

COMPLAINT NUMBER	19/149
COMPLAINANT	J Boscawen
ADVERTISER	John Tamihere
ADVERTISEMENT	John Tamihere, Radio
DATE OF MEETING	28 May 2019
OUTCOME	Upheld Advertisement has been removed

Description of Advertisement

The radio advertisement for mayoral candidate John Tamihere played on Newstalk ZB. The script for the advertisement included the following:

“Hi, John Tamihere here, did you know Phil Goff is letting Auckland Transport cut the speed on 700kms of roads to just 30km/hour? No suburb will escape this crazy plan. If you’re not happy about this, write to me at jt4mayor.co.nz and give me a mandate to reject this...”

Summary of the Complaint from J Boscawen

The Complainant said the advertisement was misleading and this was confirmed by an article on the NZ Herald’s website.

Issues Raised

- Advocacy Advertising
- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said the speed limit reduction proposal is for reductions to 30 km, 40km, 50 km, 60km, 70km and 80km, depending on where you live. The Advertiser said they didn’t have time to say all of that in a 30 second advertisement. The Advertiser said the advertisement only ran for two weeks and will not be used again.

Summary of the Media Response

The Media, NZME, said it was advised the advertisement was inaccurate and it has since been removed from broadcast.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a radio advertisement for mayoral candidate John Tamihere which said “...did you know Phil Goff is letting Auckland Transport cut the speed on 700kms of roads to just 30km/hour? ...” The Complaints Board said although the advertisement fitted the definition of advocacy advertising it was misleading because it said Auckland Transport’s proposal would reduce the speed limit to 30km/hour on 700km of roads when, in fact, the proposal is for speed limits ranging from 30 to 80km/hour, depending on where you live. The Complaints Board noted Auckland Transport said less than 72 km of road in the Auckland region is proposed to have a speed limit of 30 km/hour.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/071 and 19/104, both of which were Not Upheld.

Decision 19/071 concerned NZ National Party Facebook and Twitter posts which 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..."

The Complaints Board said the advertisement was an advocacy advertisement and was unlikely to mislead. This is because most consumers would understand the context of the advertisement and see it as the National Party's assessment of the Government's promises versus what it has delivered.

Decision 19/104 concerned a NZ National Party Facebook advertisement which shows a video and states "A Capital Gains Tax would reduce her KiwiSaver by \$64,000 over her lifetime." Small print on screen qualified the claim and stated: "Source: Calculated based on the average full-time wage earner over a 45 year working life, assuming 3% wage growth pa and 15% of their KiwiSaver investment in Australian shares."

The Complaints Board said the advertisement was an advocacy advertisement and was not misleading. The Complaints Board agreed that during political debate about a possible policy shift, scenarios that illustrate potential outcomes are permitted in advertising if sufficient information is given for consumers to understand the basis for claims made.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Complaints Board Discussion of Complaint 19/149

Consumer Takeout

The Complaints Board agreed the consumer takeout was Auckland Transport is proposing to reduce the speed limit to 30km/hour on 700km of road in the Auckland region, and every suburb will be affected. If the listener is concerned about this proposal, they should contact John Tamihere.

Was the advertisement advocacy advertising?

The Complaints Board agreed the advertisement was advocacy advertising and the identity and contact details of the advertiser were clear.

Was the advertisement misleading?

The Complaints Board agreed that although the advertisement was clearly advocacy advertising it was still misleading. This is because the information provided in the advertisement only conveyed part of the proposal put forward by Auckland Transport, and, as a result, this created a misleading impression. The Complaints Board noted the advertisement said Auckland Transport's proposal would reduce the speed limit "on 700kms of roads to just 30km/hour" when in fact the proposal is for speed limits ranging from 30 to 80km/hour, depending on where you live.

The Complaints Board referred to a letter from Auckland Transport, which was copied to the ASA Secretariat, which said "less than 72 kilometres of road (including city centre, a small section of residential roads and some town centres included) of more than 7,000 kilometres across the region are proposed to have a speed limit of 30 kilometres per hour."

The Complaints Board said in contrast to the precedent decisions, which were also political advocacy, this radio advertisement was short and didn't provide access to wider contextual information which could assist the listener to form their own opinion.

The Complaints Board agreed the advertisement was misleading, taking into account context, medium, audience and product and was in breach of Principle 2 and Rules 2(b) and 2(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

The advertisement has been removed.

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.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT FROM S J BOSCAWEN

The ad appears identical to one I heard earlier in the week. Newstalk ZB is owned by NZME, publisher of the NZ Herald. The Herald's own website says the material in the ad is false and misleading. My complaint is that ZB and John Tamihere continue to run the ad when they know it is false and this has been brought to their attention

FURTHER FROM COMPLAINANT

I lodged a complaint regarding the Tamihere Radio ad a short time ago. I would like to provide some additional information. The ad reads in part : "Did you know Phil Goff was letting Auckland Transport cut the speed limit on 700kms of roads to 30km/hour. No suburb will escape this crazy plan".

The Herald website on Friday carried a story relating to this ad. Apparently Shane Ellison, CEO, of Auckland Transport refutes the facts in this ad, and has advised both yourselves and John Tamihere.

I believe Tamihere should have either withdrawn, or modified this ad. And that Newstalk ZB should have refused to continue running it until that happened.

However I should make clear my objection is only to the first of those 2 sentences. It can be argued that every suburb is affected, because while the speed limit will not be reduced in every suburb, the residents of those suburbs not directly affected are likely to drive in those parts of the city which are.

So my objection relates to the first sentence only.

I believe the ad breaches Rule 2(b) and Rule 2 (e) in particular. I could reprint each of those rules here, but you will be very familiar with your own rules.

Appendix 2

RESPONSE FROM ADVERTISER, JTFOR MAYOR

This was a 30 second ad under the Advocacy code. The speed limit reduction proposal is for reductions to 30 km, 40km, 50 km, 60km, 70km and 80km depending on which suburbs or area in which you live. We did not have time to say that in 30 seconds and chose simply to alert people to the proposal because Auckland Transport had done a very unsatisfactory job of advising the public. More people heard our advertisement than Auckland Transport reached with their "consultation" programme.

The ad only ran for less than two weeks and will not be used again.

Appendix 3

RESPONSE FROM MEDIA, NZME

We are writing on behalf of NZME (the broadcaster) in response to the above complaint regarding John Tamihere's advertising.

This advertisement was designed and submitted on behalf of the client, but accepted by NZME Publishing for broadcast. NZME had presumed that the script and figures provided were correct.

The ASA identified Basic Principle 2, Rules 2(b) and 2(e) as potentially being breached:

All advertisements must be truthful, balanced, and not misleading.

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.

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.

In respect of truthful presentation, the advertisement states:

Did you know Phil Goff is letting Auckland Transport cut the speed on 700km of roads to just 30km/ph? No suburb will escape this crazy plan.

It has come to our attention that the advertisement was inaccurate. While 700km of roads may be affected by speed changes, not all of these would be reduced to 30 km/ph. The correct figure for those roads which may be reduced to 30 km/ph is 72km.

As you are aware, the ad has now been removed from broadcast.

Part of NZME's advertising terms includes putting advertisers on notice that it is their responsibility to ensure that their advertisements can be substantiated. Notwithstanding that, we are cognizant of the fact that we too have a responsibility as a broadcaster to ensure that the public is not misled. In this case, we do not have evidence of a member of our team explicitly asking Mr Tamihere if the figures quoted could be substantiated. Our team has been reminded to be vigilant when accepting advocacy advertisements to avoid this from reoccurring.