



09/144

DECISION**Meeting 12 May 2009****Complaint 09/144**

Complainant: D. Hore
Advertisement: Smith & Smith

Complaint: Four radio advertisements for Smith & Smith promoted their services. The advertisements contained largely the same message but contained different wording.

Advertisement 1: Contained the line "Many drivers ignore windscreen chips but something that starts out small can turn out big because if a chip turns into a crack the only option is to replace the whole windscreen".

Advertisement 2: Contained the line "Unfortunately, even a small vibration or change of temperature can turn chips into major issues. Once the chip comes a full crack there is no choice but to replace the whole windscreen" and also "...and if you are fully insured with Smith & Smith the repair's usually free".

Advertisement 3: Contained the line "...it was just a small chip but this morning the vibration of going over a judder bar turned it into a crack. She had no option but to replace the whole windscreen" and also "...and if you are fully insured, with Smith & Smith the repair's usually free".

Advertisement 4: Contained the line "A small chip in your windscreen can turn into a big crack and a big headache because you have to replace the whole windscreen" and also "...and if you are fully insured, with Smith & Smith the repair is usually free".

Complainant, D. Hore, said:

"The advertisement claims that if a windscreen chip turns into a crack that it can not be repaired and the windscreen has to be replaced.. This is incorrect and under the Windscreen Standard AS/NZS 2366.2 1999 we are in fact aloud to repair cracks up to 350ml outside the critical vision area. This is very

misleading and customers believe the only option they have is to replace the whole windscreen.

If you ring Smith & Smith and ask about long crack repairs they tell you that they do not have much success doing long crack repairs. However there are other companies that do have plenty of success, so their advertising is very misleading and many people are having their windscreens replaced unnecessarily.

They also state that Smith and Smith repairs are free under insurance when they perform the repair. And the way it is said it implies that it is free only if they do the repair.

Any repair company can actually do the repair and on bill to the insurance companies who will pay for the repair.

In actual fact it really isn't free because the insurance company is actually paying for the repair on the customer's behalf who have actually already paid for their excess in advance each year when they renew their insurance and take out glass cover."

The Chairman ruled that the following provision was relevant:

Code of Ethics

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).

The Advertiser, Smith & Smith, said:

"We refer to your letter and its attached complaint from one of our competitors, D. Hore of Crack Specialists (2003) Limited.

Crack repairs and windscreen Standard ASINZS2366.2 1999

This Standard does state that cracks of up to 350mm may be repaired where they are outside the critical vision area.

At Smith&Smith® we do repair windscreens, but for quality reasons we do not repair any cracks, or chips larger than a 50c coin.

We are not alone in taking a more conservative approach than that allowed under the Standard. One of our principal competitors in the vehicle glass repair segment, Novus, promotes its windscreen repair service by saying that *"if the damaged area on your windscreen can be covered over by a credit card, the chances are very good that it can be repaired"*.

A credit card's longest side is 85mm, which is well short of the Standard's 350mm maximum where the crack is outside the critical vision area. We **attach** the relevant page from www.novus.co.nz.

Our current radio advertising

We have been running four different radio advertisements recently and we are not sure which prompted D. Hore's 3 March email to the ASA.

That said, when we received the ASA's 18 March letter we conducted an immediate review of our radio advertising. Like all advertisers, we are focused on promoting our business through short key messages about our products and people. In doing that, we are also committed to meeting our legal obligations and we are highly sensitive to any allegation that our advertising has misled the public in some way. For that reason we took a conservative decision last month to discontinue one of the four advertisements (the script is **attached** and marked "discontinued"). We do not accept the discontinued ad was misleading, but in case it was arguable from a certain perspective, we elected to focus our radio advertising on our other three ads on air at the time.

We do not consider our advertising misleading. We also **attach** the scripts of the three radio advertisements which were still on air until the end of last week but which have now stopped:

- two of the three refer clearly to there being a "big" or "full" crack which necessitates windscreen replacement;
- the third script is simply an anecdotal account of a specific notional customer's experience where she had to replace her screen given the extent of the damage it had sustained.

When this current run of advertising ends this week, we intend to create new radio advertising for future release which is our common practice. We can assure the ASA that that advertising will be mindful of industry practice and regulatory standards like ASINZS 2366.2.

Free repairs if fully insured

This aspect of our advertising has been run across many countries worldwide. All of our current advertisements make it clear that if the customer has full vehicle insurance, then the repair is usually free for them because they don't have to pay for it.

While this feature of our advertising might be something our competitors could say to the market as well, we consider that we can only speak for ourselves given the arrangements we have with insurance companies. It is for other vehicle glass companies to decide whether they wish to and can make the same or comparable claims, and some do...

...We are mindful that every trader has an obligation to act with particular care when representing any goods or services as available for "free".

Before running the "free repairs if fully insured" aspect of our advertising for the first time in early 2008, we obtained a written opinion from Dr James Farmer QC who opined that the claim was not misleading. We are happy to share a copy of Dr Farmer's opinion with the ASA in confidence, if the Authority would like to see it.

Procedural matters

The three **attached** radio scripts were created by advertising agency, Radiation. This response is for them as well as for The Radio Network.

May we note that this is a competitor complaint. Through Chapman Tripp we have offered our view that, as with the Supreme Screens matter (08/644), this complaint should be determined by adjudication. We understand, though, that the ASA has resolved to treat the matter as a consumer issue. We respect the Authority's decision to proceed this way and we support self-regulation. That said, we hope that the ASA's processes are not exploited by competitors who might see merit in cascading complaints about advertising.

Please let us know if we can provide any further information or explanation around the advertising in issue."

The Media, The Radio Network, said:

"Thank you for your letter in regards to the above.

Smith & Smith Glass is a client of The Radio Bureau and is looked after by Carat New Zealand and we expect agencies to fully understand rules and regulations of advertising.

The Radio Network accepts finished material for broadcasting in good faith.

I will leave it to The Radio Bureau, Carat New Zealand and Smith & Smith Glass to argue the case."

The Radio Bureau said:

"...TRB placed this advertising in good faith and given the technical nature of the complaint, we will leave it up to Smith & Smith to respond. Obviously TRB will abide by the decision of the Complaints Board".

Deliberation

The Complaints Board read all the correspondence relevant to the complaint, and listened to the advertisements. It noted that the Complainant, D. Hore, was of the view that the advertisements were misleading with regard to the claims they made about the need to replace windscreens with cracks in them, and the cost of repairs for those with insurance.

The Chairman directed the Complaints Board to consider the complaint with regard to Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether or not the advertisements contained anything that was likely, either directly or by implication, to deceive or mislead the consumer.

Turning to the first claim in the advertisements, regarding the need to replace windscreens with cracks in them, the Complaints Board noted that they all contained largely the same claim. This was that small chips on a windscreen could turn into

cracks, and that once this happened, people had no choice but to replace their whole windscreen. The Complaints Board noted that two of the four advertisements referred to a “full crack” and a “big crack”, and that the other two referred just to “a crack”. It noted that one of these latter two advertisements had been taken off air by the Advertiser. The Complaints Board noted advice received from both the Advertiser and the Complainant that under the relevant authority standards, cracks of up to 350mm could be repaired, as long as they were not in the critical vision area.

The Complaints Board considered the consumer take-out of the advertisements. It was of the view that consumers listening to the advertisements would understand them to mean that if any crack, as distinguished from a chip, developed on their windscreen, then the windscreen would have to be replaced. The Complaints Board noted that two of the advertisements referred to a “full” or “big” crack, but said that without any qualification of the exact size of crack these words referred to, it was likely that consumers may infer these to mean cracks which included those less than 350mm long. The Complaints Board was therefore of the view that the advertisements were misleading with regard to the claims they made about the need to replace windscreens with cracks in them, and accordingly said that they were in breach of Rule 2 of the Code of Ethics with regard to this claim.

The Complaints Board then turned to the second claim, made in advertisements 2, 3, and 4, which was “...if you are fully insured, with Smith & Smith the repair’s usually free”. The Complaints Board considered the consumer take out of the word “free” in the advertisement. The Complaints Board was of the view that consumers would understand this to mean that, if they were insured, they would not be required to “open their wallets” again for payment to Smith & Smith for the repair. The Complaints Board noted that this was the case for those fully insured, as per Smith & Smiths’ advice as to their arrangement with insurance companies. The Complaints Board also noted that the claim made was not absolute, as it included the word “usually”, which it said conveyed to the listener that while repairs would be free most of the time, in certain situations they wouldn’t. Accordingly, the Complaints Board said that advertisements 2, 3 and 4 were not in breach of Rule 2 of the Code of Ethics with regard to their claim “...if you are fully insured, with Smith & Smith the repair’s usually free”.

Having made the above observations, the Complaints Board ruled to uphold the complaint in part, with regard to the claims made in all the advertisements about the need to replace windscreens with cracks in them.

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