

COMPLAINT NUMBER	17/240
COMPLAINANT	J Bird
ADVERTISER	Aoraki Tree Care Ltd
ADVERTISEMENT	Aoraki Tree Care Ltd, Print
DATE OF MEETING	22 August 2017
OUTCOME	Not Upheld

SUMMARY

The Yellow Pages advertisement states “Aoraki Tree Care Ltd. Total tree care specialist. Dangerous and Difficult Tree Removal, All Forms of Tree Surgery, Certified for Powerline Clearing, Fruit Tree Pruning.”

The Complainant was concerned that the advertisement was misleading as it makes claims of being “Certified for Powerline Clearing” when in fact the Advertiser does not have certification as an approved contractor to carry out powerline clearing.

The Complaints Board ruled the issue was one of semantics around the interpretation of being qualified and certified. The Complaints Board agreed the Advertiser was not working outside the remit of the qualifications they possessed, and therefore the advertisement was not misleading.

The Complaints Board noted that to avoid any confusion going forward, it could be useful for the Advertiser to specify the power line work which can and cannot be undertaken as part of any future advertising.

The Complaints Board agreed that the advertisement had been prepared with a due sense of social responsibility and was not likely to mislead or deceive consumers.

Accordingly, 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 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 Complainant was concerned that the advertisement was misleading as it makes claims of being "Certified for Powerline Clearing" when in fact the Advertiser does not have certification as an approved contractor to carry out powerline clearing and enter the 4 metre minimum approach distance covered under the Electrical Code of Practice 34 (ECP 34).

The Advertiser's Response

The Advertiser confirmed they were qualified to perform the type of work they accept contracts for and provided substantiation for this qualification. They clarified that the power line clearing work undertaken was residential line clearing on what is referred to as "Service Lines"(Supply Lines).

The Advertiser confirmed that they do not undertake powerline clearance within 4.0 metres of high voltage lines as described in ECP 34.

The Media Response

The Yellow Pages stated they accept advertising in good faith, on the understanding that each advertiser bears sole responsibility for the correctness and legal compliance of their advertising material.

The Complaints Board Discussion

The Complaints Board agreed that the Advertiser was qualified to undertake the type of tree work they accept contracts for and the rules around power line clearance within a 4.0 metre clearance of high voltage lines were being adhered to.

The Complaints Board said there was a discord between the definitions of 'qualified' and 'certified' on the part of the Advertiser and the Complainant and it was this confusion which led to the complaint.

The Complaints Board said that it could be beneficial for the Advertiser to make this distinction clear in future advertisements in order avoid any risk of confusion.

The Complaints Board agreed that the advertisement had been prepared with a due sense of social responsibility and was not likely to mislead or deceive consumers.

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

DESCRIPTION OF ADVERTISEMENT

The Yellow Pages advertisement states "Aoraki Tree Care Ltd. Total tree care specialist. Dangerous and Difficult Tree Removal, All Forms of Tree Surgery, Certified for Powerline Clearing, Fruit Tree Pruning. Mark Roberts Qualified Arborist."

COMPLAINT FROM J BIRD

You will note that in the advertisement supplied. Mr Roberts states he is "Certified for Powerline Clearing".

As the Distribution Company covering the area in which Mr Roberts works we can categorically state that he has no certification or approval to work within or near power lines. Work of this type is covered by ECP 34 and requires contractors to receive approval from us

as the asset owner to carry out power line clearing work. ECP34 as derived from the Electricity (Safety) Regulations 2010 and the Electricity Act 1992.

We have taken the matter up with Mr Roberts and his position is that as he once worked for Transpower he is "certified" as when working for them he gained NCEA qualifications for work around power lines.

We believe that given that he does not have certification as an approve contractor to carry out powerline clearing and enter the minimum approach distance of 4m as laid down in ECP 34 he is misleading the public and is therefore in breach of items 3 and 4 of the advertising code of ethics.

FURTHER FROM THE COMPLAINANT: J BIRD

All persons who work close to powerlines or electrical assets must comply with the Electricity Act 1992 and Electrical (Safety) Regulations 2010. The upshot of these is Electrical Code of Practice 34, which I have attached.

In practice (and all distribution companies work in a similar way) this means a person must gain permission to work within 4 metres of an asset from the asset owner. There are two ways of doing this.

- Apply for a one off approval to do a particular job. We will assess a person or companies safety record and there hazard management plan, then place any conditions we regard as necessary for a particular situation
- A company, person or contractor may apply to be certified or approved to carry out close work on a permanent basis. Arborist who work close to lines normally do this. We will assess their equipment, skills, and past record. This often means observing a contractor in operation. There will also be subject to no notice audits. These people are then allowed to work without notifying us every time they need to cut around assets.

We get a small number of cases a year of damage to lines by people dropping trees or parts of trees on to power lines, this causes a great deal of inconvenience to customers when the power goes off. It is also very expensive.

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: AORAKI TREE CARE LTD

In a previous discussion with the complainant, I explained that I do in fact hold national qualifications for undertaking tree work near electrical power lines, (see attachment, in

particular unit standard 17152). The qualifications that I hold are compliant with the current Approved Code of Practice for Tree Work near Electrical Supply Lines.

The complainant is correct in that I am not certified to work on the Alpine Energy network, however I never work on this network. The power line clearing that I undertake is residential line clearing on what is referred to as "Service Lines"(Supply Lines). These are the lines that run from the pole on the street to the house. They are not considered a part of the Distribution Company's network. The Distribution Company takes no responsibility for maintenance on Service Lines and consider all responsibility to be with the homeowner.

I do not undertake powerline clearance within 4.0m of High Voltage lines as described in ECP 34.I do not advertise as being an "approved contractor" and have never suggested that I am. I take great pains to point out to customers where my competencies start and finish. I have no interest in Tree Work near high voltage lines, the risk is too high.

I do however, undertake tree work near electrical supply lines within the parameters set out by current legislation and codes of practice (as a small part of my business). I am qualified to undertake such work. I have been doing this work for 10 years and have never had an incident, I have previously had a good relationship with the Distribution Network.

I take my business seriously, I believe I operate with integrity and professionalism.

RESPONSE FROM MEDIA: YELLOW PAGES

With over one hundred thousand advertisers, Yellow accepts advertising in good faith, on the understanding that each advertiser bears sole responsibility for the correctness and legal compliance of their advertising material. Per clause 13 of our Terms of Business (<http://ypg.co.nz/terms>), it is each advertiser's duty to ensure that all material they provide for us to publish on their behalf is accurate, and in compliance with all applicable laws and Advertising Codes of Practice. Yellow is afforded a specific defence under section 44(4) of the Fair Trading Act in this regard.

We will amend the relevant listings if the advertiser requests us to do so, or where the ASA informs us that it has upheld this complaint.