



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0039-20
2. Advertiser :	Ola Cabs
3. Product :	Travel
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Jan-2020
6. DETERMINATION :	Dismissed
7. IR Recommendation:	Panel to Reconsider
8. Date of reviewed determination:	25-Mar-2020
9. Determination on review:	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts various scenes of people being dropped off and picked up by Ola Cabs and shows each side of screen shaded differently with one side representing OLA and the other side representing other ride share platforms There are then various scenarios relating to ride sharing displayed. Of particular note are:

- The opening scene of the advertisement shows a ride share vehicle, stopped outside homes in a narrow street in the middle of the road, waiting for the passengers who are two identical women (the same model) who enter the car by each rear door.
- at 13 seconds in the advertisement the vehicle containing the two women arrives at their hotel destination. The vehicle stops in an intersection which is a T-intersection and lets the women out in the middle of the intersection. The women exit on either side of the vehicle.
- at 19 seconds into the advertisement the vehicle stops just after turning a corner on a 3-street intersection and picks up a women who gets into the passenger door while another woman waits on the opposite side of the road.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:



*I was of the view that the driver committed many driving and parking offences, so to check, I sent a copy to Mr *****, who is *****Council and has been in this job for over 12 years. He replied (BEGIN EMAIL): ******

*From: [******

Sent: Friday, 11 October 2019 9:09 AM

*To: ******

Subject: RE: Local Government Enforcement

Importance: High

I recall seeing this ad on television on quite a few occasions. My initial reaction was that I noticed that there were several instances of obvious unlawful parking depicted in the ad. I would also add that these are offences that my team witness on a regular basis involving taxis and Uber drivers. It concerns me that an advertisement appears to normalise unlawful and dangerous parking.

In regards your specific question about the breaches observed I am of the view that there were at least 5 offences depicted of which the following are included :

82561 VOS 12 Stop in intersection R \$344 2 demerit points 170(1)

83423 ZPY 12 Stop within 10 metres of an intersection (no traffic lights) R \$344 2 demerit points 170(3)

83615 CKO 12 Double park R \$268 189(1)

82772 KLY 12

Not parallel park with 3 metres clear road alongside (no dividing line/strip) R \$114 208(1)

82769 KPP 12 Park so as to obstruct vehicles/pedestrians R \$114 208(1)

I am not aware of any Road Rule that prohibits or regulates the side of a vehicle that a passenger can exit.

Regards

As you can see, in NSW, several of these parking offences attract 2 Demerit Points, which goes to demonstrate the potential for harm, as seen by our legislators.

*The ad is therefore in clear breach of HEALTH AND SAFETY (SECTION 2.6)
UNSAFE PRACTICES*

Images of bike riding without helmets or not wearing a seatbelt will be contrary to prevailing community standards relating to health and safety. Similarly, advertisements depicting unsafe practices or images, such as riding down a hill in a wheelie bin, using a mobile phone while driving or apparently hiding in a chest freezer etc are unacceptable.



*This ad attempts to "legalise and normalise" the appalling illegal and dangerous driver behaviour frequently observed of taxi, Uber and Ola drivers.
For these reasons the ad should be banned from being broadcast immediately*

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We write in response to the complaint subject of this matter, case reference number 0039-20.

The TV advertisement in question (the "TVC") could be described as a comparison ad, between Ola and its biggest competitor. It shows a vehicle, a driver (actor) and passenger/s (actor/s), amongst other things.

At the outset, we advise that we disagree with and reject the complainant's categorisation of the TVC.

In relation to particular allegations of various breaches of the Road Rules, and whilst we do not intend for this response to be a discussion on specific provisions of the Road Rules, at least some of those allegations appear to be ill founded and unsubstantiated.

For example, the allegation of a breach of Road Rule 170(1) is unfounded and misleading as subrule 170(1)(b) allows a driver to stop along the continuous side of the continuing road at a T-intersection without traffic lights, which we understand was the case here.

The allegation of a breach of Road Rule 170(3) is similarly unfounded and misleading, for the similar reason, as subrule 170(3)(b) allows a driver to stop within 10 metres of a T-intersection without traffic lights if the driver stops along the continuous side of the continuing road of the T-intersection.

Leaving aside and notwithstanding any detailed analysis of the Road Rules, we reject the allegation that the TVC breaches subsection 2.6, or any other part of section 2 of the AANA Code of Ethics (the "Code") and submit that, contrary to the allegations in the complaint, the TVC is fully compliant with the Code.

The allegation that the "ad attempts to 'legalise and normalise' the appalling and dangerous driver behaviour" is, to put it mildly, unmaintainable and, in our view, not a conclusion that one could reasonably reach whilst or after watching the TVC.

Similarly, likening the mild, calm, non-controversial TVC to "riding down a hill in a wheelie bin" and "hiding in a chest freezer" is, in our view, an inappropriate and unreasonable comparison.



Having said that, we understand that you have to approach and examine all complaints seriously. Similarly, we adopted the same serious approach in relation to the production of the TVC. In order to assist you in dealing with this matter, we provide the following further information in relation to the TVC.

- 1. The TVC was filmed in Balmain, Sydney. Wallace Street for the opening shot and Birchgrove Road/Addison Street as the second location.*
- 2. The TVC shoot took place on 2 April 2019. The opening shot at Wallace Street was filmed at approximately 6:00 pm - 7:00 pm. The Birchgrove Road/Addison Street shots were filmed at approximately 9:00 pm - 11:30 pm.*
- 3. The TVC was filmed in a controlled environment.*
- 4. Council permit/licence was obtained from the Inner West Council for filming permission and road occupancy.*
- 5. We had footpath and road occupation blocked off for Wallace Street, Wallace Lane, Birchgrove Road and Addison Street.*
- 6. On set there was a location manager, as well as control crews, including safety supervisor, traffic controllers, pedestrian controllers and supervisors.*
- 7. Risk assessment and safety report was made prior to filming and distributed to the crew.*
- 8. Location agreement for showcasing The Riverview Hotel was also obtained.*

In summary, we not only disagree with the complainant's allegation that the TVC breached subsection 2.6 of the Code, but also believe that, in addition to the TVC being compliant with the Code, we have adopted and followed the best practice approach in relation to the TVC and its production. We submit that such approach was not accidental, but rather a result and reflection of our serious approach to rules, regulations and safety, amongst other things.

We have uploaded the TVC, the council permit/licence, the risk assessment and safety report and CAD slip.

We trust that the uploaded materials and the information provided in this response will be sufficient to enable you to deal with this matter. Should you require any further information, please do not hesitate to contact us.

THE DETERMINATION

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).



The Panel noted the complainant's concern that the advertisement depicts several scenes of driving behaviour which contravene traffic rules.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel considered whether the advertisement complied with Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Panel noted it has previously considered an advertisement in which a woman parked within ten metres of an intersection in case 0097-18 in which:

"The Panel considered that, regardless of whether or not the woman was parked in a manner that would give rise to a potential breach of the Australian Road Rules, the depiction was brief and unclear. In the Panel's view the mother is shown driving carefully away and the brief scene did not amount to a depiction of driving or parking in a manner that would contravene prevailing community standards on safety around schools. The Panel determined that the depiction of the car near the children's crossing was not a depiction of material that would breach prevailing community standards on health and safety."

Case 0097-18 was subsequently subject to Independent Review, with the following comments made in determination:

"In particular the Panel noted that the Independent Reviewer considered that there were a number of substantial flaws in Panel's determination. Specifically the Reviewer...Was of the view that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety..."

In the current case, the Panel noted that the vehicle is not depicted near a children's crossing or an area that children would be likely to frequent, and noted that the advertisement is set in the evening with no other moving vehicles or traffic shown. The Panel noted that the split-screen of the advertisement, depicting a scenario of the same woman entering two sides of the same car simultaneously was clearly an exaggerated depiction and would not be considered by most members of the community to be a realistic example of parking practices or be a call to action in regard to how a rideshare service would pick up a passenger.

The Panel noted that the relevant aspect of Section 2.6 of the Code relates to prevailing community standards on health and safety and noted the Independent Reviewer's comments in case 0097-18. However, the Panel considered that Section 2.6 does not require a legal test for determinations. The Panel considered that the content of an advertisement that includes the depiction of a specific action or activity



which may be in breach of a law, is not automatically a breach of the Code, as the Panel must consider the overall content, theme and messaging of an advertisement through the lens of prevailing community standards.

The Panel addressed each of the complainant's identified breaches of the road rules.

The Panel noted that the complainant identified "Double park 189(1)".

The Panel considered that this scene occurred at 2 seconds into the advertisement, and depicts the vehicle stopping in a street that appears to be one-way.

The Panel noted Section 189 of the Australian Road Rules states:

"189 Double parking

(1) A driver must not stop on a road if to do so would put any part of the vehicle that he or she is driving between a vehicle that is parked on the road and the centre of the road.

(2) A driver does not contravene this rule by parking on the side of the road, or in a median strip parking area, in accordance with rule 210".

The Panel noted that the split-screen of the advertisement, depicting two simultaneous scenarios was clearly an exaggerated and metaphoric depiction as it featured the same woman get in the same vehicle from two different sides at the same time.

The Panel considered that the advertisement was clearly in the context of a comparison between Ola Cabs and other rideshare services. The Panel considered that most people viewing the advertisement would recognise the unrealistic and exaggerated nature of the advertisement in comparing the same person entering two sides of the same vehicle simultaneously and most members of the community would not consider the advertisement to be prompting or encouraging unsafe behaviour.

The Panel noted that the complainant identified "Not parallel park with 3 metres clear road alongside (no dividing line/strip) 208(1)" and "Park so as to obstruct vehicles/pedestrians 208(1)"

The Panel considered that this also related to the scene at 2 seconds into the advertisement, depicting the vehicle stopping in a street that appears to be one-way.

The Panel noted Section 189 of the Australian Road Rules states:

"208 Parallel parking on a road (except in a median strip parking area)

(1) A driver who parks on a road (except in a median strip parking area) must position the driver's vehicle in accordance with subrules (2) to (8). Offence provision".

The Panel further noted specific provisions under Section 208:



“(4) If the road is a one-way road, the driver must position the vehicle parallel, and as near as practicable, to the far left or far right side of the road, unless otherwise indicated by information on or with a parking control sign.

[...]

(7) If the road does not have a continuous dividing line or a dividing strip, the driver must position the vehicle so there is at least 3 metres of the road alongside the vehicle that is clear for other vehicles to pass, unless otherwise indicated by information on or with a parking control sign.

(8) The driver must position the vehicle so the vehicle does not unreasonably obstruct the path of other vehicles or pedestrians.”

As discussed in the consideration of the previous law, the Panel considered that the high degree of unrealism in this scene would be unlikely to be considered by most members of the community to be actively encouraging or promoting unsafe behaviour.

The Panel noted that the complainant identified “Stop in intersection...170(1)” and “Stop within 10 metres of an intersection (no traffic lights)...170(3)”.

The Panel considered that this scene occurred at 19 seconds into the advertisement, and depicts the vehicle stopping just after turning a corner on a 3-street intersection.

The Panel noted Section 170 of the Australian Road Rules states:

“170 Stopping in or near an intersection

(1) A driver must not stop in an intersection unless:

(a) the driver is permitted to stop at that place under the Australian Road Rules; or
(b) the intersection is a T-intersection without traffic lights and the driver stops along the continuous side of the continuing road at the intersection.

Offence provision. Note: Continuing road, intersection and T-intersection are defined in the dictionary.

[...]

(3) A driver must not stop on a road within 10 metres from the nearest point of an intersecting road at an intersection without traffic lights, unless the driver stops:
(a) at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or
(b) if the intersection is a T-intersection—along the continuous side of the continuing road at the intersection.

Offence provision.

Note: Continuing road and T-intersection are defined in the dictionary.

The Panel noted the definition of a continuing road:



“continuing road, for a T–intersection, means the road (except a road-related area) that meets the terminating road at the T–intersection.

The Panel noted the definitions of T-intersection and terminating road, and considered that the angle of the advertisement makes it impossible to determine whether the vehicle stops along the continuous side of the continuing road, which would therefore be an exemption to this particular road rule.

The Panel considered that there is not a clear breach of the road rule, and that in conjunction with the high level of fantasy discussed previously this scene is not contrary to Prevailing Community Standards on safety.

Overall, the Panel determined that the exaggerated and unrealistic nature of the content of the advertisement in comparing the actions of a woman metaphorically using two different rideshare services was not a call to action in regard to parking practices and was not condoning or encouraging unsafe behaviour by the driving behaviours depicted.

The Panel considered that the advertisement did not depict material that most members of the community would consider to be contrary to Prevailing Community Standards on safety, and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.

INDEPENDENT REVIEWER’S RECOMMENDATION

The grounds for requesting a review of a determination of the Community Panel are as follows:

1. Where there was a substantial flaw in the Community Panel’s determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)
2. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided
3. Where there was a substantial flaw in the process by which the determination was made.

The Appellant has requested a review of the above determination of the Community Panel regarding a television advertisement for Ola Cabs. In his request for Review the Appellant states that he sought the expert responses of Mr Carlon (Centre for Road Safety, Transport NSW) and Mr Toynton (Traffic and Highway Patrol, NSW Police) following the publication of the Community Panel’s determination rejecting the original complaint, which cited Section 2.6 of the AANA Code. Both Mr Carlon and Mr Toynton were sent copies of the advertisement in question.



The appellant nominates grounds one and two as the basis of the appeal. Ground three also raises issues in this Review.

Request for review

The submission of the appellant in support of the request for review is as follows:

"I sent copies of the Ad Standards Determination, along with a copy of the Ola Cabs advertisement to:

*Bernard Carlon
Executive Director
Centres for Road Safety & Maritime Safety
Freight, Strategy and Planning
Transport for NSW*

*Robert Toynton
Inspector - Staff Officer
Traffic & Highway Patrol Command
NSW Police*

and

*Anthony Wing
Point to Point Commissioner
Transport for NSW*

Their replies are below and are self-explanatory.

This is new and additional evidence, which could have a significant bearing on the decision.

As such I believe there was a substantial flaw in the Community Panel's decision.

Before reading their replies, I just wish to add:

In April 2019, I made another complaint - Complaint reference number: 0092/19

(Quote): "2.6 Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety. Under your Code (notes) - Health and Safety (Section 2.6) it states: . UNSAFE PRACTICES - Images of bike riding without helmets or not wearing a seatbelt will be contrary to prevailing community standards relating to health and safety."

"The Panel considered that community standards are very clear on the issue of health and safety whilst riding a bicycle and considered that a depiction of an adult riding a



bicycle without a helmet secured is a depiction which is in breach of these community standards. The Panel noted that the advertisement includes a disclaimer at the bottom of the second image stating "Bicycle imagery depicted on this page is for advertising purposes only. Road rules state that bicycle riders on roads and road related areas must wear an approved bicycle helmet, securely fitted and fastened." The Panel considered that the inclusion of this disclaimer does not exempt the depiction of material which would breach the law.

In the Panel's view the advertisement does depict material contrary to Prevailing Community Standards on health and safety and that it did breach Section 2.6 of the Code. Finding that the advertisement did breach Section 2.6 of the Code, the Panel upheld the complaint."

In my view, after reading the expert opinions below, it would be inconceivable and inconsistent to not apply the same standards of road safety to the illegal and dangerous behaviour depicted in the advertisement. You can't have a double-standard and find breaches of the Road Rules are acceptable (in Ola) and others are not (in Aldi). They all contribute to road trauma and the safety of all road users. In fact the behaviour in Ola has far greater for potential for harm because failing to wear a helmet, only affects the rider. The behaviour displayed in the Ola ad could affect the lives and safety of numerous road innocent road users, who themselves broke no laws. Should this appeal fail, it will advertise to all taxi and ride-share drivers, in fact all motorists, that although illegal and unsafe, this behaviour is acceptable.

It's not.

Regards

From: Bernard Carlon

Thank you for referring your concerns regarding the 'OLA' television commercial . We have reviewed the advertisement as requested.

Rule 189 relates to double parking and provides that a driver must not stop on a road if to do so would put any part of the vehicle between a vehicle that is parked on the road and the centre of the road. The actions in the advertisement (images on the screen from 0.01 to 0.04) appear to be in breach of this rule.

Rule 170 (3) provides a driver must not stop within 10 metres from the nearest point of an intersecting road at a T-intersection without traffic lights, unless the driver stops along the continuous side of the continuing road at the intersection.

Under the Road Rules:

- continuing road, for a T-intersection, means the road that meets the terminating road at the T-intersection*



- *terminating road, for a T-intersection means the road at the intersection that is designated by traffic signs or road markings, or in another way, as a road that ends at the intersection.*

The image on the screen from 0.17 to 0.21 shows a T-intersection with the terminating road ending at the Give Way sign. The vehicle clearly stops within 10 metres of the terminating road and is not on the continuous side of the continuing road.

The road rules are designed to keep us all safe and depiction of behaviours that don't comply with the road rules through advertising potentially confuse the community about their obligations to follow the rules.

I note that you have also contacted the Point to Point Transport Commissioner, this response is on behalf of both Transport for NSW (TfNSW) and the Commissioner. The Commissioner works with industry to achieve safer point to point transport in NSW. TfNSW administers the Road Rules and the NSW Police Force are responsible for the enforcement of . The Commissioner makes no additional comment with respect to this advertisement as TfNSW has provided the feedback in relation to the Road Rules.

Regards

Bernard Carlon

From: Robert Toynton

Taxis, ride share vehicles and motorist need to ensure that they always abide by relevant traffic legislation. The actions of drivers in disobeying even (perceived) simple parking restriction signs and road rules can have significant ramifications on road safety outcomes.

This is relevant when drivers are dropping off and picking up passengers.

If detected breaching road rules by police and other enforcement officers, fines and demerit point may apply.

Regards

Robert Toynton"

The request for review was accepted.

Advertiser's response to review request

The Advertiser was afforded the opportunity to respond to the request for appeal and did so on 3 March 2020. Although the response was out of time, it was allowed by Ad Standards. In that response the Advertiser states its view that the letters submitted in



support of the review request do not represent either new or relevant evidence. The Advertiser states that it is important to distinguish the Road Rules from the AANA Code of Ethics and to also distinguish the roles of Transport NSW and the NSW Police Force from both Ad Standards and the Community Panel. It states that the NSW Police Force is not an appropriate agency to determine prevailing community standards in relation to advertising or to decide matters regarding compliance with the AANA Code. The Advertiser further states that in its view, disagreement with the determined prevailing community standards and any related decision does not indicate or prove any flaw in the Community Panel's decision(s).

The Advertiser submits that the views of the complainant do not reflect prevailing community standards and could be more appropriately described as "extreme".

In relation to the citation of a prior case relating to riding a bike without a helmet, the Advertiser states that while riding a bike without a helmet and double parking may be in breach of the Road Rules that does not mean that complaints about advertisements depicting these situations have to be determined in the same way by the Community Panel. Examples to support this offered by the Advertiser are advertising of road bicycle races and those advertising Formula 1 races.

In summary, the Advertiser submits that there is no flaw in the Community Panel's decision and that the advertisement in question does not breach Section 2.6 of the AANA Code of Ethics.

REVIEWER'S RECOMMENDATION

As noted above, the complainant has cited two grounds for review: ground one and ground two as set out above. Ground three is also be relevant to this Review.

Ground two

Regarding ground two, the Code requires that the new or additional evidence be relevant and that it be evidence which could have a significant bearing on the determination. Mr Carlon and Mr Toynton are experts in the field of the operation of NSW Road Rules and road safety and their responses, based on the advertisement, are unquestionably relevant to the case, especially as the complainant has based his allegation of breach of the Code squarely on a number of breaches of the NSW Road Rules. Given their expert standing and the content of their responses, it is apparent that the responses of Messrs Carlon and Toynton could have a significant bearing on the determination of the Community Panel. Whether their letters do in fact have a significant bearing on the determination of the Panel is a matter for the Panel itself.

Ground two is therefore satisfied.

Grounds one and three

Ground one requires that there be a substantial flaw in the determination of the Panel and **ground three** requires that there be a substantial flaw in the process by



which the determination was made. Both grounds raise more complex issues than ground two.

The determination of the Panel is set out above in this case report, including references to other cases cited by the Panel.

Some preliminary consideration of the operation of Section 2.6 of the Code in the context of road safety and the NSW Road Rules will hopefully serve to clarify the task required when determining whether an advertisement involving those road rules breaches Section 2.6 which states:

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

Firstly, a consideration of what ‘prevailing community standards’ are in a particular area will differ depending on the area concerned. In areas such as illegal drug use, gambling and road safety, Australian society has seen fit to ensure those areas are controlled by legislation. Rules may be made under legislation, as is the case for the NSW Road Rules, which are made under the Road Transport Act 2013. Other areas which might be considered under Section 2.6, such as body image, will not be the subject of legislation. In that particular area, the advertising industry has proactively set rules for what is or is not acceptable, on the assumption that these rules reflect a consensus on prevailing community standards at the time. A consensus on relevant community standards, for instance regarding road safety, forms the basis on which legislation is framed and the road rules created under it, set. In the area of road safety, that legislation and accompanying rules represent considered consensus judgements about the community’s expectations of the behaviour of drivers on our roads, with community safety as the expressed main goal. It is critical to understand that these rules are not made in a vacuum.

The Panel’s determination in this case refers to the Review of case 0097/18, where this issue of the interplay between legislation/road rules and the interpretation of community standards relating to road safety was discussed.

In that review the Reviewer noted:

“The relevant question here is whether an advertisement showing a breach of the NSW Road Rules is an advertisement which is depicting material contrary to Prevailing Community Standards on health and safety.

Significantly, it is virtually impossible to imagine what could better constitute a reflection of prevailing community standards on this issue of road safety, than the Road Rules (especially such a serious Rule) made by a government which has been elected by the community. This is the underlying principle of representative government: that a government is elected by the majority of the community and is thereby taken to represent the community in its lawmaking. It is this principle that gives credibility and authority to legislation and rulemaking. Thus, on this principle of



representative rule making, it is the view of the Reviewer that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety.”

In this Review, those comments are endorsed. It should also be noted that in previous Review decisions the point has been made that the then Board (now the Panel), in the absence of relevant research on community standards, should always articulate carefully and comprehensively the basis of its reasons for deciding whether an advertisement ‘depicts material contrary to Prevailing Community Standards on health and safety’.

In the case cited above (0097/18) the Panel, in its determination, itself states that it “*acknowledged that road safety is an issue of significant community concern and that it is important that advertisements don’t portray material which is contrary to road safety messages*”.

In making a determination in the present case the Panel had two main tasks based on the elements of the complaint at hand.

It was the first task of the Panel to decide whether the driver’s behaviour in this advertisement breached the NSW Road Rules.

If the answer to the first task was affirmative, it was then the task of the Panel to decide if the depiction of such a breach was material contrary to Prevailing Community standards on safety, as had been alleged by the complainant.

The Community Standards referred to in Section 2.6 must be the ones prevailing at the relevant time. In areas not covered by legislation reflecting a community consensus, such as body image, community views change over time, and industry changes to the Code will reflect those changes. In the absence of any Code provisions or legislation, determinations should be made reflecting, as well as possible given research on the subject is often not available, community attitudes/standards at the time.

In areas which are the subject of legislation, for instance, Road Rules, those rules will also change from time to time and this reflects changing community attitudes. The rules are dynamic and must necessarily be so. Changes vary widely and have included speed limits, the introduction of universal seat belt use, the introduction of penalties for driving under the influence of illicit drugs, the mandatory wearing of helmets for bike riders and, as of March 1 2020, the imposition of fines and the loss of demerit points for the use of mobile phones while driving. The system works well precisely because it is dynamic and responsive to shifting circumstances and prevailing community attitudes.

Thus, community standards on an issue such as road safety are reflected and represented by legislation and road rules. There is no evidence that this is not the



case. If the Road Rules did not reflect community standards, those rules would not be tenable and would be subject to widespread resistance and non-compliance. When attempting to ascertain what prevailing community standards are in the area of road safety, the legislation and road rules supply the threshold answer. Therefore, as noted above, an advertisement which breaches the NSW Road Rules, would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to prevailing community standards on safety – in this case road safety. If this proposition is not accepted, evidence for an alternative basis for identifying relevant community standards in the area of road safety should be offered.

The complainant had cited five breaches of the NSW Road Rules as the basis of his original complaint. As noted above, the initial task of the Community Panel was to determine and state clearly whether the NSW Road Rules were in fact breached by the content of the advertisement. The panel had before it the television advertisement, the original complaint and the advertiser's response including a number of attached information documents as noted above in this case report.

The Determination

As noted above, the Panel refers to an earlier case (0097-18) "in which a woman parked within ten meters of an intersection". That case, in fact, as the Panel later notes, related to parking at a school crossing and not an intersection. The Panel notes both its original decision and a subsequent Review of that determination. The Panel goes on to point out that the present case is not near a school crossing. It is unclear why the Panel makes these comments, as the issue of a school or children's crossing is not raised by the complainant at all in the present case and the scenarios are completely different.

The Panel goes on to note that the present advertisement is set in the evening "with no other moving vehicles or traffic shown". It is unclear what implication the Panel was intending to make with this latter statement. At no stage of the determination does the Panel indicate whether it had read the bundle of attached documents sent to it by the Advertiser as part of its response to the original complaint. Those documents include a very comprehensive "Film and Television Safety Report- Risk Assessment/Safe Work Method Statement" of some 35 pages, which clearly indicates that the firm involved – Waddell- had closed off the roads (Birchgrove Rd, Addison St, Wallace St and Wallace Lane, Balmain) involved in the filming and was actively engaged in both traffic and pedestrian control during the duration of the filming. The documents also include a "Road Occupancy Approval Licence" for occupation of the relevant roads and the footpaths, issued by Inner West Council. It is clear that there were no other moving vehicles or traffic shown because they were artificially blocked during filming. The absence of traffic can therefore have no bearing at all on whether the content of the advertisement breaches the NSW Road Rules or Section 2.6 of the Code.



Prior to noting the five alleged Road Rule breaches cited by the complainant, the Panel makes the statement that *“the split screen of the advertisement, depicting a scenario of the same woman entering two sides of the same car simultaneously was clearly an exaggerated depiction and would not be considered by most members of the community to be a realistic example of parking practices or be a call to action in regard to how a rideshare service would pick up a passenger”*.

It is unusual to find such a conclusive statement preceding a consideration of the issues raised in the complaint at hand – that is, the driving practices cited by the complainant as breaching individual Road Rules and consequently Section 2.6 of the Code.

This statement, which appears to be a description of scene one of the advertisement, where the women enter the car at the original pick-up address, is open to dispute. The screen of the advertisement is not split in the usual sense of the word, showing two different views. The view remains a single view of a completely realistic car and its realistic driver and passengers on a realistic road. The vision does contain split shading with a greenish tint added to one side of the screen to represent the Ola offering. That tinting, however, is the only stylisation added to the vision. Both sides of the screen otherwise remain completely normal.

Furthermore, there is no exaggeration evident in that scene. Having the two women, or rather two versions of the same woman, travel in the car could not be described as ‘exaggerated’, given normal dictionary definitions. The fact that there is a tinting split in the advertisement and that there are two passengers representing the Ola and competitor offerings, does not represent an exaggeration and does not impact the actual completely realistic parking behaviour which occurs in that and subsequent scenes of the advertisement. The tinting split, as noted above, is perhaps best described as a stylisation representing the comparative experiences.

The parking behaviour, which is the subject and heart of the complaint, is itself consistently realistic throughout the three relevant scenes (the fourth and fifth scenes in the middle of the advertisement are driving motion scenes, where the driver and passengers are enroute to the drop off destination). The scene depicts realistic parking behaviour and it is the parking behaviour in this advertisement, rather than other elements, that forms the core of the complaint. Only once, towards the end of the determination, does the Panel actually address the detail of the parking behaviour depicted.

The Panel’s reference to a ‘call to action’ is not relevant as this is not an element required for a breach of Section 2.6 of the Code (though it may form part of the content of such a breach) nor is it required for a breach of the Road Rules. It is assumed this is a Panel response to the complainant’s allegation that the advertisement “appears to normalise unlawful and dangerous parking”. However, the Panel do not make clear whether this is the case.



The content of the advertisement does not support the Panel's rationale as quoted above, for its view that the scene referred to *"was clearly an exaggerated depiction and would not be considered by most members of the community to be a realistic example of parking practices or be a call to action in regard to how a rideshare service would pick up a passenger"*.

The Panel repeats its view of elements of the advertisement being unrealistic later in its determination, relying on this view to suggest that 'most members of the community' would not consider the advertisement to be 'promoting or encouraging unsafe behaviour'. Quite apart from the fact that this element of promoting or encouraging is not a requirement for a breach of Section 2.6 of the Code (though it may form part of the content of a breach), it should be noted that, as with humour, the use of stylisation which may involve an unrealistic element, is not necessarily of itself a defence to a breach of Section 2.6 of the Code. It is worth noting that the advertiser itself does not, in either its response to the complaint or its submission to this Review, rely on the presence of any 'unrealistic' elements in the advertisement as a defence against a breach of Section 2.6.

The Panel also comments that Section 2.6 of the Code does not require a legal test for determinations. It continues: *"The Panel considered that the content of an advertisement that includes the depiction of a specific action or activity which may be in breach of a law, is not automatically a breach of the Code, as the Panel must consider the overall content, theme and messaging of an advertisement through the lens of prevailing community standards"*.

There is no legal test for Section 2.6 suggested by the original complaint. A reference to the need for behaviour depicted in the advertisement to comply with particular road rules does not constitute a legal test. Determinations must always be made on a case by case basis in the context of the particular circumstances of the case as is made clear in the Code.

The Panel then quoted the Road Rules alleged by the complainant to be breached by the advertisement:

Double park, Rule 189 (1) and (2). Strict Liability Offence

The opening scene of the advertisement shows a car with single driver but split tinting, double-parked outside homes in a narrow street which appears, as the Panel states, to be a one-way street. The car is parked, in middle of the road, waiting for the passenger(s) who are two identical women (the same model) who enter the car by each rear door.

The Panel, in its determination above in this case report, quotes Rule 189 and its two relevant sub sections, (1) and (2).

However, despite quoting the provisions of Rule 189, the Panel completely fails to address or discuss it when commenting on this scene of the advertisement. This is



despite the scene depicting the vehicle clearly breaching sub section (1) of Rule 189, by:

- a) *parking between a vehicle that is parked on the road and the centre of the road and*
- b) *failing to be exempt from the above rule by parking on the side of the road or in a median strip area (sub section 2).*

As the allegation of breaches of the NSW Road Rules is central to this complaint and the basis on which the complainant claims Section 2.6 of the Code has been breached, the Panel should have considered whether this and following Road Rules, all of which are strict liability offences, were breached by the advertisement. In its determination, the Panel is silent on whether the content of this scene of the advertisement breaches Rule 189 (1) and is not exempted by 189(2). It was incumbent on the Panel that it undertake this consideration given the centrality of the Road Rules to the original complaint. Its failure to do so in respect of the Road Rule breaches alleged by the complainant constitutes a substantial flaw in the process by which the determination was made.

Instead of undertaking a consideration of the operation of Rule 189 and the parking behaviour depicted in the relevant scene of the advertisement, the Panel reiterates earlier comments, stating that:

“The Panel noted that the split-screen of the advertisement, depicting two simultaneous scenarios was clearly an exaggerated and metaphoric depiction as it featured the same woman getting in the same vehicle from two different sides at the same time.

The Panel considered that the advertisement was clearly in the context of a comparison between Ola cabs and other rideshare services. The Panel considered that most people viewing the advertisement would recognise the unrealistic and exaggerated nature of the advertisement in comparing the same person entering two sides of the same vehicle simultaneously and most member of the community would not consider the advertisement to be promoting or encouraging unsafe behaviour.”

As noted above, the Panel uses terms here which are inappropriate in describing the advertisement. Dictionary definitions of the words ‘exaggerated’ and “metaphoric” do not support the contention that these terms describe accurately the effect of the split screen tinting contained in the advertisement.

It is demonstrably the case that the advertisement is thematically a comparison between Ola and a competitor, but nothing turns on that observation.

It is important to note that the stylisation that does exist in the advertisement, which the Panel relates to the ‘same person entering two sides of the same vehicle simultaneously’ does not affect the parking behaviour depicted in the advertisement



at all. This is a significant point. The parking behaviour remains totally realistic, regardless of whether two people enter the car simultaneously or not. It is the parking behaviour of this scene, and of the scenes that follow, which is critical to ascertaining whether the advertisement has breached the NSW Road Rules, as the complainant has claimed as the basis for his complaint.

As noted previously, Section 2.6 of the Code does not require an advertisement to be “promoting or encouraging unsafe behaviour” in order to be in breach, although an advertisement which is in breach may contain those elements.

The Panel then quotes Section 208 of the Road Rules, which it states also relates to the first scene of the advertisement.

Section 208 (1) (4) (7) and (8) Parallel Parking. Strict Liability Offence

Section 208 prohibits parallel parking on a road (except in a median strip parking area) unless in accordance with sub rules 2-8. Sub rule (4) states that if the road is a one way road, the driver must position the vehicle parallel and as near as practicable to the far left or far right side of the road, unless otherwise indicated by information on or with a parking control sign.

The vehicle in the advertisement is parked on what appears to be a one-way street without any parking control sign. The vehicle is not positioned parallel or as near as practicable to either the far left or far right side of the road. The vehicle in the advertisement is thus clearly in breach of Section 208 (1) and (4).

Sub rule (7) provides that if the road does not have a continuous dividing line or dividing strip, the driver must position the vehicle so that there is at least three metres alongside the vehicle that is clear for other vehicles to pass, unless otherwise indicated by information on or with a parking control sign.

The vehicle in the advertisement is also parked in breach of sub rule (7) of Section 208.

Sub rule (8) provides that the driver must position the vehicle so that it does not unreasonably obstruct the path of other vehicles or pedestrians.

The vehicle in the advertisement is clearly parked in a manner which obstructs the path of other vehicles; thus it is parked in breach of Section 208 (8).

Again, the Panel completely fails to address this scene of the advertisement in terms of Road Rule 208, despite quoting it. The Panel, instead, again refers to “a high degree of unrealism in this scene” which in its view would be “unlikely to be considered by most members of the community to be actively encouraging or promoting unsafe behaviour”. This view of the Panel has been commented on above in this Review (re Rule 189) and those comments are reiterated here.



As an allegation that the Road Rules are breached forms the basis of the complainant's claim that Section 2.6 of the Code is breached by the advertisement, it was incumbent on the Panel to directly address the complainant's complaint and consider whether the relevant scene depicted the vehicle as parked in a manner which breached Road Rule 208. Its failure to do so represents a substantial flaw in the process by which it made its determination.

The Panel then turned to the last of the Road Rules which the complainant alleged were breached by the advertisement. This Rule, Section 170 (1) and (3), is the only road rule cited in the original complaint which the Panel actually examines in any detail, assessing whether what it viewed as the relevant scene breached Section 170 (3), rather than simply quoting the relevant section as it had for the other sections noted above.

Section 170. Stopping in or near an intersection. Strict Liability Offence

Section 170 relates to stopping in or near an intersection:

- 1) A driver must not stop in an intersection unless:
 - a. the driver is permitted to stop at that place under the Australian Road Rules; or
 - b. the intersection is a T-intersection without traffic lights and the driver stops along the continuous side of the continuing road of the intersection.

Offence provision. Note: Continuing road, intersection and T-intersection and defined in the dictionary.

- 3) A driver must not stop on a road within 10 metres from the nearest point of an intersecting road at an intersection without traffic lights, unless the driver stops:
 - a. At a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or
 - b. If the intersection is a T-intersection – along the continuous side of the continuing road at the intersection.

Offence provision. Note: Continuing road and T-intersection are defined in the dictionary.

The Panel quotes the definition of a continuing road for a T-intersection as: "means the road (except a road-related area) that meets the terminating road at the T-intersection".

The Panel states that the scene relevant to this road rule occurs 19 seconds into the advertisement and 'depicts the vehicle stopping just after turning a corner on a 3-street intersection'.

There is no 3-street intersection shown in the advertisement. The intersection shown is a 2-street T-intersection.



In fact, there are two separate scenes of the advertisement which relate to Section 170 – not just one. The two scenes are filmed at exactly the same location. The Panel appears to have overlooked the first relevant scene.

The first relevant scene occurs at 13 seconds and runs to 17 seconds in the advertisement. It depicts the vehicle containing the two women arriving at their hotel destination. The vehicle clearly stops in an intersection which is a T-intersection and lets the women out in the middle of the intersection. The women exit on either side of the vehicle.

The driving behaviour in this scene is in clear breach of Section 170 (1) as the driver:

- Stops in an intersection
- Is not permitted to stop at that place under Australian Road Rules
- The intersection is a T-intersection without traffic lights and
- The driver does not stop along the continuous side of the continuing road at the intersection and thus cannot take advantage of that exemption.

It is clear in the advertisement that the driver has driven just past the hotel on the continuing road and into the intersection with the terminating road. One curb of the intersecting road is clearly visible outside the hotel on the right of screen. Parked cars are visible on the left of the screen, parked on the continuous side of the continuing road. It is evident that the driver has not pulled in to the opposite curb to the hotel as his Ola passenger, when she alights from the car, steps onto the road and not onto the curbed sidewalk. The driver has stopped on the opposite side from the continuous side of the continuing road.

This scene of the advertisement therefore clearly breaches Section 170 (1) – a breach not identified or addressed by the Panel.

The scene the Panel does refer to occurs at 19-21 seconds into the advertisement, at the same intersection as the previous scene, where the two women are waiting to be picked up outside of the hotel. The Ola passenger is standing opposite one side of the hotel, on the curve of the sidewalk formed by the intersecting (terminating) road and the continuing road, and the other woman is standing in the road, in the intersection, on the continuous side of the continuing road. The Ola vehicle (significantly no longer a vehicle conveying a comparison by split tinting as that tinting is now shown on the entire screen of the advertisement, without any duality) is seen turning left out of the intersecting (terminating) road and into the continuing road, with the hotel in the right background. The Ola vehicle stops on the curve of the intersecting (terminating) road with the continuing road. The Ola passenger then enters the Ola vehicle while the other woman is left standing in the street, still waiting for her ride.

This scene depicts the Ola vehicle clearly breaching Section 170 (3):

- The driver stops on a road within 10 metres from the nearest point of an intersecting road at an intersection without traffic lights,



- The driver does not stop at a place or in an area to which a parking control sign applies permitting the driver to stop at that place under the Australian Road Rules,
- The driver does not stop along the continuous side of the continuing road at a T-intersection.

The Panel, in deciding that this scene did not depict ‘ a clear breach of the road rule’ stated that it ‘considered that the angle of the advertisement makes it impossible to determine whether the vehicle stops along the continuous side of the continuing road, which would therefore be an exemption to this particular road rule’.

This is demonstrably not the case. The Panel was supplied with a copy of the advertisement and it was at their disposal to view carefully. It was also supplied by the Advertiser with comprehensive identification of the locations of the filming. An attentive viewing of the advertisement makes it abundantly clear that the two scenes mentioned above, i.e. the drop off of the women at the hotel and the subsequent pick up of the Ola passenger, are filmed at exactly the same place. Even a cursory viewing of the advertisement makes clear which is the intersecting (terminating) road and which is the continuing road, including which is the continuous side of the continuing road. The driver has clearly driven down the continuing road in the drop off scene and in the scene where he picks up the Ola passenger at the same location, he turns left into the continuing road, out of the intersecting (terminating) road. He presumably continues along the continuing road in the direction his car is pointed, once he has picked up his passenger. There can be no mistaking which is the terminating road, and which is the continuing road. Consequently, the continuous side of the continuing road is also obvious.

The basis for the Panel deciding that there is no clear breach of the road rule regarding this last scene is therefore incorrect, as it contrary to the clear evidence of the content of the advertisement.

There are thus breaches of Section 170 (1) and (3) contained in the two scenes referred to above, one of which is not identified by the Panel and the other of which is subject to an erroneous finding by the Panel, which is not supported by the evidence of the content of the advertisement.

The Panel goes on to conclude in relation to Rule 170:

“The Panel considered that there is a not a clear breach of the road rule, and that in conjunction with the high level of fantasy discussed previously this scene is not contrary to Prevailing Standards on safety”.

As noted above, the Panel is in error in this statement as there is a clear breach of the road rule 170 and it cannot rely on this finding to support its determination as it is made against the weight of evidence contained in the advertisement. This error is all the more significant given that Rule 170(3) was the only Road Rule which the Panel addressed suitably in terms of process.



The word “fantasy” is inappropriately used in this context as dictionary definitions relate to the process of ‘creating especially unrealistic or improbable mental images in response to a psychological need; the faculty or activity of imagining impossible or improbable things’.

Most significantly, it is ironic that the Panel would describe the last scene in the advertisement using the expression “high level of fantasy”. In this last scene, the element which the Panel relies on earlier in its determination to support its contention that the advertisement is ‘exaggerated and unrealistic’ is present but in completely different way. That element is the device of a tinted split screen, split down the middle of the car, depicting on either side of the car, the identical women passengers entering the vehicle at the pick-up point, riding to their destination and exiting the car at the hotel via the back seat doors. The tinting, consistently in previous scenes, appears only on the side of the car carrying the Ola passenger. The other side of the car is untinted.

In this last scene, the device changes and the split screen no longer centres on the car itself. Instead, it is a whole of screen split, where the tinted half encompasses the whole side of the screen where the car and the Ola passenger are depicted. The car is completely enveloped by the tinting as is the Ola passenger. The other passenger stands in the non-tinted side of the screen awaiting her ride. The scene does not depict the two women entering the same vehicle. Only the Ola passenger enters her vehicle in a completely realistic manner, and the other woman stands alone, waiting on the opposite side of the road for her ride, in a completely realistic manner. The tinting on the vehicle side of the screen in no way affects the realism of the scene or the behaviour of the Ola passenger, and definitely does not affect the driving behaviour of the driver who, (as discussed above in this Review), stops on the curve of an intersection of a terminating road and a continuing road, on the side of the road which is not the continuous side of the continuing road. The non-Ola passenger is standing on the continuous side of the continuing road.

There is no element of fantasy evident in this last scene.

Therefore, to describe the above scene as containing a ‘high level of fantasy’ is inaccurate and unsupported by the evidence of the content of this scene. The Panel was incorrect to state in respect of this scene that “there is not a clear breach of the road rule” and to rely on this finding in making its determination. The Panel’s contention that the advertisement was ‘exaggerated and unrealistic’ was inappropriate in terms of the expression ‘exaggerated” and was not accurate in respect of the driving behaviour depicted in the advertisement.

The Panel should have given appropriate consideration (as it did in 0097/18 and 0022/19) to the other Road Rules cited by the complainant as the basis for his contention that the advertisement breached those Road Rules and consequently breached Section 2.6 of the Code. As noted previously, this represented a substantial flaw in the process by which the determination was made.



The Panel concluded its determination stating:

“Overall, the Panel determined that the exaggerated and unrealistic nature of the content of the advertisement in comparing the actions of a woman metaphorically using two different rideshare services was not a call to action in regard to parking practices and was not condoning or encouraging unsafe behaviour by the driving behaviours depicted.

The Panel considered that the advertisement did not depict material that most members of the community would consider to be contrary to Prevailing Community Standards on safety and did not breach Section 2.6 of the Code.”.

In respect of these final comments, as noted above, the device of split screen tinting which depicts two passengers on a comparative ride basis is not ‘exaggerated’ according to dictionary definitions and any lack of realism conveyed by the various scenes in the advertisement, has no effect at all on the depiction of the driving behaviour of the driver of the vehicle, which forms the basis of the original complaint. The overall impression in respect of the driving behaviour depicted in the advertisement is one of realism. It is this driving behaviour which is at the heart of the original complaint made by the complainant, not the manner in which the two women enter or alight the vehicle. Their behaviour is irrelevant to the alleged breaches of the Road Rules.

The Panel also notes in its concluding comments, that the advertisement in its view was ‘not a call to action in regard to parking practices and was not condoning or encouraging unsafe behaviour by the driving behaviours depicted’. This Review has noted above that neither of these elements are required for a breach of Section 2.6 of the Code, though they may form part of content which does breach Section 2.6. The absence of these elements therefore is probative of no conclusion which relates to a consideration of Section 2.6 of the Code.

Conclusion

As new or additional relevant evidence which could have a significant bearing on the determination has been submitted, Ground 2 is satisfied.

The Panel should have given proper consideration to the core claim by the complainant that the advertisement breached five Road Rules and consequently breached Section 2.6 of the Code. Its failure to do so constitutes a substantial flaw in the process by which the determination was made. Ground 3 is thus satisfied.

Regarding Ground 1, the Panel’s determination contains a number of instances where findings made by the Panel are not supported by the evidence of the content of the advertisement. The Panel relies to varying degrees on those findings in its Determination. The Panel also does not comprehensively articulate how it has



ascertained what it believes are the ‘prevailing community standards’ on road safety. It offers no evidence that the NSW Road Rules do not reflect and represent prevailing community standards on road safety, and suggests no alternative basis for those standards. These are doubtless flaws in the Panel’s determination, but whether these flaws satisfy the terms of Ground 1 is a moot point. As Grounds 2 and 3 are satisfied it is not necessary to come to a final conclusion regarding Ground 1.

I recommend that the Community Panel reconsider its determination taking into account the matters raised in this Review.

THE DETERMINATION ON REVIEW

The Ad Standards Community Panel (Panel) noted the request for review of its decision and the findings of the Independent Reviewer.

In particular the Panel noted that the Independent Reviewer considered that there were a number of substantial flaws in Panel’s determination. Specifically the Reviewer:

- Recommended that the Panel should consider the additional evidence provided by the complainant;
- Was of the view that the Panel failed to give proper consideration to the core claim by the complainant that the advertisement breached five Road Rules and consequently breached Section 2.6 of the Code.
- Had the view that the Panel did not comprehensively articulate how it has ascertained what it believes are the prevailing community standards on road Safety.
- Was of the view that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety.

Taking into account the Independent Reviewer’s recommendations and comments, the Panel considered whether the advertisement depicted material contrary to prevailing community standards on health and safety, in relation to the actions of the motor vehicles.

The Panel considered that the three key elements of the advertisement were: The opening scene of the advertisement shows a ride share vehicle, stopped outside homes in a narrow street in the middle of the road, waiting for the passengers who are two identical women (the same model) who enter the car by each rear door.

- at 13 seconds in the advertisement the vehicle containing the two women arrives at their hotel destination. The vehicle stops in an intersection which is a T-intersection and lets the women out in the middle of the intersection. The women exit on either side of the vehicle.
- at 19 seconds into the advertisement the vehicle stops just after turning a corner on a 3-street intersection and picks up a women who gets into the passenger door while another woman waits on the opposite side of the road.



As recommended by the Independent Reviewer, the Panel first considered whether the advertisement depicted material which would be in breach of the NSW Road Rules, as referenced by the complainant.

The Panel noted that the scenes from 1-4 seconds in the advertisement depicts a car stopping on a road to pick up pedestrians. This image shows a ride share vehicle stopping in what appears to be a one way street to pick up a passenger (shown as a passenger getting into the ride share from each side although it is the same person). The Panel noted that the car was stopped next to parked vehicles.

The Panel noted the advertiser's response that this part of the advertisement was filmed in Wallace Street in Balmain. The Panel noted that this is a one way street as appears likely in the advertisement.

The Panel noted the complainant's concern that the advertisement breached Section 189 of the NSW Road Rules which state:

"(1) A driver must not stop on a road if to do so would put any part of the vehicle that he or she is driving between a vehicle that is parked on the road and the centre of the road."

The Panel noted that there is no marked centre of the road but that the vehicle clearly stops adjacent to parked cars. Taking into consideration the information provided by the complainant, the Panel considered that stopping in this position to pick up passengers is a breach of this road rule. The Panel determined that the car stopping next to the parked cars at the start of the advertisement was likely to be in breach of Section 189(1) of the NSW Road Rule.

The Panel also noted the complainant's concern that the advertisement also contained two breaches of NSW Road Rule 208. The Panel noted that this rule relates to Parallel Parking and the Panel considered it likely that this element of the complaint would be in relation to the opening scene.

The Panel noted the Independent Reviewer's recommendation that the statement applies to the first scene of the advertisement, which would clearly be in breach. The Panel noted that the definition of 'park' in the Road Rules includes 'stop' and that on that basis the depiction of the driver stopping adjacent to other cars would be likely to be a breach of Rule 208.

The Panel then considered the scene at 15 seconds which depicts the two women getting out of the vehicle. The Panel considered that this scene is shot at night and that the fleeting image does not show with any clarity the detail of where the vehicle has stopped or whether it has stopped near parked cars or other prohibited signage. The Panel considered that this image does not depict any material with sufficient clarity to suggest or indicate that there has been a breach of any Road Rule.



The Panel also considered that the image of two women alighting from the car at the same time and on different sides also is not inherently dangerous or against public health and safety, and in the context shown in the advertisement it is not possible to say whether or not there is any traffic approaching or whether the stop complies with relevant legislation. In the absence of any clear breach of a Road Rule, or the depiction of any inherently dangerous activity, the Panel considered that this element of the advertisement did not breach prevailing community standards on health and safety.

The Panel then considered the scene at 19 seconds showing the vehicle picking up a passenger from the curb.

The Panel noted the complainant had provided evidence suggesting that this scene appeared to be in breach of Rule 170 of the Road Rules.

The Panel noted that Section 170 (1) and (3) relates to stopping in or near an intersection:

'(1) A driver must not stop in an intersection unless—

(a) the driver is permitted to stop at that place under these Rules, or

(b) the intersection is a T-intersection without traffic lights and the driver stops along the continuous side of the continuing road at the intersection.

...

(3) A driver must not stop on a road within 10 metres from the nearest point of an intersecting road at an intersection without traffic lights, unless the driver stops—

(a) at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under these Rules, or

(b) if the intersection is a T-intersection—along the continuous side of the continuing road at the intersection.

Offence provision. Note: Continuing road, intersection and T-intersection and defined in the dictionary."

The Panel noted that in its original determination it had determined that it was unclear whether this intersection was a T section where the driver was stopping along the side of the continuing road.

The Panel noted the Independent Reviewer's statement that in the materials provided by the advertiser it is clear where this road is located and that it is not a continuing intersection.

The Panel acknowledged the Independent Reviewer's comment, however noted that members of the community viewing the advertisement would not have access to this information.

However, upon further examination of the location of the advertisement, the Panel noted that the road in which the driver stops in this section of the advertisement is a road which is marked as a shared zone. The Panel considered that although some identifiable markings are obscured, there is a marking visible on the road indicating a



10km per hour speed limit. The Panel noted that this is one marking to indicate a shared zone.

The Panel noted that Rule 188 of the NSW road rules applies to stopping in a shared zone:

“A driver must not stop in a shared zone unless—

...

(c) the driver is dropping off, or picking up, passengers or goods, ...”

The Panel noted that in this section of the advertisement the driver is seen to stop in a shared zone to pick up a passenger, and that is behaviour which is permitted under 188(c) of the Road Rules. The Panel considered that this more specific Rule would apply to the depicted situation in preference to the broader situations to which Sections 170 (1) or (3) of the NSW Road Rules applied.

Finding that the opening scene of the advertisement was likely to breach Section 189 of the NSW Road Rules, the Panel then considered whether the depiction of a behaviour which breached the Road Rules was a depiction which was contrary to Prevailing Community Standards on Health and Safety.

The Panel noted the Independent Reviewer’s recommendation that an advertisement which depicts the breach of NSW Road Rules would, under normal circumstances and unless conclusive evidence proving otherwise was offered, necessarily be contrary to Prevailing Community Standards on safety. The Panel further noted the Independent Reviewer’s recommendation that if the Panel were to consider that a breach of the Road Rules is not contrary to Prevailing Community Standards it would have to clearly articulate why and where prevailing community standards on road safety are being ascertained from.

A minority of the Panel considered that the Panel’s role is not to interpret whether or not an action would be in breach of the Road Rules in particular States or Territories, rather its role is to determine whether an average member of the community would consider a behaviour to be unsafe. The minority of the Panel considered that prevailing community standards on road safety would be behaviour which is likely to result in accident or injury in the eyes of an average member of the community. A minority of the Panel considered that there is a community expectation that a taxi or ride service vehicle would stop on the road, where safe to do so, to pick up passengers. The minority of the Panel considered it was clear from the advertisement that there was no available parking on the road at the start of the advertisement, and that the driver double parks quickly in order to pick up their passenger safely. The minority of the Panel considered that the driver did not park the car or leave the car, and that most members of the community would not consider this to meet the definition of double parking even if this is technically a breach of the NSW Road Rules. The minority of the Panel considered that this scene was brief, the view of the road obscured and that the driver was not seen to be blocking the movement of any other traffic. The minority of the Panel considered that the actions of the driver at the start



of the advertisement would not be against prevailing community standards on road safety.

The majority of the Panel acknowledged the Independent Reviewer's view that Road Rules are in place because they are the prevailing community standards on road safety. The majority of the Panel considered that most members of the community consider road rules to be in place to protect community safety, and that a breach of road rules would be against community standards. The majority of the Panel considered that the first few seconds of the advertisement depicted a scene which was in breach of Section 189 of the NSW road rules, and therefore was depicting material contrary to Prevailing Community Standards on road safety.

The Panel considered that the other scenes in the advertisement did not clearly depict any breach of Road Rules and did not other depict behaviour that would be contrary to prevailing community standards on road safety.

Upon reconsideration the Panel determined the advertisement did breach Section 2.6 of the Code, finding that the depiction of the vehicle double parking was depiction of material contrary to Prevailing Community Standards on safety, and upheld the complaint.

ADVERTISER'S RESPONSE TO IR DETERMINATION

I have reviewed the letters, including the independent reviewer's lengthy comments and recommendations.

We do not agree with the independent reviewer's comments and reasoning. Indeed, many aspects of it appear to be patently and cardinally erroneous, in my view. Notwithstanding, this may not be the most appropriate time to debate such views.

We advise that the TV commercial in question is not currently on air and I understand that it may be modified, if it is to be aired at a future date, or replaced.

We otherwise reserve all our rights in relation to this matter.