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Ad Standards Limited
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Case Report

1. Case Number :	0214-20
2. Advertiser :	Telstra
3. Product :	Information Technology
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Jul-2020
6. DETERMINATION :	Dismissed
7. IR Recommendation:	Reconfirm the Original Decision

ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual

DESCRIPTION OF ADVERTISEMENT

This advertisement opens on a wide shot looking across a river. A large geometric block floats in the shot. Sounds of nature are heard, then a foreboding sound belonging to the carbon block.

The scene cuts to a second landscape where multiple blocks are visible and cast shadows on the land.

The scene cuts to a shot of rocky coast. More blocks are visible floating along the coastline.

The scene cuts to a metropolitan area. A single block floats, moving skyward. This block extends almost infinitely skywards and towards the horizon.

The voiceover states:

VO: On one hand, using mobile and internet reduces Australia's carbon footprint...

VO: ...by reducing travel and making business more efficient.

VO: But their use also creates CO2.

VO: And your carbon thumbprint may be something you have never even considered.

VO: Well, there is a solution.

SUPER: BELONG. CARBON NEUTRAL MOBILE & INTERNET.

SUPER: belong.com.au/carbonthumbprint



THE COMPLAINT

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

Belong television advertisement depicts carbon dioxide as dark clumps of cloud floating above our countryside and cities. This is not only misleading but completely false. Carbon dioxide is a colourless and odourless gas which comprises only 0.03% of the atmosphere yet it is essential to life on our planet. If the company must make meaningless gestures to give people the impression that it is greener than green then it should at least go to the trouble of getting its facts straight.

The company concerned (Belong) ran an advertisement which clearly claimed to represent carbon dioxide as a dark grey could of material hovering over our cities and countryside. This representation was reinforced in the last few seconds of the advertisement when the dark and dirty clouds magically disappear because consumers embrace Belong and its carbon neutral corporate policy. In fact carbon dioxide is a colourless and odourless gas. This is not a claim I make personally it is a scientific fact.

AANA Environmental Claims in Advertising and Marketing Code provides that "Environmental claims in advertising must not be misleading or deceptive and must ensure that all disclaimers, including those about the extent of environmental benefit, are presented in a manner that can be clearly understood by the consumer." It seems quite clear that the Belong advertisement which is the subject of my complaint is misleading and deceptive in its portrayal of carbon dioxide. Thus it is in breach of the Code.

If the objective of Belong is to impress customers and prospects that it cares about climate change and aim to mitigate Greenhouse effect, then it should present scenes that is congruent with the science of CO₂. High school science has taught me that at such a low concentration of 400 parts per million, CO₂ is an atmospheric trace gas. It is colourless and odourless. At standard temperature and pressure, the density of CO₂ is around 1.98 kg/m³, about 1.67 times that of air, meaning that it will sink rather than float in the air. In fact, being a soluble molecule when exposed to a body of water as is shown in several scenes of the commercial, at standard 1 atmospheric pressure it will be absorbed by the water body, not float over it. One cannot see CO₂, it does not concentrate in the atmosphere as dark sooty clouds and certainly as an inert molecule in the atmosphere it is not a chemical pollutant in the scientific and industrial definition. Whereas it is a Greenhouse gas, however it does not have the properties in anyway as misrepresented in this commercial. It runs counter to scientific knowledge of carbon dioxide and accordingly misinforms students. I find this disinformation offensive and unscientific. It should be removed immediately.

"Carbon" is in fact carbon dioxide (CO₂), which is an odourless, colourless life gas - not pollution clouds as depicted. The ad is totally misleading. Even if production of CO₂ is a problem (which I contend it is not), for the ad to graphically suggest that the gas appears like a volcano or heavy pollution cloud is false.



THE ADVERTISER'S RESPONSE

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

Belong is a division of Telstra Corporation Limited ('we'), which is a voluntary member of Ad Standards.

We take our ethical and environmental responsibilities very seriously – not just in our advertising, but also in the actions we take as a business. The issues raised fall under the AANA's Environmental Code and not, in our view, to the provisions of Section 2 of the Advertiser Code of Ethics nor any of the other codes administered by Ad Standards. Accordingly, this response will only deal with those relevant parts of the Environmental Code.

CONTEXT AND BACKGROUND

- *Global warming – invisible threat meets evolved denial*

Global warming is a threat to life as we know it. In December 2019, the UN Environment Programme published its latest "Gap Report", written and overseen by dozens of climate scientists, which concluded that "if all current unconditional commitments under the Paris Agreement are implemented, temperatures are expected to rise by 3.2°C, bringing even wider-ranging and more destructive climate impacts." These impacts are likely to include phenomena that can be characterised as "tipping points", including: "abrupt carbon release back into the atmosphere", like permafrost emissions and forest die back; and the collapse of ice sheets in the West Antarctic and Greenland, which would eventually lead to 10 metres of sea level rise. To put that in context, it is estimated that one billion people now occupy land less than 10?metres above current high tide lines, including 230?million who live less than 1?metre above that level (<https://www.nature.com/articles/s41467-019-12808-z>).

The psychology of humans' reaction to global warming is complex. As conscious beings, we are aware of our own mortality, but we have evolved to not be distracted by it (<https://www.bloomberg.com/opinion/articles/2019-10-21/climate-change-denial-isn-t-limited-to-science-skeptics?sref=PSby8kid>). Doctors declaring that "poor nutrition is a leading cause of mortality" tells us that eating better might extend our life, but death is nonetheless inevitable. Or as novelist Jonathan Franzen has put it: "Given a choice between an alarming abstraction (death) and the reassuring evidence of my senses (breakfast!), my mind prefers to focus on the latter."

Given these factors, it is important that a range of learning tools are used in order to explain the mechanisms and impacts of climate change, and to overcome barriers to action.



- Visualisation as a critical tool for education

Science isn't fact – it's a methodology to collect evidence that supports or does not support our hypotheses. Science often demands that we discount our values, our politics, or direct experiences – like watching the sun revolving around the Earth – in favour of evidence that challenges our beliefs about our relevant place in the universe.

Visualisation is a well-accepted tool for the illustration of scientific phenomena that are otherwise not visible to the naked eye. This applies to the infinitesimally small (e.g. the stylised structure of atoms), to the infinitely large (e.g. the universe, including the representation of planets in our own solar system), and is widely adopted by Government and academic institutions alike (e.g.

<https://www.theage.com.au/national/black-balloons-inflate-green-awareness-20070313-ge4ern.html>.

In fact, NASA has explicitly visualised the pattern of carbon dioxide movements across the globe, by utilising the infrared segment of the light spectrum (<https://svs.gsfc.nasa.gov/12478>).

- Carbon is not a lone traveller

The vast majority of carbon dioxide emissions associated with telecommunications services arise as a function of energy use. In Australia, every tonne of CO₂ that is emitted as a result of energy supply is accompanied by other emissions including fluoride, metals, cadmium, mercury, nitrogen dioxide (and its equivalents), dioxins & furans, Volatile Organic Compounds, sulfuric acid mist, hydrogen chloride and chlorine. These emissions variously take gas, liquid (mist) and solid (particulates and dust) forms.

In fact, the environmental regulation of energy generation plant in Australia includes obligations relating specifically to “opacity limits”. Digital camera monitoring, visual inspections, and opacity alarms are used to monitor emissions to determine whether these opacity obligations are breached (<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/air/18p0700-review-of-coal-fired-power-stations.pdf>). In turn, opacity literally means the he quality of a material that does not allow light to pass through it. Emissions cannot be opaque without being visible. Accordingly, the combined emissions (of which CO₂ is a component) that arise from power supplied to operate telecommunications services are in fact visible.

It is therefore entirely reasonable to represent “emissions” not simply as a pure cloud of carbon dioxide, but to indicate the nature of “accompanying emissions” that are caused upon their production.

Some of these accompanying emissions (especially particulates) are not just visible, but also the cause of many health issues for communities who are located close to their source (<http://report.hazelwoodinquiry.vic.gov.au/>).



BELONG'S APPROACH TO CLIMATE CHANGE

The land on which we do business, the land on which our customers live, is and always will be protected by the First Peoples. They have done this continuously for 65,000 years as the longest continuous culture on planet earth.

Finding and facing the truth is a fundamental principle in the way Belong operates and the way our team works, in service of customers, and the communities in which they live. It is therefore critical that we understand and take responsibility for the impacts that we have had on this ecosystem in the most recent history of that 65,000 year timeline.

We know that as a telco our actions have direct and indirect impacts on everything from the environment, and economy, to social connectedness, and individual consumer wellbeing.

It is within this context that we became Australia's first telco to be certified 100% carbon neutral by Climate Active. The Climate Active organisation has a government-backed program to certify businesses who are doing their part to reduce carbon emissions. Their certification [<https://www.climateactive.org.au/be-climate-active>] provides 'a clear signal' that a business is 'committed to sustainability, innovation and industry leadership'. This certification asks business to prove annually that they are climate neutral in order to get recertified and to use Climate Active's trademark in association with their brand.

This means, in absolute terms, that our carbon footprint and residual emissions caused by our business, our products and even our services have been offset by the purchase of carbon credits. We committed to doing so at no extra cost to our customers. We take this commitment so seriously that we also undertook steps to reduce our carbon output in real terms by installing HVAC equipment, fresh air-cooling systems, high efficiency chillers, electronically commutated fans and lighting upgrades in our buildings. Furthermore, we prioritised the refresh of older rectifiers (telco infrastructure) to more modern, high-efficiency units to power our network.

Our staff are also invited to participate in doing their part by recycling their old mobile phones at our collection points to avoid harmful metals being left to degrade in landfills and poison our ecosystems. Our buildings all contain end-of-trip facilities to encourage our team to use environmentally friendly transport options like bicycles and scooters.

RESPONSE TO COMPLAINT

- Belong Carbon Thumbprint TV Advertisement

This advertisement is a 30-second brand spot which aims to do two things: to make consumers aware that their telecommunications ("telco") service can have an environmental impact and to give consumers the opportunity to lessen that impact by



switching to a telco provider that has offset all of its carbon producing activities through the purchase of carbon offsets.

- Environmental Code of Practice

Having a formalised standard for environmental advertising is a critical tool that enables quality debate of the underlying issues raised in complaints under the Environmental Claims code.

1. Truthful and factual presentation

Climate change is real, and our actions have an impact on our environment and that impact is causing the warming of global temperatures to levels that will have harmful consequences on humans and communities. We and 79% of Australians believe climate change is the biggest issue facing our country [Australia Talks National Survey, ABC and Vox Pop Labs (July 2019) <https://www.abc.net.au/news/2020-02-05/australia-attitudes-climate-change-action-morrison-government/11878510?nw=0>]

The complainants contend that our representation of carbon in the environment as ‘dark clouds’ floating above our countryside is misleading or deceptive. We deny this contention. The clouds are a scientific visualisation of CO₂, consistent with actual observed volume density ratios for this gas. As noted above in the section “Carbon is not a lone traveller”, the emissions that arise from energy supply (the dominant source of CO₂ emissions in telecommunications) are accompanied by a range of other gases and matter that have positive opacity.

Any reasonable consumer watching the advertisement would understand this. Telecommunications services obviously operate today without angry clouds appearing every time someone sends a text message or streams a movie.

The fact that CO₂ is colourless and odourless is the very reason that it needs to be scientifically visualised for education purposes. The fact that the gas is represented as a cube-like structure reinforces that it is a not literal representation of gas as it appears in the natural environment.

Accordingly, the representation of carbon dioxide as a computer-generated cloud was not misleading. There is nothing in the scientific visualisation that renders false any representation made in the advertisement. Upon watching the ad, a reasonable consumer would:

- *become more aware of the impact of their teleconnectivity on the environment;*
- *become aware that switching to a carbon-neutral telco provider would reduce this environmental impact.*

2. A genuine benefit to the environment

Telco providers contribute to Australia’s carbon emissions in real and absolute terms, thereby contributing to global warming.



Our carbon offset scheme has a tangible benefit to the environment by reducing net CO2 emissions, and improves the prospects of Australia meeting its obligations to carbon reduction targets per the Kyoto Protocol, the Paris Climate Agreement and to objective of keeping global warming below 1.5 degrees before 2050 [Global Warming of 1.5 degrees, Special Report, Intergovernmental Panel on Climate Change (2019)].

Therefore, the advertisement's assertion that switching to Belong would have a benefit to the environment is substantiated.

3. Substantiation

On every presentation of the ad, there is a link to www.belong.com.au/carbonthumbprint, which sets out the basis on which the claims have been calculated, including:

- *the external sources used for assumptions relating to the number of phone users in the market, average data usage per user, data intensity of various digital activities.*
- *the methodology and calculations (relating to carbon intensity) used to achieve carbon neutral status certification with Climate Active; and*
- *specific articulation of sources of error estimation.*

As previously stated, we take our ethical and environmental responsibilities very seriously. With all the evidence presented above, we do not see that we have breached the Environmental Code of Practice.

We feel fortunate to have had an opportunity to respond to questions on this important issue of public debate.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Environmental Claims in Advertising and Marketing Code (the Environmental Code).

The Panel noted the complainants' concerns that the advertisement is misleading as the advertisement portrays carbon dioxide as black clouds when in fact it is a colourless and odourless gas.

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

The Panel considered whether the advertisement made an Environmental Claim. The Environment Code applies to 'Environmental Claims' in advertising and marketing communications. An 'Environmental Claim' is 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 Environment is given a broad definition in the Code but, according to the dictionary definition means ‘the broad natural surrounding conditions, such as the bush, the rivers, the air, the sea in which human beings live.’

The Panel considered that the advertisement makes the claim that Belong mobile and internet are carbon neutral. The Panel considered that carbon dioxide (CO₂) is widely recognized as a greenhouse gas contributing global warming. The Panel considered that a claim that the company is carbon neutral is a claim which highlights an environmental aspect of the product.

The Panel considered that the advertisement did make an Environmental Claim and the provisions of the Environmental Code apply.

The Panel considered Section 1a of the Environmental Code which requires that ‘Environmental Claims in Advertising or Marketing Communications...Shall not be misleading or deceptive or be likely to mislead or deceive.

The Panel noted that the Practice Note to the Environmental Code states that “it is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code, Instead consideration will be given as to whether the average consumer in the target market will be likely to be misled or deceived by the material.”

The Panel noted that the advertisement was broadcast on free-to-air television and was therefore targeted to a broad audience.

The Panel noted the advertiser had provided evidence that they are carbon neutral accredited and that this claim in itself is not misleading.

The Panel noted the advertiser’s response that the clouds depicted in the advertisement are a scientific visualisation of CO₂ consistent with observed volume density ratios for the gas, and that any reasonable consumer would understand this.

The Panel considered that there is increased awareness about greenhouse gases and their impact on the environment in the general community. The Panel considered that an average consumer in the target market would understand that dark clouds of greenhouse gasses aren’t produced around mobile and electrical devices every time they are used, however would understand that the use of such devices would contribute to greenhouse gas emissions.

The Panel considered that the cloud shown in the advertisement are a visual representation of the CO₂ emitted when such devices are used in order to highlight the environmental benefit of using a carbon neutral service.



The Panel considered that an average Australian consumer would recognize the dark clouds to be a visual representation and would not associate them with smog pollution or be led to believe that using non-carbon neutral phone and internet services would create black clouds such as those shown in the advertisement.

Taking into consideration the information provided by the advertiser and the general consumer audience, the Panel considered that the overall impression to a consumer is that the advertiser is offering a service which is carbon neutral as a point of difference to other services available.

The Panel considered that the environmental claim of the service being carbon neutral made in the advertisement was not misleading or deceptive, or likely to mislead or deceive and did not breach Section 1a of the Environmental Code.

The Panel considered Section 1c of the Environmental Code which requires that 'Environmental Claims in Advertising or Marketing Communications... shall represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer.'

Similar to the discussion under Section 1a, the Panel considered that the average consumer would understand the clouds in the advertisement to be a visual representation of CO2 and not intended to be an actual depiction of CO2 clouds. The Panel considered that the environmental claim made in the advertisement did represent the extent of the environmental benefits as they relate to the service in a manner that can be clearly understood by the consumer. The Panel determined that the advertisement did not breach Section 1c of the Environmental Code.

The Panel determined the advertisement did not breach Section 1 of the Environmental Code.

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

INDEPENDENT REVIEWER'S RECOMMENDATION

Background

The complaints related to advertisements by Beyond, a telecom provider which is a division of TELSTRA, advocating use of Beyond's products (mobile phones and internet) as 'reducing Australia's carbon footprint'. The ads depict landscapes, the first four being depicted as dark and threatening. They show:

- A large expanse of water over which floats roughly cube-shaped clouds;
- A second landscape in which multiple cube-shaped clouds cast shadows on the land;
- A rocky coast in which the cube-shaped clouds are shown over the coastline;



- A metropolitan scene, in which multiple cube-shaped clouds float across the buildings; and
- A final scene of land and sea in which the sky is light and the wispy cloud is depicted in an everyday recognisable shape.

The voice-over comments that ‘using mobile and internet reduces Australia’s footprint by reducing travel and making business more efficient, but that their use also increases people’s carbon footprint’. The suggested solution to the latter problem is to use Beyond’s products’.

Sample of Complaints

The following are an indication of the initial complaints:

- That as carbon dioxide (CO₂) is a colourless, odourless gas it was misleading and deceptive to portray it as a dark cloud;
- That it was also misleading and deceptive to portray it as a cloud since CO₂ is more dense than air and would sink rather than float in the air as a cloud;
- It was misleading and deceptive to portray CO₂ only as a pollutant, that is, only the negative aspect of the presence of CO₂ in the atmosphere, since certain levels of the gas are also essential to life;
- It was misleading and deceptive to suggest that because Beyond can purchase carbon credits, it will reduce CO₂. The truth is that all the credits do is pay for reduction of CO₂ somewhere else.

Panel’s response

The relevant Code is the Environmental Claims Code (Code) and its accompanying Practice Note.

Code and Practice Note, as relevant

Environmental Claims Code

1. TRUTHFUL AND FACTUAL PRESENTATION

Environmental Claims in Advertising or Marketing Communication:

- shall not be misleading or deceptive or be likely to mislead or deceive;*
- shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language;*
- shall represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. ...*

2. SUBSTANTIATION

Environmental Claims in Advertising or Marketing Communication:

- shall be able to be substantiated and verifiable. Supporting information shall include sufficient detail to allow evaluation of a claim;*
- Shall meet any applicable standards that apply to the benefit or advantage claimed; and*



- c. *Containing testimonials that shall reflect the genuine, informed and current opinion of the person giving the testimonial.*

Environmental Claims Code

Practice Note

*SECTION 1(a) – shall not be misleading or deceptive or be likely to mislead or deceive
It is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code.*

Instead, consideration will be given as to whether the average consumer in the target market would be likely to be misled or deceived by the material.

Factors to consider include: ...

- *It does not matter whether the advertisement actually misled anyone, or whether the advertiser intended to mislead – if the advertisement is likely to mislead or deceive there will be a breach of the Code.*
- *The target market or likely audience of the advertising or marketing communication should be carefully considered when making environmental claims. Therefore, all advertising should be clear, unambiguous and balanced, and the use of technical or scientific jargon carefully considered. ...*

SECTION 1(b) – shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.

A disclaimer can clarify, expand or reasonably qualify a representation but should not contradict, diminish or retract it. ...

SECTION 1(c) – shall represent the attributes or extent of the environmental benefits or limitations as they relate to a particular aspect of a product or service in a manner that can be clearly understood by the consumer. ...

PART 3 – SUBSTANTIATION

SECTION 3(a) – shall be able to be substantiated and verifiable. Supporting information should include sufficient detail to allow evaluation of a claim. Advertisers and marketers should have a reasonable basis for making a claim and therefore should hold appropriate, balanced, comprehensive and credible evidence to substantiate all express and implied claims. Information to support a claim may include, but is not limited to, documentary evidence or data evidencing conformity with an identified standard, research, studies, or an expert independent audit. There is no requirement to use third party verification or certification before an environmental claim is made. An advertiser's own internal procedures may be able to provide the necessary substantiation.

In testing the validity of any claim the Community Panel will only rely on information/material provided by the advertiser and the complainant. The



Community Panel may seek expert advice to assist in the consideration of material provided in relation to the complaint. It is not the intent for the Community Panel to act as an arbiter of scientific fact, or of philosophical approaches to understanding or addressing environmental concerns.

The Panel found:

- the advertisements involved ‘Environmental Claims’ in advertising and marketing communications since an ‘Environmental Claim’ is 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’; and
- The Environment is given a broad definition in the Code, but according to the dictionary definition means ‘the broad natural surrounding conditions, such as the bush, the rivers, the air, the sea in which human beings live’.

By implication the Panel found that the advertisements related to the ‘environment’ as they were depictions relating to land, water, and air including in cities; that ‘the claim that the company is carbon neutral because it has purchased carbon offsets to neutralise the carbon emissions of its mobiles or internet service is a claim which highlights an environment aspect of the product’. Accordingly the advertisement did make an ‘environment claim’ and the Code applied. The Panel also noted that the advertisement must not be ‘misleading or deceptive’ or be ‘likely to mislead or deceive’ in the ordinary, not legal sense of those terms, and the ads were shown on ‘free-to-air’ television and were targeted to a broad audience.

In reaching the conclusion that the advertisement did not breach section 1 of the Code or any other grounds, the Panel found:

- As Beyond had provided evidence that it was carbon neutral accredited, this claim was not misleading;
- That any reasonable consumer would understand that the clouds depicted were a scientific visualisation of CO₂ consistent with observed volume density ratios for the gas and not an actual depiction of CO₂ clouds;
- An average consumer would understand that dark clouds of greenhouse gasses are not produced around mobile and electrical devices every time they are used, but do contribute to greenhouse gas emissions;
- That the clouds were a device used to highlight the environmental benefit of using a carbon neutral service;
- That an average Australian consumer would not associate the clouds with smog pollution or lead anyone to believe that non-carbon neutral phone and internet services would create dark clouds as shown in the advertisement;
- That the overall impression of the advertisement was that Beyond was offering a service which was carbon neutral to differentiate itself from other providers;



- That the environmental claim represented the attributes or extent of the environmental benefits or limitations in a manner that could clearly be understood by the consumer;
- As a result, the ads were not misleading or deceptive or likely to mislead or deceive;

Complainants' responses to Panel findings for purposes of review

The complainants variously submitted the following. Not all the complaints are listed as some related directly to Telstra and its publications rather than those of Beyond, some related to comments on website or other sources and were relating to climate change, not the emission of CO₂, rather than the advertisement by Beyond which was focused on a carbon footprint, with one comment only about climate change. The response by the advertiser also referred at points to climate change, rather than CO₂. Nor have the submissions been separately listed as there is overlap between them. The composite submissions listed are of the views of both principal complainants. They are:

- Some of the scientific reports cited by Beyond as justifying its concern about climate change were unfounded;
- 'Millions of gas blocks choke a city';
- That it is not the role of Telstra or its Divisions, not being agencies of government, to inform the public on scientific matter concerning climate change or to remove barriers to action by the community or government;
- That it is important for scientific integrity and for educating the public, including children and young adults that any scientific information be balanced;
- It is unconscionable to mislead the user with the impression created by Beyond's ads and apps that CO₂ is bad for the environment and that users who do not heed this information and change their provider are socially bad;
- There were alternative, less misleading means of portraying CO₂ than use of the cloud imagery;
- The real purpose of the ad is not to protect the environment, but rather to promote sales of their products;
- Certain statements by Beyond, such as 'The clouds are a scientific visualisation of CO₂ consistent with actual observed volume density ratios for this gas' defy scientific knowledge, and that 'Our carbon offset scheme has a tangible benefit to the environment by reducing net CO₂ emissions' is 'self-puffing at its best';
- The advertisement is 'deceptive and misleading communication founded on misinformation and disinformation about the molecule carbon dioxide';
- That many members of the Panel may 'have preconceived bias in favour of the climate change agenda';
- That the advertisement breaches the mandate of advertisers to present truth and fact in pursuit of their ultimate environmental claim and hence is likely to mislead or deceive the general public, particularly its youth, because Beyond



states that it has ‘managed to stop their carbon emission from their business operation’;

- The Panel concentrated only on the matter of the false claim of the benefit of carbon neutrality, not on the need for supporting evidence to support the claim of zero carbon;
- The representation of atmospheric carbon dioxide as wholly bad is not consistent with scientific facts and was an abuse of licence for creativity and was challenged as potentially deceiving the public because the benefits of CO₂ were not equally presented;
- The Panel’s finding that Australian consumers would recognise the ominous blocks of gas to be a visual representation of carbon dioxide and would not associate them with the gasses that cause smog pollution was inconsistent with the acknowledgement that it is the association of CO₂ with smog which permitted the depiction of the clouds as opaque;
- The dismissal of the complaint is founded on the presumption that the audience as a whole would believe in climate change, which is not the case;
- There is no disclaimer or statement of limitations and qualifications of the visual image in clear, plain and specific language as required under section 1(b) of the Code; and
- There is no indication as to how Beyond achieved net zero carbon emissions.

In conclusion, one of the complainants recommended the Reviewer to direct the Panel to:

- Replace the visualisation with another animation that is congruent with scientific fact of carbon dioxide; or
- Add a disclaimer that in reality, carbon dioxide does not appear like the ominous block of gas.
- Otherwise the complainant suggested that the advertiser:
 - Remove the commercial immediately’; and
 - Demonstrate on their webpage how Beyond has achieved net zero carbon with commercial and energy data in support of their initiative; and
 - Present a balanced perspective on the benefits of carbon dioxide, consistent with science.

Role of reviewer

The Independent Reviewer first considers whether the application for review sets out a *prima facie* case for review and decides whether to accept or not accept the request. That decision depends on whether the complaint meets any of the required but limited grounds for review, namely:

- *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.*

- *Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).*
- *Where there was a substantial flaw in the process by which the determination was made.*

The complainants who provided material for the purposes of the review relied collectively on all three grounds.

I accepted the claim because it was supported by a significant amount of 'comprehensive and credible' material, and a reviewer could only determine if there was a breach of any of the grounds of review by consideration of that material.

First Ground: ambiguity

As a preliminary point I seek clarification of a degree of ambiguity in the first ground. That ground permits reconsideration of '*new or additional relevant evidence which could have a significant bearing on the determination*' where this '*becomes available*'.

The expression '*becomes available*' implies that the information was not available at the time of the complaint and only became available after the date the initial complaint was made. That suggests it must be new information not available at the time of the determination, not existing information at the time of the complaint.

In practice, it is those making the complaint about the determination who are the most likely to provide that further information and they will do so in response to the determination. The determination is the trigger for the new information. The implied prohibition that information available earlier cannot be considered by the reviewer is at odds with this reasoning.

At the same time, the proviso that '*the explanation of why this information was not submitted previously must be provided*' implies that information available earlier can be provided but only if there are good reasons for not having done so earlier. The qualification implies that the new and relevant information will only be accepted and taken into account by a reviewer if good reasons are provided as to why this information was not provided in relation to the initial complaint.

Applying that proviso strictly means no information provided in response to the determination can be relied on if it was available prior to the complaint.

In this instance, the information in the reports relied on is well-known and was in existence prior to the complaint. The Paris Agreement was ratified by Australia in 2016; the two articles from Bloomberg and Nature were published in 2019.

It would be useful for the reviewer if AdStandards could clarify this ground.

Direct the panel



The complainant has recommended that the reviewer direct the Panel. That suggestion is to misunderstand the reviewer's role. Ultimately, all the reviewer is doing is making a recommendation to the Panel as to whether any of the three criteria listed are met in the Panel's findings and any subsequent material provided by the advertiser or by a complainant seeking independent review. If a breach is found the reviewer recommends the Panel reconsider the finding. It is for the Panel to decide whether it accepts the recommendation. It is not for the reviewer to direct the outcome of the Panel.

REVIEWER'S REASONS

Introduction

The complaints warrant a general comment. The initial and further material provided by the complainants are made from the perspective of professional scientists and engineers. That view is one not taken by an advertiser seeking to encourage the public to purchase their products. There is a clash of perspectives between the two views.

The Panel's role is to balance the competing views, not favouring either one or the other but adopting a view reflecting those of a viewer of the advertisement. That position does not provide a licence for the Panel to accept misrepresentations of scientific information by the advertiser, but nor is the Panel required to demand the factual accuracy of the scientist. The balance is drawn by applying the terms of the Code and the Practice Note. In particular, the permission for a degree of creative licence - the 'visualisation' tool - is the key mitigating or balancing factor.

A second general comment is that the Panel's (and the reviewer's) role is to view the advertisement. It is the advertisement which must not be misleading or deceptive, and the appropriateness of which is the subject of AdStandards' regulatory regime. The public is not exposed to the detailed responses of the complainants and too heavy an emphasis on factual misrepresentations identified by the complainants in subsequent submissions is only relevant to the extent that it exposes aspects of the advertisement that have, or are likely to, mislead or deceive the viewer of the advertisement, and only to the extent that the correct view 'could have a significant bearing on the determination'.

Reasons

No objection was taken by the complainant to the Panel's finding that the complaint related to the an 'aspect' of the 'environment' and was accordingly an 'environmental claim'. Nor was there any objection to the fact that the advertisement, being shown on free-to-air TV was intended for a broad audience, or that the expression 'misleading or deceptive' should be given its ordinary, not its legal meaning.

Nor can objection be taken to the advertisement being to promote sales of Beyond's products. That is the nature of advertisements.



There is a degree of confusion in the complaints. They refer at times to criticisms of Telstra, for example, including its annual report, not Beyond's advertisement; submissions are made concerning the separate 'Carbon Thumbprint' segment of Beyond's website, not the advertisement under consideration; and to climate change in general, rather than emission of CO₂. These elements of the complaints have not been taken into account in the review.

Objections

The objections can be summarised as follows. The advertisement is:

- Scientifically inaccurate and hence misleading or deceptive, or likely to mislead or deceive
- since some of the scientific reports cited by Beyond as justifying its concern about climate change were unfounded;
- Likely to mislead or deceive' the intended broad audience, including children and young adults, given the depiction of CO₂ as a dark cloud when there are alternative less misleading way to depict CO₂;
- Misleading and deceptive since 'at standard temperature and pressure, the density of CO₂ is around 1.98kg/m³, about 1.67 times that of air, meaning that it will sink rather than float in air'
- Unbalanced since no reference was made to the important role of CO₂ to life on earth;
- Misleading and deceptive because it does not contain a disclaimer concerning the scientific accuracy of the claims; and
- Indicating bias of the Panel.

These objections, expanded as appropriate, are examined under the three grounds of review available to the reviewer by applying the grounds of review and the relevant terms of the Code and the Practice Note.

First ground: New or additional evidence which is sufficiently significant that it could have a bearing on the determination

This ground requires that the reviewer can find that the new evidence provided by the complainants establishes that the advertisement is so scientifically misleading or deceptive or likely to mislead or deceive that it 'could have a significant bearing on the determination'.

The complaints which fall under this heading include:

- There are a number of 'loose and unfounded claims and statements by the advertiser'. These included a quote from a source relied on by the advertiser, the UN Gap Report (December 2019) that did not appear in the report and other information in the reports that did not support the claims of the advertiser. This is a claim of factual inaccuracy.
- The comment by the advertiser that 'The clouds are a scientific visualisation of CO₂ consistent with actual observed volume density ratios for this gas' is



argued to be meaningless or at best opaque and inconsistent with scientific knowledge.

- One complainant pointed out that the ‘actual observed volume density ratios’ would be rendered as a black square about 12x12mm, and would barely be discernible to the viewer, while the other stated that the dust would produce at most ‘a subtle mist effect’.
- Another complainant said that as CO₂ is heavier than air it would sink rather than float as a cloud.
- The imagery of the clouds is false and misleading since on one view it is other polluting gases which cause the coloration, but another view is that the colour is due to dust, not gas.

In the first instance, the complainants have not explained why these points were not made in relation to the initial complaint. The dates of the reports cited indicate they have not ‘become available’ subsequent to the initial complaint. They were available earlier. On that basis, the reviewer could refuse to consider this evidence. However, in view of my earlier comment about the ambiguity of this aspect of the grounds of review. I am not recommending the application for review cannot be accepted for this reason.

The Practice Note indicates there is no need for the Panel to act as an arbiter of scientific fact or to use third party verification or certification of an environmental claim. The Panel can accept the accuracy of the evidence provided by the advertiser. This the Panel has done. The Panel was entitled to do so as the information cited by the Panel is founded on scientific journals which are widely known and well respected. Accordingly, for the Panel to have relied on these findings was appropriate. That is not to imply that the views in those journals may not be ‘loose or unfounded’ but the Panel was authorised to rely on them.

In addition, my opinion is that the ‘visualisation’ or creative licence permitted the advertiser is sufficient justification to discount the degree of scientific inaccuracy pointed out by the complainants in the new evidence provided. (See also my later comment about visualisation of a ‘colourless, odourless gas’.) The visualisation tool may be employed, unless its use is so misleading or deceptive that it ‘could have a significant bearing on the determination’.

The new evidence relates in all cases to the cloud image. It is the impact of the advertisement on the general public or the average consumer in the market that is to be considered according to the terms of the Code and the Practice Note.

The Panel found that the general public or the average consumer in the market:

- ‘would understand that dark clouds of greenhouse gasses aren’t produced around mobile and electrical devices every time they are used, however, would understand that the use of such devices would contribute to greenhouse gas emission’;
- ‘would recognise the dark clouds to be a visual representation and would not associate them with smog pollution or be led to believe that using non-carbon



neutral phone and internet services would create black clouds such as those shown in the advertisement.'

Those views are supported by the later discussion of the odd shape of the clouds signalling to the viewer that the image in the advertisement is an artificial device designed to highlight the dangers of pollution from CO₂.

If the views of the random group of young people interviewed by one complainant are an indication, the majority understood that carbon dioxide can pollute and that the clouds were a representation of the bad effects of CO₂ and were not scientifically accurate. In other words, the general public as represented by this sample would not be misled by the image of the clouds, and would accept a degree of advertising licence in the representation, knowing this was an advertisement.

There may be scientific inaccuracies in the advertisement but given the mitigating factor of the visualisation of the cloud image I am not persuaded that in the context of the Code and the Practice Note the new evidence indicates that the advertisement is so misleading or deceptive that the errors 'could have a significant bearing on the determination'.

Second ground: There is a substantial flaw in the Panel's determination (that is, the determination was clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).

The new information listed under the first ground could also have been considered under this second ground. As they have already been considered, I have not included them here.

Points which can be considered under this ground are that:

- Beyond did not provide evidence to supports its claim of being carbon neutral and that its carbon offset scheme has a tangible benefit to the environment by reducing net CO₂ emissions;
- The claim of Beyond that CO₂ is a pollutant lacked balance as it did not indicate the positive features of CO₂ as being necessary for life on earth;
- The Panel did not critically analyse Beyond's response to the complaint and simply accepted the evidence provided by Beyond as true and factual;
- Beyond did not establish that green house gas emissions are visible. Consequently, the 'depiction of CO₂ and the accompanying gaseous emissions as dark clouds... is false and misleading' particularly when there are more scientifically accurate depictions available;
- There was no disclaimer by Beyond about the accuracy of the cloud image as representing pollution due to the emission of CO₂.

Beyond is carbon neutral and the carbon offset scheme has a tangible benefit to the environment by reducing net CO₂ emissions



This argument has two aspects: that there is no evidence that Beyond is carbon neutral; and that the claim to be carbon neutral is misleading and deceitful.

The Panel ‘noted the advertiser had provided evidence that they are carbon neutral accredited and that this claim in itself is not misleading’.

The complainant claimed that the advertiser did not provide evidence to support its claim of being carbon neutral. In essence this is a claim of absence of substantiation under section 2 of the Code and Part 3 section 3(a) of the Practice Note.

Beyond did assert in its 13 July 2020 response to the complaint that it became Australia’s first 100 per cent carbon neutral telco. This assertion is supported by the Climate Active logo to that effect on the Beyond website, but this image is not included in the advertisement. Nonetheless, its existence does indicate that the claim is ‘able to be substantiated and verifiable’ (Code section 2(a)).

So, although there is no requirement for third party certification, certification of that kind is third party certification and can be substantiated by Beyond. Such certification is evidence of an application by Beyond for recognition in this form, and of Beyond’s meeting the criteria for certification. The successful outcome validates Beyond’s internal procedures and would meet the relevant terms of the Practice Note.

Accordingly, the first aspect of the claim that the Panel’s decision that Beyond’s claim was substantiated so as to amount to a substantial flaw under ground 1 is not made out.

The second aspect is that the purchase of carbon credits on which the claim is based is misleading since offsetting is no more than an accounting device, and in any event ‘does not mitigate, reduce, or offset the other emissions’ which are pollutants.

‘The Panel considered that the environmental claim of the service being carbon neutral made in the advertisement was not misleading or deceptive, or likely to mislead or deceive and did not breach Section 1a of the Environmental Code’. The words used by the advertiser in its response to the complaint is that ‘our carbon footprint and residual emissions caused by our business, our products and even our services have been offset by the purchase of carbon credits’.

Those words do no more than claim a net benefit in overall atmospheric pollution. They do not claim that pollution in the stratosphere over Australia is diminished. The purchase of carbon credits may be described as an accounting device but it is accepted under international agreements and is well known in the general population as having a mitigating effect on atmospheric pollution overall.

In my opinion the Panel’s finding cannot be considered as so misleading that it involves a substantial flaw under ground two.

Absence of balance in the representation of CO2 as harmful



The complaint is that gas is essential to life on this planet and has other benefits. To depict it as wholly harmful is unbalanced.

The Panel did not specifically refer to the issue of balance. However, in its findings that the advertisement did not breach 'Section 1 of the Environmental Code, on any other grounds' the Panel implicitly concluded that the advertisement was not unbalanced.

The complaint fails to acknowledge the words accompanying the advertisement, namely, that use of mobiles and internets has made business more efficient, and is a practical benefit of use of these emitters of CO₂. That information was provided as a qualification to the negative effects of CO₂ on the environment.

The beneficial effects of the gas in terms of being essential to living on earth are not featured in the advertisement. The absence of that information is only likely to amount to a substantial flaw if the absence is unbalanced. The use of the cloud image is arguably an indication of the benefits. Clouds are a source of the rain which is essential to life on earth. The beneficial implication is implicit, and balances the negative effects of the image as indicated by the darkness of the cloud.

Overall, in the opinion of the reviewer, the cloud image does not import such a degree of imbalance as to amount to a substantial flaw by the Panel under the second ground.

The acceptance of Beyond's responses as true and factual and the absence of analysis

This argument raises the factual inaccuracies considered under ground 1 and these issues have been dealt with under that heading.

Failure to establish that greenhouse gas emissions are visible and the 'depiction of CO₂ and the accompanying gaseous emissions as dark clouds... is false and misleading' when there are more scientifically accurate depictions available.

The Panel 'considered that an average Australian consumer would recognize the dark clouds to be a visual representation and would not associate them with smog pollution or be lead to believe that using non-carbon neutral phone and internet services would create black clouds such as those shown in the advertisement'. As the complaints noted, CO₂ is an odourless and colourless gas. The Reviewer accepts that to depict CO₂ as dark clouds, at least without acknowledging that the clouds might contain material other than CO₂ which contributed to their visibility, was strictly not scientifically correct.

On the other hand it is difficult to envisage how an advertisement could depict an odourless, colourless gas without a degree of licence. The advertiser notes that 'visualisation is a well-accepted tool for the illustration of scientific phenomena that



are otherwise not visible to the naked eye', and the advertiser relied on a visualisation metaphor in this instance.

The complainant suggests there are other more scientifically accurate ways to advertise the same story, namely a graphic image depicting the formula for the elements comprising CO₂. The initials 'C' for carbon and 'O' for oxygen, are technical and would not necessarily be understood by those in the general population who had not studied chemistry or science. Nor would the placement of the 'O' on either side of the 'C' and use of the 'equal' sign be illuminating for those who had not studied algebra.

Use of the cloud as the vehicle to indicate a gas and depicting it as dark and threatening, is an indication that the gas is harmful. Visualisation is, as the advertiser indicates, a 'well-accepted tool'. Advertisers are permitted a degree of artistic licence. Whether the advertiser exceeds that degree is the issue. Is the advertisement misleading and deceptive or likely to mislead or deceive?

Had the clouds simply been dark versions of clouds encountered every day, that may have been an issue. In this advertisement, however, the clouds are an odd rough cube shape. This atypical shape is sufficient to indicate to a general audience that these are not depiction of ordinary clouds. Rather they are shapes in the air for the purposes of the advertisement and the odd shape, coupled with the voiceover information about the harmful effects of CO₂, alerts the public to the fact that the clouds in the advertisement are a visualisation device.

In these circumstances, in the reviewer's opinion, the general public is not likely to be deceived. In other words, the advertiser did not, in using this visualisation, overstep the limit of their licence to the extent likely to mislead or deceive. It follows that Panel's conclusion that the adoption of this visual image did not involve a substantial flaw.

Absence of a disclaimer

The Practice Note section 1(b) requires the advertiser to display '*any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language*'.

A complainant criticised the advertiser for the absence of a disclaimer for the following:

- The visualisation of carbon dioxide is not consistent with scientific knowledge;
- There were no tangible and direct benefit to the environment from this company, the carbon mitigation was already achieved by a third party;
- The controversial choice of visualising carbon dioxide [is] inconsistent with science; and
- A claimed presumption that the audience [as a whole] would believe in climate change.



The first dotpoint has been considered under the first and second ground. Although the visualisation may not be scientifically accurate, given the artificial nature of the depiction, the visualisation is not so misleading that a disclaimer is required.

The second dotpoint has also been dealt with under the second ground. The general understanding by the public of the way offsets work suggests that the claim of tangible benefit is not so misleading as to warrant a disclaimer

The third dotpoint which in essence is that the visualisation of CO2 as clouds is misleading has also been dealt with under the first ground and the conclusion does not warrant a disclaimer.

The fourth dotpoint is based on a perceived implication that the audience[as a whole] would believe in climate change. I have dealt with this point in deference to the complainants, although as I noted earlier, to discuss climate change when the advertisement is about CO2 emissions, is to conflate two distinct but related concepts.

The reality is that not everybody believes in or agrees with the climate change narrative. Indeed that was conceded by one of the principal complainants. There is actually widespread dissent in some quarters about the existence of climate change. The harmful impact of CO2 on climate change is also not universally accepted. In those circumstances, there is no imperative need for a disclaimer recognising the benefits of CO2 on the environment.

I note in this context that there is no need for the ‘Panel to act as an arbiter of philosophical approaches to understanding or addressing environmental concerns’ (Practice Note Part 3 section 3(a)). That is sufficient to obviate the need for a disclaimer on this issue.

Although the Panel did not specifically address the issue of a disclaimer in Practice Note section 1(b), its conclusion that the advertisement ‘did not breach the Environmental Code on any other grounds’ implicitly includes that provision. I can not find any substantial flaw in that determination.

Third Ground: Procedural flaw

There are two complaints to be considered:

- The outcome indicates there must have been a deficiency in the processes of decision-making by the Panel; and
- Bias on the part of the Panel members.

General deficiency in the process

This element of the complaint appears to be based on an assumption that the Panel’s reasons indicate that their decision-making processes must have been deficient for them to reach their decision. I take it that this complaint relates to the Panel’s



statement that they took into consideration ‘the information provided by the advertiser’, but still did not accept the basis of the complaint.

I note that there is no indication whether the Panel’s consideration was of all the information (which by implication included the scientific reports), or only some of it. Nor is the ‘consideration’ an indication of whether the Panel’s findings were influenced by some or all the material. It would have been helpful if the Panel had done so. Nonetheless, in view of the evidence in support of the harmful effects of CO2 on the climate, and the assertions that Beyond was 100 per cent carbon neutral, the ultimate findings of the Panel are justifiable.

Bias

The second aspect of the submission that there has been a procedural flaw is the claim of bias. Legally this is a serious accusation. I assume that the claim of bias is due to the absence of any dissenting views reflecting those of the complainant and the segments of the community which do not accept the concept of climate change or that CO2 emissions contribute to that change.

Bias involves a claim that the fair-minded and informed observer could apprehend that the decision-maker might not be sufficiently impartial. Bias is not lightly to be found.

A ‘fair-minded and informed observer’ would understand there are harmful effects of an increasing amount of CO2 in the earth’s atmosphere but that the net effects can be mitigated by actions including obtaining carbon credits. Beyond provided evidence that it has mitigated the impact of the CO2 omitted from use of its mobiles and internet services by its purchase of carbon credits. The informed observer would be aware that Beyond was Australia’s first telco to be certified as 100 per cent carbon neutral by Climate Active, and that Climate Active is an organisation that ‘has a government-backed program to certify businesses ... doing their part to reduce carbon emissions’.

In these circumstances, it is my opinion that it would be highly unlikely that any legal claim of bias would succeed. That view is the stronger because finding bias of a group is even more difficult than establishing that an individual is biased.

In summary, as the Panel is not required to evaluate the accuracy of the evidence, nor arbitrate between different philosophical assessments of the claims, and there is sufficient factual evidence to support the findings that CO2 is harmful to the environment, and that the processes in support of the Panel’s findings were justifiable, in my opinion, the information supporting the outcome is not so misleading or deceptive as to be factually inaccurate to such an extent that it would have a bearing on the determination. Nor is the imagery used in the advertisement so misleading or deceptive as to be against the weight of the evidence or to involve a ‘substantial flaw’. Finally, in my opinion there is no substantial flaw in the process by which the determination was made.



Conclusion

The findings of the Panel did not involve a breach of the three grounds on which a reviewer may recommend a reconsideration by the Panel. That view is based on the application of the provisions of the Code and the Practice Note to the advertisement in light of the Panel's findings under the three grounds which may be considered by the reviewer.