

COMPLAINT NUMBER	22/065
COMPLAINT ON BEHALF OF	The Real Estate Institute of New Zealand
ADVERTISER	Frank Energy
ADVERTISEMENT	Frank Energy Television
DATE OF MEETING	12 April 2022
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about the fictional portrayal of a real estate agent pointing out different features of a home which is for sale. The Board said the advertisement used deliberate hyperbole that was unlikely to mislead or portray real estate agents in a negative light.

Advertisement

The Frank Energy television advertisement features a real estate agent showing a couple through a home which he describes as "hell on earth". He points out features such as an outline on the floor where the previous owner "carked it", buckets in the bathtub to catch water from a leak, and a graveyard for cats in the front yard. The new mascot for Frank Energy, a man dressed as a green asterisk says "Being frank isn't always appreciated, unless you're a power company... Frank Energy the power company that sells it to you straight".

Summary of the Complaint

This complaint was made on behalf of The Real Estate Institute of New Zealand (REINZ). The Complainant was concerned the advertisement promoted an outdated, negative and inaccurate stereotype, portraying real estate professionals as having little regard for their customers or the law.

Issues Raised:

- Social responsibility
- Decency and offensiveness
- Truthful presentation

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said the advertisement presented a humorous, farcical scenario whereby a real estate agent provides a brutally honest tour of a property, to the shock of the prospective buyers. There is no suggestion at any point in this advert that the estate agent was intending to mislead his clients. The Advertiser said no reasonable consumer would believe this advertisement was intended as a genuine portrayal of a typical real estate agent.

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 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(c) Decency and Offensiveness: Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

Guidelines

Advertisements must not exploit, degrade, denigrate, demean or objectify any person or group of people or any products, services, objects or places.

Humorous, satirical treatment of people and groups of people are natural and accepted features of societal relationships and may be acceptable, provided they are not likely to cause harm or serious or widespread offence.

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.

Guidelines

Obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 19/227 which was ruled No Grounds to Proceed.

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

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

Decision 19/227 concerned a Waka Kotahi/NZ Transport Agency television advertisement which showed three different car dealers pointing out the safety risks associated with each of the cars for sale. Examples of the comments they made are “this car doesn’t have air bags on the side”, “It’s got a one star rating”, “very low protection in a head on-crash and this engine’s going to come all the way up to meet you”. The advertisement ended with the message “The safer the car, the safer they are”.

The Chair of the Complaints Board confirmed the advertisement for the Waka Kotahi/NZ Transport Agency was an advocacy advertisement intended to raise awareness about the value of inexperienced drivers having the safest possible car to drive. The Chair said the

Advertiser used a level of humour with exaggerated stereotypes of used-car salespeople being brutally honest about the possible consequences of an accident in an older model car. The Chair said sometimes Advertisers find light-hearted ways to successfully engage with an audience about a hard-hitting message.

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, which in this case is:
 - Context: New electricity retailer on the market
 - Medium: Television
 - Audience: Television audience
 - Product: Electricity

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that new electricity retailer Frank Energy is straight talking, something which is appreciated in a power company.

Was the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. The Board said the advertisement used deliberate hyperbole that was unlikely to mislead, which is specifically referred to in the guidelines for Rule 2(b) Truthful presentation. Specific examples of the hyperbole were describing the house as "hell on earth", and pointing out features such as an outline on the floor where the previous owner had "carked it", buckets in the bathtub to catch water from a leak in the roof and a graveyard for cats in the front yard.

Did the advertisement contain anything that was likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule?

The Complaints Board agreed the advertisement did not reach the threshold to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.

The Complaints Board said the agent in the advertisement was telling the truth, which is what agents are required to do. The Board said the circumstances portrayed in the advertisement depict a fantastical situation, which is obviously unreal. The Board said a professional real estate agent would not market a house in the way shown in the advertisement, including the outline on the floor showing where the previous owner had died.

The Complaints Board said it was most likely the consumer would perceive the obvious hyperbole, as in the precedent example, Decision 19/227, where the car salesman points out the safety risks associated with cars with low safety ratings.

Was the advertisement socially responsible?

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Principle 2 or Rules 1(c) or 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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

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

COMPLAINT ON BEHALF OF THE REAL ESTATE INSTITUTE OF NEW ZEALAND (REINZ)

REINZ represents 90% of New Zealand's licensed real estate agents (16,000+ members) who support buying, selling, renting and letting commercial, rural and residential property. The real estate profession in New Zealand is integral to economy, and is regulated and governed by a strict code of conduct. In short, it's a profession that must and does hold itself to high standards of professionalism.

We are disappointed and concerned by the advert Frank Energy is running under the campaign 'Selling it to you straight'. This ad, in an attempt to be humorous, is offensive to an entire occupational group and denigrates the service they provide. We believe this is in breach of Rule 1(c) and 2(b) of the Advertising Standards Code. The advert takes advantage of national interest in the housing market, promotes an outdated, negative and inaccurate stereotype and paints real estate professionals as individuals with little regard for their customers or the law.

Specific messages throughout the ad are in direct conflict with the profession's legal responsibilities and disregard the rights of consumers. Occurrences of such conduct would be referred to the Real Estate Authority as the conduct breaches the REA's Code of Professional Conduct and Client Care (including rules 6.2 to 6.4 and rule 10.7). While trying to be satirical, the way the unlawful conduct is portrayed sends a harmful message to the New Zealand public that they can expect this type of behaviour and they accept it. This is simply not the case. This is a sector that works hard to build a positive reputation as it supports communities across the country.

This ad undermines an entire profession and we respectfully request that the Advertising Standards Authority requires its removal from TV and online. We have written to Frank Energy requesting the same outcome. The ad can be found on You Tube by searching Frank Energy. Selling it to you straight.

Appendix 2

RESPONSE FROM ADVERTISER, FRANK ENERGY

I confirm we wish to defend Complaint 22/065.

Our recently launched brand campaign features 3 different TV commercials, each using irreverent, everyday life situations to highlight the uncomfortable reality that can come with total honesty. In summary, the ad in question presents a humorous, farcical scenario whereby a real estate agent provides a brutally honest tour of a property to the shock of the prospective buyers.

In our view, this ad does not breach any of the Principles in the ASA Code. We have set out below the reasons why the advert does not breach either Principle 1 (Rules 1(c)) or Principle 2 (Rule 2(b)) as alleged by REANZ.

Rule 1 (c) Decency and Offensiveness

Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, hostility, contempt, abuse or ridicule.

REANZ's complaint states that our portrayal of real estate agents is unlawful and in breach of the REA's Code of Professional Conduct and Client Care. However, neither our script nor the performance of our talent, presents real estate agents in a negative light.

Our ad features a friendly, up-front real estate agent that simply gets 'too frank' in drawing attention to some of the property's flaws, rather than emphasizing the property's benefits (as would typically be the case). The humour throughout this advert lies in our portrayal of this agent and his completely honest, albeit non-traditional, sales technique. There is no suggestion at any point in this advert that the estate agent is intending to mislead his clients. Our VO "being frank isn't always appreciated" further supports the intent of the ad to portray the awkward nature of 'telling it like it is'.

We note that Rule 1(c) specifies "Humorous, satirical treatment of people and groups of people are natural and accepted features of societal relationships and may be acceptable, provided they are not likely to cause harm or serious or widespread offence". In our view, the advert should not likely cause "serious or widespread offence" for the following reasons:

- a) REANZ's suggestion that the conduct by the fictitious agent would be unlawful or in breach of rules 6.2 to 6.4 and rule 10.7 of the REA's Code of Professional Conduct and Client Care is inaccurate. These rules are aimed at preventing an estate agent from not disclosing known defects of a property. The advert shows an agent doing the exact opposite of this, in that he is overtly emphasizing the known issues.

For completeness, we are not aware of any law or rule within the REA's Code of Professional Conduct and Client Care that prevents an agent from being 'too frank' with potential buyers.

- b) REANZ state that advert "...sends a harmful message to the New Zealand public that they can expect this type of behavior and they accept it". In our view, any suggestion no reasonable consumer viewing this ad would come to expect similar behavior from their estate. The humor and tongue-in-cheek nature of the advert is plain and obvious (and appears to be an aspect that REINZ agree with).
- c) the Real Estate industry itself uses humour regarding sales techniques in their advertising – see for example <https://www.asa.co.nz/backend/documents/2018/12/18/18429.pdf>. In our view, it is not appropriate for REINZ to suggest that their members are able to use such humour, but that non-members cannot.
- d) As part of our campaign review process, we undertook research on consumer 'take-outs' from the 3 ads in market. Verbatim examples comments in respect of this advert were as follows :

The real estate agent took them around the house and was fully honest about all things that might put potential buyers off..."

“It is funny watching the couple’s expressions as the agent tries to make the defects selling points...”

“The property agent was trying to be honest and frank. Just like frank energy which is represented by a green asterisk.”

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.

We note that REINZ has alleged the advert breach Principle 2, Rule 2(b). However, the complaint does not contain any detail on which aspects of the advert are misleading, confusing or untruthful.

However, we assume that this aspect of the complaint is directed toward the idea that the estate agent presented in the advert does not represent a genuine portrayal of an agent. If that is the case, we agree with REINZ and note that this is the very point of the advert. Further, we note that Rule 2(b) notes that:

“Obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable.”

Our view, is that the presentation of the real estate agent fits squarely within the above exception. Indeed, even REANZ acknowledge in their complaint that the advert is “humorous” and “satirical”. In our view, no reasonable consumer would believe this advertisement is intended as a genuine portrayal of a typical real estate agent. The bizarre and unexpected sales approach of the agent, together with the outrageous scenario presented by the run-down home (including a cat graveyard) clearly pushes this ad outside the realms of reality into comedic farce.

Summary

We do not believe this advert “*promotes an outdated, negative and inaccurate stereotype and paints real-estate professionals as individuals with little regard for their customers or the law*” in the eyes of the general viewing audience. Rather, the ad is a humorous, tongue-in-cheek reflection on a typical life-moment that Kiwis will appreciate as light-hearted parody.

SUPPLEMENTARY INFORMATION FROM THE ADVERTISER

Is the advertisement still accessible – where and until when?

Yes – planned to be in market per media schedule until end of June 2022 in rotation with 2 other brand spots.

List all media where the advertisement is placed.

National TV - TVNZ, Discovery, Sky, Choice, HGTV
Streaming Platforms - YouTube, TVNZ OnDemand
Social Media – TikTok, Instagram Stories, Facebook

For Broadcast advertisements, provide:

- **A copy of the script** – Provided
- **A copy of the media schedule and spot list** - Provided
- **CAB key number and rating** CAB Number: #20208014 G Rating

Who is the target audience for the product / brand / service? And what tools and/ or data were used to target this audience?

- TV - Trading Demo of AP 25 to 54 across TV, utilising TV Map to define the audience & to choose relevant programming.
- Digital - Our digital targeting range is all people 18+, utilising the digital platform's audience targeting (Facebook, TikTok, Google)

Appendix 3**RESPONSE FROM COMMERCIAL APPROVALS BUREAU****Complaint 22/065 - Frank Energy - Key: MSFEN0600003 Classification: G**

This commercial for Frank Energy was approved by CAB on 08/02/22 with a 'G' general classification. It forms part of a wider advertising campaign based around the concept of 'Seeling it to you Straight'.

The creative execution of this particular ad features an over-the-top depiction of an open home scenario, where a house with very obvious flaws is touted to a buying couple.

In CAB's opinion, the creative is an obvious exaggeration and the viewing public are unlikely to read the comedy as defamation of the real estate industry as an employer. More likely they will view it as intended, a hyperbolic situation played for effect.