of where these amounts have come from, or showing a cause and effect relationship between these amounts and the Government’s policies. No evidence that these amounts would have been different if this Government had not been elected.

Looking at each individual point: 1. Extra fuel taxes costing \$15 per week. As of today fuel taxes have only gone up due to extra GST collected on increasing petrol prices caused by the international price of oil going up. This would still have happened if National was in power so not caused by this Government’s policies.

2. \$20 a week in groceries. What government policy does National allege has caused this? Grocery prices go up regardless of who is in power. Evidence given in their posting is for an entire year, so covers a time when National was still in Government.

3. Rent gone up by \$20 per week. Again rents go up regardless of who is in power. Can National please state what they would have done different to stop rents going up between election day and today? Many families own their own home so don't pay rent. No mention that accommodation supplement has also been increased.

4. \$40 per week in cancelled tax cuts. The Government instead is increasing working for families so are not worse off by the amount of the cancelled tax cuts - some may even be better off as a result.

5. \$10 per week from slower economic growth. Economic growth goes in cycles and has been slowing since 2016, when the previous Government was in power. Why does National think that economic growth would not have slowed if it had remained in power? Some families will soon get the winter energy payment.

I believe that this advertisement is attempting to draw a comparison between what is happening under this Government and what would have happened if the National party was in power, and this comparison is misleading and deceptive.

CODE OF PRACTICE

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, NEW ZEALAND NATIONAL PARTY

Re: Complaint 18/200

I write in response to your letter of 2 July 2018 regarding the above complaint from P Bruce White concerning a National Party digital marketing post.

I can confirm the relevant post has been removed from the National Party's Facebook account while the ASA consider the complaint.

However, I do completely reject the basis of the complaint, which as you note appears to have been made under the Advertising Codes of Practice: Code of Ethics – Basic Principle 4, Rule 2, and Rule 11.

I will go through each of these sections as they relate to this complaint:

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

The advert/graphic was an untargeted, non-funded Facebook post and is based off a press release issued by the National Party Leader Simon Bridges on the same day, which outlines how all the figures were reached. That press release (view at: <https://www.national.org.nz/government/adding-100-a-week-to-cost-of-living>) was linked in the comments section of this post. It was clearly viewable and accessible by anyone reading the post, so people seeking more information could read it and see the evidence it was based on.

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).

Our intention was not to mislead the reader. The figures featured in the graphic were all factually correct as outlined below:

- Fuel taxes up by \$15 a week. There has been widespread news coverage that fuel taxes are going up by 24.3 cents a litre in Auckland (Regional Fuel Tax + Increase in Excise Tax). Based on the average vehicle fuel tank being around 60 litres that equates to \$15 to fill up a car.

- \$20 a week in groceries is from the Otago University's latest New Zealand Food Cost Survey (<http://www.scoop.co.nz/stories/GE1806/S00065/price-of-healthy-food-basket-continues-to-rise.htm>). This was accompanied by a NZ Herald article linking retailers increasing cost of food to minimum wage increases. Increasing fuel taxes will also increase the cost of food. (https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=12070643)
- \$20 extra rent is from MBIE estimates since last year. Independent economists are on record saying this Government's ban on foreign investment, increasing the brightline test and negative gearing changes, as well as accommodation supplement increases will all increase rents. Also the Healthy Homes legislation has increased red-tape and costs on landlords.
- \$40 per week in cancelled tax cuts. Tax cuts legislated for by last Government, since repealed by this Government, were \$1,060 per average earner a year. For a two-earner household, this is \$40+ per week.
- Slower economic growth is from lower GDP forecasts under this Government compared to when they took office. Average GDP growth over next two years was an average of 0.5 per cent lower in Budget 2018 compared to PREFU. This works out at \$500 per person over 2 years or \$10 per week for two-person household.

This evidence was not included in the graphic because in a Facebook post there is insufficient opportunity to explain background detail like that and we make no attempt to do so.

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.

Readers of this post would be under no misapprehension this is a political party advert as would be evidenced by the National Party authorisation clearly displayed in the corner and the National Party logo. Its purpose is to highlight the rising costs of living which the National Party believes to be relevant to political debate. The graphic contains factual information as outlined above.

I trust this provides the information you require to consider this issue.

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 days of receipt of this decision.