

COMPLAINT NUMBER	16/315
APPEAL NUMBER	16/015
APPLICANT	B. Harding
ADVERTISER	Ministry of Business, Innovation and Employment
ADVERTISEMENT	MBIE New Zealand Energy Quarterly
DATE	20 September 2016
OUTCOME	Declined

SUMMARY

The Chairperson declined the application for appeal.

The Chair of the Complaints Board ruled on 26 August 2016 the ASA did not have jurisdiction to consider the complaint from B. Harding about the Ministry of Business, Innovation and Employment New Zealand Energy Quarterly report. The Complainant appealed the Ruling.

This application was considered by the Chairperson of the Appeal Board. She noted the Complainant's view that the item was an advertisement and that it should be put before the Complaints Board for consideration.

The Chairperson agreed with the No Jurisdiction ruling and said there was nothing in the appeal application which met one of the grounds on which an appeal could be accepted. The Chairperson ruled the appeal application was Declined.

Please note this headnote does not form part of the Decision.

CHAIRPERSON'S RULING

The Chairperson viewed the application for appeal. She noted there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Chair of the Complaints Board has been misinterpreted to the extent that it has affected the decision.

- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

The Chairperson noted the Complainant considered the Ruling was misinterpreted regarding the evidence provided to the Chair, as they believed the item was an advertisement due to the fact it was "available to educate and impart specific information for an opportunity to promote a belief".

The Chairperson considered the Complainant's view and also considered the item under the ASA definition of an advertisement and also used the information below on the MBIE Website.

The MBIE Publication says its purpose is to:

"The New Zealand Energy Quarterly provides quarterly data and analysis on energy supply, demand, prices and associated greenhouse gas emissions. This publication is part of the suite of energy publications produced by the Modelling and Sector Trends Team of the Ministry of Business, Innovation and Employment. It may be downloaded or subscribed to at www.med.govt.nz/sectors-industries/energy/energy-modelling/publications/new-zealand-energyquarterly."

Given this information the Chairperson agreed with the No Jurisdiction ruling made by the Chair of the Complaints Board She confirmed that the item was a report that included statistical information, not an advertisement promoting a service or product.

The Chairperson acknowledged the Complainant disagreed with the No Jurisdiction ruling, however, this was not a ground which an appeal could be accepted for considering. The Chairperson said there was nothing else in the application for appeal which met one of the grounds upon which an appeal could be accepted and ruled it was Declined.

Chairperson's Ruling: Appeal application **Declined**

DESCRIPTION OF ITEM

The New Zealand Energy Quarterly provided quarterly data and analysis on energy supply, demand, prices and associated greenhouse gas emissions. The publication said it "was part of the suite of energy publications produced by the Energy and Building Trends Team of the Ministry of Business, Innovation and Employment."

APPEAL APPLICATION FROM B. HARDING

I wish to Appeal the 16/315 Outcome within the Appeal Chairman Ruling section "c" whereby misinterpreted information was used.

The Ruling on 16/315 of not having the Jurisdiction to consider the Complaint is clearly abrogating the A.S.A. stated claim of investigating any Advertisement that is contrary to Rule 2 of Truthful Representation.

Whether "it is or not" Catalogued as an "Advertisement" basically becomes purely speculative conjecture based on a Broadview or a Fine-line View. My view and interpretation using the A

S A interpretation supplied is that it was "available" to "educate" and impart "specific information" for an "opportunity" to promote" a "belief" for any entity to utilise for their own promotional ends.

The above formulation of "specific qualities" and Entitlements would be normally classified as being under 'Advertisements'.

The Privately Operated Association of Wind Farm Organised Members happily utilised and warranted the use of a Government Sponsored Wind Professionally Collective Information of Data to advertise the Favourable merits of wind outputs, with the Knowledge of knowing that the Data Supplied was False and Impracticable, which ironically could have been supplied to M.B.I.E. by them in the first place. So it had a very prestigious impact effect to use and promote a Specific Quality Characteristic.

I believe the A.S.A. should now review then to re- classify by redirecting my Complaint as a MISLEADING Statement that Powering N Z for 17 days was inherently a False Usage and Utterance.

I would respectively request that the Madam Chairwoman, remove the NO JURISDICTION Outcome and replace it after a Due Diligence Outcome reviewed re-appraisal by Upholding my Complaint 16/315.

A supporting Cross Reference made in her 16/288 adjudication where she clearly acknowledged that the 17 Day reference was indeed a Misleading statement, should also be added to this current Appeal Application as a major supporting brief of information.

Hopefully, a pragmatic and honest approach will reverse this decision

SUMMARY OF NO JURISDICTION RULING

The Chair acknowledged the concerns of the Complainant, however she said the MBIE New Zealand Energy Quarterly was not an advertisement for the purposes of the Advertising Codes of Practice. The Chair noted the definition of an advertisement, which said, in part:

“The word ‘advertisement’ is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity. The definition includes advertising in all media, print, broadcast, and digital and includes social media and advertiser-controlled websites. Emails and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes, as are neck labels or promotions attached to a product Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.”

The Chair said the item before her was a government quarterly report on energy in New Zealand and she did not consider it was promoting a service or product. She said the item reported statistical information and was not an advertisement.

In light of these findings, the Chair ruled the Complaints Board has no jurisdiction to consider the complaint.