

COMPLAINT NUMBER	17/120
COMPLAINANT	S Briggs
ADVERTISER	Ace Drain Unblocking Ltd
ADVERTISEMENT	Ace Drain Unblocking Ltd, Digital Marketing
DATE OF MEETING	13 June 2017
OUTCOME	Upheld

SUMMARY

The website advertisement (www.acedrainunblocking.co.nz) for Ace Drain Unblocking Ltd is for “a team of drain unblocking specialists operating in the greater Auckland area.” Each section of the website contains the words: “Ace Drain Unblocking Ltd. If we can't unblock it you don't pay.”

The Complainant was concerned that Ace Drain Unblocking Ltd said they were unable to unblock their stormwater drain but they had still been charged.

The Advertiser said the statement “if we can't unblock it, you don't pay” had been their motto since they had started business. In this instance, a fee for the job had been quoted and the drain itself was clear – the issue was with an inground soak hole.

The Complaints Board noted the issue with the soak hole meant the unblocking was not able to be completed. The Complaints Board considered whether the statement in the advertisement could mislead consumers without qualification or a disclaimer. The Complaints Board said that many consumers would have limited knowledge about the type of drainage on their property and it appears in some circumstances a fee may apply where unblocking is not achieved. In light of this, 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 Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society and whether it 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 their lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

The Complaint

The Complaints Board first turned to the Complainant's concerns. The Complainant said they had asked Ace Drain Unblocking Ltd to clear a stormwater drain at their property. Workers had arrived and tried to unblock the stormwater drain. The Complainant said: "They were unable to do this and said it was because the drain led to a soak away/drainage pit which must have 'silted up'. I anticipated there would be no charge but they still presented an invoice for me to pay." The Complainant said they had contemplated contesting the demand for payment and wanted the banner advising "If we can't unblock it you don't pay" removed from the website.

The Advertiser's response

The Complaints Board then considered the Advertiser's response. The Advertiser, Ace Drain Unblocking Ltd, said they were a small, owner-operated company and their motto since inception had been "If we can't unblock it you don't pay." In some instances where drains could not be unblocked clients were not charged. The Advertiser said, in the instance being considered by the Board, the customer was verbally quoted a fee of \$170 for the job. A hydrojet machine was sent into the stormwater drain but the stormwater drain connected to an in-ground soak hole unable to be unblocked by any machine and needing to be re-done. The Advertiser said the owner should have known about the soak hole-type drainage on the property and advised the Advertiser of the situation initially. The Advertiser, having deployed manpower and machinery to the site, charged in line with the verbal quote.

The Advertiser also said "We would like to reiterate that we do take our slogan very seriously and have always honoured this message. We will continue to do so in future. We work in some of the most difficult & unhygienic environments day in and day out and our commitment is vital for our small business to ensure that we stick to our promise."

The Complaints Board discussion

The Complaints Board said it appeared the owner did not know about the soak hole but assumed their drains were blocked and accepted the advertised promise that every aspect of blockage was covered "or you don't pay." It was apparent machines appropriate for the unblocking of drains had been deployed and that no blockage was found but that the soak hole was at fault and this was a different matter to unblocking drains.

The Complaints Board acknowledged the response from the Advertiser and their stated intent to honour the promise made in their advertising. However, the Complaints Board was required to look at the complaint before it and whether or not the advertisement was misleading.

Should there have been a disclaimer?

The Complaints Board said that many consumers would have limited knowledge about the type of drainage on their property. The Board said that without a qualifying statement or disclaimer it was not clear in the advertisement that the advertised promise related only to the clearance of pipes and did not appear to include soak holes or other similar types of drainage issues.

The Complaints Board said the statement in the advertisement of "If we can't unblock it, you don't pay" was absolute and no exceptions were referred to. The Complaints Board agreed the statement in the advertisement could mislead consumers without qualification or a disclaimer. Therefore, it said the advertisement was in breach of the Rule 2 requirement for truthful presentation and had not been prepared with the due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was **Upheld**.

DESCRIPTION OF ADVERTISEMENT

The website advertisement (www.acedrainunblocking.co.nz) for Ace Drain Unblocking Ltd was for “a team of drain unblocking specialists operating in the greater Auckland area”. Each screen began with a black box containing the words: “Ace Drain Unblocking Ltd. If we can't unblock it you don't pay.” Information also included phone number and website address. The opening screen had an image of two vehicles with signage for Ace Drain Unblocking Ltd overlaid with a banner saying: “For drainage problems Auckland wide 24 hours a day 7 days a week.” Following screens outlined and promoted services and gave testimonials and contact details.

COMPLAINT FROM S BRIGGS

I asked Acedrain Unblocking Limited (<http://www.acedrainunblocking.co.nz>) to clear my stormwater drain at my property ... in Auckland. They arrived on site at 11.15am on 11/5/17 and tried to unblock the stormwater drain. They were unable to do this and said it was because the drain led to a soak away / drainage pit which “must have silted up”. I anticipated there would be no charge but they still presented an invoice for me to pay. In total they were on site for less than 30 minutes. Please can you get them to remove their banner from their website. I paid on my credit card to avoid a scene and am interested on your advice as to whether I should contest it.

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).

RESPONSE FROM ADVERTISER: ACE DRAIN UNBLOCKING LTD

This email is with reference to your communication dated 22/05/17 regarding a complaint against our advertisement.

We are a small owner operated company and take pride in whatever job we undertake in order to satisfy our customers.

We take our services very seriously and abide by strict policies. Our company's motto/statement since inception has always been “*If we can't unblock you don't pay*”. This is our principle where we ensure that should we be unable to unblock a drain, our clients do not pay. We have had some instances where we could not unblock and clients were not charged either.

All this time, there has never been a single complaint against us. Here in this instance, this customer was quoted verbally a fee of \$170 for the job. As you are aware, in most instances customers would like an approximate cost for the job more as an estimate and our staff had extended the same.

Our drain unblocking technician went and did investigations on site. He sent hydrojet machine into stormwater drain to clear blockage. This stormwater drain connected into an in-ground soakhole which no machine can unblock. Soakholes have to be redone in order to make them work.

The owner should have known about the soakhole type drainage on his property and had they told us about this situation, we would have advised differently. Our staff expected to be communicated of this by the complainant initially. Having deployed both manpower and machinery at the site, an invoice was raised as per the verbal quote.

We would like to reiterate that we do take our slogan very seriously and have always honoured this message. We will continue to do so in future. We work in some of the most difficult & unhygienic environments day in and day out and our commitment is vital for our small business to ensure that we stick to our promise.