

COMPLAINT NUMBER	18/092
COMPLAINANT	L. McCorkindale
ADVERTISER	J. Worker
ADVERTISEMENT	Algies Bay Property, Herald Homes
DATE OF MEETING	24 April 2018
OUTCOME	Upheld

SUMMARY

The advertisement which appeared in the Herald Homes supplement promoted sections for sale in Algies Bay, Rodney. The advertisement stated, in part: “New Northern Motorway to be completed within the next few years making these sections less than 45 Minutes to Auckland CBD! Private sale & priced to sell.”

The Complainant challenged the Advertiser’s claim that it would take “less than 45 minutes” to travel to the Auckland CBD once the new motorway was completed.

The Advertiser provided video evidence which demonstrated they departed Algies Bay at 6.50pm, and arrived in Auckland CBD at 7.33pm for a total of 43 minutes’ drive time.

The majority of the Complaints Board considered a major focus of the advertisement was drive time to the Auckland CBD which was likely to be appealing to people who would commute regularly into the city. The majority said the claim was not supported by the information provided by the Advertiser as it did not demonstrate a typical journey. The Board also noted no information was provided to support the claim there would be a reduction in travel time after the new motorway was completed. The majority said the advertisement was in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

A minority said the Advertiser was entitled to portray the travel time to the sections in the best possible light and people who were interested in purchasing would likely undertake further research on the location. The minority also noted the new motorway was likely to shorten the journey and found the Advertiser’s evidence was sufficient to support the claim. The minority said the advertisement was unlikely to mislead consumers and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics.

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

[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 complaint with reference to Basic Principle 4 and Rule 2 of the Code of Ethics.

Rule 2 required the Complaints Board to consider whether the advertisement contained any statement or visual presentation or created 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).

Basic Principle 4 required the Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and society

The Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant was concerned the advertisement which appeared in Herald Homes was misleading. The statement subject to complaint was: "New Northern Motorway to be completed within the next few years making these sections less than 45 Minutes to Auckland CBD!" The Complainant was of the view that "the distance to Warkworth from the sections is 12.3 km and is adjudged to take 14 mins. The new motorway junction is approximately a further km north of Warkworth, and a set of traffic lights have to be used. Even driving at 2 am this time of less than 45minutes is not possible and in rush hour the time is more like 2 hours. This advert is incorrect and the person making it needs to be advised."

The Advertiser's Response

The Advertiser provided videos which showed them recording the time while driving from Algies Bay at 6.50pm, arriving in Auckland CBD at 7.33pm, as substantiation for the claim.

The Media's Response

The Media, NZME, responded to the complaint, stated, in part: "We understand that the advertiser has contacted the ASA with evidence illustrating that the claim can be substantiated, using footage illustrating the time he left the property and the time he arrived in Auckland CBD.

On that basis, we are comfortable that this claim can be substantiated. While undoubtedly this commute time will vary in different conditions and at different times, we are comfortable that the reasonable consumer will understand the nuances of Auckland traffic and will not be misled or deceived by the claim."

Complaints Board Discussion

The Complaints Board were required to consider whether the advertisement was likely to mislead consumers and noted the onus fell on the Advertiser to substantiate any claim made.

The majority of the Complaints Board considered a major focus of the advertisement was drive time to the Auckland CBD which was likely to be appealing to people who would commute regularly to the city.

The majority said the likely consumer take-out of the advertisement was that once the Northern Motorway was built, the commute from Algies Bay to the CBD would be less than 45 minutes. The majority of the Complaints Board said this was not supported by the information provided by the Advertiser. It noted the Advertiser submitted video evidence which illustrated the time it took to drive the distance against the flow of most traffic and at a

time when the roads were unlikely to be congested. The majority said the time demonstrated by the Advertiser was unlikely to be achievable by consumers wishing to commute on a regular basis between Algies Bay and the Auckland CBD.

The majority also noted that no information was provided to the Complaints Board to support the claim there would be a reduction in travel time after the new motorway was completed.

The majority said the advertisement was therefore likely to mislead consumers and had not been prepared with a due sense of social responsibility to consumers and society, in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

A minority disagreed. In its view the Advertiser was entitled to portray the travel time to the sections in the best possible light and people who were interested in purchasing were likely to do further research on the location. The minority also noted the new motorway was likely to shorten the journey and found the Advertiser's evidence supported the claim. The minority said the advertisement was unlikely to mislead consumers and was not in breach of Basic Principle 4 or Rule 2 of the Code of Ethics.

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

DESCRIPTION OF ADVERTISEMENT

The advertisement which appeared in the Herald Homes supplementary newspaper promoted sections for sale in Algies Bay, Rodney. The advertisement stated, in part: "1 hectare blocks. Private concrete driveway with both power & phone to the gateway. New Northern Motorway to be completed within the next few years making these sections less than 45 Minutes to Auckland CBD! Private sale & priced to sell."

COMPLAINT FROM L MCCORKINDALE

On Wednesday 14 March the attached advert appeared in Herald Homes. I dispute the statement that these sections outside the main centre of Algies Bay will be less than 45 mins from Auckland CBD. The distance to Warkworth from the sections is 12.3 km and is adjudged to take 14 mins. The new motorway junction is approximately a further km north of Warkworth, and a set of traffic lights have to be used. Even driving at 2 am this time of less than 45minutes is not possible and in rush hour the time is more like 2 hours. This advert is incorrect and the person making it needs to be advised.

CODES OF PRACTICE

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, J. WORKER

Note from Secretariat: The Advertiser provided videos of themselves driving from Algies Bay at 6.50pm, arriving in Auckland CBD at 7.33pm, as substantiation of the claim.

RESPONSE FROM MEDIA, NZME. – HERALD HOMES

We are writing in response to the above complaint regarding a private sale advertisement for a property featured in Herald Homes on 14 March 2018.

The complainant disputed that the property was 45 minutes from Auckland CBD, as was claimed in the print ad.

We understand the relevant sections of the Advertising Codes appear to be:

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).

We understand that the advertiser has contacted the ASA with evidence illustrating that the claim can be substantiated, using footage illustrating the time he left the property and the time he arrived in Auckland CBD.

On that basis, we are comfortable that this claim can be substantiated. While undoubtedly this commute time will vary in different conditions and at different times, we are comfortable that the reasonable consumer will understand the nuances of Auckland traffic and will not be misled or deceived by the claim.

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.