

<b>COMPLAINT NUMBER</b>	18/161
<b>APPEAL NUMBER</b>	18/009
<b>APPELLANT</b>	B Harding
<b>ADVERTISER</b>	Tilt Renewables
<b>ITEM</b>	Tilt Renewables Viewing Platform
<b>DATE OF MEETING</b>	9 July 2018
<b>OUTCOME</b>	Declined

## **SUMMARY**

The Chair of the Complaints Board ruled on 18 June 2018 that the viewing platform information panels at the Tararua Wind Farm were not advertising and the ASA did not have jurisdiction to consider the complaint from B Harding.

The panels included information about the history and mechanics of the wind turbines including diagrams.

The Complainant appealed the Decision and considered it was in the interests of natural justice the complaint be referred to the Advertising Standards Complaints Board and the Advertiser be asked to substantiate the claims made on the panels.

This application was considered by the Chairperson of the Appeal Board. The Chairperson noted the Complainant disputed the information panels were not advertising and provided further details on why the content of the panels was misleading.

The Chairperson agreed with the Chair's determination that the information panels at the wind farm viewing platform were not advertisements. In her view, the information panels were not put in place with the intention of influencing those who viewed them, but as part of the consent process in the early days of wind farm construction.

The Chairperson noted the concerns of the Complainant with regard to the no jurisdiction ruling and the accuracy of the information on the panels, however, disagreement with a decision was not a ground on which an appeal could be accepted and as there were no other grounds on which the appeal could proceed, the application was declined.

The Chairperson ruled the appeal was Declined.

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

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## **CHAIRPERSON'S RULING**

The Chairperson viewed the application for appeal. She noted that there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6(c) of the Second

Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (i) The proper procedures have not been followed.
- (ii) There is new evidence of sufficient substance to affect the decision.
- (iii) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (iv) The decision is against the weight of evidence.
- (v) It is in the interests of natural justice that the matter be reheard.

In their appeal application, the Complainant said it was in the interests of natural justice that the complaint be considered by the Advertising Standards Complaints Board and the Advertiser be asked to substantiate the claims made.

The Chairperson noted the Complainant disputed the information panels were not advertising and provided further details on why the content of the panels was misleading.

The Chairperson reviewed the complaint, images of the information panels, the Chair's Ruling and the Appeal application. The Chairperson noted that the Appeal application outlined why the Complainant considered the panels to be advertising, including anecdotal information about what information on the panels impressed some tourists the most.

The Chairperson acknowledged the Complainant had also set out a number of questions they would like addressed by Tilt Renewables and the Complainant had strong views on the veracity of the information on the panels.

However, the Chairperson said in the first instance, there was a requirement to establish whether the Advertising Standards Authority had jurisdiction to consider the complaint.

The Chairperson took into account the ASA definition of an advertisement which said: "Advertising and advertisement(s) are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."

The Chairperson said the definition was wide-ranging and could cover many different types of commercial communications but it was not all encompassing. The Chairperson referred to a previous decision on jurisdiction, Decision 16/315 Appeal 16/015 on the Ministry of Business, Innovation and Employment New Zealand Energy Quarterly report. That Ruling said in part:

"The Chairperson considered the Complainant's view and also considered the item under the ASA definition of an advertisement and also used the information below on the MBIE Website.

The MBIE Publication says its purpose is to:

"The New Zealand Energy Quarterly provides quarterly data and analysis on energy supply, demand, prices and associated greenhouse gas emissions. This publication is part of the suite of energy publications produced by the Modelling and Sector Trends Team of the Ministry of Business, Innovation and Employment. It may be downloaded or subscribed to at

[www.med.govt.nz/sectors-industries/energy/energy-modelling/publications/new-zealand-energyquarterly](http://www.med.govt.nz/sectors-industries/energy/energy-modelling/publications/new-zealand-energyquarterly).”

Given this information the Chairperson agreed with the No Jurisdiction ruling made by the Chair of the Complaints Board She confirmed that the item was a report that included statistical information, not an advertisement promoting a service or product.”

The Chairperson said this was a useful example of information which did not come under the ASA definition of advertisement.

The Chairperson noted the appeal application was based on disagreement with the Chair’s view that the information on the panels would not influence those viewing them.

The Chairperson agreed with the Chair’s determination that the information panels at the wind farm viewing platform were not advertisements. In her view, the information panels were not put in place with the intention of influencing those who viewed them, but as part of the consent process in the early days of wind farm construction.

The Chairperson noted the concerns of the Complainant with regard to the no jurisdiction ruling and accuracy of the information on the panels, however, disagreement with a decision was not a ground on which an appeal could be accepted and as there were no other grounds on which the appeal could proceed, the application was declined.

**Chairperson’s Ruling:** Appeal application **Declined**

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**DESCRIPTION OF ITEM**

The information panels which appeared at the Ashurst viewing platform at the Tararua Wind Farm contained facts about the history and mechanics of the wind turbines including diagrams and information on how they were constructed.

**APPEAL APPLICATION FROM COMPLAINANT, B HARDING**

I wish to make an Appeal against the 18/6/2018 ruling whereby the Chair’s Outcome had NO Jurisdiction applied to it.

The Chairs Definition of Advertising Content within this complaint, with references to the Purposefully Mounted 13 Information Panels mounted behind 65 Metres length of Clear Perspex has been based on the fact that “they did not influence the (Public, Educational School or the many Overseas Tourist Parties) audience”, in any way but provided Factual information about the Tararua Wind Farms and the Wind Turbines along with, “that they were part of a Resource Consent requirement”.

In My Considered Opinion.

This Ruling is against the Natural Justice with apparent bias, and is not part of the Chairs, Procedural Fairness to use Tilt Renewables reference, to any Resource Consent requirement, who have also Quoted, “that these are not Advertising”, thereby being used as if it was part of my Advertising Complaint, it is an intended Obfuscation with the intent to influence the Chair, as though it was a justifiable important piece of information, somehow to be Accepted as an “Advertisement” of the Fact yet, that it’s Content was not of a Advertising Quality according to the Chairs Ruling against me.

A very Confusing so called Applied reasoning, that has very strongly influenced the Chairs reasoning in applying a No Jurisdiction Outcome.

I would like to Submit some valid reasons as to why, I am Appealing against the Chairs Decision.

Within

- 1 The NZ Fair Trading ACT of 2014.
- 2 Advertorial Context Presentation.
- 3 Tilt Renewables Intention's.
- 4 Advertising Code of Ethics.

1 The NZ Fair Trading Act states that whether a claim is express or implied, should only be based upon, truthful Facts and Figures within Credible sources of Information. Along, with any research steps taken by or on behalf of Tilt Renewables making the claim before it was ever made, including the actual or potential effects of that Particular Claim. (a) The reference that Tilt Renewables made that Information "given was correct at the Time" (b) containing actual Technical facts relating to the first Stage at Tararua (c) and that these Panels "did not intend to influence the Audience" (d) and that Tilt Renewables was "LIKELY" that they were going to "update the Information Panels to reflect the more RECENT turbines because of the change of ownership" (e) and that "at the time of writing how many average homes were Powered by the Site".

**2 The Chair should question Tilt, within the Judicial Fairness Regime to answer the Following Nine Questions**

- 3 (a) What has changed over this period from then to now.
- 4 (b) Is the Mechanical Revs per Minute of 1515-1650 the same as a Fixed 50 HZ (Cycles per Second).
- 5 (b1) does these Turbines have Voltage Excitation equipment attached.
- 6 (b2) does these Turbines have any Plus and Minus Speed Droop Governors Equipment attached.
- 7 (b3) can these Turbines produce 50Hz Sinusoidal Energy.
- 8 (b4) Is the Rating of all the Turbines based solely on them being Operated as a Three Phase Induction Motor, operating at an Electric Speed of 50 Hertz.
- 9 (b5) Is there any difference between the important First Mentioned Stage and any subsequently more Stages of these Turbines, and if there is, what? is their needed Acquired Attributes.
- 10 (6) Could one stand alone, individual Turbine, connected to one home produce enough power to boil a hot water jug.
- 11 (7) Does all Turbines Only, Produce useless Harmonics.

**These Questions should be answered under Tilts Quoted Technical Facts Statement for Truthful Appraisal to the Chair.**

**As a Guidance to the Chair, for the Truthful answers should be only.**

**(a) Nil (b) No (b1) No (b2) No (b3) No (b4) Yes (b5) None (b6) No and (b7) Yes.**

**Reference to 1c section**

To State that they, (these 13 Information Panels of 65 Metres length) did not intend to influence the Audience, but will provide only Factual Information, belies a contradiction of intentional broadcasting of Information that is not to be allowed (by the Chair) or, to be accepted as a form of Advertising within the Merits of seeing Turning viewable Blades of Nearby Wind Turbines from a sitting 400 Persons Purposely made viewing Platform, costing

\$400,000 by the PNCC Ratepayers, who are then, being exposed to a range of Misinformation of Technical Facts.

If Tilt or the PNCC did not provide these Facilities to Inform people by Advertising the Wind Farm Merits which, according to Ashurst Information Bulletins attract Thousands of people every year, what is the Point and Basis from the ASA Chairs Statement that they are not Advertising and Encouraging Tourists to this particular Site.

**Reference to 1d Section.**

If Tilt Renewables was going to update the Information Panels to reflect the Recent Turbines, as my understanding the "Newest Replacement Turbine" was 5 Years ago. Tilt Demerged from Trust Power Shares 2 Years ago, so they have supplied and informed the A.S.A. with FALSE information of their future intent, as it was not practically possible to modify the Panels Content from their Limited Ownership Time Frame.

**The ASA should question Tilt** as to what the new Information will contain that's not already there within the Platform Advertising.

**Reference to 1e Section.**

Under the NZ Fair Trading Act under the Credible Source of Information, it is Implied within the Advertised Content that these Wind Farms will supply 15,000 Households with Electricity. Within this Act, it is an Unsubstantiated Representation of Fact, as there has never ever been a proven Controlled Test or Practical Research any-where in the World that an Independent Standing alone Wind Farm Complex will supply either 50 or 60 Hz Electricity to any Household Appliances.

**Under the Natural Justice Proviso to Validate my opposing claim.**

**I would request that the Chair ask Tilt Renewables to Supply a Truthful Verified Example** "Of where and when that has ever Occurred, with Time, Date and Place and for how long".

**Section 2 of the Advertorial Context Presentation Aspect.**

The Viewing Public is entitled to know when it is reading the Thirteen Displayed Montages Promotion that, they will be Subjected to absorb the Advertisers Promotional Services associated with building and identifying their part in the Viewing Platforms Unique layout and it's very Special Geographical position in the Town of Ashurst.

The Areas District Council of Palmerston North has Combined with Tilt Renewables to Supply with Locally Advertised Road Directions for the Public to be Educated and to Understand the Economic Impact that the turning Blades of the Wind Turbines have for the Community.

More importantly, they expect to be provided with a Truthful and Accurate Technical Description of the Functionality of the Viewed Turbines, unfortunately they have not, because of the above reasoning in Sec 1 to 12.

**Sec 3 Tilt Renewables Pty Ltd Australia Intention.**

As New Owners of the portrayed Montage Information Panels, they have stated in their Reply Brief to the ASA Chair "these are not Advertising" then go further by stating "that they contain (only) actual Technical Facts".

The ASA Chairs deliberation and outcome results, has been clearly influenced by this very Ambiguous Statement.

They knew, that the ASA is only there for the Decimation of Truthful Advertising, by planting this No Advertising Statement in the Initial Brief was a very clever Public Relation Option. By insinuating that they are NOT to be seen in the light as "Advertising Content".

**Then the Chair requires to Question Tilt again, under the Judicial Fairness Rules, to Supply Answers to two Questions.**

"Does Tilt Renewables claim Advertising Tax Relief Expenses from the Ashurst Viewing Facility".

"If it is not Advertising the Merits of Wind Farms, then describe to the ASA Chair, the Function and Advantage of the Viewing Platform Facility to Tilt Renewables".

#### **Sec 4 Reference to the Code of Ethics**

The Basic Principles under **Section 1.2.3. and 4** of the Viewing Montage has been Compromised as Lawfully, Misleading and Deceptive which has impaired Public Confidence with no due sense of Social Responsibility to the Consumers and to Society.

The Products Wind Farm Output, does not Conform with any of the basic NZ Fair Trading Act nor the NZ Guarantees Act requirements.

The Truthful Presentation Rulings have all been Grossly Compromised.

It is on this note that my Appeal be Scrutineered with a Recommendation for the Joint Partners of Tilt Renewables and PNCC to Recommend the Total Removal of the Thirteen Montages of Advertising Information, which have been Promoting, an End Product that not one Consumer can ever Legally Utilise, and also is totally Useless to Society.

I hopefully, wish that the Appeal Procedures have been followed, and I have supplied sufficient evidence to prove that the Evidence from Tilt Renewables and the way they presented it to the Complaints Board has been Misinterpreted, to the extent that they gave a No Jurisdiction Outcome based on Dubious Untruthful Information, also that Ruling went against the Weight of Evidence of the Complainant, which has been based on Solid Electrical Engineering Practical Experience.

To have the Chairperson Recommend that the Complaint 18/161 is to be Re-heard, with the added option of reversing their Original Decision whereby they had NO JURISDICTION, will be a Just Reward in my Opinion of Justice with Integrity of the A.S.A. Organisation.

I will wait for your Reply with Anticipation.

20/6/2018

As an Independent note of the Effect of the Montage Advertising on a Group of 5 Japanese Tourist when I First visited the Platform Site.

I asked them what part of the Montage information impressed them the most.

They unanimously agreed, that Advertising 15,000 homes were being supplied with Electricity, was the Focussed Point of having Wind Farms.

Which of course, is a Technical and Operationally impossibility.

## **SUMMARY OF CHAIR'S RULING**

**The Chair** noted Complainant was of the view the information panels were an advertisement and were misleading.

The owner of the information panels, Tilt Renewables, provided a response to the Secretariat on the issue of jurisdiction. The owner said, in part: "These are not advertising and contain actual technical facts relating to the first stage at Tararua. The information was correct at the time of writing (for example the number of average homes powered by the site)."

The owner said the information panels were constructed in 1999 and were required as part of Tararua Wind Farm resource consent. The owner explained it was likely they were going to update the information panels to reflect the more recent turbines and the change in ownership of the Wind Farm.

The Chair noted the ASA definition of an advertisement which said: "Advertising and advertisement(s) are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed."

Taking into account the definition of an advertisement the Chair said the information panels did not intend to influence the audience but provided factual information about the Tararua Wind Farm and the wind turbines. The Chair also took into account the information panels were part of the resource consent for the Wind Farm. She concluded that they were not an advertisement. The Complaints Board only has jurisdiction to consider advertisements.

Accordingly, the Chair ruled the Complaints Board did not have jurisdiction to consider the complaint.