

COMPLAINT NUMBER	19/071
COMPLAINANT	K Stafford & N Jones
ADVERTISER	New Zealand National Party
ADVERTISEMENT	National Party, Digital Marketing
DATE OF MEETING	9 April 2019
OUTCOME	Not Upheld

SUMMARY

The NZ National Party Facebook and Twitter posts included the ‘All sizzle no sausage’ video. The post said “Labour promised to build 10,000 houses in the first year of its flagship housing programme. Like many of its policies, KiwiBuild has failed to deliver. If there’s one thing we’ve learned with this government, it’s don’t believe the hype.”

Two complaints were received. Both K Stafford and N Jones said the Advertiser is misleading the public by saying the Labour Party promised to build 10,000 houses a year and it did not reflect an allowance for the gradual increase in house production over the ten years.

The Advertiser provided a number of statements from Labour MPs referring to Labour’s housing policy and said it was a reasonable assumption that the houses could or would be delivered at a rate of 10,000 per year.

The Complaints Board said that in the context of an advocacy advertisement, the Advertiser had provided sufficient substantiation to support the claim “Labour promised to build 10,000 houses in the first year of its flagship housing programme.”

The Complaints Board said that most consumers would understand the context of the advertisement as the National Party’s assessment of the Government’s promises versus what it has delivered. The Complaints Board said the advertisement is unlikely to deceive, mislead or confuse consumers.

The Complaints Board unanimously ruled that the advocacy advertisement before it was not in breach of Principle 2 or Rule 2(b) and Rule 2(e) of the Advertising Standards Code.

The Complaints Board ruled the complaint was 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 complaints with reference to Principle 2 and Rule 2(b) Truthful Presentation and Rule 2(e) Advocacy Advertising of the Advertising Standards Code.

Principle 2 requires the Complaints Board to consider whether the advertisement is truthful, balanced and not misleading.

Rule 2(b) required the Board to consider whether the advertisement was misleading or 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) required the Board to consider whether the advertisement was advocacy advertising, and, if so, whether the identity and position of the advertiser was clearly stated. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

The Complaints Board ruled the complaint was Not Upheld.

The Complaints

Two complaints were received. Both K Stafford and N Jones said the Advertiser is misleading the public by saying the Labour Party promised to build 10,000 houses a year and it did not reflect an allowance for the gradual ramp up, in house production over the ten years.

The Advertiser's Response

The Advertiser provided a number of statements from Labour MPs referring to Labour's housing policy and said it was a reasonable assumption that the houses could or would be delivered at a rate of 10,000 per year.

The Advertiser said to ensure no undue confusion for the general public around Labour's position they have altered the wording from 10,000 in the first year to read: "Labour promised to build 100,000 houses over ten years for its flagship KiwiBuild housing programme."

Precedent Decision

Decision 17/327 National Party Facebook, Not Upheld

Two advertisements posted to the National Party Facebook Page and YouTube channel made statements about Labour's tax policy. The majority of the Complaints Board considered the likely consumer take out of the advertisement and said it referenced Labour's tax policies as part of a political discourse that had been widely discussed in the public domain. The majority said the context of the advertisement from the National Party, on their Facebook page and YouTube channel, made it clear it presented their opinion and what they considered to be a point of difference in policy. The complaints were not upheld.

The Complaints Board Discussion

Consumer Takeout

The Complaints Board began by discussing the likely consumer takeout of the advertisement and agreed it promoted the NZ National Party's opinion that Labour had failed in its policy to build 10,000 houses in its first year.

Is the advertisement an advocacy advertisement?

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 were developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant.

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.

Having established the advertisement was from the NZ National Party, the Complaints Board noted that political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society.

The Complaints Board also 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.

Is the identity of the Advertiser clear?

The Complaints Board agreed the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement appears on the NZ National Facebook and Twitter pages and contained the National Party logo. Therefore, the Board said the context, placement and content made the identity of the Advertiser clear.

Is the advocacy advertisement misleading?

The Complaints Board noted the use of the word 'promised' in the first line which reflected the pre-election statements provided as substantiation for the advertisement.

The Complaints Board noted three of the references provided by Advertiser in particular supported statements made about the number of houses to be built in the first year, even if targets have since been recalibrated.

- Reference 1 of the Advertiser's response provides a quote from Phil Twyford in 2014 saying "Labour is going to build 10,000 affordable homes for first home buyers **each year for a decade.**"
- Reference 3 of the Advertiser's response quotes Kelvin Davis in 2016 saying KiwiBuild "will build 10,000 affordable houses **per year.**"
- Reference 5 of the Advertiser's response provides a Labour statement from 2017 saying "to start a programme to build 10,000 affordable homes **a year.**"

The Complaints Board said that in the context of an advocacy advertisement, the Advertiser had provided sufficient substantiation to support the claim "Labour promised to build 10,000 houses in the first year of its flagship housing programme."

The Complaints Board said that most consumers would understand the context of the advertisement as the National Party's assessment of the Government's promises versus what it has delivered. The Complaints Board said the advertisement is unlikely to deceive, mislead or confuse consumers.

The Complaints Board unanimously ruled that the advocacy advertisement before it was not in breach of Principle 2 or Rule 2(b) and Rule 2(e) of the Advertising Standards Code.

The Complaints Board acknowledged the self-regulatory action taken by the Advertiser to avoid any undue confusion for the public by changing the wording of the post to "Labour promised to build 100,000 houses over ten years for its flagship KiwiBuild housing programme."

The Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The Facebook and Twitter posts which featured around the 'All sizzle no sausage' video said "Labour promised to build 10,000 houses in the first year of its flagship housing programme. Like many of its policies, KiwiBuild has failed to deliver. If there's one thing we've learned with this government, it's don't believe the hype."

COMPLAINT FROM K STAFFORD

I believe this falls under your jurisdiction under the Electoral Act as well as it being an advertisement and it falls under the category of being misleading. The advertiser, The National Party of New Zealand (National), has stated that the NZ Labour Party of New Zealand (Labour) promised to build 10,000 houses in the first year of its flagship housing programme (KiwiBuild).

This is demonstrably false as seen in Labour's actual policy found here (<https://www.labour.org.nz/kiwibuild>) which states: "KiwiBuild will deliver 100,000 affordable houses over ten years for first home buyers. Half of these will be built in Auckland. That is a ten-fold increase in the number of affordable houses being built in Auckland each year, from 500 to 5,000"

It is my belief that National have deliberately misled in this advertisement as I do not believe this has ever been Labour's promise.

COMPLAINT FROM N JONES

My complaint is on the grounds of Rule 2(b), Truthful Presentation.

This advertisement by the New Zealand National Party states:

"Labour promised to build 10,000 houses in the first year of its flagship housing programme. Like many of its policies, KiwiBuild has failed to deliver. If there's one thing we've learned with this Government, it's don't believe the hype."

Labour did not promise to build 10,000 houses in the first year of the KiwiBuild programme. The party's election policy, now Government policy, was to build 100,000 houses over ten years, which would involve a gradual ramp up in production starting with 1,000 in the first year.

The fact there will be a ramp up period in the first term was clear at the initial launch of the policy under David Shearer back in 2012:

"Our target is to ramp up to building 10,000 houses a year by the end of our first term (or as swiftly as the availability of skilled labour allows), and to continue at this level for around ten years."

[Source: https://thestandard.org.nz/wp-content/uploads/2012/11/KiwiBuild_Factsheet.pdf]

This was repeated at the 2017 election:

"Under KiwiBuild, Labour has promised to build 100,000 affordable homes in a decade. It'll take a while to ramp up, with 20,000 expected to be built in its first three-year term."

[Source: <https://www.newshub.co.nz/home/election/2017/10/kiwibuild-won-t-hit-property-valuesardern.html>]

In Government the need for a ramp up period has also been clear, with well-publicised interim targets from Government departments:

"In the first year KiwiBuild will deliver 1000 homes, another 5000 by June 2020, and 10,000 in 2021."

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[Source: <https://www.hud.govt.nz/news-and-resources/news/online-pre-qualification-opens-for-firstkiwibuild-homes/>]

The Government's announcement that it would be unlikely to meet its target of 1,000 houses in the first year has been widely publicised. For example:

<https://www.radionz.co.nz/news/political/380708/twyford-on-kiwibuild-it-s-going-to-be-tough-to-meet-that-target>

https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12195042

<https://www.stuff.co.nz/business/property/110263289/kiwibuild-to-be-recalibrated-as-interim-targets-are-scraped>

National's housing spokesperson has repeatedly used the Government's target of 1,000 houses in the first year to criticise the policy. For example:

https://www.national.org.nz/unwanted_kiwibuild_houses_a_blot_on_government

<https://twitter.com/JudithCollinsMP/status/1075694891743600641>

Stuff.co.nz has also produced a KiwiBuild housing tracker, which it publicises widely and embeds in housing-related articles. Journalist Henry Cooke explains:

"The Labour-led Government has promised to build 100,000 affordable homes over 10 years. But that doesn't quite mean 10,000 a year right away, and we're not measuring them against that - yet. Housing Minister Phil Twyford has described a "ramp-up" period to get the policy in full swing, with 1000 homes built in the first year, 5000 in the second, and 10,000 in the third - then 12,000 every year after that. Those "years" are financial years, meaning the first one runs July 1, 2018, through until July 1, 2019."

Source: <https://www.stuff.co.nz/national/politics/105105107/how-stuffs-kiwibuild-tracker-works>

The following is established:

1. The fact of a ramp up period been publicly available for at least six years. It was repeated prior to the 2017 election and again with the formation of the new Government and the launch of the KiwiBuild programme. 2. The National Party has referenced the ramp up period, including the specific year one target of 1,000 houses 3. The media has widely publicised the year one target of 1,000 houses, including the Government's admission it may not reach this target, and the National Party has commented on this story. 4. The National Party's housing spokesperson, Judith Collins, has repeatedly referenced the first year target of 1,000 houses. 5. The National Party has a taxpayer-funded research unit to fact check claims produced on social media. These facts are easily discoverable using Google.

In relation to Rule 2(b):

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1. The advertisement spreads an untruth that is likely to mislead, or else they would not have made it. Their intention is to portray the Labour Party as failing to meet a commitment - to build 10,000 houses every single year - that it never made.

2. The advertiser held evidence that the claim it was making was untrue, as shown above.

3. The defence of 'obvious hyperbole' does not stand, as there are precise figures given that are not true.

I contend that the advertisement aimed to mislead, deceive or confuse consumers, abuse their trust and exploit their lack of knowledge by inaccuracy and false representation.

CODES OF PRACTICE

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.

RESPONSE FROM ADVERTISER,

Thank you for your email dated 19 February 2019, regarding our recent KiwiBuild Advertisement.

In regards to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.

KiwiBuild as a housing policy has had numerous and dramatic changes over time, with the programme failing to meet even its own revised targets by Housing Minister Phil Twyford.

However, the comment by the complainants, that "Labour did not promise to build 10,000 houses per year in the first year of KiwiBuild" is incorrect, and the following is evidence of that:

1. In 2014, Phil Twyford, now Minister of Housing, spoke to the NZCID, in a speech where he noted “Labour is going to build 10,000 affordable homes for first home buyers each year for a decade...”
https://www.labour.org.nz/phil_twyford_speech_to_nzcid
2. In 2016, Labour pledged to build 10,000 houses per year – as attributed here:
<https://www.radionz.co.nz/news/political/308361/labour-pledges-10,000-houses-a-year>
3. On December 1, 2016, Kelvin Davis, Labour MP, is also quoted as saying that KiwiBuild “..will build 10,000 affordable houses per year for selling to first-home buyers..”
https://www.labour.org.nz/nats_will_jump_at_chance_to_vote_for_kiwibuild_bill
4. In 2017, it was reported by interest.co.nz that Labour’s policy was to deliver 10,000 houses a year:
<https://www.interest.co.nz/opinion/88222/differences-between-national-and-labour-housing-starting-show-through-adams-readies>
5. In February 2017, Labour released a statement on their KiwiBuild Bill that was before Parliament, citing “It required the Government to start a programme to build 10,000 affordable homes a year and sell them to first home buyers..”
https://www.labour.org.nz/nick_smith_s_building_boom_just_alternative_facts
6. A report on sharechat.co.nz in 2017 attributed 10,000 house per year to Labour’s KiwiBuild policy:
<http://www.sharechat.co.nz/article/e86d637f/labour-to-ring-fence-property-investor-losses-to-close-tax-loophole.html>
7. On the 15th May 2017, Business Desk reporter Patrick Smellie reported on Labour’s 10,000 houses per year policy under KiwiBuild:
<http://www.scoop.co.nz/stories/BU1705/S00500/labour-to-ring-fence-property-investor-losses.htm>
8. In July 2017, Stuff reported on the release of Labour’s financial plan that they were setting aside funds to “build 10,000 new affordable houses a year, for 10 years...”
<https://www.stuff.co.nz/national/politics/94879965/labour-lays-out-financial-plan-with-billions-more-for-health-education>
9. In June 2018, a report from the Spinoff was published that noted Labour’s policy of “10,000 homes per year..”
<https://thespinoff.co.nz/society/01-06-2018/labours-kiwibuild-project-talking-big-thinking-small/>
10. The Government’s own Kiwibuild website states that 100,000 homes for first home buyers will be built over the next decade:
<https://www.hud.govt.nz/residential-housing/kiwibuild/>

The reasonable assumption of anyone viewing that government publication could be that those houses could or would be delivered at a rate of 10,000 per year. There is no other notes or citations to say otherwise.

Given the 10 references above, it cannot be reasonably argued that it was not, or never was, Labour Party policy to deliver 10,000 affordable homes per year. However, on the part of our political advocacy advertising, we have taken on board your comments and decided to amend the wording of the advert to ensure there is no undue

confusion for the general public around what the Labour Party position is regarding their KiwiBuild policy.

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.