

Case Report

1	Case Reference	14 ACB 2
2	Advertiser	Rinnai Australia Pty Ltd
3	Complainant	Rheem Australia Pty Ltd
4	Product	Rinnai Infinity 26 Touch
5	Type of Advertisement/Media	Various: Internet, Television, Point of Sale
6	Board Members	Laura Hartley, Addisons (Chair) Paul Holm, Andrews & Holm Katrina Rathie, King & Wood Mallesons
7	Date of Determination	29 August 2014
8	Determination	Complaints upheld as to breaches of sections 1.1 and 1.2 of the Code in relation to a number of advertisements as identified in the Determination below.

Introduction

A complaint was lodged on 4 June 2014 (the **Complaint**) with the Advertising Claims Board (**Board**) by Rheem Australia Pty Ltd (**Complainant**) against Rinnai Australia Pty Ltd (**Advertiser**) regarding the Advertiser's advertising campaign featuring the "Rinnai Institute of Comfort" that advertises its gas continuous flow water heaters, specifically the Rinnai Infinity 26 Touch (the **Product**) together with its solar powered water heater. A panel was convened to undertake the work of the Board in considering this complaint in accordance with the Board's procedural guidelines (**Guidelines**).

The Complainant and the Advertiser were given an opportunity to make submissions in accordance with the Guidelines. A summary of these submissions and the Board's determination are detailed below.

Issues raised by the Complaint

The Complaint raises issues under Sections 1.1, 1.2, 1.3 and 1.4 of the AANA Code of Ethics (**Code**), which provide:

- 1.1 *Advertising or Marketing Communications shall comply with Commonwealth law and the law of the relevant State or Territory.*
- 1.2 *Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.*
- 1.3 *Advertising or Marketing Communications shall not contain a misrepresentation, which is likely to cause damage to the business or goodwill of a competitor.*
- 1.4 *Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.*

Description of advertising or marketing communication

The material which is the subject of the Complaint comprises:

- (a) a series of television commercials for the Product as part of the *Institute of Comfort* campaign, that have been broadcast on television and online;
- (b) a webpage relating to the *Institute of Comfort* campaign; and
- (c) point of sale material.

Complainant submissions

The Complainant submits that the advertising materials make false and misleading claims to seek to persuade consumers that the Product is vastly superior to all others and in doing so, disparages the Complainant's brand and its product. In particular, the Complainant submits that the advertising materials breach Sections 1.1, 1.2, 1.3 and 1.4 of the Code, alleging that the claims made in the advertising:

- (a) are misleading or deceptive in relation to claims made about the product in the following four areas:
 - (i) safety,
 - (ii) environment and energy,
 - (iii) product reliability and longevity, and
 - (iv) ease and cost of installationand are therefore in breach of sections 1.1, 1.2 and 1.4 of the Code; and
- (b) make misrepresentations about the operation of electric storage water heaters when compared with the Advertiser's gas and solar water heaters, which negatively impact on the Complainant's branded products in breach of section 1.3 of the Code.

In particular, the Complainant makes the following broad allegations about the advertising material:

- **Safety** – The Complainant alleges that claims made in the advertising falsely represent electric storage water heaters as unsafe, in that they are capable of delivering water of excessive temperature. This is contrasted with a depiction of a safe temperature of 38^oC, set using the Product. On the basis that all water heaters are capable of outputting water at temperatures above that level, including the Product, the Complainant argues that claims used by the Advertiser differentiating its Product from electric storage water heaters, including "*Safe temperatures every time*", are therefore misleading.
- **Environment and energy** – The Complainant alleges that the claims about the energy efficiency of electric storage water heaters are untrue and misleading, having regard to data contained in an impact statement issued by the Australian Government which showed electric storage water heaters had a slightly higher efficiency rating than gas continuous flow water heaters. The Complainant further alleges that the claim the Product "*runs on cheaper, cleaner, natural or LP Gas*" is misleading as LP gas is around 2 or 3 times more expensive than natural gas across Australia and running the Product on LP Gas is more expensive than running an electric storage water heater. Finally, the Savings Calculator on the Advertiser's website is misleading as it shows a saving of \$664

versus an electric storage water heater and yet the fine print includes information that the amount is calculated by use of Victorian data and used only one rate from one supplier.

- **Product reliability and longevity** – The Complainant alleges that the reference to a 12 year warranty is misleading because only one component of the Product is covered by the warranty, while other parts and labour are covered by a 3 year warranty. Further, the Complainant alleges that the comparative claims to electric storage water heaters are incorrect having regard to its own branded products. Finally, the claim *“Burner won’t run at low tap flow rate so water may run cold”* is not supported by an SAI Global test report dated April 2014 and relied on by the Advertiser.
- **Ease and cost of installation** – The Complainant alleges claims made regarding the ease and cost of installation are misleading because they are silent on the need for a power point or additional work that may be required in providing gas connections to a home. Similarly, the Complainant alleges the Advertiser’s claim regarding its solar product being *“lighter, cheaper and easier to install”* is misleading on the grounds that they *“have relatively higher installation costs than the installation of an [electric storage water heater], especially in a replacement situation”*.

Advertiser submissions

The Advertiser submits that the claims used in the relevant advertising are factual, with some minor discrepancies acknowledged and corrected by the Advertiser. The Advertiser states that the campaign was intended to raise consumer awareness about aspects of hot water systems, including safety, and to differentiate the credible advantages of the Product against all major competitors.

The Advertiser disputes the Complainant’s characterisation of the campaign as false and misleading in breach of Sections 1.1 and 1.2 of the Code. The Advertiser submits that the advertising materials make credible claims that intend to position continuous flow water heater technology, including that of the Product, as superior to other types of hot water technologies.

In response to the Complainant’s allegations, the Advertiser submits:

- **Safety** – While acknowledging that the Product could deliver water at temperatures higher than 38°C, the Advertiser argues this would only happen in circumstances where the consumer uses the Product contrary to the written instructions or to the message of the advertisement. Further, claims made about the safety of electric storage water heaters in comparison are credible as consumers are unable to select the delivery temperature from electric storage water heaters and the default delivery temperatures are much higher, by government legislation.
- **Environment and energy** – The Advertiser acknowledges that its substantiating materials did not support the ‘low efficiency’ claim made in its advertising or the claim *“runs on cheaper, cleaner natural or LP Gas”* and indicated it had made appropriate amendments on its website. The Advertiser considers that other aspects to its claims are supported and in particular, that the Savings Calculator relies on a ‘prominent tab’ which is easily identified and accessible.
- **Product reliability and longevity** - The Advertiser argues that the statement *“12 year warranty”* is not misleading because at the time the statement is made verbally by the presenter, text is superimposed stating *“see website for details”*. The Advertiser rejects the suggestion that the fictitious comparisons used in its advertising with electric storage water heaters are misleading because they did not apply to the Complainant’s products. The

Advertiser argues that the 'tap flow rate' claim is intended to suggest the Product has superior low flow performance not just due to minimum start up flow rates but also due to its lowest possible gas consumption. Despite this, the Advertiser notes that it has removed this claim.

- **Ease and cost of installation** – The Advertiser claims that references to wiring are to the wireless temperature controllers, which distinguish the Product from other similar products, and claims regarding the ease of installation of its Product are logical and valid.

The Advertiser rejects the Complainant's assertion that the claims used in the advertising are disparaging to the Complainant's brand, and states that the claims are, in any case, credible and therefore not in breach of section 1.3 of the Code. The Advertiser highlights that no competitor brand is mentioned or identifiable in any of the materials associated with the campaign, which set out to differentiate their brand from their competitors by making credible claims and comparisons, which they consider to be a legitimate advertising technique not in breach of the Code.

Summary of Determination

The Complainant has raised a broad range of issues arising from a variety of advertising materials. Given the volume of that material and complicated nature of the various complaints made, the Board has only dealt specifically in this decision with those matters raised by the Complainant which the Board determines should **be upheld** and the reasons for those determinations, rather than also going through each complaint which the Board has dismissed as well.

For ease of reference, annexed to this Case Report and marked "A" is a document setting out the transcript of the two relevant advertisements of the Advertiser (captured on air during May 2014) and seven advertisements captured on the Advertiser's website during May 2014, relied upon specifically by the Complainant, together with transcripts of particularly relevant portions of the Advertiser's website which were also relied upon. The Advertiser's point of sale material complained about by the Complainant is not annexed.

In relation to the complaints which have been upheld by the Board (as dealt with below) those complaints are upheld in relation to sections 1.1 and 1.2 of the Code. In relation to claims made in respect of section 1.3 of the Code, those matters have not been upheld and are dealt with below in respect of the specific relevant complaints. The Board has also determined that none of the complaints which have been upheld amount to a breach of section 1.4 of the Code.

To the extent that the Board has determined breaches of sections 1.1 and 1.2 of the Code, this is on the basis that the conduct identified is misleading or deceptive pursuant to section 18 and (in some cases) also sections 29(a) and (g) of the Australian Consumer Law (*Schedule 2 of the Competition and Consumer Act 2010*).

In considering and determining the matters raised by the Complainant, the Board has adopted the approach of the High Court in *ACCC v TPG Internet Pty Ltd* [2013] HCA 54 (**TPG Case**) in considering the relevant advertisements and website material as a whole. In particular, the High Court has noted that the dominant message test is central to the assessment of whether particular advertisements are misleading or deceptive. Further, that use of qualifying statements or disclaimers, which may accompany key or headline representations, need to be very clear and prominent if they are to be relied upon as countering any argument that representations are misleading and deceptive to consumers.

Identification and Disparagement of the Complainant Specifically

The Complainant raised issue with the Advertiser's relevant campaign that, as a general statement, it used false and misleading claims to seek to persuade consumers that the Product was vastly superior to all others and in doing so, directly disparaged the Complainant's brand and its products. Further, that the comparisons made, particularly in respect of allegedly fictitious products used throughout the campaign and labelled as 'cheap', was a comparison being made of other key competitor products in the market. Given its high market share, the Complainant contended that it was therefore a direct representation about it and its products. As such, consumers would be misled generally in respect of the campaign and representations made, that comparisons were being made to the Complainant's products specifically and that those products were inferior to the Advertiser's products which would cause disparagement and damage to the Complainant and its reputation.

The Board is of the view that the Advertiser's campaign makes no direct reference to the Complainant, its brand or its products. There were also no identifiable aspects of the comparison products referred to (including those marked 'cheap') that would justify the contention of the Complainant that the products were identifiable as its products, such that the Product was being compared in that manner. Whether or not the Complainant is a significant brand in the relevant market does not, in the Board's view, change this position. It is unlikely, in any event, that consumers would be aware of this fact as contended for by the Complainant. The Board did not consider that consumers would be misled or deceived into considering the comparison being made in the campaign was a direct one to the Complainant and its products.

Specific Complaints Upheld by the Board

In order to deal with the varied complaints by the Complainant, the Board has determined to address each of those specific complaints which it has upheld by reference to the particular advertising content in question (for example, television or website commercial, point of sale material and/or website). The Board is of the view that the following of the Complainant's specific complaints should be upheld (the relevant transcript for each relevant advertisement other than the point of sale advertisement being set out in Annexure 'A' as noted above). In relation to the transcribed content of the relevant advertising, the Board notes also that certain visual aspects of those advertisements are not evident from the transcript solely and the Board's determinations have been made on the basis of the overall content and context of the advertising, consistent with the accepted approach in *Parkdale Custom Built Furniture Pty Limited v Puxu Pty Limited* (1989) 149 CLR 191 (particularly Gibbs CJ at 199). Whilst emphasis was given to particular words or phrases, in particular advertising by the Complainant, it is appropriate that those matters not be looked at in isolation consistent with this approach (see for also *Shephard J in Tobacco Institute of Australia v AFCO* (1993) ATPR 41-199 at 40, 759):

(a) Rinnai IOC Campaign, Level 2, family safety: TVC Transcript C in Annexure "A"

Overall, the Board's view in respect of the matters conveyed to consumers in this particular television advertisement is that the Advertiser intended to convey representations as to safety claims associated with the Product. In particular, the Advertiser used the word 'safe' throughout in order to convey that the effect of the Product was to ensure 'safe' water temperature by reason of the Product, in particular, referencing safe water temperature for children achieved by the Product remotely set at 38°C. Further, the particular advertisement conveyed water temperatures of 65°C from a hot water tap absent the Product. The Board considered that a number of misrepresentations flowed from these matters in the context of the advertisement as a whole including the following:

- i. The filling of a bath at a temperature of 65°C was misleading, in that it was neither realistic that such a temperature would be emitted into a bath nor that any child (or teddy bear) would be inserted into such water without it first being checked to ensure it was not too hot. In this regard, it is usual for a householder to adjust the temperature of bathwater, whether this is by using the cold tap or a remote controller, so to avoid excess temperature. The Board does not consider that a householder is less likely to do so merely because their hot water system lacks a wireless remote controller.
- ii. Secondly, the ability to achieve a temperature of 38°C (shown as 'safe') from the Product required human intervention. The Board agreed with the Complainant that all water heaters were capable of outputting water at temperatures above the 'safe' 38°C level, including the Product, if it was not set to that lower desired temperature. As such, it was misleading and deceptive to represent that the 38°C temperature was, in any sense, guaranteed.
- iii. The Board considered that, given the requirement for human intervention in order to reach the desired temperature (the input of the desired temperature in the remote controller) that the appropriate claim which could have been made by the Advertiser was one of convenience but not one of safety.
- iv. Further, the evidence before the Board suggested that it was extremely unlikely that a temperature of 65°C would, in fact, normally be available in household situations (such as in a bathroom) with plumbing codes increasingly regulating the installation of output of hot water to a maximum of 50°C and various standards similarly including 'safe' temperatures for normal household situations at 50°C. As such, the inference that a bath could likely be filled with 65°C water was also felt to be misleading in all of the circumstances.

(b) Point of Sale Advertising – one page document

The Complainant submitted a one page point of sale advertising document of the Advertiser in connection with the Product which included the statement "*Safe temperatures every time*".

Given the Board's determination above that the 'safe' temperatures could only be achieved if the Product is used appropriately by the consumer, the Board has determined that this statement is also misleading and deceptive.

The Product operates so the last temperature set will output (which may not be safe) and a consumer may not check the controller for the temperature setting every time the hot tap is used. Given that consumer intervention is needed on every occasion (which may be unlikely) to ensure the 'safe' temperatures alleged by the Advertiser, the statement contained in the point of sale is misleading.

(c) Rinnai IOC Campaign, Level 5, Smart Technology Web Page – Text Transcript J in Annexure "A"

The Complainant raised issues with representations it contended were made in this web page text, in particular, comparisons made to electric storage water systems which were shown to be old and marked 'cheap' and statements that such products:

- (i) "*Continuously burns dirty, expensive, coal fired electricity (even when not in use)*"; and
- (ii) "*Suffer from "Low efficiency"*".

The Board agrees with the Complainant's contentions that the claims made that electric storage water systems 'continuously' use power are incorrect. Effectively, the Board considers, based on the evidence provided, that such water heaters will only use electricity

when the element is heating, which would not occur on any basis 'continuously'. As such, the statement in (i) above would be misleading and deceptive.

Further, the Board considers that the claim as to 'low efficiency' is likewise not supported by any material provided and is misleading. Some material provided to the Board would indicate that some electric storage water heaters, in fact, had a slightly higher efficiency rating than continuous flow water heaters. On this basis, the reference to 'low efficiency' set out in (ii) above is, in the Board's view, untrue and misleading. The Board notes that the Advertiser in its reply submissions has conceded that the data on which it relied does not support the claim and has informed the Board that it has been removed from the relevant website advertising where it was previously made.

(d) Rinnai IOC Campaign, Level 6, Energy Efficiency/Bill Comfort Webpage Text Transcript H in Annexure "A"

The Complainant raised various issues with the content of these website pages. Insofar as those complaints related to the inclusion of the following (in respect to electric storage water heaters):

"Always on, using energy to heat water even when not in use"; and
"Low efficiency".

Those matters have been addressed above. The Board confirms that it has already determined that those representations are misleading and deceptive, including in the context of this particular website content.

In addition to the above, the relevant website pages also included reference to the Product and that it *"runs on cheaper, cleaner Natural or LP Gas"*. The Complainant contended that, to the extent this statement refers to LP Gas, this statement was false and misleading in that LP gas was around 2 to 3 times more expensive than natural gas, across Australia. As such, running the Product on LP gas would be more expensive than running an electric storage water heater. The Board agrees and notes that this point has also been conceded by the Advertiser, who has agreed to change any such claims to remove any reference to LP Gas. There was no issue raised by the Complainant in relation to this statement insofar as it related to Natural Gas.

This part of the Advertiser's website also includes an *"Electric to gas hot water savings calculator"*. The Complainant raised concerns that:

- (i) the savings calculator represented an amount of savings of \$664 in relation to a 4 person household (using the Product versus an electric storage water heater);
- (ii) these savings were calculated by using a Victorian electricity tariff (predominantly the most favourable Australian tariff) from one energy supplier; and
- (iii) as such, the claim as to purported savings were true only as to those in Victoria who had access to that tariff, as those in other States (or unable to use that supplier) were unlikely to be able to achieve the same level of savings.

The Board agrees with the Complainant as to the representations made and that they are misleading and deceptive. The Advertiser contended that the basis upon which the calculations had been made were made clear by use of a reference to a statement to consumers *"*read about how we calculate this"* contained on the savings calculator, which then took consumers to the *"savings calculator assumptions"*. The Board does not consider that the inclusion of this information is sufficient in order to avoid consumers being misled (consistent with the approach taken in the TPG Case referred to above). The material referred

to is contained in small print at the bottom of the savings calculator and this is insufficient to correct the otherwise misleading representation as to savings and is not prominent as contended for by the Advertiser.

(e) Rinnai IOC campaign, Level 3, Reliability: TVC Transcript D in Annexure A:

The Complainant contended that the statement made in this television commercial that the Product "*comes with a 12 year warranty*" was false and misleading. The Board agrees that the reference to a 12 year warranty is misleading, because only one component of the Product is actually covered by the warranty (the heat exchanger for the part only not labour), while other parts and all labour are covered by a 3 year warranty.

The Board considers that these limitations on the '12 year warranty' are significant and, in order to avoid being misleading or deceptive, these limitations need to be disclosed in a very clear and prominent fashion.

The Advertiser contended that the warranty claim was sufficiently qualified by the superimposition of written text which appeared when the statement was made stating "*see website for details*". The Board is of the opinion that if that text is included (which was not clear from the evidence as the text could not be seen on all relevant advertisements), this would be insufficient in any event to avoid consumers being misled or deceived (consistent with the approach in the TPG Case).

Additionally, this advertisement also contained a comparison between a gas continuous hot water system labelled as 'cheap' and the Advertiser's product. Relevantly the advertisement also contended that "*some sales people are suggesting that all hot water systems are the same. They're not.... (then referring to the cheap product) cheap plastic fan and valves and inferior electronics. Absolute rubbish.*"

The Complainant contended that the 'cheap' apparently fictitious product referred to by the Advertiser (which the Advertiser had stated was drawn from construction aspects of competitor products in the market) bore no resemblance to the vast majority of competing brands of continuous flow hot water systems in the Australian market, including any of the Complainant's products.

The Board considers that members of the target audience for this advertising would understand that the continuous hot water system labelled as 'cheap' was representative of at least a significant portion of the Advertiser's competitor products and would not understand this product to be wholly fictional. The Board agrees with the Complainant's contention that the 'cheap' product is not representative of the majority of competing brands and that, as a result, the various representations made in this regard were also misleading and deceptive in breach of sections 1.1 and 1.2 of the Code.

The Board is not, however, satisfied that the representations made amounts to a breach of section 1.3 of the Code (as is contended). In order to breach this section, the relevant misrepresentation must be shown to be **likely** to cause damage to the business or goodwill of a competitor. The Board considers the representations dealt with in this section **may** cause damage to the Complainant (or other competitors in the market), clearly as it was the Advertiser's apparent intention to convey to consumers that the competitor products were significantly inferior and unreliable. The Board was not, however, provided with any information or evidence on which it could determine whether this would be **likely** to cause any damage to the Complainant (or any other competitors in the market). On this basis the Board is unable to determine that any breach of section 1.3 of the Code has occurred.

(f) Rinnai IOC campaign, Level 3, Reliability web page Transcript K in Annexure "A"

To the extent that the representations referred to in paragraph (e) above are repeated in this section of the Advertiser's website, the Board repeats its determinations above. All of the statements made under the "*Cheap Hot Water Unit*" heading are misleading and deceptive and the complaint is upheld in this regard.

In particular, the website material also included the following statement in relation to the continuous flow electric hot water system referred to as 'cheap' that the "*Burner won't run at low tap flow rate so water may run cold*". In support of this statement the Advertiser provided to the Board a copy of an SAI Global Test Report Number 4352 dated 9 April 2014 "*Low flow comparison testing of 5 instantaneous water heaters*" (**Report**). However the Board considers that the Report does not support the Advertiser's claim and that the Advertiser's relevant performance for 'minimum flow rate to start' and 'minimum flow rate to shut off the appliance' numbers are very similar to those of the Complainant and the other competitor products in the Report. The Report indicates that water may run cold at low flow rates for all units in the test report and virtually at the same levels. As such the Board considers that this claim is misleading and deceptive.

The Board notes that the Advertiser has now advised the Board that the campaign has been amended to remove reference to this statement as well as the related representation that the Product was superior on the basis that the Product's "*Low turn down ratio means hot water runs at even the lowest flow rate*".

In relation to this advertisement, the Board is not, however, satisfied that the representations made amount to a breach of section 1.3 of the Code (as is contended) for the same reasons as set out above in relation to paragraph (e).

(g) Rinnai IOC campaign, Level 1, Installation: TVC Transcript A in Annexure "A"

The Complainant raised concerns as to representations contained in this television advertisement, in the context of the comparison of the Product and other continuous hot water systems. In particular that, in respect of other products, "*most need costly wiring*" but that the Product (and its installation) requires "*no wires or holes*". It does.

The Board considers that the claims made regarding the ease and cost of installation are misleading because they are silent on the need for a power point for the Product, or additional work that may be required in providing gas connections to a home, for example.

The Board does not accept the Advertiser's contention that the representations made in relation to installation of the Product are only in relation to the wireless remote which comes with the Product. In the Board's view, the context in which the representations are made (including the visuals used) do not support the contention that consumers will understand that the representations relate only to installation of the remote controller, but rather that they relate to the Product and its installation as a whole.

The Product pictured in the campaign shows no fittings (such as plumbing pipes or wires) compared to those shown on the 'cheap' comparison product. As all hot water systems will require some sort of fittings (gas, water, power etc), not to show these on the Product at all is in the Board's view misleading.

(h) Rinnai IOC campaign, Solar v Electricity: TVC Transcript I in Annexure "A"

This particular advertisement compared the Product powered by the Advertiser's evacuated tube solar technology versus an electric water storage heater. In that context, the claim is made that "*This one uses our Rinnai evacuated tube solar technology. Powered by the*

Australian sun, energy bills for hot water are virtually zero in summer. Lighter, cheaper and easier to install".

The Advertiser contended that the claims made as to "*lighter, cheaper and easier to install*" are only made in relation to the evacuated tube panel used for the solar installation. The claims are not a reference to the installation of the Product (run in this case by solar) as a whole, or a comparison with the installation cost of an electric storage water heater.

In the context of the advertisement as it appears, the Board does not agree and considers that consumers will consider the representations are being made as to the installation of the Product in its totality (as no consumer is likely to install roof top solar panels unless these were part of a working hot water system). Further, as the advertising commences with a contrast of 2 showers, the first using an electric storage water system and second using the 'Rinnai evacuated tube solar', the Board considers that consumers would understand that the subsequent reference to evacuated tube solar being 'cheaper and easier to install' is in contrast with the installation of an electric storage water system.

On that basis, the Board also considers that such representations would be false and misleading, as the evidence provided would indicate that the Product (including the solar version) would, in fact, have higher installation costs than those of an electric storage water heater, particularly in a replacement situation. This view is supported by the material provided by the Complainant as to the cost comparison of replacing an old electric storage water heater, using published retailer information.

For all of the above reasons, the Board also finds that the representations referred to above in relation to this advertisement are misleading and deceptive.

Other Complaints Not Upheld by the Board

In relation to any other complaints made by the Complainant in relation to the Advertiser's advertising materials, the Board has determined that no further complaints should be upheld.

Advertiser Statement

On 2 September 2014, the Advertiser was provided with a copy of the Board's determination. In accordance with the Guidelines and on the basis of the Board's determination, the Advertiser was requested to provide an Advertiser Statement indicating whether it would modify or discontinue the Advertisement.

On 9 September 2014, the Advertiser provided the following response:

"Rinnai Australia does not believe that it has engaged in any conduct which is likely to mislead or deceive consumers. In our view, the reasoning behind many of the conclusions reached by the Board is based on misunderstandings of the technical complexities and regulatory aspects of the products involved, and the interactions between these products and consumers.

Nonetheless, in the spirit of upholding the processes that underpin the Australian Association of National Advertisers (AANA) self-regulatory system, Rinnai Australia accepts the determination by the Board, and hereby agrees to discontinue the relevant aspects of the Institute Of Comfort advertising."

Annexure 'A'

A. Rinnai IOC campaign, Level 1, Installation: TVC transcript:

"The Rinnai Institute of comfort would like to draw your attention to something that doesn't get much attention. These two hot water systems look similar, but they're not. Most need costly wiring. (Builder - Oiy, could you give us a hand with this mate?) What a pain. Now Rinnai Infinity 26 Touch is the only one with wireless fingertip temperature control and look, no wires or holes. A touch of Rinnai genius. I think we've created the most innovative hot water system in Australia, hands down".

B. Rinnai website, Level 1, Installation, web page text:

"Easy to install. With the Infinity 26 Touch, our wonderful engineers have ensured it's as easy to install as any other regular continuous flow unit, because the wireless componentry is supplied with the unit".

[Claim for Regular system appearing marked "Cheap"]: "Controllers must be purchased separately. Require wires to be run for controller install" and "extra install time and cost".

[Claim for Rinnai Infinity 26 Touch appearing]: "No additional wiring, no structural work, no exposed wires in the home, no additional components to purchase".

C. Rinnai IOC campaign, Level 2, Family Safety: TVC transcript:

"At the Rinnai Institute of Comfort we strive to make your experience with hot water as safe and as comfortable as possible. Consider the safety of your little ones. This is hot water from an electric tank. So it's hard to get a safe temperature (dial shows 65 C and statement "too hot"). Ouch. Who would subject their teddy to that heat? But this bath has been filled by our new Rinnai Infinity 26 Touch with inbuilt wireless remote so I can set the temperature (presenter holds the controller, controller is seen by TVC viewer, presenter looks at controller display, presses controller button, temperature dial shows 38 C and the statement "just right") and you can relax knowing it's safe and just right for the kids. I mean teddies (laughs). A touch of Rinnai genius isn't it (laughs)".

D. Rinnai IOC campaign, Level 3, Reliability: TVC transcript:

"(Loudspeaker - Calling all maintenance crews). Here at the Rinnai institute of comfort, we've heard that some sales people are suggesting that all hot water systems are the same (laughing). They're not. Come with me. Look. Ugh. Cheap plastic fan and valves and inferior electronics. Absolute rubbish. Now this is our Rinnai Infinity 26 Touch with brass and solid metal parts, Rinnai electronics and it comes with a 12 year warranty. How good is this? Finger-tip remote control. So it's Rinnai's famous long life quality and efficiency at a simple touch. (Other machine explodes) See what I mean. That didn't last long. Another touch of Rinnai genius. (Yelling out – Nigel)".

E. Rinnai IOC campaign, Level 4, Remote Controls: TVC transcript:

"At the Rinnai institute of comfort, we take the business of showering seriously. Two identical looking showers but this one uses an old fashioned electric tank. I can't get the temperature right. Oh damn. So touchy. But here we have our Rinnai Infinity Touch controlled by wireless remote (presenter picks up controller, looks at it and presses a button to set the delivery temperature). Look, the control is shower proof. How good is that? The new Rinnai Infinity Touch. The smartest hot water system ever. Another touch of Rinnai genius."

F. Rinnai IOC campaign, Level 5, Smart Technology: TVC transcript:

"At the Rinnai Institute of comfort we're completing a fascinating study. Ahh, believe it or not these two women are from exactly the same era. (Woman) "A" still gets her water from an old fashioned electric tank so it can run out when you least expect. The hair! Or come out excessively hot. The stonewashed look! While (Woman) "B" is totally in touch. She uses the Rinnai Infinity Touch with wireless remote. Perfect temperature, never runs out, and perfect hair, every time. A touch of Rinnai genius that makes everything else look so 80's".

G. Rinnai IOC campaign, Level 6, Energy Efficiency/Bill Comfort: TVC transcript:

"(Loudspeaker - Professor Stone to the shower lab). The Rinnai institute of comfort believes everybody has the right to a reliable hot shower. Without being burnt by energy bills. Heated with electricity, this shower takes ages, chews up power and costs you money. The Rinnai Infinity Touch with wireless control runs on clean natural gas. Not dirty coal fired electricity. He can also set the temperature so he doesn't waste energy and being Rinnai, he only uses energy when it's on. Oh, it looks like he's in a spot of hot water. Another touch of Rinnai genius. (Yells out – Trevor!)."

H. Rinnai IOC campaign, Level 6, Energy Efficiency/Bill Comfort web page text:

Web page content to describe the Rinnai Touch: "The Rinnai infinity range is already well known for its energy saving over electric storage tanks. The new infinity 26 Touch turns it up another notch. Here are the advantages:"

[Claim for Electric Tanks shown and marked "Cheap"] – "Always on, using energy to heat water even when not in use; low efficiency; use expensive "dirty" coal-fired electricity; time and energy wasted mixing hot and cold to find the right temperature; the higher the temperature setting the more energy used".

[Claim for Rinnai Infinity 26 Touch shown] – "Only runs when you're using it; 6+ star efficiency rating; runs on cheaper, cleaner Natural or LP Gas; remote control setting delivers the perfect temperature time after time".

I. Rinnai IOC campaign, Solar v Electricity: TVC transcript:

"The Rinnai institute of comfort is all for environmentally friendly renewable solar energy hot water. Morning! And lower energy bills. Heated by costly dirty coal fired electricity, this shower chews up power. This one uses our Rinnai evacuated tube solar technology. Powered by the Australian sun, energy bills for hot water are virtually zero in summer. Lighter, cheaper and easier to install. Oh, it looks like he's in a spot of hot water. Rinnai evacuated tube solar. The cleanest, most efficient hot water under the sun."

J. Rinnai IOC campaign, Level 5, Smart Technology web page text:

"Old Technology vs. New Technology. The old electric tank is reminiscent of an era of big wasteful, fuel guzzling cars, the large "brick" mobile phone and clunky, generally cumbersome technology. The new Rinnai Infinity 26 Touch brings hot water technology into a new sustainable, energy-conscious age. Compact, efficient and clean."

[Claim for Electric Tanks shown and marked "Cheap"] – "Heats only the water that's in the tank, so when it runs out it runs cold; continuously burns dirty, expensive, coal-fired electricity (even when not in use); cumbersome imprecise temperature adjustment; low efficiency; large, ugly, taking up metres of useable space."

[Claim for Rinnai Infinity 26 Touch shown] – “Heats water continuously as it flows through the system ensuring water always runs hot; heats water using clean burning, energy efficient gas, only when its needed; precise temperature control through wireless remote technology; 6+ star energy efficiency rating; compact and space saving design.”

K. Rinnai IOC campaign, Level 3, Reliability web page text:

“The inside story on reliability. When doing your homework for a replacement hot water unit, there's a good chance you'll be told that all continuous flow systems are the same. But, they're not. You pay for what you get. Take a look....”

[Claim for Electric Tanks shown and marked "Cheap"] – “Often built with cheaper third-party parts; burner won't run at low tap flow rate so water may run cold; thermoplastic flow valves deteriorate over time at higher temperatures; poorly engineered circuitry and cluttered internal wiring; plastic fans will fail and wear with long-term use; cheaper internal engineering means shorter warranty periods.”

[Claim for Rinnai Infinity 26 Touch shown] – “Superior engineered parts, manufactured by Rinnai for Rinnai; low turn down ratio means hot water runs at even the lowest flow rate; flow valves made from highly machined long lasting brass; compact and neat internal engineering; leaders in circuitry design and technology; solid metal fan for long-lasting operation; industry leading heat exchanger warranty (12 years); quick and easy to install”.