

COMPLAINT NUMBER	20/120
ADVERTISER	Nelson Tasman Cremations Direct
ADVERTISEMENT	Nelson Tasman Cremations Direct, Print
DATE OF MEETING	9 June 2020
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a newspaper advertisement for a cremation service which quoted a starting price exclusive of Goods and Services Tax (GST). The Complaints Board said the advertisement was unlikely to confuse or deceive consumers as the price clearly stated it was excluding GST.

Description of Advertisement

The newspaper advertisement in the Nelson Mail for Nelson Tasman Cremations Direct is headed "Cremations from \$2,100 (excl. GST)." The advertisement contains contact details and describes its service as "simple. meaningful. affordable."

Summary of the Complaint

The Complainant is concerned the advertisement is misleading given that there are no circumstances when GST could be claimed back.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser defended the advertisement saying it does not claim the GST can be claimed back. The advertisement makes it clear the price is exclusive of GST by explicitly stating this as well as having the price say "From \$2,100." The Advertiser said it is adhering to the requirements of the Commerce Commission by making it clear GST is excluded from the price.

Summary of the Media Response

Stuff said the advertisement does not make claims about claiming back GST and the pricing clearly shows GST costs will be additional.

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 two precedent decisions, Decision 19/097 and 17/024, both of which were Settled by the Advertiser

The full versions of decisions since 2015 can be found on the ASA website:
<https://www.asa.co.nz/decisions/>

Decision 19/097 concerned an advertisement digital marketing advertisement for SsangYong NZ which promoted the Rhino from \$25,990 +ORC. The Complainant was concerned this price did not include GST.

The Chair of the Complaints Board ruled the complaint was settled following the Advertiser's self-regulatory action to amend the advertisement to include GST in the advertised price.

Decision 17/024 concerned website advertisement for Techno Fix promoting replacement screens for iPhones. The advertisement did not make it clear whether the pricing displayed included GST.

The Chair of the Complaints Board ruled the complaint was settled following the Advertiser's self-regulatory action to amend the advertisement to say "All prices exclude GST"

Complaints Board Discussion

Consumer Takeout

The Complaints Board said the likely consumer takeout of the advertisement is the company offers a cremation service for a starting price of \$2,100 with GST additional to this.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was unlikely to mislead or confuse consumers about whether the quoted price is inclusive or exclusive of GST, given that it clearly states on the advertisement "(excl. GST)".

The Complaints Board noted the Commerce Commission's position on pricing detailed on its website, www.comcom.govt.nz which states;

"Any claims made about price must be clear, accurate and unambiguous for you as the consumer. Prices must include or be clear about the 15% Goods and Services Tax (GST)."

The Complaints Board said the issue of pricing transparency regarding GST was not about whether it was possible to claim the Goods and Services Tax back. The Board noted that advertisers are required to clearly communicate whether the price includes GST or not. The Board agreed it was clear the advertisement stated a price that excluded GST. The Board said that despite a cremation service being an unlikely example of a GST exemption, this did not make the advertisement misleading.

The Complaints Board noted the Media response that it would encourage advertisers to use pricing inclusive of GST. The Board agreed as a matter of best practice it would be useful for consumers to be given the full GST inclusive price in the interests of clarity.

However, the Complaints Board confirmed the advertisement was not likely to mislead consumers and unanimously ruled it was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

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 cannot think of a single instance whereby it would be possible to Claim the GST back.

Appendix 2

RESPONSE FROM ADVERTISER, NELSON TASMAN CREMATIONS DIRECT

Thank you for taking the time to bring this to our attention.

I respond accordingly below:

In the creative provided by the complainant, Nelson Tasman Cremations Direct never claimed it would be possible to claim the GST component of the price back which is the fundamental basis of the complaint. Other service providers do not stipulate whether price is including or excluding GST and we opted to make it very clear to all who see our advertisement that the price stated is exclusive of GST. The price stated is the base price hence the noted 'from \$2,100 plus GST'.

As per the requirements of the Commerce Commission – Prices must include or be clear about the 15% Goods and Services Tax (GST). Any further charges must be declared before you buy.

Based on the ASA 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.

Our advertisement(s) are incredibly clear about pricing stipulating that the price is excluding GST, and the GST component will be added to the final account when purchase of services provided is made. Based on this, I do not believe that our advertisement in question has misled or deceived anybody.

Appendix 3

RESPONSE FROM MEDIA, STUFF – FOR NELSON MAIL NEWSPAPER

Thank you for your letter dated 16 April 2020 in reference to the above complaint.

In the creative the advertiser never claimed it would be possible to claim the GST back which is the basis of this complaint.

"I cannot think of a single instance whereby it would be possible to Claim the GST back".

As per the Commerce Commission requirements: *Prices must include or be clear about the 15% Goods and Services Tax (GST). Any surcharges must be declared before you buy.*

The advertisement text clearly states the pricing is \$2,100+GST.

ASA: 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.*

Guidelines: *The full price of the products or services must be shown. Unavoidable additional charges must be clearly identified.*

Based on this information I do not believe that the Nelson Tasman Cremations advertisement in question has misled or deceived our audience, therefore the creative does not need to be amended.

Having said that my team member has raised this complaint directly with the client and encouraged their pricing is inclusive of GST in future advertising.