

COMPLAINT NUMBER	16/387
COMPLAINANT	B Reber
ADVERTISER	Arnet Law
ADVERTISEMENT	Arnet Law Print, The Post Franklin & North Waikato Community Newspaper
DATE OF MEETING	13 December 2016
OUTCOME	Upheld

SUMMARY

The community newspaper advertisement for Arnet Law included the question “Negotiating with an a**hole?”.

The Complainant said the word “a**hole” was offensive and not saved by the use of asterisks.

The majority of the Complaints Board agreed with the Complainant. The majority said the use of the word “asshole” with or without asterisks, in the context of an advertisement promoting a law firm in a community newspaper did offend against generally prevailing community standards and was in breach of Rule 4 and Basic Principle 4 of the Code of Ethics.

The minority of the Board disagreed and said the wording in the advertisement was supported by the Advertiser’s intention to illustrate their straight-talking approach and was not in breach of the Code.

However, in accordance with the majority the Complaints Board ruled the complaint was Upheld.

[Advertisement to be removed]

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 4 and 5 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement contained anything that was likely to cause serious or widespread offence to most people, taking into account generally prevailing community standards. The Complaints Board was also required to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board ruled the complaint was Upheld

The Complaint

The Complainant was offended by the use of the word “a**hole” in the advertisement for Arnet Law and said “Although the word is toned down by the use of two asterisks, its meaning is clear. The use of this word is against common decency and besides, it is an emotive term, quite unsuited to a law firm.”

The Advertiser’s Response

The Advertiser, in its response stated in part:

“The ad in question forms part of a group of ads, each relating to different areas of the practice, each done usually by a different Lawyer within the firm.

Arnet Law uses the mantra of being straight talking Lawyers. We keep things simple and straight forward. We use terms that everyone understands.

The word Asshole has been dulled down by the use of the **'s to avoid using the actual word. This shows we are aware that the word when used in its full state could be offensive and we have shown we know when its appropriate to use certain terms and when it is not appropriate to use them.

The ad in question refers to nothing more than "Negotiating with someone difficult". The complainant's email and phone call to our office both suggest that he has taken our ad very personally and interpreted it to mean that we treat difficult people with less respect. This is not the case, we treat everyone with respect. However, negotiating with difficult people can be difficult. We have the skills to help our clients with this. That is what our ad is about.”

The Advertiser confirmed its practice operates in Southern Auckland with a number of rural and farming sector clients who appreciate the straight-talking approach.

Precedents

The Complaints Board reviewed two possible precedent decisions.

Decision 15/322 was about a Hell Pizza flyer that included the ‘words’ “B*%#@!!” and “mutherf**king” in promoting its Flamin’ Dragon Pizza. The Complaints Board said symbols and asterisks in place of letters in the expletives did not save the advertisement and the complaint was upheld.

Decision 15/183 was for a billboard advertisement for Burger Fuel which promoted the “Greedy Bastard” burger. The Complaints Board accepted that the wording had been used in a lighthearted manner to describe a large burger and was unlikely to cause serious offence. However, while the word “bastard” may be acceptable in a more targeted medium when used in this context, the use of the word on a billboard was not socially responsible and the complaint was upheld in part.

The Complaints Board also took into account the Broadcasting Standards Authority list from its “What not to Swear: The Acceptability of Words in Broadcasting 2013”. It noted that “arsehole” was 15th on a list of 31 words. The Board confirmed this survey related to a programme context and not advertising, but it gave an indication of the acceptability of strong language and expletives.

The Complaints Board's Discussion

The Complaints Board viewed a copy of the advertisement and noted it was published in The Post Franklin and North Waikato, a community newspaper with a circulation of about 22,000 copies delivered to homes and businesses weekly.

The Complaints Board took into account the possible precedent decisions, the ranking of the word on the *What not to Swear* list and the Advertiser's approach to its target market in Southern Auckland and North Waikato.

The Complaints Board was unanimous in its view that the advertisement did not meet the threshold to be likely to cause serious or widespread offence under Rule 5 of the Code of Ethics and this part of the complaint was Not Upheld.

A majority of the Complaints Board said the advertisement was in breach of Rule 4 of the Code of Ethics, taking into account generally prevailing community standards and the context of the advertisement, promoting a law firm in a community newspaper accessible to a wide audience. In this context, the use of the word "asshole" to describe a party to legal action in an advertisement did reach the threshold and was not socially responsible. The majority agreed the advertisement was not saved by the use of asterisks in the word.

A minority of the Complaints Board disagreed. The minority said the word was a mild expletive and was further softened with the use of the asterisks. In the minority view, the advertisement used a level of humour to describe people who may be difficult to deal with in negotiations. The minority said the advertisement did not meet the threshold to breach Rule 4 of the Code in relation to community standards and had been prepared with a due sense of social responsibility.

However, in accordance with the majority, the Complaints Board ruled the advertisement was in breach of Basic Principle 4 and Rule 4 of the Code of Ethics. The advertisement was not in breach of Rule 5 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld.

DESCRIPTION OF ADVERTISEMENT

The print advertisement for Arnet Law was published in The Post Franklin and North Waikato Community Newspaper. Wording in the advertisement said:

"Negotiating with an a**hole?"

"We've got a lawyer for that". The advertisement went on to describe the services the firm offers in plain language and included contact details and the wording "Arnet. We're Lawyers. Not Judges."

COMPLAINT FROM B REBER

The offending word is in the opening statement at the top of the advert, which states: "Negotiating with an a**hole?" Although the word is toned down by the use of two asterisks, its meaning is clear. ... The use of this word is against common decency and besides, it is an emotive term, quite unsuited to a law firm. The advert appeared on the last page of their 15 Nov 2016 edition.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 4: Decency - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

Rule 5: Offensiveness - Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

RESPONSE FROM ADVERTISER, ARNET LAW

Arnet Law engages the services of an external creative consultant to come up with its advertising material. The creative person has worked on some extremely large campaigns and the people involved have won some amazing accolades and awards for their creative work. If the creative people had thought there was an issue with the use of the term they would not have put it forward.

The ad in question forms part of a group of ads, each relating to different areas of the practice, each done usually by a different Lawyer within the firm. I attach a copy of a couple of the other ad's which are part of the campaign.

Arnet Law uses the mantra of being straight talking Lawyers. We keep things simple and straight forward. We use terms that everyone understands.

The word Asshole has been dulled down by the use of the **'s to avoid using the actual word. This shows we are aware that the word when used in its full state could be offensive and we have shown we know when its appropriate to use certain terms and when it is not appropriate to use them.

We could use the words — Negotiating with a difficult person — however that would not fit with our Straight Talking Lawyers mantra, nor would it have the same effect, of course the point of advertising is to be noticed.

The ad in question refers to nothing more than "Negotiating with someone difficult". The complainant's email and phone call to our office both suggest that he has taken our ad very personally and interpreted it to mean that we treat difficult people with less respect. This is not the case, we treat everyone with respect. However, negotiating with difficult people can be difficult. We have the skills to help our clients with this. That is what our ad is about.

...

Arnet Law operates in a rural part of Southern Auckland. Many of our clients work in the rural and farming sector, and this Straight Talking approach appeals to them.

You will see from the attached Arnet Law is trying for a more youthful tone in its advertising. That is the type of clients we are looking for. Clients with personality, clients that like straight talking lawyers. We aren't the stereotypical stuffy old fashioned lawyers. It's all about communication.

I also attach copies of other ads that show our use of humour and commonly used terms rather than the stereo typical lawyerly language.

Arnet Law also sends a Birthday card to each of our clients. Some could find this offensive, however to the contrary we have received considerable positive feedback.