

COMPLAINT NUMBER	17/336
COMPLAINANT	R. Stewart
ADVERTISER	Taxpayers Union
ADVERTISEMENT	Taxpayers Union Print
DATE OF MEETING	21 September 2017
OUTCOME	Not Upheld

SUMMARY

The newspaper advertisement for the Taxpayers' Union stated "This Election will cost you. No matter the result on Saturday, this election is going to cost you. Under the combinations below, the combined promised new spending over the next three years is..." The advertisement then had a visual representation of the possible tax payable per household with suggested coalitions and their combined promised new spending over the next three years. The advertisement showed the National Party and Act Party as coalition partners with a figure of \$3,441 over three years or \$22.05 per week, per household, at the top of the page in black and the Labour Party, the Green Party and the New Zealand First Party with figure of \$35,787 over three years or \$229.71 per week, per household, at the bottom of the page in red.

The Complainant said the advertisement was misleading and noted a specific example that the figure of \$8.3 billion presented under the National Party image was misleading as "they've announced [a] single policy bigger than this total \$10b on roads plus many other promises with no planned reduction in spending."

The Advertiser said the "promised spending cited by R Stewart mostly falls outside of the three-year window that we have costed" and there was further breakdown and explanation on its website. It said the advertisement clearly explained the premise and methodology used and had independent economists work with the political parties referred to, with the exception of one, to ensure their claims relating to the estimated spend over the next three years were able to be supported.

The Complaints Board said the advertisement was an advocacy advertisement and had met the identification requirement and was part of the political discourse provided for under the provisions of Rule 11 of the Code of Ethics. It said the qualifications provided in the advertisement and the information available to consumers on the Advertiser's website, supported the claims made and did not reach the threshold to mislead consumers. The Complaints Board said the advertisement was not in breach of Rule 2 or Rule 11 and had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

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 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 Not Upheld

The Complaint

The Complainant said, in part: "This 'ad' is grossly misleading and not accurate in anyway... This advertisement misleads by presenting information as factual when in fact it's nonsense & a complete fabrication."

The Complainant noted a specific example about the figure of \$8.3 billion presented under the National Party was misleading as “they’ve announced single policy bigger than this total \$10b on roads plus many other promises with no planned reduction in spending.”

The response from the Advertiser, the Tax Payers Union

The Advertiser responded to the issues raised in the complaint and provided information relating to the specific concern raised, stating, in part:

“The text beneath the heading of the Advertisement clearly identifies that the figures contained in the Advertisement relate to promised new spending over the next three years.

- a. The example of promised spending cited by R Stewart mostly falls outside of the three-year window that we have costed. Further explanation of this is available on our webpage, which has full party breakdowns, such as the National Party’s at: www.taxpayers.org.nz/bribeometernational.
- b. The text at the bottom of the Advertisement explains the methodology used to calculate the figures.
- c. The URL provided on the Advertisement contains a full breakdown of the castings and explains in even more detail the methodology, including a link to individual party breakdowns.
- d. Our independent economists have worked extensively with all the political parties (with the exception of one, who were uncooperative) to calculate figures, which we are confident accurately reflects the cost of promises made by each of the parties.”

Complaints Board Discussion

Advocacy and Identification

The Complaints Board was of the view the advertisement before it fell into the category of advocacy advertising by the Taxpayers’ Union, an organisation who campaigns for “better value for money from Government Spending”.

In considering the challenges that the Complaints and Appeal Boards can face in dealing with Complainants with oppositional views to Advertisers on a significant issue, particularly Election related 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 Taxpayers’ Union. The Complaints Board said this was primarily indicated by:

- The Taxpayers’ Union logo at the bottom right-hand corner of the advertisement
- The “Bribe-o-meter” logo in the bottom left-hand corner
- The website address www.bribe-o-meter.nz included in the advertisement which directed people to the Advertiser’s website for further information
- An authorisation statement which reads “Authorisation by the New Zealand Taxpayers’ Union, Level 4, 117 Lambton Quay, Wellington”.
- The positioning statement “More spending = more tax + more debt”.

Taking into account the above information, the Complaints Board said the identity of the Advertiser, Taxpayers' Union, was clear and ruled the Identification requirement of Rule 11 had been met.

Having established the advertisement was from an advocacy group expressing their perspective on the upcoming election, 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 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.

Consumer Take-out

The Complaints Board considered the likely consumer take-out of the advertisement.

The Complaints Board said the advertisement was clearly an election related advocacy advertisement presenting the opinion of the Taxpayers' Union. It said the positioning statement "More spending = more tax + more debt" made it clear to consumers the advertisement was being presented from a particular perspective. It noted the key message of the advertisement was that "election promises" made by political parties in the lead up to an election could have an impact on taxes and national debt and will ultimately cost the taxpayer.

The Complaints Board noted the strong visual representation of the advertisement relating to the possible make up of coalitions and their combined promised new spending over the next three years.

Misleading

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

The Complaints Board said the advertisement was unlikely to mislead readers as to the nature and source of the information. It noted the advertisement clearly stated the figures were representative of "the combined promised new spending over the next three years" and included the statement "these figures are based on parties' own estimated costs of their policies and they have been tracked and verified by our own independent economists." It also took into account the advertisement included the website address "www.bribe-o-meter.nz" where it said consumers could get a "full breakdown".

With regard to the specific concern raised by the Complainant about the figure attributed to the National Party of \$8.3 billion being misleading because they had promised other spending, including \$10 billion of roading alone, the Complaints Board said the Advertiser had provided information to support the claim. It noted the Advertiser said the "promised spending cited by R Stewart mostly falls outside of the three-year window that we have costed" and there was further explanation on the Advertiser's website. The Complaints Board said the advertisement clearly explained the premise and methodology used and took into account the Advertiser had independent economists work with the majority of the political parties referred to, to ensure their claims about the estimated spend over the next three years were able to be supported.

The Complaints Board said taking into account the political nature of the advertisement, the qualifications provided in the advertisement and the supporting information available to consumers on the Advertiser's website, it had not met the threshold to mislead consumers. It said the advertisement was not in breach of Rule 2 or Rule 11 of the Code of Ethics and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

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 Taxpayers' Union opinion on the "cost of the election" by showing the possible make up of coalitions and the taxes association with their combined promised new spending over the next three years.

It said the qualifications provided in the advertisement and the information available to consumers on the Advertiser's website, supported the claim the National Party's estimated new spending was \$8.3 billion over the next three years.

The Complaints Board said the advocacy advertisement was part of the political discourse provided for under the provisions of Rule 11 of the Code of Ethics and did not reach the threshold to mislead consumers. The Complaints Board said the advertisement was not in breach of Rule 2 or Rule 11 and had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled to Not Uphold the complaint.

Decision: Complaint **Not Upheld**

DESCRIPTION OF ADVERTISEMENT

The newspaper advertisement for the Taxpayers' Union stated "This Election will cost you. No matter the result on Saturday, this election is going to cost you. Under the combinations below, the combined promised new spending over the next three years is..." The advertisement then had a visual representation of the possible tax per household with suggested coalitions and their combined promised new spending over the next three years.

The advertisement showed the per household cost of taxes over the next three years with the National Party and Act Party as coalition partners with a figure of \$3,441 or \$22.05 per week, at the top of the page in black and the Labour Party, the Green Party and the New Zealand First Party with figure of \$35,787 or \$229.71, at the bottom of the page in red.

The advertisement said "More spending = more tax + more debt" and said "these figures are based on parties' own estimated costs of their policies and they have been tracked and verified by our own independent economists." The advertisement included the website address "www.bribe-o-meter.nz" where it said consumers could get a "full breakdown".

COMPLAINT FROM R. STEWART

This 'ad' is grossly misleading and not accurate in anyway.

For example National Party listed as promising to spend only \$8b when they've announced single policy bigger than this total \$10b on roads plus many other promises with no planned reduction in spending.

This advertisement misleads by presenting information as factual when in fact it's nonsense & a complete fabrication.

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 TAXPAYERS' UNION

1. We refer to your letter of today's date, requesting a response to a complaint made by R Stewart, about our advertisement placed in newspapers today ("**the Advertisement**").
2. R Stewart's complaint alleges that the Advertisement is "grossly misleading and inaccurate", because it says that the National Party will spend \$8 billion, whilst having announced a commitment to spend over \$10 billion on roading. R Stewart claims the advertisement presents "fabricated information".
3. We deny R Stewart's claims, and note:
 - a. The text beneath the heading of the Advertisement clearly identifies that the figures contained in the Advertisement relate to promised new spending over the next three years.
 - b. The example of promised spending cited by R Stewart mostly falls outside of the three-year window that we have costed. Further explanation of this is available on our webpage, which has full party breakdowns, such as the National Party's at: www.taxpayers.org.nz/bribeometernational.
 - c. The text at the bottom of the Advertisement explains the methodology used to calculate the figures.
 - d. The URL provided on the Advertisement contains a full breakdown of the castings and explains in even more detail the methodology, including a link to individual party breakdowns.
 - e. Our independent economists have worked extensively with all the political parties (with the exception of one, who were uncooperative) to calculate

figures, which we are confident accurately reflects the cost of promises made by each of the parties

4. We hope our comments provide the necessary context required for the consideration of the Complaints Board. Please do not hesitate to contact us further, if any further clarification is required.

RESPONSE FROM MEDIA, FAIRFAX MEDIA

Thank you for your letter dated 20 September 2017 in reference to the above complaint.

We understood the advertisement to be a truthful representation of the information provided to the public.

As an advocacy styled advertisement, it provided the public with the information the advertiser wished to convey, with an authoriser statement at the bottom of the advertisement, should any party wish to contact them to discuss.

The advertisement ran in The Dominion Post, Waikato Times and The Christchurch Press. (Fairfax Media Publications).

We have also seen this published in the NZ Herald.

We welcome any recommendation the ASA have for this styled advertisement and campaign.