



**Ad Standards** Community Panel  
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Ad Standards Limited  
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## Case Report

|   |                                  |
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| <b>1. Case Number :</b>                 | <b>0062-20</b>                   |
| <b>2. Advertiser :</b>                  | <b>Ultra Tune Australia</b>      |
| <b>3. Product :</b>                     | <b>Automotive</b>                |
| <b>4. Type of Advertisement/Media :</b> | <b>Internet - Social - Other</b> |
| <b>5. Date of Determination</b>         | <b>12-Feb-2020</b>               |
| <b>6. DETERMINATION :</b>               | <b>Dismissed</b>                 |

### ISSUES RAISED

AANA Code of Ethics\2.1 Discrimination or Vilification  
AANA Code of Ethics\2.2 Exploitative or Degrading  
AANA Code of Ethics\2.3 Violence  
AANA Code of Ethics\2.4 Sex/sexuality/nudity  
AANA Code of Ethics\2.6 Health and Safety  
AANA Code of Ethics\2.7 Distinguishable advertising

### DESCRIPTION OF ADVERTISEMENT

There are three versions of this this television advertisement.

The 60 second version features Warwick Capper and a woman wearing a white bikini in a dune buggy driving on the beach. He notices Pamela Anderson standing on the beach holding a surf board, and states, "Pamela Anderson?". As he stares at her, and the woman next to him exclaims and hits him. The steering wheel comes off in his hands and he screams. The dune stops at the ocean shore, where the buggy has become bogged. Pamela Anderson notices and laughs. Warwick Capper and the woman get out of the buggy. Four women in Baywatch-style red swimwear smile and one brings up the Ultra Tune app on her phone. A large tsunami-style wave appears and Warwick Capper raises his arms and screams. Pamela Anderson states, "Here we go again". The wave hits Warwick Capper and the first woman who yells for help. Warwick Capper and the first woman can be seen struggling in the water. Warwick Capper yells out, "Pamela, it's me Warwick Capper. Save Warwick. It's me. Hall of Fame." Pamela Anderson and the four others in red swimwear are seen running in slow motion towards them. They grab paddle boards and are seen from behind



paddling into the water. The four women in red swimsuits are seen dragging Warwick Capper onto the beach, while the first woman stands to the side and watches. The Ultra Tune man arrives and asks Pamela if there is car trouble. She responds that it's Capper trouble. Warwick Capper is seen lying on the beach and he says, "breathing trouble". The Ultra Tune man raises a hand and says, "I've got this" and bends over Warwick Capper. A voice over states, "avoid unexpected situations". Warwick notices the Ultra Tune man and says, "you're not Pamela, ah well". and smiles. Pamela Anderson states, "get your car serviced at Ultra Tune".

The 45 second version features Warwick Capper and a woman wearing a white bikini in a dune buggy driving on the beach. He notices Pamela Anderson standing on the beach holding a surf board, and states, "Pamela Anderson?". As he stares at her, and the woman next to him exclaims and hits him. The steering wheel comes off in his hands and he screams. The dune stops at the ocean shore, where the buggy has become bogged. Pamela Anderson notices and laughs. Four women in Baywatch-style red swimwear smile and one brings up the Ultra Tune app on her phone. A large tsunami-style wave appears and Warwick Capper raises his arms and screams. Pamela Anderson states, "Here we go again". The wave hits Warwick Capper and the first woman who yells for help. Warwick Capper and the first woman can be seen struggling in the water. Warwick Capper yells out, "Pamela, it's me Warwick Capper. Come save Warwick. It's me. Hall of Fame." Pamela Anderson and the four others in red swimwear are seen running in slow motion towards them. They grab paddle boards and are seen from paddling into the water. The four women in red swimsuits are seen dragging Warwick Capper onto the beach, while the first woman stands to the side and watches. The Ultra Tune man arrives and asks Pamela if there is car trouble. She responds that it's Capper trouble. Warwick Capper is seen lying on the beach and he says, "breathing trouble". The Ultra Tune man raises a hand and says, "I've got this" and bends over Warwick Capper. A voice over states, "avoid unexpected situations". Warwick notices the Ultra Tune man and says, "you're not Pamela, ah well". and smiles. Pamela Anderson states, "get your car serviced at Ultra Tune".

The 30 second version features Warwick Capper and a woman wearing a white bikini in a dune buggy driving on the beach. He notices Pamela Anderson standing on the beach holding a surf board, and states, "Pamela Anderson?". As he stares at her, and the woman next to him exclaims and hits him. The steering wheel comes off in his hands and he screams. The dune stops at the ocean shore, where the buggy has become bogged. Pamela Anderson notices and laughs. Four women in Baywatch-style red swimwear smile and laugh. A large tsunami-style wave appears and Warwick Capper raises his arms and screams. Pamela Anderson states, "Here we go again". The wave hits Warwick Capper and the first woman who yells for help. Warwick Capper and the first woman can be seen struggling in the water. Warwick Capper yells out, "Pamela, it's me Warwick Capper. Save Warwick." Pamela Anderson and the four others in red swimwear are seen running in slow motion towards them. They grab paddle boards and are seen from behind paddling into the water. The four women in red swimsuits are seen dragging Warwick Capper onto the beach, while the first



woman stands to the side and watches. Pamela Anderson states, "Avoid unexpected situations, get your car serviced at Ultra Tune".

### **THE COMPLAINT**

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

*The ad is fostering unhealthy stereotypes including the dithering man who ogles women to the point he can't control himself, as well as Pamela and the girls in swimwear highly sexualised with breasts quite exposed. Many would question Cappa's sexuality given his history of being a womaniser, and would think that mocking a gay person would be offensive. This concept that men are out of control when confronted with a woman they are attracted to is known to have an impact on sexual abuse statistics in society and is an unhealthy stereotype that should be stopped. Showing men to be the inadequate and bumbling fool by contrast to a capable women is an unhealthy stereotype equally.*

### **THE ADVERTISER'S RESPONSE**

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

*Background information:*

*The advertisement forms part of an ongoing series of Ultra Tune advertisements generically referred to as the "Unexpected Situation Series". This series of contrived hyper-realistic comedic circumstances are used to advertise our Ultra Tune Roadside service and, as with this advertisement, Ultra Tune servicing.*

*Over the last few incarnations of the series, we have engaged high profile global celebrities (Jean Claude Van Damme, Mike Tyson, and Charlie Sheen) to leverage their brands, fame and by default their celebrity and instant recognition to increase our brand exposure and cut through. The concept behind the advertisement series has been to elevate our brand Ultra Tune and promote the services we provide in the after-market motor vehicle servicing advertising space which is otherwise quite bland and forgettable, in a more entertaining and humorous manner that are linked to actual issues that arise from not having your car serviced regularly.*

*In the past the series have been targeted by certain vocal interest groups. Ultra Tune cannot say if the complaints against the advertisement are again part of a campaign although the wording of the emails, as well as the fact that there appears to be almost a "knee jerk" reaction to the advertisement, might suggest that they are.*

*That said, Ultra Tune again acknowledges that many of the complainants will have deep and strongly held beliefs about objectification of women and sexualisation of*



women in advertising as shown by the quite emotional and in our opinion non-constructive allegations contained in a number of complaints.

However, the issue is not particular complainants' beliefs but instead, and as the Practice Note recognises, Prevailing Community Standards. In this respect the Board will also be aware that an objective assessment is required, and the intolerance of a particular viewer of an advertisement is not determinative where that intolerance does not accord with Prevailing Community Standards.

The Board will be further aware that it is not the volume of complaints per se that is important, this particularly if they appear to be the product of a dogmatic bias or campaign. The question instead is whether there is any merit in the complaints. With this advertisement, we have retained Ms Anderson leveraging her portrayal as CJ Parker in the Baywatch TV series that was produced between 1989 to 1999 for the very purpose of using her well-known brand and fame. The Baywatch series still remains relevant as the series was being screened on Channel Nine over summer. Ms Anderson's character in that TV series was a female lifeguard who was independent and could save lives (usually drownings) as equally as men.

#### *Detailed responses*

We note the issues raised by your letter (sections 2.1, 2.2, 2.3, 2.4, 2.6 and 2.7 of the Code) and respond as follows:

#### *Section 2.1 – Discrimination and Vilification \ Gender*

Section 2.1 of the Code provides:

*“Advertising or Marketing Communication shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

*The Practice Note elaborates on the above by saying:*

*Discrimination - unfair or less favourable treatment.*

*Vilification - humiliation, intimidation, incites hatred, contempt or ridicule.*

*We refer to the Board's previous decisions in cases 0040/16, 0236/16, 042/17, 043/17, 044/17, 045/17 and 203/17 where the Board dismissed the complaints.*

*In case 0236/16 the Board, inter alia, stated that:*

*“advertisers are free to use whomever they wish in their advertisements and considered that the use of two women in a car for an automotive product or service is not of itself discriminatory. The Board considered that the women's' (sic) physical appearance may be considered as sexy to some viewers or exaggerated to others but that this is not of itself vilifying or discriminatory”.*

*In our respectful submission, the advertisement does not show any form of discrimination, or vilification against women in any aspect of this section and submit:*

*(a) The advertisement is clearly designed to be hyper-realistic and comedic.*

*(b) The use of women in the advertisement is not in itself discriminatory.*



*(c) There is no negative depiction of any societal group as defined under the terms of Section 2 of the Code.*

*(d) The female lifeguards (of which Ms Anderson is one) are portrayed as empowered and self-reliant.*

*(i) As lifeguards, they rescue Mr Capper's character from the ocean using their lifesaving equipment (the branded surf rescue boards) in an appropriate manner. Their actions are swift and definitive in response to his call of help. They are always shown to be in control of the situation.*

*(ii) They recognise the need to extract the stuck vehicle and are seen using the Ultra Tune Roadside Assistance app on their mobile phone.*

*(e) Similarly, the female passenger is self-empowered and independent which is shown by her when admonishes Mr Capper's character at the start of the advertisement and that she does not require rescuing by the lifeguards.*

*Nothing in these advertisements encourages or incites any violence, harm or sexual predatory behaviour to any person regardless of gender. Some complaints have alleged that Mr Capper's character was "ogling" Ms Anderson at the start of the advertisement. However, it is pre-conceived and bias allegation. The proper construction is that the character sees Ms Anderson but is unsure it is her as evidenced by the upward inflection of the line "Pamela Anderson?" denoting a question to himself.*

*There is no act in these advertisements that is intended to either incite contemptuous laughter (i.e. laugh at rather than with the characters), or urge on, stimulate or prompt to action, hatred, contempt or ridicule against men or women.*

*Section 2.2 Explorative or degrading \ Degrading - women*

*Section 2.2 Explorative or degrading \ Exploitative - women*

*Section 2.2 Explorative or degrading \ Degrading - men*

*Section 2.2 of the Code states that:*

*"Advertising or Marketing Communication shall not employ sexual appeal:*

*(a) where images of Minors, or people who appear to be Minors, are used; or*

*(b) in a manner which is exploitative or degrading of any individual or group of people."*

*The Practice Note elaborates on the above by saying:*

*Exploitive*

*(a) taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities; or*

*(b) focusing on their body parts where this bears no direct relevance to the product or service being advertised.*

*Degrading - lowering in character or quality a person or group of persons.*

*We refute the suggestion that the advertisements in any way exploits women or men.*

*(a) No minors are featured in the advertisement.*

*(b) The advertisement is set at a beach. As at any beach, there will be people in various states of clothing (including swimwear). Several complainants have used emotive*



words such as “scantily” clothed in saying that the costumes are not related to our products / services. However, they neglect to consider that we have set this situation at the beach (which is not in any form contrary to the Code) and in this situation people will be in swimwear. All the actors and actresses are dressed in location appropriate clothing.

(i) Ms. Anderson who is dressed in an appropriate manner to go surfing at a beach; namely the black full-length wetsuit covering her body.

(ii) The lifeguard actresses are dressed in appropriate attire to perform duties as a designated surf lifeguard. As further submitted below, their attire was designed to parody the Baywatch costumes in the TV series and 2017 movie of the same name. See attached photographs 1.

(iii) The male actors are dressed in appropriate beach attire.

(c) Some complainants have alleged women does not relate to our product / service. The use of women in the advertisement is not in itself contrary to the Code. We refer to the comments of the Board in case number 029/18 that “advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code unless the use of the person is in some way depicting a breach of the Code”.

(d) Several complainants have complained about the use of the actresses’ body (including breasts) in the advertisement. The advertisement does not and is not focused on the actresses’ breasts or other body parts.

(i) A number of complainants have noted the Baywatch style running scene in the advertisement. As mentioned above, we are leveraging Ms Anderson’s famous and iconic role in that TV series and the 2017 movie (see attached photograph 1). The scene does not focus on any particular body part of the female body and in the context of them running to rescue a person is appropriate to include. We also note that Baywatch has recently been screening on Channel Nine over the summer.

(ii) Also in response to the complaints regarding the scenes with actresses using the paddle board. These complaints neglect the fact that surf rescue boards are used in this matter and the actresses are accurately portraying their use (see attached photograph 2).

(iii) The advertisement does not use any “lingering inappropriate shot” as it is designed to be an action, fast-paced advertisement. There is the homage to Baywatch as referred to above and we submit is appropriate in its context.

(e) We also submit that the above allegations neglect or ignore the actual actions and conduct of the female character’s in the advertisement. The advertisement clearly shows those characters taking action to rescue a person requesting rescue, they are responding quickly, using surf lifesaving equipment, using the Ultra Tune Roadside app for the vehicle assistance, and indeed rescuing the person. Ms Anderson and the lifeguards are presented with intelligence and positively.

(f) In response to any allegation for degrading a person or group of people regarding the administration of CPR (the final scene), we submit that the comedic effect is blatant and not exploitive nor degrading to any one as:

(i) If Mr Capper’s character is conscious and able to speak, then the character does not require CPR.

(ii) Whilst Mr Capper’s character originally hoped for Ms Anderson’s assistance, the character is shown / heard to accept CPR from a male.



*Regarding the portrayal of the male character, we submit that they are not being degraded:*

*(a) Mr Capper's character:*

*(i) Whilst we reject the allegation the character inappropriately looked at Ms Anderson (see above), it is not degrading to men that the character notices Ms Anderson at the beach.*

*(ii) The character's reaction to the steering wheel disconnecting is one of comedic relief. The character (as well as the passenger) is cognisant of the consequence of not having control of the vehicle. This is not degrading to either men or women.*

*(iii) It is not degrading to men that the character requires assistance or to be rescued from the ocean.*

*(b) The Ultra Tune character:*

*(i) the focus of introductory scene of the character is the 40th anniversary logo of Ultra Tune. The focus is not of the character's bottom which is fully clothed.*

*(ii) The character using the "car trouble" catchphrase that has been in used in the advertisement series.*

*(iii) The character is shown to be competent and able to assist in the situation.*

### *Section 2.3 Violence*

*Section 2.3 of the Code provides:*

*"Advertising or Marketing Communication shall not present or portray violence unless it is justifiable in the context of the product or service advertised."*

*We submit that the advertisement does not infringe this section. In the opening scenes when the female passenger admonishes Mr Capper's character for looking at Ms Anderson, we submit she is playfully slapping him in direct response to that. The playful slap is clearly not of sufficient force to cause the steering wheel to disconnect (which is rather due to poor vehicle maintenance).*

*Further the advertisement does not on any interpretation promote or condone violence against any person.*

### *Section 2.4 – Sex, sexuality and nudity*

*Section 2.4 of the Code provides:*

*"Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience."*

*The Practice Note elaborates on the above by saying:*

*"Images of women in bikinis are permitted, however unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person) or where there is clear sexual innuendo from the ad (e.g. Depicting the women as sexual objects)."*

*We also note what the Board said in case 0175/16 which was:*

*"The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative. The Board noted*



*that the two women are wearing ‘going out’ clothing which is often revealing but considered that in this instance although the women’s breasts are enhanced by the style of clothing they are wearing, their breasts are not the focus of the advertisement.*

*The Board considered that, consistent with a previous determination in case 0093/12, while it is not necessary for the women to be wearing low-cut clothing, it is not an unusual style of clothing for women to wear on a night out and the women’s physical features are not the focus of the advertisement.”*

*At all times, the actresses were fully clothed.*

*(a) Their clothing is not the focus of the advertisement.*

*(b) As mentioned above, the advertisement is set at a beach. As at any beach, there will be people in various states of clothing (including swimwear and wetsuits). Several complainants have used emotive words such as “scantily” clothed in saying that the costumes are not related to our products / services. However, they neglect to consider that we have set this situation at the beach (which is not in any form contrary to the Code) and in this situation people will be in swimwear. All the actors and actresses are dressed in location appropriate clothing.*

*(i) Ms. Anderson who is dressed in an appropriate manner to go surfing at a beach; namely the black full-length wetsuit covering her body.*

*(ii) The lifeguard actresses are dressed in appropriate attire to perform duties as a designated surf lifeguard. As further submitted above, their attire was designed to parody the Baywatch costumes in the TV series and 2017 movie of the same name. See attached photographs 1.*

*(iii) The male actors are dressed in appropriate beach attire.*

*(c) There is not sexual poses or innuendo in the advertisement. The actors and actresses are not displayed as sexual objective; we refer to our previous submissions in section 2.1 & 2.2.*

*CAD designated this specific advertisement with a PG classification.*

*Section 2.6 – Health and safety / Body Issue*

*Section 2.6 of the Code provides:*

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

*There are no unsafe practices portrayed in the advertisement.*

*(a) The beach buggy is being driven conservatively and safely along a beach with no other people in sight other than Ms. Anderson who is exiting the water. The driver is attentive to his circumstances. Prior to a vehicle malfunction, he looks in Ms Anderson’s direction.*

*(b) All surf lifesaving equipment is used in an appropriate safe manner.*

*There is no bullying depicted in the advertisement.*

*The body images depicted within the advertisement are not unrealistic in relation to body shape.*

*(a) Advertisement cast members exhibit body shapes of all types, shapes and sizes obtainable via everyday lifestyle choices.*



- (b) *The female surf lifesavers have athletic body types consistent with their vocation.*  
(c) *All cast members would fall well within the healthy weight range from a Body Mass Index perspective.*

*Section 2.7 – Distinguishable advertising / advertising not clearly distinguishable*  
*Section 2.7 of the Code provides:*

*“Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.”*

*The advertisement is clearly an advertisement.*

#### *Conclusion*

*For the reasons above, we do not believe the advertisements breaches the Code in any way, including any other parts of the Code not directly referred to above.*

### **THE DETERMINATION**

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

The Panel noted the complainant’s concerns that the advertisement:

- stereotypes men by suggesting that they inappropriately ogle women
- plays on the stupid man/capable woman theme and is derogatory to both
- is mocking of homosexuals
- is highly sexualised with breasts exposed

The Panel noted that the advertisement was also considered on free to air television in case 0051-20, and for thoroughness the Panel opted to include discussion points from that case in this report, which are clearly marked.

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

The Panel noted that there are three versions of this television advertisement, a 60 second version, a 30 second version and a 45 second version.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that *‘advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.’*

The Panel noted that the Practice Note for Section 2.1 of the Code of Ethics provides the following definitions:

*Discrimination – unfair or less favourable treatment*

*Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.*

The Panel first considered the 60 second version of the advertisement under Section 2.1 of the Code.



The Panel noted the complainant's concern that the advertisement:

- stereotypes men by suggesting that they inappropriately ogle women
- plays on the stupid man/capable woman theme and is derogatory to both

The Panel noted the advertiser's response that:

*"Nothing in these advertisements encourages or incites any violence, harm or sexual predatory behaviour to any person regardless of gender. Some complaints have alleged that Mr Capper's character was "ogling" Ms Anderson at the start of the advertisement. However, it is pre-conceived and bias allegation. The proper construction is that the character sees Ms Anderson but is unsure it is her as evidenced by the upward inflection of the line "Pamela Anderson?" denoting a question to himself.*

*There is no act in these advertisements that is intended to either incite contemptuous laughter (i.e. laugh at rather than with the characters), or urge on, stimulate or prompt to action, hatred, contempt or ridicule against men or women."*

The Panel considered that the depiction of Warwick Capper noticing Pamela Anderson at the start of the advertisement was consistent with a depiction of him reacting to seeing a celebrity and was not a depiction of him ogling her or leering at her. The Panel noted that he squints his eyes in an attempt to determine if it is Pamela Anderson.

The Panel noted that when Warwick Capper gets into trouble in the water he yells out for Pamela Anderson to save him. The Panel considered that this was a suggestion that he sees her as strong and capable of helping him and is not a suggestion that he is objectifying her.

The Panel noted at the end of the advertisement Warwick Capper is seen to claim that he is having breathing problems in the hope that Pamela Anderson would give him CPR. The Panel considered that he is not seen to be disappointed or upset when the Ultra Tune man goes to help him instead. The Panel considered that there is a suggestion in this scene that Warwick Capper finds Pamela Anderson attractive, however considered that this suggestion is not in itself discriminatory or vilifying.

The Panel considered that the Ultra Tune man in the advertisement was depicted as being friendly and helpful and was not portrayed in a way which suggested that he objectified the women in the advertisement.

The Panel noted that the complainant's comment that Warwick Capper may be homosexual due to his history of being a womaniser and that his depiction in the advertisement may be considered to be mocking of homosexuals.

The Panel considered that there is no reference in the advertisement to homosexuality and no content that could be considered discriminatory to homosexuals. The Panel noted however that even if a homosexual was depicted in the advertisement, the use of a person with a particular sexual preference is not of itself a breach of the Code.

The Panel noted complainants' concerns in case 0051-20 that the advertisement:



- is sexist
- is demeaning to women and is not appropriate in these times
- focusses on the male point of view
- portrays women as ditsy, dumb sex objects/ vacuous morons

The Panel noted the advertiser's response that:

*"the advertisement does not show any form of discrimination, or vilification against women in any aspect of this section and submit:*

*(a) The advertisement is clearly designed to be hyper-realistic and comedic.*

*(b) The use of women in the advertisement is not in itself discriminatory.*

*(c) There is no negative depiction of any societal group as defined under the terms of Section 2 of the Code.*

*(d) The female lifeguards (of which Ms Anderson is one) are portrayed as empowered and self-reliant.*

*(i) As lifeguards, they rescue Mr Capper's character from the ocean using their lifesaving equipment (the branded surf rescue boards) in an appropriate manner. Their actions are swift and definitive in response to his call of help. They are always shown to be in control of the situation.*

*(ii) They recognise the need to extract the stuck vehicle and are seen using the Ultra Tune Roadside Assistance app on their mobile phone.*

*(e) Similarly, the female passenger is self-empowered and independent which is shown by her when admonishes Mr Capper's character at the start of the advertisement and that she does not require rescuing by the lifeguards."*

The Panel noted that it had previously considered similar concerns in relation to another advertisement from this advertiser in case 0236-16, in which:

*"The Board noted that advertisers are free to use whomever they wish in their advertisements and considered that the use of two women in a car for an automotive product or service is not of itself discriminatory. The Board considered that the women's physical appearance may be considered as sexy to some viewers or exaggerated to others but that this is not of itself vilifying or discriminatory."*

The Panel noted that in the current advertisement the six women may be portrayed in a way which highlights their physical appearance and attractiveness, however consistent with the determination in 0236-16 the Panel considered the inclusion of attractive actors or models in an advertisement is not of itself vilifying or discriminatory.

The Panel noted that it had also previously considered similar concerns in relation to another advertisement from this advertiser in case 0260-19 in which:

*"The majority of the Panel considered that the advertisement perpetuated the negative stereotype that women can't drive, depicted the women in need of rescuing by men and dehumanised the women and depicted them as doll-like sexual objects to be used by men. The majority of the Panel considered that the cumulative effect of the advertisement amounted to*



*a depiction which humiliates the women and depicts them receiving less-favourable treatment because of their gender.”*

Unlike case 0260-19, in the current advertisement the Panel considered that Pamela Anderson and the four other female lifesavers were depicted in an active heroic role in the advertisement. The Panel considered they were depicted as capable and ready to respond to the situation.

The Panel considered that the woman depicted as being next to Warwick Capper in the advertisement was shown as being able to rescue herself from the water. The Panel considered that whilst the woman was shown in an incidental role in the advertisement, the overall impression given by the advertisement was showing women as capable and confident.

The Panel considered that the women in the advertisement were not shown to receive unfair or less favourable treatment and that there was nothing in the advertisement which humiliated or intimidated the women or which would incite hatred, contempt or ridicule of the women.

The Panel determined that the 60 second version of the advertisement did not depict material in a way which discriminates against or vilifies a section of the community on account of gender and did not breach Section 2.1 of the Code.

The Panel then considered the 45 and 30 second version of the advertisement under Section 2.1 of the Code.

Consistent with the determination in the 60 second version of the advertisement, the Panel considered that the 45 second and 30 second version of the advertisement did not depict material in a way which discriminates against or vilifies a section of the community on account of gender and did not breach Section 2.1 of the Code.

The Panel determined that the advertisement did not breach Section 2.1 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: “Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group of people.”

The Panel noted complainants’ concerns in case 0051-20 that the advertisement is demeaning to men.

The Panel noted the advertiser’s response that:

*“Regarding the portrayal of the male character, we submit that they are not being degraded:*

*(a) Mr Capper’s character:*

*(i) Whilst we reject the allegation the character inappropriately looked at Ms Anderson (see above), it is not degrading to men that the character notices Ms Anderson at the beach.*



*(ii) The character's reaction to the steering wheel disconnecting is one of comedic relief. The character (as well as the passenger) is cognisant of the consequence of not having control of the vehicle. This is not degrading to either men or women.*

*(iii) It is not degrading to men that the character requires assistance or to be rescued from the ocean.*

*(b) The Ultra Tune character:*

*(i) the focus of introductory scene of the character is the 40th anniversary logo of Ultra Tune. The focus is not of the character's bottom which is fully clothed.*

*(ii) The character using the "car trouble" catchphrase that has been in used in the advertisement series.*

*(iii) The character is shown to be competent and able to assist in the situation."*

The Panel considered whether the advertisement employed sexual appeal of the men in the advertisement.

The Panel noted that all three versions of the advertisement featured Warwick Capper and the Ultra Tune man. The Panel noted that Warwick Capper is dressed in an open print shirt, leopard print board shorts and wearing a gold chain around his neck. The Panel noted the Ultra Tune man is wearing black shorts and a singlet with Ultra Tune information printed on them, and a black cap.

The Panel considered both men were clothed appropriately for the beach. The Panel considered that while there was a focus on the buttocks of the Ultra Tune man, this was to highlight the 40<sup>th</sup> anniversary logo on his clothing and the Panel considered that this focus was not sexualised. The Panel considered that whilst Warwick Capper is seen to react to Pamela Anderson in a way which suggests he finds her attractive, there is no focus on or reference to the way Warwick Capper looks.

The Panel considered that the depiction of the men in the advertisement did not employ sexual appeal and therefore Section 2.2 did not apply to the portrayal of the men.

The Panel noted complainants' concerns in case 0051-20 that the advertisement:

- sexualises and objectifies women – does not portray them as people in their own right
- is degrading to women
- depicts the man leering at the girls and making sexist remarks
- features a focus on the women's breasts and backsides, with breasts shown bouncing as they run
- depicts the women in a way which is not related to the service being promoted

The Panel noted the advertiser's response that:

*"We refute the suggestion that the advertisements in any way exploits women or men.*

*(a) No minors are featured in the advertisement.*

*(b) The advertisement is set at a beach. As at any beach, there will be people in various states of clothing (including swimwear). Several complainants have used emotive words such as "scantily" clothed in saying that the costumes are not related to our products / services.*



However, they neglect to consider that we have set this situation at the beach (which is not in any form contrary to the Code) and in this situation people will be in swimwear. All the actors and actresses are dressed in location appropriate clothing.

(i) Ms. Anderson who is dressed in an appropriate manner to go surfing at a beach; namely the black full-length wetsuit covering her body.

(ii) The lifeguard actresses are dressed in appropriate attire to perform duties as a designated surf lifeguard. As further submitted below, their attire was designed to parody the Baywatch costumes in the TV series and 2017 movie of the same name. See attached photographs 1.

(iii) The male actors are dressed in appropriate beach attire.

(c) Some complainants have alleged women does not relate to our product / service. The use of women in the advertisement is not in itself contrary to the Code. We refer to the comments of the Board in case number 029/18 that “advertisers are free to use whoever they wish in advertisements and that this is not a matter which falls within Section 2 of the Code unless the use of the person is in some way depicting a breach of the Code”.

(d) Several complainants have complained about the use of the actresses’ body (including breasts) in the advertisement. The advertisement does not and is not focused on the actresses’ breasts or other body parts.

(i) A number of complainants have noted the Baywatch style running scene in the advertisement. As mentioned above, we are leveraging Ms Anderson’s famous and iconic role in that TV series and the 2017 movie (see attached photograph 1). The scene does not focus on any particular body part of the female body and in the context of them running to rescue a person is appropriate to include. We also note that Baywatch has recently been screening on Channel Nine over the summer.

(ii) Also in response to the complaints regarding the scenes with actresses using the paddle board. These complaints neglect the fact that surf rescue boards are used in this matter and the actresses are accurately portraying their use (see attached photograph 2).

(iii) The advertisement does not use any “lingering inappropriate shot” as it is designed to be an action, fast-paced advertisement. There is the homage to Baywatch as referred to above and we submit is appropriate in its context.

(e) We also submit that the above allegations neglect or ignore the actual actions and conduct of the female character’s in the advertisement. The advertisement clearly shows those characters taking action to rescue a person requesting rescue, they are responding quickly, using surf lifesaving equipment, using the Ultra Tune Roadside app for the vehicle assistance, and indeed rescuing the person. Ms Anderson and the lifeguards are presented with intelligence and positively.

(f) In response to any allegation for degrading a person or group of people regarding the administration of CPR (the final scene), we submit that the comedic effect is blatant and not exploitive nor degrading to any one as:

(i) If Mr Capper’s character is conscious and able to speak, then the character does not require CPR.

(ii) Whilst Mr Capper’s character originally hoped for Ms Anderson’s assistance, the character is shown / heard to accept CPR from a male.”

The Panel first considered whether the 60 second version of the advertisement contained sexual appeal. The Panel considered that the advertisement featured six attractive women dressed in swimwear.



The Panel considered that the depiction did contain sexual appeal.

The Panel then considered whether the advertisement was exploitative. The Panel noted that part (a) of the definition of exploitative in the Practice Note for the Code, is “taking advantage of the sexual appeal of a person, or group of people, by depicting them as objects or commodities”.

The Panel noted the Practice Note for the Code provides:

*“For material to breach this section of the Code, it must contain sexual appeal, however not all images or other material depicting people who are scantily clad or naked will be unacceptable under this section. This section restricts the use of material only if it employs sexual appeal in a manner which is exploitative of or degrading to any individual or group of people. The Community Panel may have regard to the context or medium in which the material appears.”*

The Panel noted that the women in the advertisement are depicted as intelligent, capable lifesavers who rescue Warwick Capper after a tsunami type large wave washes him into the ocean. The Panel considered that the women are not depicted as objects or commodities and are depicted as heroic in undertaking a lifesaving role.

The Panel considered that the 60 second advertisement did not meet part (a) of the definition of exploitative as the advertisement did not depict the women as objects or commodities.

The Panel then considered part (b) of the definition of exploitative in the Practice Note for the Code, which is “focussing on their body parts where this bears no direct relevance to the product or service being advertised”.

The Panel noted the definition of focus is “a central point, as of attraction, attention, or activity” (Macquarie Dictionary 2006).

The Panel considered that depicting women with cleavage or large breasts in an advertisement is not of itself exploitative. The Panel considered that while the women’s cleavage is eye-catching, there is not a specific or direct focus on their breasts which makes them the central point of attention, i.e. a close up or highlighting of their breasts.

The Panel noted that while some members of the community may consider there to be an inappropriate focus on the women’s breasts, the Panel considered that the focus was on the storyline as a whole and any attention on the women was as a result of their life saving activities and was not on their body parts specifically.

The Panel also noted that the women’s thighs and buttocks are prominent in a scene showing them paddling out to rescue Warwick Capper, however considered that it is in the context of the women using the paddleboards in an appropriate manner and is only a small part of the entire advertisement. The Panel considered that most members of the community would not consider such a brief scene in an advertisement to be the central point of attention.

The Panel considered that the current advertisement did not meet part (b) of the definition of exploitative as there was no particular focus on the women’s body parts.



The Panel found that the advertisement did not employ sexual appeal in a manner which is exploitative of the women.

The Panel then considered whether the advertisement was degrading. The Panel noted the definition of degrading in the Practice Note is “lowering in character or quality a person or group of people”.

The Panel again noted that the women in the advertisement are depicted as capable lifesavers who rescue Warwick Capper after a tsunami type large wave washes him into the ocean. The Panel considered that the women are not lowered in character or quality but rather are depicted as the heroes in the advertisement as they rescue the man who is shown to require lifesaving assistance.

The Panel considered that the 60 second version of the advertisement did not use the sexual appeal of the women in a way which is degrading to the women, or women in general.

The Panel determined that the 60 second version of the advertisement did not employ sexual appeal in a manner which was exploitative or degrading of the women in the advertisement, and did not breach Section 2.2 of the Code.

The Panel then considered the 45 second and 30 second version of the advertisement under Section 2.2 of the Code.

Consistent with the determination for the 60 second advertisement, the Panel considered that the 45 second and 30 second version of the advertisement contained similar themes and imagery and this version did not employ sexual appeal in a manner which was exploitative or degrading of the women in the advertisement, and did not breach Section 2.2 of the Code.

The Panel considered the advertisement did not breach Section 2.2 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Panel noted the complainants’ concern that the advertisement portrays abuse and suggests that hitting one’s partner for looking at another woman is considered OK and funny.

The Panel noted the advertiser’s response that:

*“We submit that the advertisement does not infringe this section. In the opening scenes when the female passenger admonishes Mr Capper’s character for looking at Ms Anderson, we submit she is playfully slapping him in direct response to that. The playful slap is clearly not of sufficient force to cause the steering wheel to disconnect (which is rather due to poor vehicle maintenance).*

*Further the advertisement does not on any interpretation promote or condone violence against any person.”*



The Panel noted the scene which suggests that the woman slaps Warwick Capper appeared in all three versions of the advertisement.

The Panel considered that the advertisement is intended to be unrealistic and comedic, and that the scene is similar to slapstick comedy in the manner that the woman is depicted slapping the man, which causes him to jerk on the steering wheel, which then detaches from the steering column in his hands, and the vehicle gets bogged in the sand.

The Panel noted that Warwick Capper has no negative reaction to the interaction which suggests the woman slaps him. The Panel considered that Warwick Capper does not indicate that he is hurt in any way by the interaction.

The Panel considered that most members of the community would not consider this clearly fantasy scenario of a series of incidents to be promoting or condoning violence or domestic abuse.

The Panel considered that the advertisement did not present or portray violence and considered that the advertisement did not breach Section 2.3 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Panel noted the complainant's concern that the advertisement is highly sexualised with breasts exposed.

The Panel further noted complainants' concerns in case 0051-20 that the advertisement:

- is inappropriate for viewing during at this time slot (during the Australian Open, daytime TV during school holidays)
- features a sexual innuendo that the women are there to provide a 'service'

The Panel noted the advertiser response that:

*"At all times, the actresses were fully clothed.*

*(a) Their clothing is not the focus of the advertisement.*

*(b) As mentioned above, the advertisement is set at a beach. As at any beach, there will be people in various states of clothing (including swimwear and wetsuits). Several complainants have used emotive words such as "scantily" clothed in saying that the costumes are not related to our products / services. However, they neglect to consider that we have set this situation at the beach (which is not in any form contrary to the Code) and in this situation people will be in swimwear. All the actors and actresses are dressed in location appropriate clothing.*

*(i) Ms. Anderson who is dressed in an appropriate manner to go surfing at a beach; namely the black full-length wetsuit covering her body.*

*(ii) The lifeguard actresses are dressed in appropriate attire to perform duties as a designated surf lifeguard. As further submitted above, their attire was designed to parody the Baywatch costumes in the TV series and 2017 movie of the same name. See attached photographs 1.*



*(iii) The male actors are dressed in appropriate beach attire.*

*(c) There is not sexual poses or innuendo in the advertisement. The actors and actresses are not displayed as sexual objective; we refer to our previous submissions in section 2.1 & 2.2."*

The Panel considered the 60 second version of the advertisement.

The Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered whether the advertisement depicted sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is 'sexual intercourse; sexually stimulating or suggestive behaviour.' (Macquarie Dictionary 2006).

The Panel considered that the depiction of the women in swimwear in a beach setting is not of itself a depiction of sexual intercourse, sexual stimulation or suggestive behaviour and that the advertisement as a whole did not contain sex.

The Panel considered whether the advertisement contained sexuality.

The Panel noted the definition of sexuality includes 'sexual character, the physical fact of being either male or female; the state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one's capacity to experience and express sexual desire; the recognition or emphasising of sexual matters'. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that some members of the community may consider a depiction of attractive women in swimwear to be a depiction of sexuality.

The Panel determined the advertisement did contain sexuality.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes 'something nude or naked', and that nude and naked are defined to be 'unclothed and includes something 'without clothing or covering'. The Panel considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is factor when considering whether an advertisement contains nudity.

The Panel considered that the men and women in the advertisement were all wearing clothing consistent with current fashion trends for swimwear and that there are no bare breasts or genitals in the advertisement. The Panel noted that Pamela Anderson and the lifesavers in the advertisement are depicted wearing swimwear with zippers undone to reveal a substantial amount of cleavage. The Panel considered that some members of the community would consider this to constitute partial nudity.

The Panel determined the advertisement did contain nudity.

The Panel then considered whether the advertisement treated the issues of sexuality and nudity with sensitivity to the relevant audience.



The Panel considered the meaning of 'sensitive' and noted that the definition of sensitive in this context can be explained as indicating that 'if you are sensitive to other people's needs, problems, or feelings, you show understanding and awareness of them.' (<https://www.collinsdictionary.com/dictionary/english/sensitive>)

The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' is a concept requiring them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement – the concept of how subtle sexual suggestion is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted the complainants' concern that the advertisement had been broadcast during the Australian Open during the school holidays and that the content was not appropriate for children.

The Panel noted that the advertisement had been given a P rating by ClearAds (Parental Guidance Recommended, may be broadcast at any time of day, except during children's programming) and was aired at a time appropriate to the rating (<https://www.clearads.com.au/wp-content/uploads/2020/01/ClearAds-Handbook-Edition-8.pdf>).

The Panel considered that the relevant audience for the advertisement would be broad and would likely include children.

The Panel noted that it had considered similar issues in case 0175-16, in which:

*"The Board acknowledged that some members of the community would find the use of female models to promote an automotive service to be exploitative. The Board noted that the two women are wearing 'going out' clothing which is often revealing but considered that in this instance although the women's breasts are enhanced by the style of clothing they are wearing, their breasts are not the focus of the advertisement. The Board considered that, consistent with a previous determination in case 0093/12, while it is not necessary for the women to be wearing low-cut clothing, it is not an unusual style of clothing for women to wear on a night out and the women's physical features are not the focus of the advertisement."*

The Panel also noted that it had considered similar issues in case 0260-19 in which:

*"The Panel considered that the women's full bodies can be seen after they climb onto the boat, and that the women's cleavage may be visible, but this is not excessive and is consistent with general fashion. The Panel noted that one of the women was wearing a bikini with overalls, and that the side of her breast is visible. However, the Panel considered that the woman's bikini top covers her appropriately and is consistent with normal dress which would be seen near a beach. The Panel noted that the three women shown already on boat were in revealing bikinis, however considered that this depiction is very fleeting and lasted for less than a second. The Panel considered that the women are in the background and are not the focus of the scene and were unlikely to be noticed by most viewers. Further, the Panel considered that*



*their depiction is consistent with what would usually be worn on boats and did not amount to a depiction of nudity which would be inappropriate for the relevant broad audience”*

The Panel noted that the advertisement is a clear reference to the Baywatch TV series and movie, and that most members of the community would be aware of both Pamela Anderson and the Baywatch connection even if they had not watched the TV program or movie before.

The Panel considered that the women in the advertisement are wearing swimwear consistent with that worn by Baywatch actors, and noted that it is not dissimilar to current beachwear trends. The Panel noted that the women’s zippers are pulled low and their cleavage is visible, but their breasts are not fully exposed. Further the Panel noted that their swimwear is high cut around the buttocks but considered that this is not a depiction of overt nudity. The Panel considered that the advertisement did not contain overt nudity and that the six women and two men in the advertisement were dressed appropriately for a beach scene.

The Panel considered that the advertisement suggests that the women are employed or volunteer to provide a lifesaving service at the beach, and there is nothing in the advertisement to suggest or indicate that the women are sexually available.

The Panel considered that the women in the advertisement do not behave in a manner that most members of the community would consider sexualised, nor do the men. The women in the advertisement are depicted as fit and capable of rescuing Warwick Capper, and they do not act in a sexualised manner.

The Panel considered that in the context of advertisement parodying a well-known entertainment franchise and airing in programming with a broad audience, the overall depiction of sexuality and nudity was mild and not inappropriate for that audience.

The Panel determined that the 60 second version of the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel then considered the 45 second and 30 second version of the advertisement under Section 2.4 of the Code.

Consistent with the determination for the 60 second version, the Panel considered that the 45 second and 30 second version did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience.

The Panel noted complainants’ concerns in case 0051-20 that the advertisement:

- promotes domestic abuse and violence and attacks on women
- contributes to human trafficking
- promotes pornography and constitutes sexual abuse
- runs counter to community awareness campaigns about respect for women

The Panel noted that its role is to consider the content of the current advertisement in relation to the Code of Ethics. The Panel considered that the advertisement did not depict nor reference women being treated in a violent or disrespectful manner. The Panel considered that the advertisement did not depict or reference pornography.



The Panel determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of 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 complainants’ concerns in case 0051-20 that the advertisement:

- depicts an unhealthy image of skinny women with large breasts
- creates the impression in young girls that women only have value if they have large breasts
- portrays unhealthy and unnatural body type images

The Panel noted the advertiser’s response that:

*“The body images depicted within the advertisement are not unrealistic in relation to body shape.*

*(a) Advertisement cast members exhibit body shapes of all types, shapes and sizes obtainable via everyday lifestyle choices.*

*(b) The female surf lifesavers have athletic body types consistent with their vocation.*

*(c) All cast members would fall well within the healthy weight range from a Body Mass Index perspective.”*

The Panel noted that the same six women appear in both versions of the advertisement.

The Panel noted the Practice Note for the Code provides:

*“Advertising must not portray an unrealistic ideal body image by portraying body shapes or features that are unrealistic or unattainable through healthy practices... An unrealistic ideal body image may occur where the overall theme, visuals or language used in the advertisement imply that:*

- *a body shape, or feature, of the kind depicted (e.g. very thin or very muscular) is required to use the product or service or to participate in an activity associated with the product or service;*
- *those people who do not have a body shape, or feature, of the kind depicted cannot use the product or service, or participate in a particular activity; or*
- *those people who do not have a body shape, or feature, of the kind depicted should alter their body shape, or features, before they can use the product or service, or participate in a particular activity.*

*An unrealistic ideal body image may also occur where models are depicted in a way that:*

- *promotes unhealthy practices*
- *presents an unrealistic body image as aspirational; or*
- *is reasonably likely to cause pressure to conform to a body shape that is unrealistic or unattainable through healthy practices (such as diet or physical activities),*

*unless such depictions are justifiable in the context of the product or service advertised.”*



The Panel considered that the women in the advertisement do not appear to be unhealthily thin and considered that their body type is athletic and strong.

The Panel noted that some members of the community may consider that the women have had breast augmentation surgery and that depicting such women portrays unhealthy and unnatural body type images and creates the impression that women only have value if they have large breasts. The Panel noted that there is no suggestion of surgery in the advertisement and considered that the depiction of women with large breasts, either natural or enhanced, is not of itself a depiction of an unrealistic body image.

The Panel considered that there is no suggestion in the advertisement that women's value is in any way related to their breast size or body shape.

The Panel noted complainants' concerns in case 0051-20 that the advertisement depicts unsafe driving.

The Panel noted the advertiser's response that:

*"The beach buggy is being driven conservatively and safely along a beach with no other people in sight other than Ms. Anderson who is exiting the water. The driver is attentive to his circumstances. Prior to a vehicle malfunction, he looks in Ms Anderson's direction."*

The Panel noted that the scene of Warwick Capper driving the vehicle appear in both versions of the advertisement.

The Panel considered that the vehicle became bogged and the steering wheel fell off due to the faulty vehicle, not as a result of unsafe driving.

The Panel noted that the people in the vehicle do not appear to be wearing a seatbelt.

The Panel noted that the Code requires an advertisement not to depict material contrary to Prevailing Community Standards on health or safety and considered that in this advertisement it is unclear whether the passengers are wearing seatbelts, or what type of seatbelt. The Panel considered that this is therefore not in breach of the Code as most members of the community would be unable to definitely determine whether the advertisement depicted people wearing seatbelts or not and in the particular scenes of this advertisement, the screen shots and the way that the people were sitting meant it was not possible to clearly see whether or not they were wearing seatbelts. In the context of driving slowly along a beach in a beach vehicle the Panel considered that a lack of clarity about seatbelts was not a depiction that was contrary to prevailing community standards on safety.

The Panel considered that the advertisement did not breach Section 2.6 of the Code.

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that "Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."



The Panel noted complainants' concerns in case 0051-20 that the advertisement makes the viewer no wiser to the actual service the company provides.

The Panel noted the advertiser's response that the advertisement is clearly an advertisement.

The Panel considered that the relevant audience is people watching free to air television, particularly during the tennis coverage.

The Panel considered that this section of the Code relates to the material being distinguishable as an advertisement, and that it does not relate to the content of the advertisement having to clearly be related to the promotion of a product or service.

The Panel considered that the relevant audience would clearly be able to distinguish both versions of this advertisement as advertising.

The Panel considered that this advertisement is clearly distinguishable as advertising material to the relevant audience and determined that the advertisement did not breach Section 2.7 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaints.