



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0097/18
2	Advertiser	The Smith Family
3	Product	Community Awareness
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	07/03/2018
6	DETERMINATION	Dismissed
7	Date of reviewed determination	09/05/2018
8	Determination on review	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a mother dropping her daughter off at school. The mother stops at a crossing, she witnesses a happy group of school children walking over a supervised crossing. The mother then notices a sad, poor looking girl following behind the group and watches with concern. A voice over states that one in seven Australian children are growing up in poverty.

THE COMPLAINT

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

In NSW, the penalty for disobeying Rule 171 (1): Stop on/near children's crossing (school zone) is \$439 and 2 Demerit Points. The primary reason is because it's very dangerous as it obstructs the line of sight of both pedestrians and motorists.





Additionally, the young children are seen skipping and running across the road (not looking or holding the hand of an adult) and then the young girl is seen crossing the road, never looking to the right, then left then right again. And she crosses looking the entire time looking at the road. She's not holding an adult's hand. In NSW it's government policy that: "until they are 10, children must always hold an adult's hand when crossing the road." And the Pedestrian Council has been promoting this message in its Walk Safely to School Day campaign, nationally, for 20 years. We don't know the age of these children, but most appear to be well under 10.

The subliminal message is clearly that richer children get driven to school, but poorer children have to walk and it makes them very depressed. Yet for 20 years our primary messages have been about walking for health and reducing car dependency. Only today, the AMA launched a campaign to combat childhood obesity, much of it caused by sedentary behaviour and car-dependency. For the record, the grammar is rather appalling too. (Quote): "Right now, one in seven young Australians are [sic] living in poverty." This should be: "Right now, one in seven young Australians is living in poverty."

While I am not doubting the good intentions and work of the Smith Family, this ad sends out ALL the wrong messages about Road Safety and Health to children, parents and motorists. In particular, the ad cannot be permitted to invite or encourage breaking or flouting any state law. It does. I am therefore lodging this complaint under your Code of Ethics that the ad is contrary to prevailing community standards on Health and Safety.

THE ADVERTISER'S RESPONSE

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

I am writing in response to a complaint you received (6 February 2018) regarding advertising materials produced for The Smith Family and we thank you for drawing this to our attention.

I understand that it has been claimed this particular TV commercial aired on Channel 9 produced for The Smith Family's Back to School Appeal, breaches Section 2.6 of the AANA Code of Ethics, namely:

Section 2.6

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

Driving practices or other actions which would, if they were to take place on a road or



road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

We do not believe that the commercial has breached sections 2.1, 2.2, 2.3, 2.4, 2.5 and 2.7 in any way, and have focused our response on the issues raised in relation to section 2.6.

To address the complaint, we have structured our response in five parts.

Part one – children not holding hands whilst crossing the road

In our advert children are shown crossing the road on a pedestrian crossing. They are not holding hands, and it is evident they are younger than ten. While there are road safety recommendations and advice (Road Safety guidelines of the NSW Government) that suggest children under ten should be actively supervised in the traffic environment and should hold an adult's hand when crossing the road, these suggestions are not enforceable laws.

As a charity focused on supporting the education of disadvantaged Australian children, we care about their wellbeing and safety. For this reason, during filming a team of Safety Supervisors (Traffic controllers, a Traffic Supervisor, Pedestrian Managers, and a registered Nurse) were on set. In the TV commercial, a Crossing Supervisor can also be seen wearing a high visibility vest and actively supervising the children at 00.03 seconds and once again at the end of the advert at 00.25.

Please refer to the attached Safety Report (Attachment 1), Traffic Management Plan (Attachment 2), for they are evidence that safety on set was a primary concern.

Part two – a car stopped at a crossing

Within our advert, the primary character is a pre-occupied and busy young mum dropping her daughter at school. The advert is intended to show that while everyday Australians go about their everyday lives, they don't see the poverty that exists in our society. The purpose of the advert is to encourage people to see that poverty is real in Australia, and not to look away from it. The TV commercial plays an important role in encouraging people to question whether they are ignoring children living in poverty.

In our commercial, our mother pulls up her car near the pedestrian crossing. At that point, she becomes distracted and overwhelmed with concern for a disadvantaged child who she sees crossing the road. The advert emphasises how watching this child



has affected the mother, by showing her jolted back to reality by her daughter who wants her.

The daughter's request for her mother's attention is an important scene, because it enables us to see the daughter which provides the basis for the audience comparing the differences in the girls' uniforms, resources (such as school bag and book) and sense of wellbeing.

The mother responds and the daughter gets out of the car. The tone of the commercial is emotional and attention is focused on the mother seeing the disadvantaged girl. The story is not about the mother breaking the law or behaving recklessly. It is evident she is emotionally stunned.

Within the advert there is not undue focus on the car's location. The car is not shown blocking the line of sight of any of the pedestrians or other motorists. There are no other motorists featured. During the filming, the road was closed; the car was filmed under controlled supervision; there was a crossing supervisor for the children crossing the road; and there are no road signs within the scenes present in the commercial.

Furthermore, in direct adherence to Section 139 of the Roads Act 1993 a notice of approval was received from Bayside Council (Attachment 4). This is clear in the Traffic Management Plan (Attachment 2) which has a Film Area designated in red box. This area was approved by the council as a safe area to film.

Part three – message that poor children are depressed because they walk to school

Within the advert there are many children crossing the road as pedestrians. All the children are experiencing a range of emotions. It was not our intention for this advert to convey a message that walking to school makes any child, no matter their circumstances, feels sad.

Within a 30 second time limit, this advertisement has to convey a story about a mother's response to a child whom she sees and her processing that this child is missing out and not fitting in at school.

Given the purpose of this advert was to tell that story, there was insufficient time to include a scene where a child approaches a crossing then looks right, then left, then right again before stepping onto the crossing.

The disadvantaged child crossing the road is outfitted deliberately to convey impecunious circumstances. These include old ill-fitting shoes, a plastic bag as a lunch box and a faded and tattered uniform. The Smith Family is aware through our daily work with disadvantaged Australian children that this depiction is not over exaggerated. It is evident that this child is different from other school children, and her poverty and the impacts of her poverty (ie isolation and not fitting in at school) is what



is affecting her as she walks. It is this that is making her depressed.

We do not believe people will judge this as being an advert about the transport options for getting children to school, and the effects of those transport options on a child's feelings.

Part four – advert contains a grammatical error

The narrated line “right now, one in seven young Australians are living in poverty” is deliberately conversational in style to reflect common usage. We do not agree it is a breach of any of the AANA Code of Ethics. Attachment 3 provides the script for the advertisement, for reference.

Part five – The Smith Family's work to draw the public's attention to a very real societal need

The Smith Family has worked tirelessly for over 95 years supporting Australia's disadvantaged. Today our organisation focuses on the providing educational support programs to children to help them break the cycle of disadvantage. This includes child sponsorship where children are sponsored by caring Australians throughout their school years. This advert forms part of a campaign raising funds and awareness to secure more sponsors so that more disadvantaged children can be supported.

Every day we work with children affected by poverty like the child depicted in our advert, and we are trying to stop it which is why we exist. However, we urgently need to get the issue on the agenda and raise funds to prevent it from occurring. Our depiction has been guided by our experience in working with these families and in particular the first-hand accounts and personal stories that families have so generously shared with us. Our depiction is certainly not for gratuitous reasons.

This approach and dramatisation of a disadvantaged child, is no different to campaigns by many other charities that regularly show the impacts of poverty for example on African children and other populations around the world. It may not be attractive but is necessary to raise awareness and funds to address an important issue. The ad was intended for Adults who may be able and willing to become a financial supporter of The Smith Family's work, and the media selection was based on an Adult audience.

Advertising to attract more supporters is key for our sustainability and the continuation of our work. The Smith Family Back to School Appeal advertising (of which this advert is a key part) has achieved a very strong positive response from the public and many Australians have signed up to become sponsors as a result. We need this outcome, as we cannot continue to do our important work without the help of the public.



So, in conclusion we do not accept the basis of the complaint and do not accept that this ad breached the Code. Should you require any further information or clarification please do not hesitate to contact me.

THE DETERMINATION

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

The Panel noted the complainant’s concern that the advertisement depicted material contrary to messages about road safety, specifically the proximity of the mother’s car to the children’s crossing, the way in which the children are crossing the road and that the advertisement is undermining messages about walking and health.

The Panel reviewed the advertisement and noted the advertiser’s response

The Panel considered 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 the television advertisement depicts a mother dropping her child at school. The mother witnesses a happy group of children cross at the crossing, and then a sad child crossing by herself. A voice over states that one in seven Australian children are growing up in poverty.

The Panel noted the complainant’s concern that the advertisement shows the mother pulling up next to a children’s crossing which is against road rules.

The Panel 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. The Panel noted the information provided by the complainant regarding the Australian Road Rules and penalties for stopping on or near a children’s crossing.

The Panel noted that the depiction of something which is against recommended behaviour or might be in contravention of a regulation, is not of itself a depiction of material which is against prevailing community standards on health and safety. The Panel must consider the impact of the depiction in the overall context of the advertisement.

The Panel noted the advertiser’s response that the advertisement was filmed in a



closed off area and that this was the only place the woman could pull over and still be in frame for the advertisement. The Panel noted that the mechanics of filming are not relevant to the overall impression of the advertisement – which is what the Panel must consider.

The Panel noted the brief image which depicts a woman parking near to a children's crossing. The Panel considered that there were no obvious signage or road markings in the advertisement to show that the woman could not park or pull over where she did. The Panel considered that the depiction of where the woman is parked is brief and is not the focus of the advertisement. The Panel considered that many schools have drop-off zones near school crossings and that it was unclear in the advertisement if the woman was parked in one of these zones.

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.

The Panel then considered the complainant's concern that the advertisement depicts children under 10 crossing the road without holding an adult's hand and that this behaviour is also against road safety guidelines.

The Panel considered the children were crossing at a designated school crossing and that it is common to see children who walk to school crossing at a school crossing without a parent. The Panel considered that most members of the community would consider children crossing the road at a school crossing to be consistent with community standards around road safety. The Panel considered that the depiction of the children crossing at the school crossing was not contrary to prevailing community standards on health and safety.

The Panel noted the complainant's concern that the children are depicted not keeping an eye on traffic as they cross the crossing. Again the Panel noted that the focus of the advertisement is on the emotions and social position of the children crossing and that the brief images do not depict children unsafely crossing the road.

The Panel noted the complainant's view that the advertisement undermines messages regarding the health benefits of walking to school. The Panel considered that this was an interpretation of the advertisement that was unlikely and that the overall impact of the advertisement is clearly on the need to provide emotional and financial support to some children – and is not depicting material contrary to health



messages.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety regarding road safety. The Panel determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, 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 The Smith Family. The Appellant nominates grounds one and two as the basis of the appeal.

In terms of ground one, the appellant submitted the following:

Evidence (substantial flaw in Board's decision) to support request for Independent Review

I believe the Community Panel failed to understand the gravity of three main issues:

- 1 Stopping and Parking large 4WD vehicles in front of school pedestrian crossings, blocking line of sight of small children who often behave erratically and unpredictably
- 2 Showing a young girl crossing the road, on the school pedestrian crossing, on her



own, while looking down and not in the direction of traffic.

3 And just as importantly, not holding the hand of an adult. We have been managing National Walk Safely to School Day now for 19 years. The primary message is: Until they are ten, children must always hold an adult's hand when crossing the road. Please see a copy of our TV CSA:

<https://youtu.be/8XUqPCextoQ> This event is sponsored and supported by the Commonwealth Government and every state and territory government. Pedestrian deaths are increasing throughout Australia. This ad sends out ALL the wrong messages to parents and children and the potential for harm cannot be underestimated.

Additional information

Would you please add Prof Cross's statement to my "appeal" which is an excerpt from her letter:

"While no-one could disagree with the importance of encouraging children to be active, sending children to the road environment without holding an adult's hand, could be likened in terms of its danger, to encouraging children to swim to increase their physical activity, without adult supervision."

In support of its reliance on ground two, the Appellant submitted the following:

Here is new evidence from Senior Ranger Richard Goulston of Willoughby City Council:

Thank you for your email question concerning The Smith Family advertisement involving a motor vehicle stopping outside a school to drop off a passenger.

I have 28 years of experience as a Council Law Enforcement Officer including 22 years enforcing parking regulations near schools. This type of offence would certainly be an example of one of the most serious parking offences near schools.

The vehicle is parked in a dangerous location by obstructing the vision of drivers approaching the pedestrian crossing. It also provides more of an obstruction due to the height and bulk of the vehicle and the location being a school zone which will have pedestrians who are children (i.e. shorter than an adult and with less road sense) and as such are representative of some of our most vulnerable pedestrians

It is clearly in breach of NSW Road Rule 172 (1) which in a school zone incurs a 439 dollar fine and 2 Demerit points. The fine amount and demerit points confirm the relative seriousness of the offence.



172 Stopping on or near a pedestrian crossing (except at an intersection)

(1) A driver must not stop on a pedestrian crossing that is not at an intersection, or on the road within 20 metres before the crossing and 10 metres after the crossing, unless the driver stops 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.

Maximum penalty: 20 penalty units.

Note 1.

Intersection and parking control sign are defined in the Dictionary, and pedestrian crossing is defined in rule 81.

Note 2.

A driver stops within a particular distance from a crossing if the driver stops so any part of the driver's vehicle is within that distance—see rule 350 (2).

(2) For this rule, distances are measured:

- (a) in the direction in which the driver is driving, and
- (b) as shown in the example.

(3) In this rule:

road does not include a road related area but includes any shoulder of the road.

Note.

Road related area is defined in rule 13, and shoulder is defined in rule 12.

Also we ask that you watch this episode of A Current Affair where Tara Brown undertook an extensive study of behaviour around schools. It provides irrefutable evidence about how young children behave so unpredictably, how they are small and very difficult to see - and the consequences. https://youtu.be/leLH_RArhuU

Additionally, please find attached a copy of a letter from Prof Donna Cross of Edith Cowan[*sic*] Uni 2013. Prof Cross is considered to be the leading authority in the area of research into child safety in the road environment.

The Smith Family ad promotes very dangerous parking, the failure of a very young child not to look when crossing the road, and not hold an adult's hand, that it must be taken off air without any further delay.

The letter referred to from Professor Donna Cross of Edith Cowan University Child



Health Promotion Research Centre, is dated 14/2/13 and states as follows:

I am quite concerned to learn that several jurisdictions/states in Australia may be conducting a walk to school day without adequately protecting children under 10 from the difficulties they experience using the road environment. Such an initiative is counter to all available evidence. Young people do not have the ability to safely cross roads without adult help until 10 years of age.

While no-one could disagree with the importance of encouraging children to be active, sending children to the road environment without holding an adult's hand, could be likened in terms of its danger, to encouraging children to swim to increase their physical activity, without adult supervision.

Significant research conducted by our research team at the Child Health Promotion Research Centre at Edith Cowan University and by other Australian and international universities has confirmed that children under 10 years of age lack the cognitive and perceptual abilities to cross a road safely. This age group of children have limited peripheral vision; non-directional hearing; very poor traffic search behaviour (they think, for example, that if they can see a driver the driver can see them); and they are not able to choose the safest places to cross or seek adequate help to cross the roads. Moreover, their small physical size and their emotional immaturity (e.g. they are easily distracted) place them at great risk in a road environment as a pedestrian, let alone as a cyclist also trying to balance on two wheels.

There is no doubt based on quality empirical evidence that children under 10 years of age should not be encouraged to cross roads without holding an adult's hand.

The Appellant does not indicate why the letter from Professor Cross (2013) was not submitted with the original complaint. It appears that the letter from Senior Ranger Richard Goulston (April 12, 2018) was sought after the determination of the Community Panel and in response to the Panel's challengeable comments regarding the operation of NSW Road Rule 172 (1).

Advertiser's Response

The Advertiser was afforded the opportunity to respond to the request for appeal and did so on April 22 as follows:

Re: Advertising Complaint – The Smith Family – Your Reference 0097/18

I am writing in response to the 'Evidence to support request for Independent Review' about the decision to dismiss a complaint made against advertising materials produced for The Smith Family. This response provides supplementary information to append to our original response, addressing specific sections of the new evidence.



The following claims have been made with regard to the TVC's depiction of a child and/or children crossing a school pedestrian crossing unaccompanied by an adult and not holding the hand of an adult as one of the reasons why the advertisement should be taken off air.

I refer specifically to the following excerpts from the Letter from Donna Cross, Professor Child and Adolescent Health, Edith Cowan University:

'Young people do not have the ability to safely cross roads without adult help until 10 years of age.'

'There is no doubt based on quality empirical evidence that children under 10 years of age should not be encouraged to cross roads without holding an adult's hand.'

And the following point listed by the complainant as the Community Panel's failure to understand the gravity of the issue:

3 And just as importantly, not holding the hand of an adult. We have been managing National Walk Safely to School Day now for 19 years. The primary message is: Until they are ten, children must always hold an adult's hand when crossing the road. Please see a copy of our TV CSA:

<https://youtu.be/8XUqPCextoQ> This event is sponsored and supported by the Commonwealth Government and every state and territory government. Pedestrian deaths are increasing throughout Australia. This ad sends out ALL the wrong messages to parents and children and the potential for harm cannot be underestimated.

Our response – children not holding hands whilst crossing the road

The NSW Government's 'Transport for NSW: Centre for Road Safety' website outlines a

number of road safety recommendations to keep children safe at crossings. The recommendation for children to hold an adult's hand while crossing the road is an important message but not an enforceable law.

The Road Safety website also states that unaccompanied children can safely cross the road if the crossing is facilitated by a School Crossing Supervisor:

The School Crossing Supervisor scheme provides supervisors at existing pedestrian (zebra) crossings and children's crossings to facilitate the safe crossing of unaccompanied primary and infant school children.



[Source:

<http://roadsafety.transport.nsw.gov.au/stayingsafe/pedestrians/vulnerablepedestrians/children.html>]

The Smith Family supports the safety of children when crossing roads, which is why a School Crossing Supervisor was present in all instances of children crossing the road in this advertisement. In the TVC not only did we have actual traffic controllers during filming, a crossing supervisor is visible at 00:03 secs and for the final 5 secs of the TVC in a high-vis yellow vest.

This not only ensured the safety of the children on set but conveys to viewers that the child depicted in the ad is being actively supervised by an adult.

With this in mind, and the information provided in our original response, we do not accept the basis of the complaint and do not accept that this ad breached the Code. Should you require any further information or clarification, please do not hesitate to contact me.

As indicated above, the Advertiser has requested that both its original submission in response to the complaint and its letter of April 22 above, be considered as its response to the application for review.

Some observations should be made at the outset regarding the material submitted by the advertiser in response to the review application.

Notably, at the beginning of its original response to the complaint, the Advertiser notes that the complaint alleges a breach of Section 2.6 of the AANA Code of Ethics. However, inexplicably, the Advertiser then goes on to make its response to the complaint solely in terms of Section 2.c of a wholly unrelated Code: The FCAI Code. This Code relates solely to advertisements for motor vehicles (emphasis added). That is, advertisements which are intended to advertise motor vehicles which are available in the Australian marketplace.

It is quite clear that the Smith Family advertisement is NOT an advertisement for any motor vehicle available in Australia and therefore the FCAI Code is totally irrelevant to this case. It is unclear how the Advertiser became confused about the two Codes (AANA and FCAI) when they are totally separate Codes, administered by totally unrelated bodies. Due to this confusion, the Advertiser in its original response to the complaint did not address Section 2.6 of the AANA Code, concentrating instead on addressing the provisions of Section 2.c of the FCAI Code. This situation is even more inexplicable, as the original complaint did not make any mention at all the FCAI Code, addressing itself solely to alleging a breach of Section 2.6 of the AANA Code. The Advertiser's response, consequently, was concerned with elements arising from the terms of Section 2.c of the FCAI Code as to whether the advertisement depicts



activities which would break an enforceable law in terms of the FCAI Code rather than addressing the terms of Section 2.6 of the AANA Code at all.

The Community Panel, in its decision, makes no mention of this confusion by the Advertiser regarding the relevant Code governing the complaint nor of its failure to address Section 2.6, but correctly considers the complaint in terms of Section 2.6 of the AANA Code:

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

The Reviewer can only assume either that the Panel overlooked the failure of the Advertiser to address the correct Code or simply chose to ignore that fact.

Again, in its response to the review request, the Advertiser continues to be confused about which Code the alleged breach is relevant to. Echoing FCAI Code Section 2c once more, the Advertiser states: “The recommendation for children to hold an adult’s hand while crossing the street is an important message but not an enforceable law”. In so doing, the Advertiser fails to appreciate that whether the provision in question is or is not an enforceable law is totally irrelevant to the operation of the AANA Code under which the complaint was made. It is, however, relevant to the FCAI code. Ironically, although the Advertiser was willing to dismiss this government recommendation on the ground that it was not an enforceable law, it subsequently relies on another government recommendation stating that “unaccompanied children can safely cross the road if the crossing is facilitated by a School Crossing Supervisor”. The Advertiser emphasises that:

“The Smith Family supports the safety of children when crossing roads, which is why a School Crossing Supervisor was present in all instances of children crossing the road in this advertisement. In the TVC not only did we have actual traffic controllers during filming, a crossing supervisor is visible at 00:03 seconds and for the final 5 seconds of the TVC in a high-vis yellow vest.

This not only ensured the safety of the children on set but conveys to viewers that the child depicted in the ad is being actively supervised by an adult.”

No mention is made of the safety of the group of children who precede the single child across the pedestrian crossing.

The Community Panel has correctly noted that the mechanics of the filming of the advertisement including the safety requirements of that filming were immaterial to the Panel’s determination, as they are to this Review.

Regarding the issue of unaccompanied children crossing a road safely, as the



Advertiser in its review submission chooses in part to rely on the NSW government website provision regarding the facilitation of a School Crossing Supervisor, certain aspects of the advertisement require closer examination. Noted above are the claims made by the Advertiser as to the presence of the School Crossing Supervisor in the advertisement. In fact, the original appearance is of a disembodied arm only on the very edge of the screen and for less than a second on screen. There is no clear picture at all of the presumed Supervisor. The arm is barely visible and the whole person never is.

The Advertiser also claims in its review submission that a Supervisor is also visible for the final 5 seconds of the advertisement in a high-vis yellow vest. In fact, there is no clear and sharp visibility of the Supervisor at all. There is an extremely blurred two second shot of a person in a fluorescent vest in the mid distance on left of screen for approximately two seconds and immediately that image is obscured by the large on-screen message.

In summary, the images claimed of the Supervisor are either blurred, blurred and obscured or disembodied. The images are far from clear and prominent and offer no definitive indication of the children being “actively supervised”.

It should also be noted here, in relation to the Advertiser’s original submission, that the complaint and indeed this review, in no way reflect upon the social benefit of the work of the Smith Family nor its motivations in undertaking this advertising campaign. No criticism is implied of the commitment of the Smith Family to social welfare and to combatting the many problems caused by poverty in our society. However, both the determination of the Panel and this review must be based on the execution of the advertisement and not on the motivation or intention of those making the advertisement.

REVIEWER’S RECOMMENDATION

As noted above, the complainant has cited two grounds for the review. As in this case those grounds overlap somewhat, the review will consider them together.

It should be noted at the outset that in previous review decisions the point has been made that the 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 this instance, the Panel firstly considered the driving behaviour of the mother. The Panel 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” (emphasis added).



This comment by the Panel is virtually an understatement. There are few issues which cause a higher level of community concern than road safety. This is an issue which affects every citizen on every day that they leave their homes. It is an issue which is central to their safety and that of their family and friends. For those with children attending school, road safety is a critical issue. The Panel further acknowledges that it has received material regarding the Australian road rules and penalties for stopping on or near a children's crossing. (The Reviewer assumes this is the description of the relevant Road Rule submitted by the Complainant). It is not clear whether the Panel proceeded to examine the actual relevant Road Rule provisions online or in hard copy, in particular, Clause 171 and Clause 172, relating to children's crossings and to pedestrian crossings respectively. The online version of these Road Rules 2014 shows them accompanied by helpful diagrams which demonstrate physically the rule in question. It would have been of great benefit for the Panel to view these provisions rather than just reading about them second-hand, but there is no indication as to whether the website was viewed by the panel.

Having made the above statement about the significance of observing the Road Safety Rules the Panel then goes on to make the following statement:

“The Board noted that the depiction of something which is against recommended behaviour or might be in contravention of a regulation is not of itself a depiction of material which is against prevailing community standards on health and safety. The Board must consider the impact of the depiction in the overall context of the advertisement”.

The issue of the woman's driving behaviour is not about ignoring recommended behaviour but about something far more serious: a potential breach of NSW Road Rules, created by an agency of the NSW Government. A depiction of an activity which does breach NSW Road Rules is just that. The overall context of an advertisement in which a breach of Road Rules is depicted is immaterial to the depiction of the committing of a breach.

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.

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

The Panel, as noted earlier, correctly stated that the mechanics of the filming of the advertisement were not relevant to their consideration of the advertisement when making their determination. However, it is worth noting in passing, that the Panel states that the advertiser in its response had advised, inter alia, that "this was the only place the woman could pull over and still be in frame for the advertisement". It is not clear in what document the Panel saw this statement, as it is not contained in any of the documents submitted to the reviewer for this review (including the Case Report and attached documents submitted to the Panel before their determination was made). However, on the assumption that such a document was submitted, it is of interest only as a possible explanation of why those responsible for the advertisement were willing to direct the woman to park the car in breach of the NSW Road Rules.

The Panel were made aware of the seriousness of Rule 171, including the severe penalties which a breach incurs, by the submission of the complainant in the original complaint.

There are a number of problems with the Panel's consideration of the woman's driving behaviour.

In its determination, the Panel refers to 'the brief image' depicting the woman parking near the children's crossing. This is not a brief image as the Panel states. The entire advertisement lasts 30 seconds and of that 30 seconds the woman is parked within 20 metres of the crossing for 25 seconds. This represents the majority of the duration of the advertisement and could hardly be described as a 'brief image' in terms of the relativity of the entire advertisement. Even if this were not the case, the Road Rules in question are both serious and mandatory and brevity is not a defence to a breach of them.

In addition, the 20 and 10 metre Rule has been promulgated to ensure 'safe sight distance' at children's crossings. This is to ensure safe sight for those crossing. The height and bulk of a four-wheel drive vehicle parked so close to a children's crossing would clearly impede vision on that side of the crossing, illustrating the rationale for the Rule.

Next the Panel states



“...there were no obvious signage or road markings in the advertisement to show that the woman could not park or pull over where she did. The Panel considered that the depiction of where the woman is parked is brief and is not the focus of the advertisement. The Panel considered that many schools have drop-off zones near school crossings and that it was unclear in the advertisement if the woman was parked in one of these zones.”

This statement reveals that the Panel had totally failed to understand the operation of Rules 171/172 of the NSW Road Rules. As a careful reading of the Rules would have indicated, Rules 171 and 172 operate in exactly the reverse manner to that stated by the Panel.

The Reviewer has ascertained the accuracy of the following elucidation of Rule 171 with the Traffic Engineer of a very large Sydney Council and has also personally surveyed many school crossings on the north side of Sydney to confirm the operation of the Rule. The Reviewer has also accessed the “RMS Supplement to Australian Standard” Version 2.4 (current version), the “Technical Direction on Stopping and Parking restrictions at intersections and crossings” TDT 2002/12C and NSW Road Rules 2014, Rules 171 and 172.

Rule 171 states:

171 Stopping on or near a children’s crossing

A driver must not stop on a children’s crossing, or on the road within 20 metres before the crossing and 10 metres after the crossing, unless the driver stops 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.

For this rule, distances are measured:

In the direction in which the driver is driving, and

As shown in example 1 or 2.

In this rule,

Road does not include a road related area, but includes any shoulder of the road.

Note: A driver stops within a particular distance from a children’s crossing if the driver stops so any part of the driver’s vehicle is within that distance.

The statutory requirement is to provide 20 m of no stopping on the approach to a crossing for safe sight distance.



RMS NO STOPPING (R5-400) sign series is to be used.

RMS Practice does not permit variations to no stopping distances unless with kerb extensions.

If the Panel had carefully read NSW Road Rule 171 it would have realised that rather than the woman being able to park because 'there were no obvious signage or road markings in the advertisement to show that the woman could not park or pull over where she did', the reverse was actually the case. The Statutory requirement of 20 metres on approach and 10 metres on departure of no stopping is the default NSW requirement. In order to park without breaching the road rules within those distances, there would need to have been a specific 'parking control sign' which permitted the driver to stop within those distances. Otherwise it is an absolute prohibition. There was no such sign in the advertisement and no parking control signs at all visible in the area in which the woman has parked. Therefore, the Panel's reliance on the absence of signs saying no parking was allowed was completely misplaced.

The only variation to the statutory requirement of 20 and 10 metres could occur in the case where there was a kerb extension. There is no kerb extension shown in the advertisement and therefore the 20 and 10 metre restrictions apply.

A further example of the Panel's failure to understand the operation and scope of Rule 171 is the Panel's reference to the possibility of the woman being parked in a 'school drop off zone'. Rule 171 makes it absolutely clear that, in the absence of a parking control sign to the contrary, there is to be no stopping at all within the 20 and 10 metre distances:

"NO STOPPING (R5-400) sign is used to define the length of roadway where vehicles are absolutely prohibited (emphasis added) from stopping". (Technical Direction: Stopping and Parking Restrictions at Intersections and Crossings, TDT 2002/12C).

It is therefore impossible to have a drop-off zone within the restricted area. Drop-off zones, where they exist, are located beyond the restricted area. The Panel cannot therefore rely on this possible explanation for the woman parking where she does.

The Panel goes on to state:

'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 is brief and unclear. In the Board's [sic] 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.'

This review has already dealt above with the issue of brevity and reiterates those comments. The Panel does not elaborate on what it means by the use of the word 'unclear'. There is nothing unclear about the area in which the woman parks, well within the 20-metre restricted area and very close to the crossing hump. This parking position is made clear both in long shot and in the shot through the windscreen of children crossing. The mother may drive carefully away, but that is irrelevant to her prior driving behaviour of parking in a strictly prohibited zone.

To sustain the claim that an advertisement showing a clear breach of NSW Road Rules is not a depiction of material contrary to Prevailing Community Standards on safety, the Panel would need to offer conclusive evidence for that view, as this Review has noted above. In this case the Panel has offered no such evidence but merely proffered its view – a view informed by incorrect facts and assumptions.

The Panel then went on to consider the issue of whether the depiction of children under the age of ten crossing the road without holding the hand of an adult was contrary to prevailing community standards on health and safety.

This issue differs from the previous issue as it does not invoke a specific NSW Road Rule. It may be a recommendation that children under the age of 10 only cross roads (not specifically crossings) while holding the hand of an adult and it is understandable that government policy supports this. The Road Rules only refer to kindergarten children holding the hand of an adult and this is in relation to the installation of children's crossings and is of no assistance here.

The Panel is correct in identifying that the advertisement shows children crossing at a designated school crossing and children are commonly seen traversing such school crossings without a parent. However, in NSW, schools commonly have either a 'Lollypop' person who stands with a large STOP sign in the middle of the crossing or a "Children's Crossing Supervisor" to facilitate the safe crossing of children, especially children under secondary school age. These "Children's Crossing Supervisors" are accredited by the RMS.

The Advertiser in its submission to this Review states:

"The Road Safety Website also states that unaccompanied children can safely cross the road if the crossing is facilitated by a School Crossing Supervisor".

The Panel makes no mention at all regarding this requirement for the presence of a School Crossing Supervisor. The Advertiser states that such a Supervisor was present



during filming:

‘a crossing supervisor is visible at 00.03 secs and for the final 5 secs of the TVC in a high-vis yellow vest. This not only ensured the safety of the children on set but conveys to viewers that the child depicted in the ad is being actively supervised by an adult”

Presumably the Advertiser meant to include the group of children who cross in this latter comment.

The Panel does not mention nor address the issue of the presence of a School Crossing Supervisor. Whether this is because they chose to merely ignore it or whether they dismissed it due to the confusion of the Advertiser between the AANA Code and the FCAI Code is unclear. As the Advertiser had specifically addressed this issue in its original response, the Panel should have at least addressed the issue of the provision of a School Crossing Supervisor for the sake of a comprehensive consideration of this element of the complaint. Instead, the Panel simply dismisses the issue on the grounds that ‘it is common to see children who walk to school crossing at a school crossing without a parent”. The Panel appears to be saying that most of the community would consider children crossing the road at a school crossing without adult supervision to be consistent with community standards around road safety. Given the prevailing practice of having School Crossing Supervisors or Lollypop people at NSW school crossings, there is no evidence that community standards are satisfied by having children crossing without adult supervision. Clearly, if that were the case, NSW would not have neither Lollypop people nor School Crossing Supervisors at their school crossings.

As the Advertiser’s relies on the presence of a School Crossing Supervisor in the advertisement this Review reiterates previous comments as to whether that presence is adequate.

As noted earlier in this Review, at the beginning of the advertisement, a disembodied adult arm is visible on far right of screen at the opposite side of the crossing to where the woman is parked, just before the group of children cross. This image appears for less than a second. Again, at the end of the advertisement a very blurred adult figure appears in a fluorescent vest on the left of the crossing in front of the woman’s car. This image appears for 2 seconds before it is almost totally obscured by the words “Sponsor an Australian Child Today”. These images are neither clear nor prominent. It would be impossible to know whether the casual viewer would even register the presence of the supervisor. It is difficult to know why, when the Advertiser places so much emphasis on the presence of the supervisor for safety, the images of the supervisor were not made more prominent and clear. These are the kinds of questions which the Panel should have considered when determining this issue rather than just dismissing the possibility that young children crossing a school crossing in



the manner shown, might be contrary to prevailing community standards.

The Panel then considered the issue of whether the children ‘are depicted not keeping an eye on traffic as they cross the crossing’. Again, no mention is made by the Panel of the issue of the presence of a School Crossing Supervisor whose role it is to watch and control traffic at the crossing. The Panel responds to this issue by noting that ‘the focus of the advertisement is on the emotions and social position of the children crossing and that the brief images do not depict children unsafely crossing the road’.

The focus of the advertisement may well be on the emotions and social position of the children but that is not the definitive factor as to traffic consciousness. Indeed, in the advertisement the group of children, who are presumably the better off financially and socially, are also not keeping an eye on the traffic and in fact are skipping rather than walking carefully across the crossing. This failure to observe traffic seems much more likely to be an age-related phenomenon than a social one. Ultimately though, it is not at a level which would be a depiction of material contrary to community standards on health and safety.

Finally, the Panel addressed the complainant’s view that the advertisement undermines messages regarding the health benefits of walking to school. The Panel considered that this was an unlikely interpretation of the advertisement. Additionally, it is possible that the group of children have walked to school themselves. There is no clear indication either way. The Panel was entitled to come to this view regarding health messages.

As noted above, there were a number of substantial flaws in the Community Panel’s determination. In addition, the letter from Senior Ranger Richard Goulston, obtained after the publication of the determination, may well provide additional relevant evidence which could have a significant bearing on the determination.

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 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;

Expressed the view that the Panel had not adequately considered whether children shown crossing a school crossing in the manner shown, might be contrary to prevailing community standards.

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 image of the motor vehicle being driven by the woman.

The Panel noted NSW Road Rules 171 provides that:

'171 Stopping on or near a children's crossing

(1) A driver must not stop on a children's crossing, or on the road within 20 metres before the crossing and 10 metres after the crossing, unless the driver stops 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.

Maximum penalty: 20 penalty units.

Note 1.

Children's crossing is defined in rule 80, and parking control sign is defined in the Dictionary.

Note 2.

A driver stops within a particular distance from a children's crossing if the driver stops so any part of the driver's vehicle is within that distance—see rule 350 (2).

(2) For this rule, distances are measured:

- (a) in the direction in which the driver is driving, and
- (b) as shown in example 1 or 2.

(3) In this rule:

road does not include a road related area, but includes any shoulder of the road.



Note.

Road related area is defined in rule 13, and shoulder is defined in rule 12.'

The Panel also noted the Roads and Maritime Supplement to Australia Standards (version 2.4 31 August 2016) (NSW) (Supplement to the Road Rules) which in Part 10 provides in relation to Children's Crossings that 'RMS practice does not permit variations to no stopping distances unless with kerb extensions.

The Panel noted that the relevant rule across Australia is that a vehicle should not stop within 20 meters before the children's crossing. The Panel accepted the Reviewer's comment that the Panel had misinterpreted the Road Rules in its earlier consideration in concluding that as there was no clear signage to say that she could not stop in that position then there was no clear breach of the Road Rules.

The Panel considered that the woman in the advertisement was clearly seen to be stopping within 20 meters before the crossing in the advertisement at 00:03 and the vehicle is seen stopped in close proximity to the children's crossing again at 00:26.

The Panel also noted that there does not appear to be a kerb extension which might make the stopping location acceptable.

The Panel considered that these two brief scenes did establish that the woman was stopped in a manner which would breach Road Rules.

The Panel then considered whether there was any material in the advertisement to establish that this depiction was a depiction that would not be contrary to prevailing community standards on safety

The Panel noted the additional evidence provided by the complainant included information stating that:

"The vehicle is parked in a dangerous location by obstructing the vision of drivers approaching the pedestrian crossing. It also provides more of an obstruction due to the height and the bulk of the vehicle and the location being at a school zone which will have pedestrians who are children (ie shorter than an adult and with less road sense) and as such are representative of some of the most vulnerable pedestrians".

The Panel considered that additional material provided in the complainant's request for review indicates that there is significant community concern around the safety of children when crossing roads and considered that Road Rules designed to protect children at crossings would be consistent with community standards on road safety.



The Panel considered that the images of the car stopping at 00:03 and the image at 00:26 do depict material contrary to prevailing community standard on safety around children's crossings.

The Panel, noting the Reviewers comments that the contravening image lasts nearly 30 seconds, then considered the internal shots of the car and the woman watching the girl on the crossing, which comprised the majority of the advertisement. The Panel considered that if those images were separated from the images of the car stopping, they would not necessarily depict a breach of the Road Rules. While the children viewed from inside the vehicle appear close, it would not be possible to determine whether the vehicle was actually stopped in breach of the Road Rules, or at a distance that was otherwise unsafe, and that in the context of the advertisement's story about a child from a disadvantaged background, the location of the vehicle would not be of impact. The Panel considered that in isolation from the scenes at 00:03 and 00:26 the shots from inside the vehicle were not depicting a breach of the Road Rules, and would not be a depiction of material contrary to prevailing community standards on safety.

The Panel noted that this is an advertisement which is promoting a not for profit organisation, aiming to elicit donations to support children, and that the image of the woman stopping the vehicle was not the emphasis of the advertisement. The Panel however considered that although the woman's stopping was not the focus of the advertisement it did agree that there was a depiction of material that breached the Australian Road Rules, and that there was no surrounding information or depictions that would override the impression.

The Panel therefore considered that the advertisement did depict material contrary to Prevailing Community Standards on road safety and did breach Section 2.6 of the Code.

The Panel then considered the complaint regarding the depiction of children crossing the road on their own – while looking down and by not holding hands with an adult. The Panel noted the Independent Reviewer's recommendation that the Panel did not give enough consideration to whether the children were shown crossing the road safely and whether a School Crossing Supervisor was clearly depicted.

The Panel also noted the Independent Reviewer's comment that 'Given the prevailing practice of having School Crossing Supervisors or Lollypop people at NSW school crossings, there is no evidence that community standards are satisfied by having children crossing without adult supervision'.

The Panel noted the NSW Government Centre for Road Safety recommendation that 'Children up to 10 should be supervised around traffic and should hold an adult's hand when crossing the road.'



<http://roadsafety.transport.nsw.gov.au/stayingsafe/pedestrians/vulnerablepedestrians/children.html> but also noted that the same document states that 'The School Crossing Supervisor scheme provides supervisors at existing pedestrian (zebra) crossings and children's crossings to facilitate the safe crossing of unaccompanied primary and infant schoolchildren.'

The Panel considered that the advertisement was depicting unaccompanied children. The Panel considered that the depiction of unaccompanied children crossing a school crossing is not contrary to prevailing community standards on safety, as in the Panel's experience, there are many children who travel to school in a manner that would leave them crossing a children's crossing at a school unaccompanied.

The Panel noted that there is not uniformity in the use of school crossing supervisors near all primary schools around Australia, and that placement of school crossing supervisors varies between jurisdictions.

For the present advertisement however, the Panel considered that there is a brief depiction of a school crossing supervisor. The Panel considered that there is a brief shot of an arm and a fluorescent vest in conjunction with the first image of the group of children crossing which does depict a school crossing supervisor is present. The Panel also noted that there is a shot of a school crossing supervisor in the distance at the conclusion of the advertisement. The Panel considered that although the adult supervisor is not depicted in focus or for long periods the advertisement does sufficiently establish that the children are being supervised at the crossing.

The Panel noted the complainant's concern that the children are seen to be behaving in an unsafe manner during the road crossing, by not keeping their eye on traffic and by skipping across the road rather than walking carefully.

The Panel considered that the depiction of the group of children entering the crossing did not enable an assessment of whether or not they had checked for traffic and in the Panel's view there does not, in the context of this advertisement, need to be an assumption that they did not check for traffic. Similarly the depiction of the girl on her own is not clear enough to ascertain whether she did or did not check for traffic.

The Panel also considered that the manner of the children walking – in the group and the girl on her own – were not inappropriate in the context of a crossing which has depicted a school crossing supervisor.

The Panel considered that it must consider the overall context and impact of the advertisement. In the Panel's view, the image of children crossing the road was secondary to the mother watching the girl on her own, in order to encourage donations. The Panel considered that the specific depictions, in the context of this advertisement which did show a school crossing with a school crossing supervisor,



were not contrary to prevailing community standards on safe crossing of children's crossings. The Panel recommended that for future scenes the school crossing supervisor could have been more clearly depicted, but that in this advertisement the images of the children were not contrary to prevailing community standards on safety.

The Panel finally considered whether the advertisement undermined health messages by making walking to school appear undesirable. The Panel considered that community efforts to encourage children to be more active are significant and important in Australia, and noted many they themselves were aware of walk to school initiatives in their own communities.

The Panel considered that this advertisement focuses on children crossing a crossing outside a school, and that there is no implication that the children have walked to school, either accompanied or not, or that the girls' demeanour is related to whether or not she has walked to school. The Panel determined that there was no implication that poor children have to walk to school or that this makes them depressed.

Upon reconsideration the Panel determined the advertisement did breach Section 2.6 of the Code, finding that the depiction of a vehicle stopping within 20m of a pedestrian crossing was depiction of material contrary to Prevailing Community Standards on safety, and upheld the complaint.

ADVERTISER'S RESPONSE TO IR DETERMINATION

I am writing in response to the Panel's decision to overturn their earlier decision and uphold the complainants appeal against The Smith Family 'Drop off' TVC.

The Smith Family wish to advise that they consider the safety of children to be of the utmost importance and whilst there was no intent to demonstrate unsafe driving practices in any way, we respect the decision of the Panel to uphold this complaint.

In line with the Panel's determination The Smith Family will discontinue use of the advertisement Back to School 'Drop off' 0097/18 effective immediately, in adherence to section 'Complaint Upheld – Advertising Modified/Discontinued'.

