

COMPLAINT NUMBER	21/228
ADVERTISER	Tall Poppy Real Estate
ADVERTISEMENT	Tall Poppy Real Estate Radio
DATE OF MEETING	8 June 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a radio advertisement for Tall Poppy Real Estate. The Board said the advertisement was not misleading.

Advertisement

The voiceover for the radio advertisement for Tall Poppy Real Estate said “Kapiti and Horowhenua Community Notices, with Tall Poppy Real Estate - They’ve saved New Zealanders \$53 million and counting...Tall Poppy, a home-grown Kiwi business with a fresh take on real estate. Licensed REAA 2008.”

Summary of the Complaint

The Complainant was concerned the statement about the amount Tall Poppy Real Estate has saved New Zealanders was misleading because real estate commissions have reduced quite considerably over the past few years, and they wouldn’t know what fees their competitors were charging.

Issues Raised:

- Truthful presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement. The Advertiser said the amount quoted is based on an algorithm developed in the business which compares their fee structure with established commission rates sourced from competitor listing agreements. They regularly review and update the equation to reflect the market. The savings calculation is also based on the premise that if Tall Poppy were not in the market, then competitor agencies would charge the higher fees listed in their contracts instead of discounting to meet their rates.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 18/383, which was Not Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 18/383 concerned a Facebook advertisement promoting Massey University to international students. It showed an image of New Zealand with the Massey University logo and the QS World University Rankings logo and the text “Ranked in the world’s top 1.3%.” The Complainant said it was misleading to state Massey University is in the top 1.3% of universities worldwide, given that the QS ranking says they are 332nd out of 1000 universities ranked.

The Advertiser said the percentage was obtained by using the QS Ranking estimate of 26,368 universities worldwide and applying Massey’s 332nd ranking which places the university in the top 1.259%, rounded to 1.3%. In a further round of submissions, the Advertiser provided direct substantiation from QS World University Rankings for the claim.

The Complaints Board agreed the advertisement could have been clearer and, for example, provided a direct link to the source information for the claim, given the target audience of international students. The Complaints Board said the substantiation provided by the Advertiser, from QS World University Rankings, supported that Massey University could claim it was in the top 1.3% under that ranking system.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised:
 - Context: Tall Poppy Real Estate sponsored community notices
 - Medium: Radio

- Audience: Radio station audience
- Product: Real estate services

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was Tall Poppy Real Estate is challenging the market by offering an alternative fee structure for real estate agents' services. Tall Poppy has calculated this change has saved the market "\$53 million and counting".

The Complaints Board noted that Tall Poppy Real Estate pays its agents a flat fee instead of commission.

Was the advertisement misleading?

A majority of the Complaints Board agreed the advertisement was not misleading. The majority said the Advertiser had provided information to explain how the figure of \$53 million was calculated. The majority noted this information was publicly available and the formula used supported the figure quoted in the advertisement.

The majority said while the formula was not included in the advertisement, there was sufficient information about it on the Tall Poppy Real Estate website.

A minority disagreed. The minority said the Advertiser had provided insufficient substantiation about how the figure of \$53 million had been calculated. The Advertiser has not specified where they source the relevant competitor fees. The website says "Our calculations are based on NZ's national average agency rates", but it doesn't say where these rates are sourced from. The minority said a national average implies more than one competitor. The Advertiser had only provided information about one competitor, Harcourts, and not across the market generally.

The majority of Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The majority of the Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT

I am one of those persons that gets frustrated & annoyed when I see or hear inaccuracies, when someone is advertising a brand or product, so have decided to act accordingly. I would like to make a formal complaint regarding a series of radio advertisements run by Tall Poppy Real Estate on local radio on the Kapiti Coast & media advertisements in the Kapiti News that claim they have saved the community or country \$53,000,000 in fees & counting. They have been using this line for quite a few years now, with the figure they claim to have saved, growing year by year. I have had discussions from time to time with acquaintances I have in real estate & I know for a fact that from these discussions, that real estate commissions have reduced quite considerably over the past few years.

The main point of my complaint, is they have obviously worked out their figure of savings, based on the 2 difference between what they perceive as a normal fee and whatever fee they have charged on all their deals completed over the years. How can they make such a statement, not knowing what level of fees their opposition companies were going to charge? I could understand if their marketing stated "Saved the country \$53,000,000 and counting based on the fact that if you would've paid a full fee of 3.95 %if charged that by one of our competitors" Or something to that effect? I simply cannot understand how they can make such a very specific & seemingly calculated claim, without the knowledge of what fees their competitors were offering? I've also heard that in a lot of cases when Tall Poppy are up against other agencies when competing for a listing and the competitors are aware of Tall Poppy being considered, those opposition companies end up matching Tall Poppy's fee, so in these instances, they shouldn't be using those sales in their claimed savings calculation. In addition to that, I'm sure there has been many occasions where Tall Poppy have listed a property without having any competition, in other words never having the ability to know what any other agency might have charged, so therefore in my opinion, can't include any of those listings in their claims of saving any fees? I personally am sick & tired of hearing these claims constantly on the radio, knowing full well they are totally unfounded & inaccurate. It's just not right they be allowed to continually get away with these false claims. This is also on their website under the profiles of nearly all their sales people, as examples:

<https://www.tallpoppy.co.nz/oursalespeople/aisling-james>

<https://www.tallpoppy.co.nz/oursalespeople/brendon-heenan>

The radio adverts are only community notices sponsorships The Radio Adverts say "Community Notices bought to you by Tall Poppy – Saved the country \$53,000,000 & counting. • Breeze Sports News • Sound Sports News • Magic Weather (all day except Breakfast) • MORE FM News I would appreciate it if you could look into this for me.

Appendix 2

RESPONSE FROM ADVERTISER, TALL POPPY REAL ESTATE

Re Tall Poppy Real Estate Radio – Complaint 21/228

We wish to defend the above complaint.

Tall Poppy Real Estate was established in 2012 on the premise of providing fair real estate for all New Zealanders, beginning with our fair flat fee offer.

Tall Poppy has used the 'Saved Kiwis message' since 2016 to demonstrate what our business model and promise of fairness has delivered to Kiwis. It is based on an algorithm developed in the business which compares our fee structure against established commission rates sourced from competitor listing agreements (Please see "Harcourts Collateral" attachment as an example of incumbent fee structures). We regularly review and update the equation to reflect the market. As we approach our 10th birthday and our company grows, so too do our savings.

As noted in the complaint, the savings calculation is also based on the premise that if Tall Poppy were not in the market, then competitor agencies would charge the higher fees listed in their contracts instead of discounting to meet our rates. In some cases, this has happened for over 100 years and continues to. Not all agencies discount their fees to meet our offer either.

Our savings calculator (from which the total is based) is readily available on our website and enables people to interrogate the nature of the savings statement they would have seen on all our advertising.

On this basis, we can substantiate all claims included in the advertisement; our pricing information is clear, accurate, unambiguous and does not mislead; it compares like for like equivalent products and services.

We are open with our approach and open with our consumers. Also, as we tend to operate in rural New Zealand where incumbent agencies are more prevalent and challenger brands with lower fees are not as present or have negligible market share we have chosen to use the prevailing commission rates of the larger agencies. Our calculator enables interested people to alter data points like The Base Fee, First Tier Limit, First Tier % and % Thereafter to understand their savings compared to other real agencies they may be talking to.

These savings are not exaggerated, and the tools on our website equip people to understand the savings they will gain from selling with Tall Poppy.

Appendix 3

RESPONSE FROM MEDIAWORKS

Tall Poppy has said they will be reaching out directly to the ASA.

They've confirmed they will CC MediaWorks in on any correspondence.