

# Case Report

1	Case Reference	17 ACB 4
2	Advertiser	LG Electronics Australia Pty Ltd
3	Complainant	Samsung Electronics Australia Pty Ltd
4	Product	Television
5	Type of Advertisement/Media	Various including Internet
6	Panel Members	John Fairbairn, MinterEllison (Chair) Simon Ward, Piper Alderman Jennifer Huby, TressCox Lawyers
7	Date of Determination	13 December 2017
8	DETERMINATION	<p><b>Certain Advertising Materials modified or discontinued</b></p> <p><b>Complaints upheld</b> in relation to two representations (as identified in the Determination below) for breaches of sections 1.1 and 1.2 of the Code but dismissed in relation to breaches of section 1.3 of the Code as identified in the Determination below.</p> <p><b>Complaints dismissed</b> in relation to a number of advertisements under sections 1.1, 1.2 and 1.3 of the Code as identified in the Determination below.</p>

## 1. Introduction

- 1.1 A complaint was lodged on 20 September 2017 (**the Complaint**) with the Advertising Standards Bureau (**the Bureau**) by Samsung Electronics Australia Pty Ltd (**Complainant** or **Samsung**) against LG Electronics Australia Pty Ltd (**Advertiser** or **LG**) regarding the Advertiser's advertising for its OLED, Super UHD and UHD range of LED/LCD televisions. A panel of legal practitioners (**the Claims Board**) was convened to consider the complaint in accordance with the Claims Board's procedural guidelines (**Guidelines**).
- 1.2 The Complainant and the Advertiser were given an opportunity to make submissions in accordance with the Guidelines. The parties filed reasonably detailed submissions in the Complainant's written complaint dated 20 September 2017, the Advertiser's Response dated 25 October 2017 (**Response**), the Complainant's reply dated 8 November 2017 (**Reply**) and Advertiser's further response dated 22 November 2017 (**Further Response**). These submissions and the Claims Board's determination are summarised below.

## 2. Description of advertising or marketing communication

- 2.1 The material that is the subject of the Complaint comprises advertising in various media including on the Advertiser's website, catalogues, brochures, billboards and other outdoor advertising, and point of sale (**POS**) displays for the LG OLED, Super UHD and UHD TVs as set out in Annexures A to I of the Complaint (**the Advertising Material**).

## 3. Issues raised by Complainant

- 3.1 The Complaint raises nine issues arising from representations it alleges were made in the Advertising Materials with respect to the Advertiser's OLED ranges of televisions, namely:

- (a) representations that LG's OLED TVs produce 'perfect black' (the **Perfect Black Representation**) (arising out of the material in Annexure A of the Complaint);
- (b) representations that LG OLED TVs create 'superior images' as compared to LCD/LED TVs, including the display of one billion colours, resulting from their self-lighting pixels, (the **Superior Image Representations**) (arising out of the material in Annexure B of the Complaint);
- (c) comparative representations regarding the number of colours and image quality produced by LG's OLED TVs, compared to 'Conventional TVs' (the **1 Billion Colours Comparative Representations**) (arising out of the material in Annexure C of the Complaint);
- (d) representations that LG OLED TVs produce 'infinite contrast' and related representations regarding contrast and brightness levels, including comparisons against LCD/LED TVs (the **Infinite Contrast Representations**) (arising out of the material in Annexure D of the Complaint);
- (e) representations that LG OLED TVs have a simpler and superior composition compared to LCD/LED TVs and do not have a colour filter (the **Composition and Colour Filter Representations**) (arising out of the material in Annexure E of the Complaint);
- (f) representations that LG's OLED TVs produce 'perfect images' and a 'perfect image from any angle' (arising out of the material in **Perfect Image from any Angle Representations**) (arising out of the material in Annexure F of the Complaint); and
- (g) representations regarding the availability of 'premium' Video On Demand (**VOD**) content on Dolby Vision-enabled TVs (the **Premium Video On Demand Content Representations**) (arising out of the material in Annexure G of the Complaint),

and the following claims in connection with the advertising of LG Super UHD and LG UHD televisions currently sold in Australia:

- (h) representations that LG's Nano Cell™ TVs are an advancement on, and offer 'improved colour purity' compared to, LCD/LED TVs with Quantum Dot Technology (the **Nano Cell™ Technology Representations**) (arising out of the material in Annexure H of the Complaint); and

- (i) representations that LG's UHD TVs 'offer better performance, advanced features and a better overall Netflix experience' (the **Netflix Experience Representation**) (arising out of the material in Annexure I of the Complaint).

3.2 In summary, the Complainant alleges that:

- (a) those representations, in isolation and in their cumulative effect, breach sections 1.1, 1.2 and 1.3 of the Australian Association of National Advertisers Code of Ethics (**Code**), which provides:

*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; and*

*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.*

- (b) the breaches of sections 1.1 and 1.2 of the Code arise from contraventions of sections 18, 29(1)(a), 29(1)(g) and 33 of the Australian Consumer Law (**ACL**); and

- (c) the breach of section 1.3 of the Code arises, amongst other things, as the representations are comparative in nature and not only unfairly disparage LCD/LED TVs in general, but its own QLED range in particular. The Complainant was concerned that the LG OLED and LG UHD Representations, individually and collectively, are likely to divert sales from its own QLED TVs to LG's OLED TVs and LG's UHD TVs.

3.3 The Complainant's submissions in relation to each of the alleged representations are set out in more detail below.

## 4. Advertiser's response

4.1 The Advertiser submitted that all of the claims should be dismissed. This was on the basis that:

- (a) the Complainant had selectively extracted certain claims or images from the Advertising Materials and in effect taken them out of context;

- (b) where it has made comparative claims, it does not carry a higher burden to show the accuracy of the comparison than would be required in other cases;

- (c) read in context, a number of the impugned claims made in the Advertising Materials are substantiated;

- (d) a number of the claims made in its advertising are hyperbolic rather than representations of fact, and should therefore not be taken literally;

- (e) the Complainant has not provided cogent evidence to show that its goodwill or business reputation has been damaged by the Advertising Materials under section 1.3 of the Code;
- (f) contrary to established authority, the Complainant had taken fragments of an overall communication in relation to a number of the claims and attempted to impose upon them contrived or overbroad interpretations;
- (g) reasonable consumers would not understand a number of the representations made by the Advertiser to have the meaning alleged by the Complainant;
- (h) the Advertiser is entitled to extol the virtues of its own products and pick the features it wishes to highlight in its advertising; and
- (i) a number of the claims alleged by the Complainant to be comparative, are not comparative expressly or by implication.

The Advertiser's submissions in relation to each of the alleged representations is set out in more detail below.

- 4.2 However, during the course of the Complaint, the Advertiser made changes to the Advertising Material referred to in paragraph 3.1(h) above on a without admissions basis.

## 5. DETERMINATION

- 5.1 In determining the Complaint, the Board has considered all the material provided by the Advertiser and Complainant. That consideration has been undertaken consistent with established principles. Amongst other things, the Board has:
  - (a) reminded itself that the test is whether conduct is misleading or deceptive or likely to mislead or deceive as a question of fact to be determined with regard to the context in which the conduct takes place and the surrounding facts and circumstances (*Taco Company of Australia Inc v Taco Bell Pty Ltd* (1982) 42 ALR 177 (**Taco Company case**)), and what a reasonable person, of the class to which the conduct was directed, reasonably understands from the conduct (*Henderson v Pioneer Homes Pty Ltd (No 2)* (1980) 43 FLR 276);
  - (b) considered the relevant Advertising Material in terms of its overall content and context. While individual words, or images in the relevant Advertising Material have been considered, the Board's view is that this should not be done in isolation, but within the totality of the relevant advertisement (*Parkdale Custom Built Furniture Pty Limited v Puxu Pty Limited* (1982) 149 CLR 191 (**Parkdale case**));
  - (c) had regard to the effect of the conduct on the relevant class of consumer, including the ordinary and reasonable members of the class (Parkdale case at 199 per Gibbs CJ) but excluding those whose reactions are extreme or fanciful (*Campomar Sociedad, Limitada v Nike International Ltd* [2000] HCA 12 at [105]). Consistent with the approach taken in the Board's Determination on 26 October 2017 in 17 ACB 2, the Board considers the relevant class of consumer is 'consumers for televisions' or persons looking to purchase a television either as a replacement for an existing television or for the first time. The Board is of the view that most of this class will

not necessarily be technologically sophisticated, but will be seeking to utilise the representations made by the Advertiser to inform a relatively significant purchasing choice. A reference to a 'Consumer' below is a reference to an ordinary reasonable member of this class (**Consumer**); and

- (d) considered whether the alleged representations caused the representee to labour under some erroneous assumption (Taco Company case at 200 per Deane and Fitzgerald JJ).

5.2 The Board has also considered the Advertising Material in the light of:

- (a) *ACCC v TPG Internet Pty Ltd* [2013] HCA 54, in which the High Court found that the 'dominant message' of TPG's advertisements was significant and that, depending on the type of advertising, many people will absorb only the general thrust of the advertisements; and

- (b) *Duracell Australia Pty Ltd v Union Carbide Australia Ltd* (1988) 14 IPR 293 at 299 where Burchett J stated:

*'In the area of comparison advertising, it has repeatedly been said that particular care is required. An unfair comparison may, quite simply, because it is unfair, be misleading. It may mislead a consumer into thinking there is a basis for a choice where, in truth, there is not; or that a choice may be made on grounds which are not truly valid ...'*

See also *Makita (Aust) Pty Ltd v Black & Decker (Australasia) Pty Ltd* (1990) 18 IPR 270 and *State Government Insurance Commission v JM Insurance Pty Ltd* (1984) ATPR 40-465.

5.3 Also relevant to this Complaint is the approach that the Courts take to puffery in advertising. While it has been said that puffery 'is part of the ordinary stuff of commerce' (*General Newspapers Pty Ltd v Telstra Corporation* (1993) 45 FCR 164 at 178 per Davies and Einfield JJ (**General Newspapers case**)), whether or not a representation amounts to mere puffery will be considered in light of the ordinary incidents and character of commercial behaviour (*Specsavers Pty Ltd v Luxottica Retail Australia Pty Ltd* [2013] FCA 648 at [49] per Griffiths J; *General Newspapers case* at 178 per Davies and Einfield JJ and *ACCC v Henry Kaye and National Investment Institute Pty Ltd* [2004] FCA 1363 at [122] per Kenny J) and in the full context in which it is made. A representation may amount to mere puffery where 'it is incapable of being proved to be correct or incorrect' (*Pappas v Soulac Pty Ltd* (1983) 50 ALR 231 at 238 per Fisher J). However, a representation will not generally be regarded as puffery where there is a definitive statement as to a characteristic or consequence of the claim (see *Jainran Pty Ltd v Boyana* [2008] NSWSC 468 at [117] per Bryson AJ; *Gillette Australia Pty Ltd v Energizer Australia Pty Ltd* [2005] FCA 1647 at [25] per Merkel J and *Procter & Gamble Australia Pty Ltd v Energizer Australia Pty Ltd* [2011] FCA 1347 at [168] to [172] per Bennett J).

5.4 Lastly, the Board also notes that under the Code it is the Advertiser's responsibility to show it has a reasonable basis for making its advertising claims. In relation to the question as to whether or not a representation is false, we have proceeded on the basis of reviewing the response and any substantiation provided by the Advertiser and assessing whether or not that material objectively provides a 'reasonable basis' for the claim made.

5.5 Each of the nine representations is considered in turn below.

**(a) The Perfect Black Representation**

5.6 The Complainant relies on examples of the Advertiser's use of the term 'perfect black' in online and digital advertising, billboard and outdoor advertising, POS material, catalogues and brochures and third party media. In those advertisements, 'perfect black' is used in a number of different ways, namely:

- (a) as a headline such as 'Perfect Black.', 'Why Perfect Black', 'Experience Perfect Black', 'Perfect Black. Explosive Colour'; and
- (b) in describing the attributes of its OLED TVs e.g. '... producing perfect black on the LG OLED TV'; '... perfect-black through Active HDR...'; 'LG OLED TVs' perfect-black screen and self-lighting pixels provide optimum picture performance...'; 'OLED Display with no backlight – Perfect Black', 'With a unique level of realism, OLED's perfect black propels amazingly vivid colours'; 'Each model generates perfect black by using self-lighting rather than back-lit pixels...'; 'With no backlight, no other TV can beat the perfect black of OLED'; and 'With self-lighting pixels, LG C7 OLED TVs feature a perfect black screen ...'.

5.7 In some iterations of the Advertising Materials, there is reference to 'the pure black of OLED'.

5.8 The Complainant submits that the Perfect Black Representations are false and misleading because:

- (a) LG's OLED TVs cannot literally or technically produce 'perfect' black. The evidence indicated that LG's OLED TVs produce (at their lowest level) 0.0005 nits of brightness (Complaint at paragraph 17). (As the Board understands it, a 'nit' is a unit of measurement of the intensity of visible light);
- (b) it suggests, contrary to the fact, that the black achieved by LG's OLED TVs is beyond theoretical and practical improvement i.e. that the blackness achieved by LG OLED TVs cannot be improved in future;
- (c) a reasonable consumer would erroneously understand from the Advertiser's use of 'perfect black' that:
  - (i) LG OLED TVs produced the 'blackest' black;
  - (ii) there is no other TV that can rival the black produced by LG's OLED TVs;
  - (iii) the black colour performance cannot be improved on by any TV manufacturer; and
  - (iv) they will be able to experience the 'perfect black' of LG OLED TVs in ordinary viewing conditions. However, any 'perfect black' would only be perceptible in pitch black rooms, which does not reflect conditions in most Australian living rooms during afternoons and evening hours.

- 5.9 The Advertiser claims that its reference to 'perfect black' in the Advertising Materials refers to the fact that its OLED TVs uses technology that allows each of the pixels in a television panel to turn on and off individually. In particular, OLED TVs do not use a backlight, which can lead to 'backlight bleeding' that diminishes a TV's ability to produce darker shades. Because the pixels in an OLED TV can turn off completely with no backlight, they can reproduce the black area in an image. The Advertiser contends that 0.0005 nits is the lowest reading that a spectrometer can record when measuring luminous intensity and in any event, is for all intents and purposes, equivalent to zero.
- 5.10 The Complainant pressed its claims in its Reply and maintaining in particular, that the representation was one of absolute, technical perfection which could not be substantiated. In its Further Response, the Advertiser advanced the view that a claim can only be substantiated to the extent permitted by available methods of testing.
- 5.11 'Perfect black' is a prominent feature of the Advertiser's advertising of its OLED TVs. Used in isolation, the term would in all likelihood be considered puffery by a Consumer. After all, nothing is perfect, and to the extent someone believes something is perfect, their belief is subjective.
- 5.12 However, in many examples provided by the Complainant (with the exception of that in Annexure A1(a)), the Advertiser has explicitly linked the 'perfect black' claim to a characteristic of the OLED TV, usually the use of image technology that does not require a back light. Consequently, while the Board considers that the use of that term does involve a degree of hyperbole, it does not consider that the Complainant's allegations can be answered on the basis that 'perfect black' is mere puff or meaningless. Consistent with this approach, the Advertiser's primary submission was that the claim was substantiated.
- 5.13 However, the Complainant approaches the Perfect Black Representation on the basis that it would be understood by a Consumer as referring to a theoretical absolute. The word 'perfect' has other meanings, and in the Board's view, a Consumer would not approach or perceive the use of 'perfect black' in such an extreme way. No one would expect an electronic product to be 'perfect' in the sense that it can 'literally or technically produce 'perfect black'', or that it is 'beyond practical improvement'. Consequently, it is the Board's view that the representations in the manner contended by the Complainant and referred to in paragraph 5.8 above do not arise from the relevant Advertising Material.
- 5.14 While, as stated above, a Consumer would approach the term on the basis that there was a degree of hyperbole and not in absolute terms, it nonetheless conveys a strong message to Consumers that the black on the OLED TV is, in practical terms, pure. In this case, as noted above, when read in context, the term is generally being used to describe a consequence of the pixel technology used in the OLED TVs. It would be taken by a Consumer as representing that, by reason of that technology, there is a purity to the black that is produced by the those TVs and that it was, in practical terms, as good as it gets.
- 5.15 It is not in issue that LG's OLED TVs emit light at (as the Advertiser contends) 0.0005 nits. The Board considers that this sufficiently supports the representation of 'perfect black'. To the extent notional amounts of light are emitted, they are undetectable in practical terms and consequently for all intents and purposes black. There was no evidence of a TV on the market that produced a better black than LG's OLED TVs. The Board considers that this aspect of the Advertising Materials is sufficiently substantiated.

5.16 Accordingly, the Board has determined that the Perfect Black Representation is substantiated.

**(b) the Superior Image Representations**

5.17 LG's online and digital advertising included the following:

'How does a LG OLED TV screen create a more realistic picture?

LCD/LED TVs produce colour and images using a backlight and filter mechanism. This technology struggles to show consistent colour due to the always on LED backlight and associated 'backlight bleed'. OLED TV creates superior images by using self-lighting pixels. By eliminating the backlight and replacing it with pixels that switch on and off individually, OLED screens are able to produce perfect black and display over a billion colours. You'll also see high contrast and colour range when viewed from wide viewing angles too.'

5.18 The Complaint alleges that:

- (a) the ordinary meaning of the word 'superior' is 'of higher grade or quality' and it is an absolute term that conveys that the subject it describes is better than its counterparts;
- (b) the Advertiser is representing that its OLED TVs create superior images to those created by all LCD/LED TVs, including the Complainant's QLED TVs. Put another way, LG's Superior Image Representations are likely to lead a consumer to believe that LG's OLED TVs, by virtue of their 'self-lighting pixels', create images that are superior in all respects to the images created by all LCD/LED TVs, when this is not the case. LG's claimed superiority is not qualified or limited in any way to any particular attribute - rather, the claim is broad, all-encompassing and suggests that LG's OLED TVs 'create superior images'. In fact, the Complainant's QLED TVs offer demonstrable performance benefits with respect to several characteristics which contribute to the overall picture quality of a television display, including for example, more efficient luminescence than OLED; and
- (c) the representation that OLED screens are able to produce perfect black and display over a billion colours by eliminating the backlight, is inaccurate because the number of colours that a TV is able to produce is a direct result of whether it has an 8 bit or a 10 bit panel. The Complainant's QLED TV for instance, which does not use self-lighting pixels, is similarly able to produce over a billion colours.

5.19 The Advertiser contends:

- (a) that the relevant Advertising Materials do not refer to Samsung or Samsung's QLED TVs;
- (b) the term 'superior' must be considered in the context in which it appears and does not give rise to a representation that its OLED TVs create images that are superior in all respects to the images created by all LCD/LED TVs. Rather, the claim is tied to the specific set of picture quality advantages enjoyed by OLED TVs;



- (c) the Complainant has read the relevant communication in a fragmented way. The statement at paragraph 5.17 does not make a representation that OLED TVs are able to display over a billion colours because of its self-lighting pixels. Rather, the two attributes are in addition to each other; and
  - (d) in the event that the Superior Image Representations are construed as a superiority claim, they can be substantiated.
- 5.20 The Complainant pressed its claims in its Reply, highlighting that the proper construction of the claim referred to in paragraph 5.19(c) is that both attributes are related to the pixels in the OLED screen. The Advertiser maintained its position in its Further Response but noted that even if the foregoing construction put forward by the Complainant was accepted, it was capable of being substantiated.
- 5.21 'Superior' is often used as a synonym for better. The ordinary meaning of 'superior' is that it is of a 'higher grade or quality' (see Macquarie Dictionary). The Board disagrees with the Complainant that it is an absolute term that conveys that LG's OLED TVs are better than all counterparts, or that they create images that are superior in all respects to the images created by all LCD/LED TVs. A Consumer would understand from the statement set out in paragraph 5.17 above that the images produced on OLED TVs by the use of self-lighting pixels are the best or amongst the best available at the time of the advertisement. The fact that the Complainant's QLED TVs may offer demonstrable performance benefits with respect to several attributes to the overall picture quality of a television does not render the use of 'superior images' false or misleading.
- 5.22 It is not in dispute that LG OLED TVs display over a billion colours. The fact that this characteristic results from the use of a 10-bit panel, rather than the elimination of a backlight and use of pixels that switch on and off, is unlikely to lead a Consumer into error.
- 5.23 Accordingly, the Board has determined that the Superior Image Representations are substantiated.

**(c) 1 Billion Colours Comparative Representations**

- 5.24 The representation is alleged to arise from an image (**Image**) in the Advertiser's online and digital advertising, which seeks to compare the picture quality and number of colours produced by an LG OLED TV and a 'Conventional TV', and represents that LG's OLED TVs are 10-bit and can produce over one billion colours while all other 'conventional TVs' are 8-bit and can produce only 17 million colours.
- 5.25 The Complainant alleges that the comparison fails to specify what is meant by 'Conventional TV'. Therefore, a reasonable consumer is likely to believe, based on the Image, that:
- (a) 'Conventional TV' captures all other TVs, including the Complainant's QLED TVs, when in fact the Complainant's QLED TVs are also composed of a 10-bit panel and can produce more than one billion colours;
  - (b) LG's OLED TVs offer significantly more colours than all 'Conventional TVs', including the Complainant's QLED TVs, when that is not the case because the Complainant's QLED TVs are also capable of offering over one billion colours;

- (c) the Image shows the actual difference in picture / colour quality between LG's OLED TVs and 'Conventional TVs', with the former offering a significantly better picture quality, including more vibrant colours, than all other 'Conventional TVs', including the Complainant's QLED TVs, when this is not the case; and
- (d) the 1 Billion Colours Comparative Representations are likely to lead a reasonable consumer to erroneously believe that LG OLED TVs are the only 10-bit TVs on the market and the only TVs capable of producing one billion colours, therefore offering a significantly better colour display than all other TVs including the Complainant's QLED TVs.

5.26 The Advertiser contends:

- (a) that the Complainant's allegations are overbroad;
- (b) a Consumer would not understand the term 'Conventional TV' to capture 'all other' TVs, including Samsung's QLED TVs, but rather to refer to common, traditional or ordinary TVs that are 8-bit. In particular, the term 'conventional' when applied to electronic goods is typically associated with that which came before the most recent product;
- (c) it is unreasonable to assume that a Consumer would consider the term 'Conventional TVs' to capture the Complainant's QLED range in light of the promotion of those goods as a new and innovative display technology; and
- (d) the 1 Billion Colours Comparative Representations can otherwise be fully substantiated.

5.27 The Complainant pressed its claims in its Reply. The Advertiser also maintained its position in its Further Response.

5.28 There is no dispute that attribution of one billion colours to 10-bit and 17 million colours to 8-bit TVs is correct. The Board considers that the reference to 8-bit under 'Conventional TV' effectively qualifies or explains what the Advertiser is classifying as a 'Conventional TV'.

5.29 The controversy arises from the Complainant's contention that the Image represents that QLED TVs are, or that Consumers would consider them to be 'Conventional TVs'. In this regard, the advertisement does not identify the QLED as the object of any comparison. This means the Consumer will be expected to proceed on the basis that the QLED is a 'Conventional TV'. The Board agrees with the Advertiser's submission that the term 'Conventional TV' refers to common, traditional or ordinary TVs that are 8-bit. In this context, the advertisement does not represent that QLED TVs are either conventional or 8-bit, or that the only 'non-conventional TV' is the LG OLED. The Complainant is free to, and does in fact advertise, its QLED TV as being 10-bit and capable of producing one billion colours.

5.30 Accordingly, the Board has determined that the 1 Billion Colours Comparative Representations are substantiated.

**(d) the Infinite Contrast Representations**

- 5.31 The Advertiser's online and digital advertising includes an image entitled 'Achieving infinite contrast with Active HDR'. It includes a scale showing 'OLED 25 stops' (in red) and LCD HDR 14 stops' (in grey). The Advertiser admits that the graphic contains a typographical error – the words in red should read 'OLED 21 Stops' and not 25. As can be seen below, the explanatory words in this advertisement actually refer to '21 stops'.
- 5.32 The graphic is accompanied by explanatory words which state:
- 'Achieving infinite contrast with Active HDR
- Infinite Contrast is essential for displaying HDR (High Dynamic Range) contents. It is achieved by exerting greater control over brightness. The infinite contrast range of an OLED TV is ideal for HDR content. OLED's TV's infinite contrast is superior to LED/LCD TV in representing the darker parts of an image. OLED TV can reproduce nearly 21 stops of brightness which is much wider than LED/LCD TVs. The wider Dynamic Range of the OLED TV makes it possible to see dark colour detail – which greatly increases the realism of what viewers watch, allowing you to fully experience the benefit of HDR content.
- Learn more about Active HDR with Dolby Vision'
- 5.33 The Complainant claims that the following representations arise from this Advertising Material:
- (a) televisions are measured on a scale of 0.0005 nits to 1,000 nits;
  - (b) LG's OLED TVs can reproduce as little as ~0.0005 nits;
  - (c) a scale of ~0.0005 nits to ~1,000 nits represents 'infinite contrast';
  - (d) no LCD HDR TV can reproduce less than 0.063 nits or more than ~800 nits;
  - (e) LCD HDR televisions can reproduce no more than 14 stops of brightness;
  - (f) LG's OLED TVs can reproduce 25 stops of brightness; and
  - (g) (from the text above the graphic), LG OLED TVs have an 'infinite contrast' range.
- 5.34 The Complainant submits that these Infinite Contrast Representations are inaccurate and misleading because:
- (a) televisions are not measured on a scale of 0.0005 nits to 1,000 nits. These values have been selected by the Advertiser to portray its OLED TVs more favourably on the darkness spectrum, but which are outperformed by Samsung's QLED TVs on the brightness spectrum;
  - (b) in circumstances where the ordinary meaning of 'infinite' is 'limitless or endless' and where it is possible to achieve higher brightness and a theoretically better contrast, a scale of ~0.0005 nits to ~1,000 nits does not represent 'infinite contrast';

- (c) a claim to 'infinite contrast range' is inaccurate because LG's OLED TVs, which cannot produce more than ~800 nits of brightness (compared to the Complainants QLED TV which can produce up to ~1,500 to ~2,000 nits at peak), cannot therefore generate a 'limitless or endless' contrast range;
- (d) LCD HDR TVs in the market can reproduce more than 14 stops of brightness; and
- (e) LG's OLED TVs cannot reproduce 25 stops of brightness as claimed and therefore overstates the extent to which it offers a better contrast than LCD HDR TVs.

5.35 The Advertiser relevantly contends:

- (a) that it is well-accepted that LG's OLED TVs have an infinite contrast ratio because the blacks produced by the self-emitting pixels are absolute compared to the whites. That is, its use of the word 'infinite' is justified because at the black end, the OLED's pixels turn off and become completely black measured at 0.0005 nits which is effectively zero (or 'absolute') compared to the whites (paragraph 5.3 of its Response).
- (b) that a Ratings review supports its position (Annexure 9 to its Response) such that the explanatory words emphasise that it is the darkness achieved by an LG OLED TV which produces the infinite contrast. It does not assert that its OLED TVs achieve greater brightness than LCD/LED TVs;
- (c) the measurements referred to in paragraph 5.34(a) above were not arbitrary, but were based on measurements of brightness using the most sophisticated techniques possible;
- (d) the 'infinite contrast ratio' is not a function of brightness, but rather a function of the ability of OLED pixels to turn off completely and emit no light;
- (e) the vast majority of LED/LCD TVs cannot reproduce more than 14 stops of brightness, and to the extent that a single model in the market (being the Complainant's Samsung Q9) is capable of achieving 15 stops on certain measurements, it represents 0.7% of available LED/LCD TVs in the market and is inconsequential such that a Consumer is unlikely to be misled or deceived; and
- (f) the Infinite Contrast Representation can therefore be substantiated.

5.36 The Complainant pressed its claims in its Reply and further submitted that the copy falsely conveyed to Consumers that LG's OLED TVs have an infinite contrast range, as opposed to an infinite contrast ratio (paragraph 80). In its Further Response, the Advertiser submitted that omitting the term 'ratio' does not render the advertisement misleading.

5.37 The Board considers that the graphic cannot be divorced from the explanatory words, which are reasonably prominent. In the Board's view, the advertisement read as a whole gives rise to the representation that OLED TVs have 'infinite contrast' for the reasons given by the Advertiser in the explanatory words. A Consumer will see the graphic as illustrative only and not representing that the numbers and scales are applicable to all TVs and absolute. Consequently, the Board does not consider that the representations alleged in paragraphs

- 5.33(a), 5.33(d) and 5.33(e) arise. That is, those alleged representations are not meanings that a Consumer would discern from the Advertising Material.
- 5.38 In relation to the representation alleged in paragraph 5.33(b), the Board considers that that representation is substantiated (see discussion in relation to the Perfect Black Representation above).
- 5.39 In relation to the representations alleged in paragraphs 5.33(c) and 5.33(g), in the context of the advertisement as a whole, the word 'infinite' is unlikely to be taken literally by the Consumer to mean 'limitless or endless', particularly given the graphic provides a range of that contrast. In that light, a Consumer would view it as somewhat hyperbolic and that LG is effectively representing an enormous contrast range in comparison to LCD/LED TVs on the market. In this context, the measurable level of black (0.0005 nits) means that the Advertiser can substantiate the representation as a ratio given the mathematical outcome of dividing by something that approaches zero. As discussed in paragraph 5.10 above, the Board accepts that the claim to 'perfect black' does not contravene the Code at least in the forms put before the Board.
- 5.40 The complaint that the Advertiser should not use the word 'range' (as opposed to 'ratio') is a distinction that is unlikely to be material or understandable to the Consumer. It is to be noted that the heading on the graphic and the opening words of the text on the graphic use the term 'Infinite Contrast'. It is only in the second paragraph that 'infinite contrast range' is used. That mistake should be corrected, but given the context in which it is used and the hyperbolic nature of the claim, the Board does not consider it to contravene the Code.
- 5.41 To the extent the Complainant relies on the characteristics of its QLED TVs to support its submission that the comparison is unfair:
- (a) the advertisement does not identify the QLED as the object of any comparison. This means the Consumer will be expected to assume that the QLED is an LCD/LED TV, and not something that can be distinguished from such TVs as per OLED TVs;
  - (b) it does not appear to be in dispute that QLED TVs are not able to achieve the level of darkness of the OLED and rather that the Complainant argues QLED achieves better brightness. However, as outlined above, the wording in the subject advertisement emphasises that the OLED 'infinite contrast' is a function of its performance in respect of darkness, rather than brightness;
  - (c) although the Complainant says its QLED outperforms OLED in displaying brighter aspects of an image, it provides no independent evidence about that.
- 5.42 Lastly, in relation to the representation in paragraph 5.33(f) above, as mentioned above, the Advertiser admitted the representation was a typographical error and which was subsequently corrected on 20 October 2017. As to the typographical error in the red line of the graphic where it states '25 stops' when '21 stops' was intended, at paragraph 89 of its Reply, the Complainant submits that the Board should rule that '...this error amounts to a misleading claim ...' The Advertiser states that the error was corrected as of 20 October 2017 (paragraph 5.12 of its Response). Given that the explanatory words stated it was 'nearly 21 stops' (and that is agreed as accurate), and if the stops on the graphic are counted, they amount to 21, this error would have been confusing to the Consumer but not

likely to mislead or deceive. It was nonetheless incorrect. The Board notes the error and the fact that it was corrected on 20 October 2017.

- 5.43 Following the correction in relation to '25 stops', the Board has determined that the Infinite Contrast Representations either do not arise or are substantiated.

**(e) The Composition and Colour Filter Representations**

- 5.44 This aspect of the Complaint relates to an online and digital advertisement, namely a webpage comparing LCD/LED TVs and LG OLED TVs by reference to images purporting to show various panels or layers of componentry for the TVs being compared. In particular, for the LCD/LED TV, over six 'layers' are shown, namely, the Backlight Unit, the Polarizer, the TFT Glass, the Liquid Crystal, the Colour filter and the Polarizer. For the LG OLED TV, three 'layers' are shown, namely, the OLED Panel and the Colour Refiner on TFT.

- 5.45 There is a caption to each of the images in this advertisement:

- (a) above the LCD/LED image the words 'LCD/LED TV with imperfect light control due to its backlight' appear; and
- (b) above the LG OLED TV image the words 'LG OLED TV that perfectly controls the light' appear.

- 5.46 The following words appear directly above that image on the webpage on which it is displayed:

'How does a LG OLED TV screen create a more realistic picture?  
LCD/LED TVs produce colour and images using a backlight and filter mechanism. The technology struggles to show consistent colour due to the always on LED light backlight and associated 'backlight bleed'. OLED technology creates superior images using self-lighting pixels. By eliminating the backlight and replacing it with pixels that switch on and off individually OLED screens are able to produce perfect black and display over a billion colours. You'll also see high contrast and colour range when viewed from wide viewing angles too'.

- 5.47 The Complainant submits that by reason of this material the Advertiser represents that:

- (a) its OLED TVs 'perfectly control the light', while LCD/LED TVs have 'imperfect light control' due to their backlight;
- (b) its LG's OLED TVs produce a significantly more vibrant picture quality with higher contrast;
- (c) the screens of LG's OLED TVs do not have a colour filter and consist only of an OLED Panel and a 'Colour Reiner [sic] on TFT'; and
- (d) LG's OLED TVs have far fewer components than, and are therefore superior to, LCD/LED TVs.

- 5.48 The Complainant further submits that the images do not accurately represent the difference in picture quality or technical complexity between Samsung's QLED TVs (which are LCD/LED TVs) and LG OLED TVs. They suggest to consumers that LG's OLED TVs can deliver a

significantly more vibrant picture quality (courtesy of superior and/or enhanced technology) than all LCD/LED TVs, including Samsung's QLED TVs, when this is not the case. The representation regarding the composition of LG's OLED TV screens omits several layers in the screens of LG's OLED TVs, namely:

- (a) a layer of glass at the front and a glass (or metal sheet) in the back;
- (b) a polarizer to prevent light reflection;
- (c) a colour filter because their light source only produces white light; and
- (d) the 'Colour Re[f]iner on TFT' is in fact composed of two layers, an Oxide-based TFT (Thin Film Transistor) base panel and the 'colour refiner', each of which performs different roles - the TFT controls pixels on and off, and the colour filter produces RGB colours.

5.49 The Complainant submits that the images are likely to mislead consumers regarding the composition of LG's OLED TV screens, leading them to erroneously believe that:

- (a) LG's OLED TVs are 'simpler' and have fewer components than LCD/LED TV screens, and are therefore superior in their composition or performance, including their ability to control the light;
- (b) LG's OLED TV screens are less likely to break down and/or are easier to repair or replace; and
- (c) picture quality is directly related to the number of layers that control light in a screen (in circumstances where this is not the only feature relevant to image quality).

5.50 The Advertiser submits that the image complained of must be interpreted in context and in particular with the words that appear on the webpages in which it is contained. The image is intended to illustrate the key point made in that related body, namely that OLED TVs produce perfect black, do not suffer from backlight leakage (due the absence of a backlight) and have a high contrast colour range 'when viewed by wide viewing angles'. The function of this particular advertisement is to draw attention to the features that the Advertiser wishes to promote.

5.51 The Complainant pressed its claims in its Reply, and the Advertiser similarly maintained its position in the Further Response.

5.52 In relation to the representations in paragraphs 5.47(a) and 5.47(b) above, for the reasons given in relation to the Perfect Black Representation and the Infinite Contrast Representations above, the Board considers that these representations are substantiated. In particular, the control of the light is referable to the same technology that gives rise to the blackness promoted by the Advertiser.

5.53 In relation to the representation alleged in paragraph 5.47(c), although not the dominant message, the Board considers that this representation arises. The advertisement appears as the second 'part' of a website for LG OLED TVs where the first 'part' is entitled 'OLED TV – A Revolution in Design'. In this context, a representation of fewer layers could be considered

part of that design revolution. In this case, by explicitly calling out particular components in an LCD/LED TV in an express comparison to an OLED TV, it was unfair of the Advertiser to omit those same components from the OLED TV where they were present. This created an inapt and consequently misleading comparison in terms of what components are present in the OLED. The Board considers it likely to mislead. Further or alternatively, it is a contravention of section 29(1)(a) of the ACL.

- 5.54 However, the dominant message of this advertisement is clearly related to conveying to the Consumer the claimed deficiencies of an LCD/LED due to the fact it has a backlight as opposed to the claimed optimal attributes of an OLED, which does not have a backlight. In the Board's view, the Consumer would conclude that the advertisement as a whole means that the OLED can deliver superior images (to LCD/LED TVs) by using self-lighting pixels and not having a backlight. While a Consumer may conclude that OLED TVs have fewer layers and be attracted to that simplicity, such a Consumer would not conclude, from reading the advertisement, that it was the lesser number of components (regardless of whether or not that was the case) that leads to the superior images of OLED TVs in this context.
- 5.55 The Board does not consider that the representations alleged by the Complainant in paragraphs 5.47(d) and 5.49 arise from this Advertising Material. It would be a strained and unnatural interpretation of the advertisement to conclude it was conveying to the Consumer that the allegedly lesser number of components led to a better image, or that that LG OLED's are superior in their composition or performance, its screens are less likely to break down or are easier to repair or replace, or that that picture quality is referable to the number of layers controlling light in a screen. The words clearly relate that outcome to the lack of a backlight in the OLED TV, which is the dominant message. On that basis, the question of substantiation of the identified representations do not arise nor does the question of whether a Consumer would be misled.
- 5.56 Further, the advertisement does not identify the Complainant's QLED as the object of any comparison. This means the Consumer will be expected to know that the QLED is a LCD/LED TV and not something different to arrive at, from the advertisement, any adverse conclusion about QLED's attributes as to picture quality or componentry. It does not appear to be in dispute that QLED's have a backlight. The Board does not consider that a proper interpretation of the advertisement gives rise to any false disparagement of a QLED TV. In its Reply at paragraph 107, the Complainant says that the Advertiser has not responded to its claim that LG OLEDs produce more vibrant picture quality than *all* LCD/LED TVs. The Board agrees with the Advertiser (paragraph 6.8 of its Further Response) that this representation does not fairly arise from the advertisement.
- 5.57 The Board has determined that the complaint should be upheld in relation to the representation in paragraph 5.47(c).

**(f) The Perfect Image from any Angle Representations**

- 5.58 In certain of its online and digital advertising, the Advertiser included the following statement:
- 'A perfect image from any angle provides a wider view of life'.
- 5.59 The Complainant alleges that this claim consists of two representations that are unsubstantiated and otherwise false:



- (a) that LG's OLED TVs produce images that are 'perfect'; and
  - (b) that LG's OLED TVs produce a 'perfect image from any angle'.
- 5.60 The Complainant's submissions on the first representation echo its submissions on 'perfect black' discussed above. That is, by representing that the image is 'perfect', the Advertiser 'is making an absolute claim about the image - that the image is better than can be produced by all other TVs on the market, and is incapable of being improved upon, when this is not the case.'
- 5.61 On the second representation, the Complainant submits that the claim 'perfect image from any angle' suggests that LG's OLED TVs produce images that are perfect, when viewed from every angle. This representation is false because there is a noticeable shift in colour when an OLED TV is viewed at an angle, and this would clearly be detrimental to the quality of an image even if it is 'perfect' when viewed from the ideal, centred position.
- 5.62 Further, the Complainant relies on an independent review of LG's OLED TVs by 'Rtings' in which the reviewer identified a marked and undesirable colour shift in the image quality, even when viewed in moderate angles (see Annexure V to the Complaint).
- 5.63 In response, the Advertiser submits that:
- (a) the statement should be viewed as a whole and in the context of the other material on the webpages in which it is contained;
  - (b) a Consumer would understand that the representation is mere puffery and would not be taken literally. In this regard it cited findings by the counterpart to the Board in the United States, the National Advertising Division, that the analogous claim 'Picture Perfect 3D. At any angle' was permissible puffery (*LG Electronics USA, Inc.*, Case #5415 at 19 (12 Jan 2012); *LG Electronics USA, Inc.*, Case #5416 at 29-30 (12 Jan 2012));
  - (c) a consideration of the pages as a whole makes clear that the representation relates to principles and design philosophy underlying LG's OLED TVs and contain limited technical claims or specifications; and
  - (d) in any event, the claim was substantiated by a review in a publication known as 'Flatpanels', which stated '[o]ne of OLED's advantages over LCD is perfect viewing angles – more or less – which combined with deep blacks and high brightness ensure that you can watch TV from basically any angle. The picture looks good even from extreme angles and as mentioned earlier the magenta tinge that was visible on last year's E6 model has been reduced so drastically on the 2017-generation panel that color shifting is truly minimal.'
- 5.64 The Complainant pressed its claims in its Reply, and the Advertiser similarly maintained its position in the Further Response.
- 5.65 The Board agrees that the statement set out in paragraph 5.58 should be read in context, namely, the other content on the webpages on which it is contained. The Board also agrees that the use of the word 'perfect' in this context would not be taken literally by a Consumer or be taken to be making an absolute claim in the sense contended by the Complainant (see

discussion in relation to 'perfect black' above). Nonetheless it conveys a strong message to Consumers that the images are, in practical terms, flawless and 'as good as it gets', and that such images can be enjoyed from any angle.

- 5.66 As stated by the Complainant in its Reply, with which the Board agrees, the advertisement represents to Consumers that the high quality viewing experience will not deteriorate when the LG OLED TV is viewed from different angles.
- 5.67 Such a representation was not substantiated by the Advertiser and indeed, as set out in paragraph 5.62, there was evidence to the contrary. In particular, the publisher relied upon by the Complainant (Rtings) was relied upon by the Advertiser in other contexts. To the extent the Advertiser relied on a different review to substantiate the claim (see paragraph 5.63(d) above), it was equivocal and acknowledges that there is image degradation, at least to some extent, when the TV is viewed from certain angles.
- 5.68 Accordingly, the Board considers that there has been a breach by the Advertiser in relation to sections 1.1 and 1.2 of the Code.

**(g) The Premium Video On Demand Content Representations**

- 5.69 This claimed representation arises from the Advertisers online and digital advertising depicting a screen divided into three screenshots by reference to 'Dolby Vision Premium VOD', 'HDR10 VOD, Blu-ray, Disc, Game' and 'HLG Broadcast' respectively. Immediately above the image are the words 'LG OLED TV supports the premium HDR, Dolby Vision™ favoured by many of the world's most respected movie directors, as well as other high-end HDR formats such as HDR10.'
- 5.70 To summarise the explanation given by the Advertiser, which does not seem to be in dispute, HDR (an acronym for High Dynamic Range) refers to, amongst other things, the ability of a TV to display images with certain contrast characteristics. Dolby Vision and DHR10 are HDR formats for displaying video content. However, Dolby vision places an additional layer of information on top of a core HDR10 video signal containing frame-by-frame instructions to the TV that facilitates its ability to present images as they were intended to be viewed.
- 5.71 The Complainant alleges that:
- (a) the image (and adjacent descriptions of Dolby Vision as 'Premium VOD', the placement of Dolby Vision above HDR10 and HLG, and the use of different screen shots for Dolby Vision, HDR10 and HLG) suggests that there is additional 'premium' content available on a Dolby Vision-enabled TV that is not available on TVs that support only HDR10 (ie. that do not support Dolby Vision). This representation is false because all Dolby Vision format content is currently also available in HDR10 format, and can be viewed on TVs that support only HDR10 (and not Dolby Vision); and
  - (b) a Consumer is likely to understand from the Premium Video on Demand Content Representations, that 'premium VOD' content is different from 'VOD' content, that 'Premium VOD' content is available for viewing, and that it can only be viewed on TVs that support Dolby Vision format. As a result, a Consumer is likely to be misled into believing that they can only view 'premium VOD' content on Dolby Vision-

enabled LG OLED TVs and not on other TVs that support HDR10, when this is not the case. The Complainant contends that such misrepresentations about the ability to access a broader range of content (including 'premium' content) is likely to influence a reasonable consumer's purchasing decision.

5.72 The Advertiser submits that:

- (a) Dolby Vision HDR is a 'premium' format (compared to HDR10) and provides the viewer of a Dolby Vision enabled TV with a different and superior experience compared to viewing that content in HDR10. In that sense, 'premium VOD' content is different from VOD content in that viewing VOD content on Dolby Vision is tantamount to viewing that content on the most advanced, premium HDR format; and
- (b) the reference to 'Premium VOD' when considered in the context of the advertisement is clearly tied to format rather than content availability.

5.73 The Complainant pressed its claims in its Reply, and the Advertiser similarly maintained its position in the Further Response.

5.74 While there is a degree of ambiguity in the use of the term 'Premium VOD' in this particular Advertising Material, the Board does not consider, on the balance or probabilities, that it represents to Consumers that there is a line of 'Premium VOD' content available. There is nothing in this particular Advertising Material that suggests that such content exists. The other text on the relevant webpage supports the view that Dolby Vision is a feature of the LG OLED TV, which provides 'premium' and better images than HDR10, which is substantiated based on the Advertiser's submissions.

5.75 Accordingly, the Board considers that the Premium Video on Demand Content Representation is substantiated.

#### **(h) The Nano Cell™ Technology Representations**

5.76 This claimed representation arises from the Advertiser's online and digital advertising depicting an image entitled 'Colour Enhancement in LCD/LED Display'.

5.77 The Claimant submits that it purports to show the evolution of TVs and makes representations that:

- (a) LG's LCD/LED TVs with 'Nano Cell™' technology are an advancement on LCD /LED TVs with Quantum Dot Technology (including Samsung's QLED TVs), offering enhanced colour; and
- (b) LG's LCD/LED TVs with 'Nano Cell™' technology offer 'improved colour purity' compared to LCD/LED TVs with Quantum Dot Technology (including Samsung's QLED TVs).

5.78 In its Response, the Advertiser volunteered, on a 'without admissions' basis, to remove the words 'improved colour purity' and amend the heading 'Colour Enhancement in LCD/LED Display' to 'Timeline of LCD/LED Displays' from the piece of Advertising Material in issue.

This modification took effect on 19 October 2017 and consequently, the advertisement in the form complained of was in effect discontinued.

- 5.79 The Advertiser did not make submissions in defence of the Nano Cell™ Technology Representations. No separate complaint was raised by the Complainant in relation to the modified advertisement, though it maintained that the deletion of the words 'without colour purity' did not operate as a cure for the representation pleaded at paragraph 60(a) of the Complaint. The Complainant did not address the amendment of the headline. The Board is of the view that once the changes were made, neither of the alleged representations arise. What is presented is a timeline. The fact that Nano Cell Technology is presented as arising after Quantum Dot Sheets, does not necessarily imply that it is more advanced in relation to colour.
- 5.80 Although the Complainant pressed for a determination on the original form of the advertisement notwithstanding the fact that it had been discontinued, for the reasons outlined above, the Board does not consider there to be any utility in it doing so. It notes the changes to the advertisement.

**(i) The Netflix Experience Representation**

- 5.81 The Advertiser's website includes a page that states 'Netflix Recommended TV means that LG TV's [sic] offer better performance, advance [sic] features and a better overall Netflix experience'. Directly underneath it on the webpage was a graphic setting out a series of features appurtenant to that statement.
- 5.82 Netflix's own website states that:

'A handful of Smart TVs are delivering a next generation experience, enabling faster performance, easier app access, and new features that improve Netflix and other internet TV services. We've identified these devices as Netflix Recommended TVs ... When you see the Netflix Recommended TV logo, you'll know the TV has passed a rigorous evaluation process. Each year the criteria and designations evolve to list the best new TVs for using Netflix and other internet TV services. To carry the Netflix Recommended TV logo in 2017, a Smart TV must have met at least 5 out of the 7 following criteria...'

Those criteria include those set out in the graphic. Both the Complainant and the Advertiser have TVs that are listed on Netflix's website as meeting these criteria. In the case of the Advertiser, its 4K UHD TVs with Web OS 3.5 are listed as Netflix Recommended TVs.

- 5.83 In summary, the Complainant focuses on the text set out in paragraph 5.81 above and alleges that:
- (a) the Advertiser has represented that 'Netflix Recommended TV means that LG TV's [sic] offer better performance, advance [sic] features and a better overall Netflix experience';
  - (b) the Advertiser has no basis on which to contend, Netflix Recommended or otherwise, that its TVs offer 'better performance, advance features and a better overall Netflix experience' *per se*; and

- (c) the label 'Netflix Recommended TV' does not mean that LG's TVs offer better performance, advance features and a better overall Netflix experience.
- 5.84 The Advertiser's response is that, read in context:
- (a) a Consumer would understand the representation as meaning that LG TVs (presumably those that are Netflix Recommended) offer 'better performance, advance features and a better overall Netflix experience', compared to those TVs that are not Netflix certified (and therefore do not constitute a 'Netflix Recommended TV'); and
- (b) the label 'Netflix Recommended TV' does in fact mean that the Advertiser's TVs offer better performance, advance features and better overall experience – when compared to those TVs that are not Netflix Recommended TVs.
- 5.85 The Complainant pressed its claims in its Reply, and the Advertiser similarly maintained its position in the Further Response.
- 5.86 The Board considers that the label 'Netflix Recommended TV' means that the particular TV to which that certification applies, has the requisite features to provide a better Netflix (and other internet services) experience compared to those TVs that are not Netflix Recommended TVs.
- 5.87 The Board agrees with the Advertiser that the Netflix claim must be read in the context of the webpage on which it appears. The graphic referred to in paragraph 5.81 is sufficiently prominent to come to the attention of Consumers when they read the Netflix claim. The Board also agrees with the Advertiser that when read in context, this Advertising Material conveys to Consumers that LG TVs offer 'better performance, advance features and a better overall Netflix experience', compared to those TVs that are not Netflix certified (and therefore do not constitute a 'Netflix Recommended TV'). In particular, the Board considers that a Consumer would understand the text in paragraph 5.81 as referring to the use of Netflix on that TV.
- 5.88 There is a lack of specificity in the words 'Netflix Recommended TV means that LG TV's [sic] offer better performance...' and read literally, it refers to LG TVs generally. However, the fact that certain of the Advertiser's TVs have the Netflix certification does not substantiate a claim that all of the Advertiser's TVs offer better performance, advanced features and a better overall Netflix experience compared to non-Netflix Recommended TVs. Put another way, this representation is not expressly qualified by reference to the particular TVs that are 'Netflix Recommended TVs', but rather attributes the characteristics of those TVs to all LG TVs. The Complainant did not focus on this aspect of the representation and the Advertiser has not had an opportunity to make submissions as to whether the representation holds true for the other TVs in its range.
- 5.89 In this particular instance, the Netflix Experience Representation appears as part of a webpage for a 4K UHD TV and references to that TV appear before and after the impugned statement on the relevant webpage. Although finely balanced, in this context, the Board considers it more likely than not that a Consumer would read the reference to 'that LG TV's [sic]' as being referable to the 4K UHD TV, or alternatively, as being referable to LG TVs that are Netflix Recommended TVs. The Board would nonetheless invite the Advertiser to make this aspect of its advertising clearer.

5.90 Accordingly, the Board has determined that the Netflix Experience Representation is substantiated.

**(i) Damage**

5.91 With respect to each of the alleged aspects of the Complaint referred to above, the Complainant submits that the representations are likely to influence a Consumer's purchasing decision. The Complainant expressed concern that Consumers who rely on the alleged representations will be diverted to LG's OLED TVs and away from its QLED TVs on the basis of the alleged misleading representations.

5.92 On the material available, where the Board has found that a misrepresentation was made, it is unable to determine whether they are likely to cause damage to the business or goodwill of the Complainant.

## 6. Conclusion

6.1 The Board finds that the advertising subject of the Complaint breaches sections 1.1 and 1.2 of the Code by conveying the following representations which are misleading or deceptive or likely to mislead or deceive:

(a) that the screens of LG's OLED TVs do not have a colour filter and consist only of an OLED Panel and a 'Colour Reiner [sic] on TFT'; and

(b) that LG's OLED TVs produce a 'perfect image from any angle'.

6.2 The Board is unable to determine that any breach of section 1.3 of the Code has occurred.

6.3 The Board has determined that the Complaint should not be upheld in relation to the other Advertising Materials.

## 7. Advertiser Statement

7.1 On 18 December 2017, the Advertiser was provided with a copy of the Claims Board's determination. In accordance with the Guidelines and on the basis of the Claims Board's determination, the Advertiser was requested to provide an Advertiser Statement indicating whether it would modify or discontinue the Advertising Materials in respect of the representations referred to in paragraph 6.1 of the Case Report.

7.2 On 8 January 2018, the Advertiser provided the following response:

*"LG is pleased that the Board has dismissed the majority (7 out of 9) of Samsung's complaints.*

*In relation to the two upheld complaints (without accepting the accuracy of the Board's determination in relation to those complaints and without any admission that it has contravened any relevant legislation or the Code), LG agrees to modify or discontinue those elements of the advertising material in accordance with the limited manner in which those complaints were upheld by the Board."*