

<b>COMPLAINT NUMBER</b>	19/279
<b>COMPLAINANT</b>	S Mellor
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	New Zealand National Party, Facebook
<b>DATE OF MEETING</b>	27 August 2019
<b>OUTCOME</b>	Upheld Advertisement to be Removed

### **Description of Advertisement**

The advertisement on the New Zealand National Party Facebook page has a picture of Hon Shane Jones, Minister for Regional Economic Development with the text “Despite claiming to be caring and compassionate, this Government only put an extra 1% in the Budget for life-saving drugs. That doesn’t even cover inflation. National will invest \$200 million more into cancer drugs. Our bottom line is you.” The text under the photo says “The Govt has put 75x more into Shane Jones’ slush fund than it has for Pharmac.” The small print says “Source Budget 2018 & Budget 2019.

### **Summary of the Complaint**

The Complainant is concerned the advertisement is misleading to claim there is 75 times more investment in the Provincial Growth Fund (3 billion over 3 years) than in Pharmac (\$985 million).

### **Issues Raised**

- Truthful Presentation
- Advocacy Advertising

### **Summary of the Advertiser’s Response**

The Advertiser said the full copy of the advertisement which includes a disclaimer statement of the source information being Budget 2018 and Budget 2019. The Advertiser said that source Treasury Budget information shows the Provincial Growth Fund was allocated \$3 billion over 3 years in comparison to Pharmac being allocated \$40 million in new funding. Hence \$3 billion / \$40 million = 75.

### **Summary of the Complaints Board Decision**

The majority of the Complaints Board upheld a complaint about a New Zealand National Party Facebook advertisement which compared the Government funding for the Provincial Growth Fund with new funding for Pharmac. The majority of the Complaints Board said the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and the political advocacy advertisement was likely to confuse or deceive consumers.

## Relevant ASA Codes of Practice

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

### 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 precedent Decision 18/200 which was Upheld in Part.

The full version of this decision can be found on the ASA website:

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

**Decision 18/200** concerned an advertisement on the New Zealand National Party's Facebook page which gave five examples of how the Government was costing Kiwi families extra each week in price increases and taxes. The majority of the Complaints Board were of the view that the Advertiser had provided insufficient substantiation to support three of the five claims made in the advertisement.

### Complaints Board Discussion

#### *Consumer Takeout*

The majority of the Complaints Board said the likely consumer takeout of the advertisement before it, was that the Government has added 75 times more money to the Provincial Growth Fund than it has to the Pharmac budget. It said the emphasis on the word "more" and "an extra 1%" supported the idea the advertisement was referring to a new allocation of funding on top of that already allocated.

A minority of the Complaints Board said the consumer takeout could also be that the general amount budgeted for the Provincial Growth Fund was overall 75 times larger than Pharmac's budget.

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

They state:

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 New Zealand 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 was a Facebook post approved by the New Zealand National Party leader, Simon Bridges, posted on the New Zealand National Party's Facebook page 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?*

Having established the potential for more than one consumer takeout of the advertisement, the majority of the Complaints Board said the claim in the advertisement lacked the context and qualification needed to avoid confusing consumers. The Board noted the source information was quoted as the 2018 and 2019 Budgets, but the Advertiser only refers to one year's Pharmac funding in the equation to substantiate the claim.

The majority of the Complaints Board said that using the three-year, \$3 billion Provincial Growth Fund figure against the one-year, \$40 million Budget increase for Pharmac was misleading. The majority of the Board said the lack of clarification on the baseline funding made the reasoning behind the absolute claim of "75 times more" confusing and misleading

for consumers. The majority said the advertisement was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

A minority of the Complaints Board said that despite the confusing funding figures, the intent of the advertisement was to highlight the Government's spending priorities on the Provincial Growth Fund over Pharmac. A minority said taking into account context, medium and audience, the political advocacy advertisement had not met the threshold to mislead or deceive consumers. A minority of the Complaints Board said the advertisement was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

However, in accordance with the majority, the Complaints Board ruled the advertisement was misleading and was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

### **Outcome**

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

Advertisement to be 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](http://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
- 

### Appendix 1

#### COMPLAINT FROM S MELLOR

The central claim is a 75x difference between investment in the Provincial Growth Fund and Pharmac. The actual difference on an annualised basis is very small. The annual Pharmac budget is about \$985m whereas the Provincial Growth Fund is \$3b over three years. This is nowhere close to the 75x difference claimed.

### Appendix 2

#### RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY

Thank you for your letter dated 6 August 2019 regarding a complaint by S. Mellor.

You note in your letter the relevant section of Advertising Standards Codes of Practice Principle 2, Rule 2(b) and (e), that may apply here.

In regard 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.

Furthermore, in very recent previous rulings the Chair of the ASA 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 Chair also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities 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.

To address the matter of complaint directly, the graphic in question of Shane Jones that has been provided by the complainant has been cropped to suit their purpose. I have attached the actual copy of the graphic that was posted for your information, where it includes a disclaimer statement of source information being Budget 2018 and Budget 2019.

Secondary to that point, you infer that we may be in breach of principle 2(b) and 2(e).

In regard to Section 2(b) – Truthful presentation ensures that advertisers must be able to substantiate their claims, this can be demonstrated by simply referring to the graphic itself, which clearly showed source documentation. And a person viewing that advertisement, having looked at the source documentation would be informed that the Provincial Growth Fund was allocated \$3 billion dollars of taxpayer money over 3 years. This in comparison to Pharmac who was allocated \$40m in new funding. A quick mathematical calculation dividing \$3 billion dollars by \$40m equals 75.

Therefore, it is a matter of fact that the advert is indeed correct, with correctly cited sources being the Governments own Budget documentation. Section 2(b) would therefore not apply. In regard to Section 2(e) – Advocacy Advertising ensures that any and all advocacy adverts are clearly identifiable as to whom is publishing it. As the complainant sought to address their complaint to the National Party, and the advertisement in question appeared on our social media channels, this would remove any doubt as to the application of this section for

any complaint made. The National Party is a well-known political party in New Zealand. The graphic in question was also authorised by the Leader of the Opposition, Simon Bridges. The further application of this section regards “..factual information, appropriate and robust and must be readily available”, we consider the Treasury Budget Information to be robust and factual for the purpose intended. If the complainants wish to make a counter argument, that the Treasury Budget is misleading or inaccurate, that is their prerogative and I would suggest they take that issue up with the Treasury or the Minister Responsible.

Thank you again for your letter, and I hope the above proves helpful in addressing the matter.