



Case Report

1	Case Number	0099/12
2	Advertiser	Energy Watch
3	Product	House goods/services
4	Type of Advertisement / media	TV
5	Date of Determination	28/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Bullying (non violent)
- 2.1 - Discrimination or Vilification Age
- 2.1 - Discrimination or Vilification Gender
- 1 - Truthful and Factual 1)i misleading or deceptive

DESCRIPTION OF THE ADVERTISEMENT

The fictitious Carbon Tax collector approaches Betty (Grandma) asking her to "Pay Up". Betty states she doesn't make any carbon in which the carbon tax collector prompts her to pay up again. Ben Polis (Founder-CEO of EnergyWatch) appears explaining that EnergyWatch cannot stop the Carbon Tax however they can help lower power bills. The final 5 seconds is tailored per state (VIC & NSW) addressing what offer is available.

THE COMPLAINT

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

An unpleasantly brusque "Carbon Tax Collector" is shown virtually bullying an individual elderly woman into paying the Carbon tax into the bucket carried also scoffing at the woman's comment that she does not produce any carbon and only has her bingo money. The individual woman is firmly urged to pay up.

The advertisements in question imply that the carbon price will significantly drive up energy prices. This misrepresentation is then used to justify the need for their energy brokering service which it is claimed will help keep price rises at bay.

We feel that the advertisements are misleading on 2 accounts.

Firstly they explicitly say that households will be targeted by a 'carbon tax collector' when in fact no such thing exists. The carbon price will be paid by the top 500 polluting companies not individuals and vulnerable households will be compensated for by the Government's household assistance package.

Secondly they make out that the carbon price will significantly drive up energy prices when according to Professor Ross Garnaut and Australian Energy Regulator chairman Andrew Reeves rising power prices have little to do with the carbon price and everything to do with over-investment in network infrastructure.

Given the already confused public perception of the carbon price's impacts upon Australian families we are concerned that these advertisements are deliberately misleading and promoting fear and misinformation.

This misrepresentation is yet another episode in a chain of advertising breaches. We are aware that Energy Watch has previously been implicated in offensive and misleading advertising campaigns including: false and misleading claims regarding the cost savings and breadth of comparison offered by their services which led to an ACCC investigation; racial stereotyping and the trivialisation of mental illness culminating in a series of their advertisements being banned by your organisation last year.

Given the ongoing nature of the company's breaches we hope that appropriate actions can now be taken to avoid similarly inaccurate material being disseminated in the future. In relation to Energy Watch's most recent ads it is our opinion that they should be removed immediately. We have also written to ACCC Chair to inform him of our opinion.

THE ADVERTISER'S RESPONSE

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

EnergyWatch does not support or condone bullying in any way. Our advertising deliberately seeks to portray the Carbon Tax Collector as a fictitious character, a surreal person who walks the neighbourhood visiting households to collect Carbon Tax money (Reinforced with text during the advertisement stating "Carbon Tax Collector is a fictitious character"). The situation of Betty (The grandmother) was used to portray the message that the carbon tax will affect everyone, even in Betty's situation. This advertisement is part of a campaign, whereby next Betty is empowered, she moves onto a better rate with EnergyWatch, installs solar panels which reduces her carbon footprint.

EnergyWatch is transparent with its views: "The Carbon tax comes in on July 1st, we can't stop it, but we can help you reduce your power bill" as stated by founder Ben Polis within the advertisement.

The reality is the carbon will affect everyone. Polluters (Top 500 biggest polluters) will pay (initially) \$23 per tonne which will be passed onto the end consumer. Rebates will be available however how effective these will be has not been confirmed. EnergyWatch is not portraying a political belief, yet stating facts to empower the consumers to seek a better rate and (In the next advertisement) to move to renewable energy by installing solar panels, reducing the customer's carbon footprint.

The intention of the Carbon Tax is designed to put pressure onto polluters and in doing so to push consumers to better use sustainable energy sources. Betty becomes educated about the

Carbon Tax and goes Solar in the second campaign. She also explains this to her friends and family, and becomes an ambassador for change for renewable sources.

EnergyWatch feel that both Essential Services Commission (Section 3.2) & NSW Government Gazette (Section 6.1.1) have been addresses by sourcing the appropriate information prior to making these claims. EnergyWatch acknowledge the purpose of the Carbon Tax is to penalise the biggest polluters, thus promoting energy efficient means of generating energy.

In summary, vilification against age or gender was not our intention nor is to deliberately single out a particular demographic, only to portray that all circumstances will be affected and how individuals will be affected is up to the individual. EnergyWatch has not aligned itself with a political belief yet has conveyed what information is presently available regarding the Carbon Tax. Our intention is not to be ageist or political aligned with anyone, but to educate consumers about a very important national issue that takes effect in less than 3 months.

Should the board wish EnergyWatch to provide further information regarding these complaints, including information regarding the Carbon Tax, we would be happy to do so.

THE DETERMINATION

The Advertising Standard Board ('the Board') considered whether the advertisement complied with the AANA Environmental Claims in Advertising and Marketing Code (the Environment Code) and the Code of Ethics ('the Code').

The Board noted the complainants' concerns that the advertisement makes misleading claims, and is ageist, sexist and depicts bullying.

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

The Board noted that the Environment Code applies to 'environmental claims' which are defined as 'any representation that indicates or suggests an Environmental Aspect of a product or service, a component or packaging of, or a quality relating to, a product or service.'

An Environmental Aspect means 'the element of a product, a component or packaging or service that interacts with or influences (or has the capacity to interact with or influence) the Environment.'

The Board noted that the advertisement depicts a female 'Carbon Tax collector' collecting the Carbon Tax from an older woman. The Board considered that the portrayal of a 'Carbon Tax collector' does not of itself amount to an environmental claim which will affect the environment but rather a current community issue which surrounds the impact of taxation on consumers themselves.

The Board considered that as the advertisement makes no specific environmental claims, the provisions of the Environment Code do not apply in this instance.

The Board noted that the issue of misleading advertising falls outside of the Code of Ethics and that this issue is one best dealt with by the Australian Competition and Consumer Commission.

The Board then considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: “Advertising or Marketing Communications 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, sex, age, sexual preference, religion, disability or political belief.”

The Board noted that the advertisement depicts a woman in the form of a Carbon Tax collector making an older woman pay the ‘Carbon Tax’. The Board considered that the advertisement was not suggesting that Carbon Tax would not be understood by any older person but that in this instance an older person had been chosen to represent the general consumer. The Board considered that the advertisement did not present older people in a manner which would be considered discriminatory or vilifying to most members of the community.

The Board noted the complainants’ concerns that the advertisement is sexist and considered that the use of a female tax collector and female consumer did not amount to a depiction of women which could be considered discriminatory or vilifying. The Board noted that the CEO of Energy Watch appears in the advertisement to explain Carbon Tax and considered that his presence in the advertisement is because he is the CEO of the company rather than because he is a man.

Based on the above the Board determined that, in this instance, the advertisement did not depict any material that discriminated against or vilified any person or section of society. The Board determined that the advertisement did not breach Section 2.1 of the Code.

The Board then 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 Board noted the complainants’ concerns that the older woman is bullied by the tax collector. A minority of the Board expressed concern over the interaction between the tax collector and the older woman and considered that the issue of harassing members of the public in this manner is serious and should not be normalised in an advertisement. The majority of the Board however considered that the tax collector is presented in a manner which is bossy rather than as a bully and that the advertisement does not depict or condone bullying.

The Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

