

Advertising—Internet-Based Marketing Service

Case No. 10-9

Facts:

Engineer A pays a fee to be included in a Web site listing of engineers who offer services in an area of expertise in a specific geographic location. The service essentially works as a "matchmaking" process. Potential clients initiate contact by visiting the Web site and by voluntarily providing the requested information about their project requirements. The Web site does not contain language endorsing any engineer but instead includes disclaimers to the contrary.

Question:

Was it ethical for Engineer A to participate in the Internet-based service under these circumstances?

References:

- Section II.5.a. - NSPE Code of Ethics: *Engineers shall not falsify their qualifications or permit misrepresentation of their or their associates' qualifications. They shall not misrepresent or exaggerate their responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, associates, joint venturers, or past accomplishments.*
- Section II.5.b. - NSPE Code of Ethics: *Engineers shall not offer, give, solicit, or receive, either directly or indirectly, any contribution to influence the award of a contract by public authority, or which may be reasonably construed by the public as having the effect or intent of influencing the awarding of a contract. They shall not offer any gift or other valuable consideration in order to secure work. They shall not pay a commission, percentage, or brokerage fee in order to secure work, except to a bona fide employee or bona fide established commercial or marketing agencies retained by them.*
- Section III.1. - NSPE Code of Ethics: *Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*

Discussion:

With the growth of electronic communications and the internet, there has been a proliferation of the types and methods employed by engineers and engineering companies in selling and marketing their services. Many of these methods mirror traditional sales and marketing techniques used in the past while other methods are new and different and require careful review and consideration.

Over the years, the NSPE Board of Ethical Review has considered a variety of sales and marketing techniques employed by engineers and engineering companies in different settings. Promotional customs, practices, and standards have evolved considerably over the past half-century. During an earlier time period, advertising by engineers (or any profession for that matter) was thought to be undignified, inappropriate, even offensive to some, on the grounds that advertising was “commercial” in nature while professional practice was a “calling” by which individuals should be selected by clients solely based upon their professional qualifications, reputation, and other meritorious criteria.

However, as the professions evolved, during the 1960s, a series of rulings by the U.S. Supreme Court held that professional society code of ethics provisions prohibiting advertising violated commercial free speech as well as federal antitrust laws. Following those decisions, professional society code of ethics provisions in advertising were eliminated or modified to reflect a new reality—that advertising professional services was a fact of life and that for the most part, only misleading or deceptive practices could and should be restricted.

Recently in BER Case No. 04-4, the Board considered a case involving Engineer A, a professional engineer licensed in four states, who established a Web site, www.engineerseals.com, that indicated that Engineer A’s company would seal professional engineering drawings for a standard prescribed fee per page. The information on the Web site stated the following:

“Get your project approved! Engineerseals.com provides a convenient, cost effective way for you to obtain sealed documents from a registered engineer to meet your local or state requirements. The online questionnaires and confirmation processes help us determine the specific services you need. We will provide direct engineering supervision, and depending on your project, we will

- *Review and modify your plans, shop drawings, specifications, and calculations;*
- *Generate the necessary drawings, plans, specifications, and reports;*
- *Perform engineering investigation, evaluation, and consultation; or*
- *Perform site visits.*

Upon receipt of your information, we will contact you directly. Your responses help us to simplify the review process and ultimately help us customize the services to meet your needs. The next time you need plans reviewed for building construction codes and permit approvals, visit engineerseals.com. We’ll help you get your remodeling, renovation, and new building projects from draft to development efficiently and professionally. The process is easy.”

The Board decided that Engineer A’s actions were unethical because the actions were in violation of the NSPE Code of Ethics provisions requiring engineers to adhere to

applicable “responsible charge” requirements as well as applicable state licensure laws and Board rules of professional conduct. At the same time, the Board made it clear that it was not per se unethical for Engineer A to develop a Web site to advertise Engineer A’s engineering services. The Board noted that as currently (and as presumably in the future) configured, the Internet is accessible virtually everywhere. The Board cautioned that it was essential for an engineer to be familiar with and adhere to applicable state licensure laws in the practice of engineering regarding electronic media and concluded by noting that nothing in its opinion was intended to limit new and innovative practice techniques, including the use of the Internet, Web sites, or electronic practice.

Turning to the facts in the present case, the Board is of the view that the method being utilized by Engineer A falls within the acceptable limits of the NSPE Code provisions which permits the use of a bona fide, established commercial or marketing agency retained by them. The Web site does not appear to include misleading or deceptive information or suggest Engineer A would be engaging in the unlawful practice of engineering in violation of state laws and regulations. The site appears to link potential clients to Engineer A on a strictly voluntary basis and contains appropriate disclaimers so that there is no misleading implications regarding endorsements or the quality of the services provided.

Conclusion:

It was ethical for Engineer A to participate in the Internet-based marketing service under these circumstances.

Board of Ethical Review:

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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