

COMPLAINT NUMBER	21/354
ADVERTISER	ACT Party
ADVERTISEMENT	ACT Party website
DATE OF MEETING	5 July 2021
OUTCOME	No Grounds to Proceed

Advertisement: The ACT Party website advertised a petition to "Stop Labour's Hate Speech Laws". The website included the following text: "Labour's hate speech laws are a win for cancel culture and will create an even more divided country... Tougher hate speech laws will take away basic rights to free speech, shut down debate, and make people afraid to express themselves...". Below the text was a form headed "Join our campaign to protect free speech".

The Chair ruled there were no grounds for the complaint to proceed.

Complaint: I wish to complain about this advertisement because it contains information designed to mislead and misinform the public. None of the hyperbolic assertions put forward by ACT are true and the entire issue is a discussion document which was clearly laid out by PM in a conference today.

It's obvious that ACT have no wish to engage democratic debate by this and are simply making political capital out of an initiative to potentially revise the laws based upon recommendations by the Royal Commission.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

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.

About Advocacy Advertising

Complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act says: "Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form." This freedom of expression supports robust debate on current issues in a democracy.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and
- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

About this complaint

The Chair noted the Complainant's concern the advertisement was misleading.

The Chair said the advertisement was an advocacy advertisement provided for under Rule 2(e) of the Advertising Standards Code. The Chair confirmed the Advertiser's identity as a political party and position on the proposed legislation was clear. The advertisement therefore met the criteria for advocacy advertising. The Chair said robust expression of opinion is allowed, as long as the advertiser is clearly identified, and the Advertiser's position is clear.

The Chair noted the advertisement appeared on the ACT New Zealand website and included the ACT New Zealand logo.

Having established the advertisement was from the ACT New Zealand Party, the Chair noted that political advertisements are not only acceptable but encouraged, as they are 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.

The Chair confirmed the advertisement was an opinion statement from a political party which is against imposing restrictions on free speech. It is also encouraging consumers to sign a petition called "Stop Labour's Hate Speech Laws"

The Chair said the opinion statement did not reach the threshold to be likely to mislead or deceive consumers and interested parties would be likely to investigate matters concerning free speech and hate speech for themselves. The Chair also noted there is regular media coverage of political party policies on matters of public debate which give context to this type of advertising.

The Chair said the advertisement was not in breach of Principle 2 or Rule 2(b) and Rule 2(e) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaint to proceed.

Chair's Ruling: Complaint No Grounds to Proceed

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 calendar days of receipt of this decision.