

COMPLAINT NUMBER	21/007
ADVERTISER	Ray White Damerell Group Limited
ADVERTISEMENT	Damerell Group Ltd, Quarterly Magazine
DATE OF MEETING	9 March 2021
OUTCOME	Upheld – advertisement not to be used again in its current form

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a print advertisement published in a quarterly sales magazine by the Ray White Damerell Group. The Complaints Board said the Advertiser had relied on sales information which did not match the image used in the advertisement. The Complaints Board said the advertisement had the potential to mislead or confuse consumers.

Advertisement

The Ray White Damerell Group print advertisement in the Quarterly Magazine showed a property with a sold sign. The details listed said “17 Parker Avenue. Sold \$3,458,000. CV \$1,175,000. Area: 1,012sqm.” The advertisement includes a bedroom icon stating 6, a bathroom icon stating 2 and a car icon stating 5.

Summary of the Complaint

The Complainant was concerned the advertisement is misleading to claim the property at 17 Parker Avenue had sold for the price quoted, given that the price included a second property at 19 Parker Avenue.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser defended the advertisement stating the information provided in their Quarterly magazine is downloaded from the Real Estate Institute of New Zealand (REINZ). The Property Smarts data provided shows the property as 17 Parker Avenue and the title and legal description identifies it as Lot 12 DP 17779 Land area 1012M2. The registered sale price was \$3,458 000.

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.

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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the property at 17 Parker Avenue in New Lynn Auckland which has a CV of \$1,175,000 had sold for \$3,458,000. The advertisement indicated the property's land area was 1,012sqm and it had 6 bedrooms, 2 bathroom and 5 carparks.

Is the advertisement likely to mislead, deceive or confuse consumers?

The Complaints Board agreed that given the consumer takeout, the advertisement was likely to cause confusion for consumers viewing the sales information in isolation.

The Complaints Board referred to the Advertising Standards Code guidelines under Rule 2(b) Truthful Presentation, which required Advertisers to be able to substantiate all claims made in its advertising. The Complaints Board noted the Advertiser had sourced the data used from the Real Estate Institute of New Zealand (REINZ). The Board said the REINZ source data had combined the property information and sales price for both 17 and 19 Parker Avenue, resulting in property details and sales price which did not match the image shown in the advertisement.

The Complaints Board said it understood the Advertiser considered it should be able to rely on the data from the REINZ. However, in this instance, as two properties were sold together, the standard format for recording a sale in the REINZ data meant the information included in the Ray White Damerell Group advertisement was not correct. The Board agreed it created the impression that 17 Parker Avenue was sold for \$3,458,000 and this was misleading. It also noted the purpose of the advertisement was to show the sales price of properties in an area to potential buyers and the onus was on the Advertiser to make sure the information used was clear to consumers.

The Complaints Board unanimously agreed the advertisement had the potential to mislead or confuse consumers. The Complaints Board ruled the advertisement was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement not to be used again in its current form.

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
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Appendix 1

COMPLAINT

The Quarterly represents the property as being sold as a single land unit for a huge \$3,458,000 - in actual fact, this property is likely to have been sold in conjunction with the neighboring site. While there is a disclaimer on the page, this is a gross exaggeration of the form that inflates the market, and I think in breach.

Appendix 2

RESPONSE FROM ADVERTISER,

I respond to your letter addressed to Michael Gee Ray White New Lynn - Austar Realty Group Ltd which was then forwarded to Gower Buchanan, Managing Director of Damerell Group Ltd. Both companies are franchised businesses of the Ray White Group. Damerell Group Ltd is the author of the Quarterly Magazine, in this case Issue 36, Q3 2020. It is a printed magazine produced quarterly. The publication is compiled and mailed out on a quarterly basis to a database of past clients and prospective customers all of whom have provided contact details and given their consent to receive our Quarterly Magazine.

Attached are the sources we accessed regarding the sale information for the property at 17 Parker Avenue. The information collated is downloaded from the Real Estate Institute of New Zealand (REINZ) in the attached spreadsheet, we also check Property Smarts sales figures, this information is also provided by REINZ. The Property Smarts data and recent sales data both confirm the information used in the quarterly as correct. We use these sources to ensure we produce an accurate summary of recent sales in the area. These are widely used and reliable portals for the Real Estate Industry to produce recent sales data.

The data used to identify the sale, represents the property as 17 Parker Avenue and the title and legal description, identifies it as Lot 12 DP 17779 Land area 1012M2. The registered sale price was \$3,458,000.

We hope the complaints board will consider our response to the claim favourably.