

Report on a Case by the Board of Ethical Review

Case No. 79-6

Advertising - Statement of Project Success

Facts:

Engineer A published an advertisement in the classified section of a daily newspaper under the heading, "Business Services," which read in full: "Consulting Engineer for Industry. Can reduce present process heating fuel consumption by 30% to 70% while doubling capacity in same floor space. For more information contact Engineer A, telephone 123-456-7890."

Question:

Was Engineer A's advertisement ethical?

References:

Code of Ethics - Section 3(a) - "The Engineer shall not make exaggerated, misleading, deceptive, or false statements or claims about his professional qualifications, experience, or performance in his brochures, correspondence, listings, advertisements, or other public communications."

Section 3(b) - "The above prohibitions include, but are not limited to the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; statements containing an opinion as to the quality of the Engineer's services; or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format."

Discussion:

This is a case of first impression since the present wording of the code on this point was adopted in July 1978, replacing the former code provisions on the advertising of engineering services.

We treat it, therefore, from the starting point that advertising, per se, is no longer prohibited. The pertinent question is whether the text of the advertisement exceeds the limits imposed by the present code language, and particularly whether it is "misleading," or "deceptive," by making a "false statement or claim." In seeking to define in this context the meaning of "false claim," we look also to that part of 3(b) which proscribes statements "intended or likely to create an unjustified expectation," and statements "containing prediction of future success."

It is apparent that Engineer A could not honestly make a factual statement about the savings to be expected by clients attracted by his advertisement, not even knowing who

those clients might be, or the nature of their facilities. The ostensible purpose of such a broad and sweeping claim of savings must be to attract inquiries, presumably to be followed by a proper technical analysis of the client's problem or need. That analysis might or might not support the basis for savings to be achieved by retaining the services of Engineer A.

It might be argued that no harm has been done by this kind of device to attract clients because it is assumed the engineer would perform the proper kind of analysis before making a substantiated claim of benefits to the client. But even if we assume that the kind of client attracted by the advertisement would be wise enough to require a proper analysis before proceeding further with Engineer A, we note that 3(b) also bars promotional statements amounting to "puffery" or "self-laudation." We might even consider that this kind of approach amounts to "sensational" language for self-interest purposes.

By opening the door to advertising of engineering services it was not intended that the "sky would be the limit." As noted by the United States Supreme Court in its decision striking down a total prohibition on the advertising of professional services, there are permissible standards limiting the type, form, and nature of professional advertising. Those permissible limits, as stated in the code provisions, are intended to avoid extreme claims or statements which might tend to deceive the public. Opening the door to proper forms of advertising did not give carte blanche to a type of advertising which rests on the premise of "buyer beware." The client is entitled to receive information about qualifications and kinds of services available from engineers, but only to the extent that such information is factual.

Conclusion:*

Engineer A's advertisement was unethical.

*Note: This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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