

COMPLAINT NUMBER	18/055
COMPLAINANT	L Anisy
ADVERTISER	Westland Funeral Services
ADVERTISEMENT	Westland Funeral Services, Print, Radio
DATE OF MEETING	10 April 2018
OUTCOME	Upheld in Part

SUMMARY

Two advertisements promoted Westland Funeral Services. The radio advertisement said, in part, “They are members of the Funeral Directors Association of New Zealand and David is the only Funeral Director in Greymouth who holds a New Zealand Certificate in Funeral Directing.” The print advertisement was in the Yellow Pages and said, in part, “Providing funeral services that West Coasters have trusted for 60 years. 24/7 Greymouth’s only qualified Funeral Director.”

The Complainant, L. Anisy complained about the statement “only qualified Funeral Director” and noted that the Complaints Board had ruled in 2012 that Anisy Funeral Services was entitled to use the statement: “You can benefit from his qualifications, and experience...”.

The Advertiser confirmed the statement in the radio advertisement was correct and no other provider in Greymouth held the New Zealand Certificate in Funeral Directing. The Advertiser said the use of the term ‘qualified’ related to the formal qualification they held.

The Complaints Board agreed the Advertiser had substantiated their qualification and the complaint about the radio advertisement was Not Upheld.

The Complaints Board noted the wording of the print advertisement was more general and stated “Greymouth’s only qualified Funeral Director.” The Complaints Board agreed with precedent Decision 12/315 and said in a sector where there has been no formal qualification required to provide funeral services, those who have been in business over a period of years and previously met industry requirements may be considered qualified. This meant that the general claim in the print advertisement “Greymouth’s only qualified Funeral Director” was misleading and this part of the complaint was Upheld.

The Complaints Board ruled the complaint about the print advertisement was Upheld.

[Print advertisement to be removed / amended]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisements with reference to Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisements were likely to mislead or deceive consumers by exaggerated claim, omission or ambiguity and whether the advertisements had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board ruled the complaint was Upheld in Part.

The Complaint

The Complainant challenged the statement “only qualified Funeral Director” and noted that the Complaints Board had ruled in 2012 that Anisy Funeral Services which operated in Greymouth was entitled to use the statement: “You can benefit from his qualifications, and experience...”.

The Advertiser’s Response

The Advertiser responded and said in part:

“Westland Funeral Services Radio Advertisement clearly says that David Neame is the only Funeral Director in Greymouth to hold a New Zealand Certificate in Funeral Directing. This statement is completely true. I attach a scan copy of this certification for verification. As far as my enquires will allow L Anisy and the members of Anisy Funeral home are not and have never held this formal qualification or any formal Funeral Directing qualification in New Zealand.”

...“As a member of the Funeral Directors Association of New Zealand all of the employees and owners of Westland Funeral Services adhere strictly to the code of ethics set down by FDANZ.

More specifically we agree to:

- to accept as a duty the maintenance of truth, accuracy, dignity and good taste.
- To maintain qualified and competent personnel with facilities and equipment adequate to provide a comprehensive funeral service.

I am qualified with a NZ Certificate in Funeral Directing. I meet New Zealand, industry and community standards in every sense. I have no issue with L. Anisy advertising they are 'experienced' they clearly are, however I do have an issue with L. Anisy claiming to be as *qualified* as I am - this is not true... Common sense says if they want to say they are qualified then they should complete the training as all other persons who want to better themselves do, then provide a professional and honest service with the sanctioned certification to prove it.”

The Complaints Board Discussion

The Complaints Board confirmed it was dealing with two advertisements from Westland Funeral Services.

As a preliminary matter and to provide context, the Complaints Board discussed the precedent Decision which applied to the same parties and to the current complaint before it. In 2012, the Complaints Board received a complaint from D. Neames of Westland Funeral Services about advertising by Anisy Funeral Services. This Decision said in part:

“The Complaints Board then turned to the response from the Advertiser’s Legal Counsel and noted where it stated: “Parliament does not require a funeral director to have a particular type of qualification. Our client qualified under an industry based training scheme and received a certificate issued by the Funeral Directors Association of New Zealand (FDANZ).” The Advertiser’s Legal Counsel continued: “The subtext of D. Neame’s claim is that a funeral director is unqualified if he does not have an NZQA Diploma in Funeral Directing. Year-long diplomas have only been available since 1990. If D. Neame’s argument is accepted the logical extension of his argument is that all directors with pre-1990 qualifications are now “unqualified” by virtue of having trained under a different system.””

...The Complaints Board acknowledged that qualifications can change over time however, it agreed with the assertion by the Advertiser’s Legal Counsel that the lack of one particular qualification – in this case any formal qualifications in this field as set by NZQA - did not mean the Advertiser was not qualified in their area of expertise. Therefore, the Complaints Board was satisfied that the public was not being misled by the advertisement and it was of the view that the certificate - albeit out of date - that recognised L. Anisy as a registered funeral director and the 43 years of experience in the industry, that the Advertiser was entitled to use the statement: “You can benefit from his qualifications, and experience”.”

The Complaints Board noted that the parties to these two complaints were competitors. The Complaints Board acknowledged that competitor complaints are generally dealt with via a user-pays adjudication process, not through the free consumer complaints service. The Chair ruled to deal with the current complaint as a consumer complaint as a matter of fairness and consistency, as this was how the 2012 complaint was dealt with.

However, the Complaints Board reiterated that its focus is on consumer complaints and the likely consumer takeout from advertisements. The Complaints Board said that any future complaints between these parties would be dealt with by the competitor complaint process rather than by the Complaints Board which is for complaints made by consumers.

The Complaints Board then turned to address the complaint about the claims in the advertisements.

Radio advertisement

The claim in the radio advertisement states: “They are members of the Funeral Directors Association of New Zealand and David is the only Funeral Director in Greymouth who holds a New Zealand Certificate in Funeral Directing.” The Complaints Board was provided with a copy of the certificate referred to in the advertisement and noted the supporting information provided from the Funeral Directors Association of New Zealand.

The Complaints Board agreed the claim in the radio advertisement had been substantiated and this part of the complaint was Not Upheld.

Yellow Pages advertisement

The Complaints Board then discussed the print advertisement published in the Yellow Pages. This advertisement said in part, “Providing funeral services that West Coasters have trusted for 60 years. 24/7 Greymouth’s only qualified Funeral Director.”

The Complaints Board agreed it was useful to consider the context for the claims and the current status of qualifications in the industry. The Complaints Board discussed that there are currently no formal requirements for becoming or working as a funeral director because it is an unregulated industry. Funeral Directors can complete a National Certificate in funeral directing and can become members of the Funeral Directors Association of New Zealand

(FDANZ), but that is not compulsory. FDANZ is an association of funeral directing companies. Only individuals who work for a FDANZ firm can be on the Register of Funeral Directors. The letter from FDANZ dated 8 March 2018 advised that that D. Neames is on the Register but L. Anisy is not. The Board discussed that FDANZ is an industry body of which membership is voluntary.

The Complaints Board agreed with precedent Decision 12/315 and said that in a sector where there is no formal qualification required to provide funeral services, those who have been in business over a period of years and previously met industry requirements may be considered qualified. In the Complaints Board view, consumers would understand that there are different ways to be qualified as a funeral director. This meant that the general claim in the print advertisement "Greymouth's only qualified Funeral Director" was misleading and this part of the complaint was Upheld.

The Complaints Board ruled the print advertisement was in breach of Rule 2 and Basic Principle 4 of the Code of Ethics and the complaint was Upheld in Part.

DESCRIPTION OF ADVERTISEMENT

Two advertisements promoted Westland Funeral Services. The radio advertisement said, in part, "They are members of the Funeral Directors Association of New Zealand and David is the only Funeral Director in Greymouth who holds a New Zealand Certificate in Funeral Directing." The print advertisement was in the Yellow Pages and said, in part, "Providing funeral services that West Coasters have trusted for 60 years. 24/7 Greymouth's only qualified Funeral Director."

COMPLAINT FROM L ANISY

We wish to bring to your attention a breach of advertising by Westland funeral Services Ltd of Greymouth.

This same matter was ruled on by the Authority in August 2012.

Westland Funeral Services Ltd are regularly advertising on local radio that they are the only qualified Funeral Directors in Greymouth.

We have also enclosed a copy of their Yellow Pages advert that also states they are Greymouth's only qualified Funeral Director.

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).

INITIAL RESPONSE FROM ADVERTISER, WESTLAND FUNERAL SERVICES

Westland Funeral Services Radio Advertisement clearly says that David Neame is the only Funeral Director in Greymouth to hold a New Zealand Certificate in Funeral Directing. This statement is completely true. I attach a scan copy of this certification for verification. As far

as my enquires will allow L Anisy and the members of Anisy Funeral home are not and have never held this formal qualification or any formal Funeral Directing qualification in New Zealand. The mere fact that he states in numerous ads etc that he is qualified makes a mockery of my legitimate qualification.

Westland Funeral Services believes that David Neame is the only truly qualified Funeral Director in Greymouth. (See attached cert)

The Letter from FDANZ state that they do not provide qualifications. Mr. Anisy's use of a FDANZ registered Funeral Director certificate dated 1973 to verify his qualification is not only incorrect but is a breach of the Fair Trading Act. (Claiming to belong or be something you are not). The following link will give a nice view of this particular issue. (See Letters attached re his cert)

I wish to ask the same board, if because a person has mowed lawns and done yard work? Can that same person claim to be a qualified horticulturalist? I have in my years painted and wall papered my houses, would that make me qualified as a painter/paper hanger. The answer is no because qualification contains a broad range of topics, associated areas and credits that are considered necessary to learn and master, to say you are qualified.

Please readdress the decision of 2012 as it makes a mockery of New Zealand's Education System.

(Why get educated, just work there and claim it!). I have a [person] who has cleaned for Westland Funerals for more than 35 years, [are they] also "qualified" as Mr. Anisy states and the 2012 decision allows because [they] have length of time in the industry?

I went to great lengths and expense to gain my qualification and to use this training to provide the very highest standard of care to my client families. I have worked as a Funeral Director since August 2003, gaining my formal qualification in 2007. I am still dazed and confused by the Advertising Standard Authority's decision in 2012 to allow someone who has never gained any formal training to say he is qualified. Particularly as a formal training program has been in place since 1991 (27 years).

The vast majority of people in New Zealand believe that people in the Funeral Industry have qualification and training to merit their trusted position in our communities. I have asked many unrelated individuals what qualified means to them. The vast majority of people stated that it meant certified and studied formally.

I find it quite hard to believe that a board made up of numerous people that hold valid and formal qualifications themselves, would agree that in our current professional climate, length of undefined service in and around an Industry would be deemed as qualified.

There have never been any questions raised as to how long this person served and in what capacity. I have attached numerous adds that state that Mr. Anisy has served anywhere from 1963, 1964, 1966, to 1973, he also has stated that he has anywhere from 45 years, over 50 years, to seven decades experience.

...Mr. Anisy states in his Ad's (highlighted) that he is the most cost competitive cremation on the coast. This is not substantiated yet he claims it. I claim to hold a NZ recognized qualification but can't state that, as the only one in Greymouth because he deems it not true.

...I have written this response in haste due to the busy nature of Westland Funeral Services. I actually have many better things to do than answer the fraudulent claims of a former and disgruntled employee and now competitor of Westland Funeral Services. This to me illustrates that the Advertising Standards Authority in 2012 were quite happy to allow the

public to be duped by an underqualified but persuasive Funeral Director praying on the fact that there is very little regulation in the Funeral Industry and qualification is not mandatory.

FURTHER RESPONSE FROM ADVERTISER

It is my understanding that the Advertising Standards Authority some years ago, sat regarding Mr Anisy and his status as qualified and registered. It was decided by the Board at the time, that given Mr Anisy's time in the industry he could be considered qualified by experience and could therefore advertise as qualified.

The question as to exactly how long, and in what capacity Mr Anisy worked in the industry, was never asked or determined by the ASA.

Simply asking Mr Anisy to 'clarify' this is neither satisfactory or reliable given his history of fabrications. He claims in multiple ads to have been in the industry anywhere from 40 years to seven decades.

...Included in my response is a letter from the Acting CEO of FDANZ outlining Mr Anisy's involvement with FDANZ and any registering process. I also include adverts which are full of misleading statements and are specifically designed to bamboozle and deceive the public.

I feel the ASA's past decision based on 'experience and time' was inadequate and leaves the public wondering what does qualified and registered mean today?

As you will see in the FDANZ letter, formal qualification in this industry has been in place since the early 90's. No 'grandfather clause' exists to allow for time or experience to pass as qualified for this reason.

The decision you face currently as to my status as the only Nationally Qualified Funeral Director in Greymouth appears to be quite straight forward given your own guidelines and codes and my proof of qualification.

Please consider that I have provided evidence of my National Qualification and current status as a registered FDANZ Funeral Director. Mr Anisy's qualification is merely an *opinion* held by himself *and* the ASA - this flies in the face of your own code. For example, it should be accurate not just an opinion. It should not mislead or deceive. My advertising states a fact I am qualified under a NZ recognised educational system. Regardless of how Mr Anisy puts it, people rely on the honesty of the Funeral Director. When that Funeral Director states they are qualified, this means recognised by NZ and the people of New Zealand. Given the long time frame that New Zealand has been providing formal training in the Funeral Industry it is no longer relevant how long an individual has been merely 'involved' in the profession.

Your own code states that "*businesses should act with fairness and honest practise*". How is it fair or honest practise for Mr Anisy to say he has been registered since 1973 and is qualified in the sense of the word that the public currently believes?

The current wording in Mr Anisy's advertisements, has been taken verbatim from his lapsed FDANZ registration certificate from 1973. He currently displays this redundant certificate in his funeral home and explains to people his 'registration' is still effective.

Showing and advertising this is against FDANZ by-laws and more importantly is a breach of the Fair Trading Act which states that a "*business or individual cannot represent themselves as being something they are not, or belonging to or being affiliated with or endorsed by*".

Principle 2 clause states: Trade Marks or registered brands or makes can be used for honest comparison but cannot be used to upgrade by association or for passing off purposes, or to mislead or otherwise take unfair advantage of the goodwill associated with the trade name, symbol or brand.

Principle 2 clause b states: Advertisements should not *be* so similar to a competitor's advertisements in general layout, copy, slogans, visual presentation, music, or sound effects as to be likely to mislead or deceive consumers.

As a member of the Funeral Directors Association of New Zealand all of the employees and owners of Westland Funeral Services adhere strictly to the code of ethics set down by FDANZ.

More specifically we agree to:

- to accept as a duty the maintenance of truth, accuracy, dignity and good taste.
- To maintain qualified and competent personnel with facilities and equipment adequate to provide a comprehensive funeral service.

I am qualified with a NZ Certificate in Funeral Directing. I meet New Zealand, industry and community standards in every sense. I have no issue with Mr Anisy advertising he is 'experienced' he clearly is, however I do have an issue with Mr Anisy claiming to be *qualified* as I am - this is not true.... Common sense says if he wants to say he is qualified then he should complete the training as all other persons who want to better themselves do, then provide a professional and honest service with the sanctioned certification to prove it.

I understand some of these issues are outside the focus of the current complaint. However, given the nature of this grievance and the ongoing misleading behaviour of Mr Anisy I want the board to have as much detail and information as possible so it can make an informed choice before issuing any findings.

RESPONSE FROM MEDIA, NZME

We are writing on behalf of NZME (the media) in response to the above complaint regarding Westland Funeral Services' (**Westland**) advertisement on The Hits and Newstalk ZB. This advertisement was scripted and voiced by NZME. We do not believe it breaches any of the codes.

The ASA identified Basic Principle 4, and Rule 2 as potentially being breached:

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

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).

In respect of truthful presentation, the advertisement states: "David is the only funeral director in Greymouth who holds a New Zealand certificate in funeral directing". We understand that a copy of Mr Neame's qualification in funeral directing has been provided to the ASA.

We understand that Westland can substantiate this statement by reference to a letter from the Funeral Directors Association of New Zealand which confirms that Mr Anisy does not hold a qualification in funeral directing. Should this be incorrect and a staff member of Anisy Funeral Home does hold a New Zealand certificate in funeral directing, Westland are happy to remove their advertisements to reflect this.

In respect of social responsibility, on the basis that the claim can be verified by Westland, we are comfortable that Westland has a reasonable basis to make the claim and therefore is not consumers or otherwise undermining societal confidence in making the claims.

Unfortunately, we have not had the benefit of reviewing the decision referred to in Mr Anisy's complaint. However, in light of the evidence provided by Mr Neame (and the lack of evidence that we have seen to the contrary), NZME Radio remains comfortable with the specific claim made in Westland's advertisement.

RESPONSE FROM MEDIA, YELLOW

As usual, our position is as follows:

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 12 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 or remove the relevant advertisement if the advertiser requests us to do so, or where the ASA informs us that it has upheld this complaint (although that would have to take place in the next print directory production cycle).

We do not have any system notes recording contact from Anisy Funeral Home regarding Westland Funeral Services, though it is possible they may have spoken to our Customer Care call centre. If so, they would have been provided with a similar statement to that above.

We can confirm that Westland Funeral Services added the statement "Greymouth's only qualified Funeral Director" this year, and it wasn't in their ads for the past few years. They were sent an artwork proof before it was printed.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.