

ADVERTISING STANDARDS COMPLAINTS BOARD

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07/033

DECISION

Meeting 6 March 2007

Complaint 07/033

Complainants: K. & J. Powell
Advertisement: Churches Education Commission

Complaint: The leaflet advertisement in a school newsletter to parents and available on the website www.cec.org.nz, carried a heading saying:

“What is Religious Education?” This is followed by the advertiser’s policy statement. Wording below says:

“Policy statement of the Churches Education Commission
- approved by the Ministry of Education and the NZ School Trustees Association.”

A further heading says:

“What is the approved Curriculum?”

The Churches Education Commission website homepage at www.cec.org.nz carries the claim: “We are the organization responsible for coordinating the *Religious Education* programmes in New Zealand ...”.

Following the web link “About Us”, the viewer comes to the heading **“AUTHORITY”**.

Information directly below that heading says:

“The Churches Education Commission is recognized by the Ministry of Education as the major provider of Christian Religious Education in New Zealand state schools as made possible by the Education Acts 1964 and 1989.”

Complainants, K. & J. Powell, said:

“Where: In a school newsletter sent home to parents.

Who: Churches Education Commission

Product: religious instruction services

The leaflet provided by the Churches Education Commission on their website is highly misleading and deceptive, and thus violates the 3rd Basic Principle and the 2nd Rule of the Advertising Code of Ethics which require that advertisements should not be misleading or deceptive and should not contain statements which create a misleading or deceptive impression. The leaflet is deceptive because it states under the initial heading "What is Religious Education" that the Churches Education Commission policy statement is approved by the Ministry of Education, even though the Ministry of Education does not approve of the policy statement. This gives the misleading impression that the Churches Education Commission is approved of or endorsed by the Ministry of Education. [See also the attached letter from the Ministry of Education to the Churches Education Commission.] The heading "What is the Approved Curriculum" is therefore also highly misleading, because the Churches Education Commission curriculum is approved only by the Churches Education Commission itself, and not by anyone else (and is not approved of by the Ministry of Education). The Churches Education Commission leaflet/flyer (attached) is available on the Churches Education Commission Website (www.cec.org.nz) by clicking the "Caring For Children" heading on the left and then clicking "Click here" at the bottom of the "Caring For Children" page.

The Churches Education Commission website is, itself, highly misleading. The second sentence on the website homepage (www.cec.org.nz) states that "We are the organization responsible for co-ordinating the Religious Education programmes in New Zealand." The reality is that any volunteer can provide religious instruction in schools, subject to minimum requirements, so the statement is deceptive (thus violating the 3rd Basic Principle of the Advertising Code of Ethics). The statement also violates the principles of free and fair competition (the 5th Basic Principle of the Advertising Code of Ethics) as well as Guidelines a and b of the Code for Comparative Advertising which require that advertising about potential competitors be factual and unambiguous. More importantly, the webpage reached by clicking "About Us" on the left hand side of the Churches Education Commission homepage contains exceedingly misleading information under the heading "Authority" (half way down the page). The first sentence states "The Churches Education Commission is recognized by the Ministry of Education as the major provider of Christian Religious Education in New Zealand state schools." The Ministry of Education does not recognize the Churches Education Commission as a major provider of religious instruction. This statement is very deceptive because it can easily be understood to be an endorsement, especially since it is made under the heading "Authority" (see also the attached letter from the Ministry of Education to the Churches Education Commission), so this statement violates the 3rd Basic Principle of the Advertising Code of Ethics. The deception created by the Churches Education Commission website and brochure creates an overall sense of social irresponsibility to society and therefore violates the 4th Basic Principle of the Advertising Code of Ethics.”

The Chairman ruled that the following provisions were relevant:

Code of Ethics

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 8: Denigration - Advertisements should not denigrate identifiable products or competitors.

The Advertiser, Churches Education Commission, said:

“Please find enclosed a response to Complaint 07/033 about the Churches Education Commission Flyer & Website Advertisements.

This response has been prepared by the Chairman & Deputy Chairman of our Executive Board.

You will note in point 2.2 that correspondence from the Ministry of Education is referred to. I have enclosed a copy of that letter.

In response to this complaint, I have since visited with Martin Connolly from the MOE to raise with him why we had not received his response to Brian Pegler's reply to the letter sent 30 October 2006. I have also enclosed a copy of that response to the MOE. Martin Connolly plans to send me a copy of his letter to Brian apologising for not responding earlier but that has not been generated as yet. I will forward that when it arrives.

As you will detect we have been acting in ‘good faith’ attempting to resolve this issue. It is our desire to come to a "win, win" for all and we have already changed the wording on the website as suggested in our response to you. Our publicity leaflets are already in the process of being designed and reprinted as also outlined.

I trust this response answers the concerns expressed by the complainant and look forward to hearing from you in the near future.

The complainants' concerns as copied to and received by the CEC relates to two areas: the leaflet (also as a pdf on the website) and the statements on the website itself.

1. The Leaflet

- 1.1 The CEC policy statement that is claimed by CEC to be "approved by the Ministry of Education" is objected to by the complainants and stated to be "deceptive" and to give a "misleading impression" because the Ministry of Education does not approve of the policy statement.

Our response:

This statement first appeared on CEC publicity in the early 1990s following consultation with the Ministry of Education. The Ministry of Education was represented by Mr David Wood who advised the Commission that such wording was appropriate, and approved the statement.

Subsequent use of the statement by the CEC has been in good faith and given the above history the CEC does not believe it could be construed as "misleading" or "deceptive".

- 1.2 The reference to an "Approved Curriculum" is suggested as being "highly misleading" because in fact it is only the CEC that approves the curriculum.

Our response:

There is no grammatical nor any lexicographical reason to connect the policy statement and its use of the word "approved" with its use with respect to the curriculum. The policy statement stands alone as such and is clearly identified by inverted commas.

Subsequent use of the word "approved" occurs under a separate heading. The content of this discrete section appears several paragraphs after the first mention of the word "approved". There is no connection.

In addition, the content of the section explicitly identifies the CEC as the group that has itself endorsed the curriculum. No explicit or implicit reference can or should be attributed to the Ministry of Education.

2. The Website

- 2.1 The website Home Page statement "We are the organization responsible for coordinating the Religious Education programmes in New Zealand" is stated by the complainants to be "deceptive" and one which "violates the principle of free and fair competition".

Our response:

Given our present commission from our member churches, our historical lineage back through the Christian Education Committee to the Bible in Schools League (which, in the early 1920s, first undertook such a role of coordination under the "Nelson System"), and our existing coordination role through a national network of regional committees, we believe this statement to be fair and true in substance.

No deception is present nor is free and fair competition excluded. The Act is not in dispute. But with over 4000 volunteer teachers there is no organization other than the CEC coordinating the religious education programmes in New Zealand State schools.

- 2.2 The content under "Authority" is claimed by the complainants to be "exceedingly misleading information".

Our response:

Correspondence from the Ministry of Education with respect to this statement is less than a year old, dated 2 March 2006. A communication from Jim Matheson, Operations Policy Manager, National Operations, reads:

"A phrase that is acceptable to both parties is as follows:

The Ministry of Education recognises the Churches Education Commission (CEC) as the major provider of Christian religious education in state schools as made possible by the Education Acts of 1964 and 1989."

This is acknowledged and confirmed in the reply of the then National Coordinator for the CEC on 7 March 2006.

3. Concluding Response

It is not the desire of the CEC to be contentious nor to propagate material that may be misunderstood or construed ambiguously.

Accordingly we would propose to our National Executive that the following modifications to our leaflet and website be incorporated in the review of publications currently being undertaken by the CEC and implemented in future editions of these publications.

3.1 Leaflet

If the Ministry believes that it can no longer agree with the Policy Statement and should therefore revoke its approval of this statement the Churches Education Commission would gladly delete its reference to the Ministry of Education.

There is no reason to alter the approved curriculum statement.

3.2 Website

"Homepage"

Paragraph 2, modified to read:

We are a national organization responsible to our member churches for its coordination of Religious Education programmes in New Zealand...

"About Us - Authority"

To be modified by placing the existing para 1 at the end of the section and altering the text to read:

"As the major provider of "Religious Instruction" in participating State schools the Churches Education Commission accepts responsibility from its constituency to coordinate "religious instruction" in these schools, liaise with education agencies, and make representation to the government and other authorities."

Respectfully submitted,

On behalf of the Churches Education Commission."

Deliberation

The Complaints Board perused the relevant correspondence and the advertisements.

It noted that the complainants were of the view that the advertisements were misleading in respect of the following:

Leaflet advertisement:

- The suggestion that "the Churches Education Commission policy is approved by the Ministry of Education".
- The implication that the Ministry of Education approves the CEC curriculum given by the heading "What is the approved curriculum".

Website Homepage Advertisement:

- The claim: "We are the organization responsible for co-ordinating the Religious Education programmes in New Zealand."
- The "About Us" section of the advertisement under the heading: "**AUTHORITY**" where it says:

“The Churches Education Commission is recognized by the Ministry of Education as the major provider of Christian Religious Education in New Zealand state schools as made possible by the Education Acts 1964 and 1989.”

The Chairman directed the Complaints Board to consider the complaints in relation to the Code of Ethics, Rules 2 and 8, together with Basic Principle 4.

The task before the Complaints Board was to determine whether the advertisements had been prepared with the due sense of social responsibility required by Basic Principle 4; whether they contained any claims which would be likely to mislead the consumer, thereby breaching Rule 2, and / or denigrated identifiable products or competitors, breaching Rule 8.

In making its determination, the Complaints Board took into account the Advertiser’s response where it said in relation to the claim “approved by the Ministry of Education”:

“This statement first appeared on CEC publicity in the early 1990’s following consultation with the Ministry of Education. The Ministry of Education was represented by Mr David Wood who advised the Commission that such wording was appropriate, and approved the statement.

Subsequent use of the statement by the CEC has been in good faith and given the above history the CEC does not believe it could be construed as "misleading" or "deceptive".

This statement first appeared on CEC publicity in the early 1990s.”

The Complaints Board noted the willingness of the advertiser to delete the reference to the Ministry of Education in its brochure if the Ministry “can no longer agree with the policy statement”.

The Complaints Board noted that the Ministry of Education in its correspondence of 2 March 2006, advised that it could not be seen in the position of endorsing any particular outside provider of religious education to schools, made the following suggestion regarding the wording of that claim:

“The Ministry of Education recognizes the Churches Education Commission (CEC) as the major provider of Christian Religious education in state schools as made possible by the Education Acts 1964 and 1989.”

This statement was later questioned in correspondence of 16 October from the Education Management Policy division of the Ministry of Education, where they requested that the statement be removed from under the heading “Authority”.

The Complaints Board acknowledged the difficulties encountered by the Advertiser in trying to present accurate information in their advertisement, but was of the view that

the leaflet as it stood, made a misleading claim and was thereby in breach of Rule 2 of the Code of Ethics.

The Complaints Board noting the nature of the product offered in the advertisement, and taking into account that each and every school through its Board of Trustees granted an organisation the right to provide religious education in schools on an annual basis, encouraged the advertiser to inform schools of the current situation with regard to the Complaints Boards ruling concerning this aspect of the complaint.

The Complaints Board was also of the view that the claim on the website homepage: "We are the organization responsible for coordinating the Religious Education programmes in New Zealand" constituted an exaggerated and misleading claim as there were other providers of these programmes and each school was entitled to appoint a provider of their own choice on an annual basis. As such the Complaints Board ruled that the advertisement was in breach of Rule 2 with regard to this claim.

The Complaints Board then addressed the issue raised in complaint about the statement "Approved Curriculum". It noted that the complainant was of the view that the advertisement implied that the curriculum had been approved by the Ministry of Education, which was not the case. However, with regard to this claim the Complaints Board was unanimously of the view that the advertisement did not contain that implication, and thereby it was not misleading and did not breach of Rule 2, with regard to this issue.

The Complaints Board unanimously agreed that the advertisements in question could not be said to denigrate identifiable products or competitors and thereby ruled that they were not in breach of Rule 8.

Furthermore, the Complaints Board recognised that the advertiser had in fact employed a due sense of social responsibility in the preparation and publication of the advertisements thereby meeting the requirements of Basic Principle 4. Accordingly, it ruled that the advertisements were not in breach of this Basic Principle.

Having made the above observations the Complaints Board ruled that the complaint be upheld (in part) on the basis that aspects of the advertisements were misleading and in breach of Rule 2 of the Code of Ethics.

Decision: Complaint **Upheld (in part)**