ADVERTISING – TRUTHFUL AND NON-DECEPTIVE STATEMENTS

Case No. 03-11

Facts:

Engineer A is a principal in Topp-Flyte Engineering, a medium-sized engineering firm in South Northville, a medium-sized town. Engineer A's firm's engineers have received professional recognition by several South Northville engineering and technical organizations in the past year and in previous years. Recently Engineer A's firm ran the following ad in a local newspaper:

> "It says a lot when South Northville engineers recognize three members of one engineering firm in one year. It says even more when the same firm's engineers are recognized for 18 years running. If you need engineering services, call the engineers other engineers have called the best: 'Topp-Flyte Engineers,' the best in engineering…"

Question:

Would it be ethical for Engineer A's firm, Topp-Flyte Engineering, to run the advertisement in a local paper?

References:

Section I.3.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall issue public statements only in an objective and truthful manner.*
Section I.5.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall avoid deceptive acts.*
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 III.1.e.	-	*NSPE Code of Ethics:*	*Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*

Discussion:

Professional advertising and the appropriate conduct relating to advertising has long been an issue within the field of engineering ethics. Throughout the

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history of the NSPE Board of Ethical Review, the BER has had occasion to decide a wide variety of cases relating to this issue. It is important to note at the outset, however, that as a general matter the NSPE Code of Ethics or other restrictions on non-deceptive advertising have been found to be unlawful by the United States Supreme Court and federal enforcement agencies. Therefore, it is clear that this Board may only pass upon advertising that is clearly deemed to be non-truthful or at the very least misleading and deceptive on its face.

As noted, while the issue of advertising has long been a subject of this Board, many if not most of this Board's opinions relating to advertising were decided under an earlier version of the NSPE Code of Ethics, which at the time deemed as unethical certain types of advertising determined to be unprofessional, including "self-laudatory comments." An example of such language was the early BER Case 64-8, where an engineering firm inserted in a magazine which circulated primarily to business subscribers a full-page advertisement, consisting of text and one simple illustration intended to depict savings in capital costs which could be accomplished by retention of an engineering firm.

The text of the advertisement emphasized through bold-face large type that there are two phases during the design of a process or a manufacturing facility where professional consulting engineering, available from competent firms, can save substantial amounts of money - (1) when the project is conceived and is ready for planning and preliminary design, and (2) when detailed plans and specifications for construction are started. The text concluded with a further statement on savings to the client: "Quality design and engineering on a professional basis, can save large amounts of capital funds for Clients."* The asterisk is explained by a footnote in six-point type: "This applies whether (name of firm) does all the preliminary phase or reviews plans already developed by a company's own engineering staff." At the bottom of the full-page advertisement appeared the name and address of the firm in large type, and a partial list of clients in somewhat smaller type.

The engineering firm reprinted the advertisement in a format consisting of the cover of the issue of the magazine in which the advertisement appeared, the advertisement as originally published in the magazine, and the following statement on the facing page: "At (name of firm) we supply the basic services described in our advertisement in a special way. Our meticulous attention to

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detail from start to finish of a project has resulted in direct capital savings to our clients. Innovations in design which we have developed have resulted in greater efficiency and production than was originally expected. We are prepared to discuss some typical projects with you and to explore how you, too, might use our professional and engineering services advantageously and profitably."

In deciding that the advertisement by the engineering firm in its original form and the reprint containing the added objectionable statements was unethical, the Board noted that language of the additional quoted statement by the firm in the reprint of the advertisement was not in accord with the mandate of NSPE Code because it was self-laudatory in tone and implied superiority by the use of "our meticulous attention to detail," and "innovations in design which we have developed. . . ." The Board also noted that the first paragraph of the additional statement was also objectionable in that it stated that the firm supplied services "in a special way." The Board also noted that this type of language was not only self-laudatory, but tended to reflect unfavorably upon the dignity and honor of the profession.

We cite this early case to illustrate the dramatic changes that have occurred within the field of engineering since the Board's rendering of its opinion in BER Case 64-8. In addition to changes in the legal landscape that render earlier NSPE Code language and BER opinions invalid, many other changes have occurred within the field of engineering that would raise significant questions regarding the propriety of such earlier BER opinions. Engineering practice has become much more commercial, competitive and market-driven, with marketing, sales, and advertising playing an increasingly more important part. With the increasing globalization of engineering practice and the heightened use of technology to deliver engineering services, it can be anticipated that this trend will continue for some time. It is clear that earlier notions about the propriety of advertising have become somewhat outdated and not in keeping with the current times.

The Board recognizes its continuing role to carefully evaluate situations involving non-truthful or misleading and deceptive advertising claims and notes that this will need to be determined on a case-by-case basis—following a careful evaluation of all of the facts and circumstances.

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Turning to the facts in the present case, based upon the legal and ethical standards outlined, the Board is not convinced that there is any basis to believe that the claims made by Engineer A and Topp-Flyte Engineering involve non-truthful or misleading and deceptive advertising claims as the Board understands the term and as it has been interpreted as a matter of law. There is nothing in the NSPE Code of Ethics that prohibits "self-laudatory" advertising as may have been the case in the past. Moreover, based upon the facts that (a) Topp-Flyte Engineering has earned recognition for its achievements for many years, and (b) there is no indication in the facts noting that its statements are factually incorrect, the Board cannot conclude that anything in the Topp-Flyte advertisement constitutes non-truthful or misleading and deceptive advertising claims.

Conclusion:

It would be ethical for Engineer A's firm, Topp-Flyte Engineering, to run the advertisement in a local paper.

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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, university engineering departments, etc.), 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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