



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

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0259-21
2. Advertiser :	Transurban
3. Product :	Travel
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	22-Sep-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual
AANA Environmental Code\3 Substantiation
AANA Environmental Code\2 Genuine Environmental Benefit

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a reference to pollution levels on Parramatta Road. The voice-over states: "With WestConnex, we're sending more cars underground which means less congestion and more free-flowing traffic, improving local air quality by as much as to 10% along Parramatta Road. WestConnex – Here's to an even better Sydney."

THE COMPLAINT

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

1. *Misleads the viewer by comments such as air on Parramatta road is cleaner by 'as much as' 10 %. That could be anywhere from 0-10%.*
2. *Doesn't mention the pollution in tunnels they've created like the M4. So pollution has gone, if any has, from outside to underneath where some days it's visibly smoky.*
3. *Doesn't mention the financial burden of the toll the average person has to pay to use the M4 for the next 38 years!*
4. *Its deceptive in that it shows blue clear skies and fresh air as a result of moving pollution underground - not removing it.*
5. *The whole ad makes me sick to the stomach to watch.*



6. These large money-making organisations taking exorbitant amounts of toll from tollways that have been paid off already, and from those areas that can least afford, and then implying that they're cleaning the air for Sydney is too disgusting, misleading and sickening to watch.

This ad has got to be a bad joke. It must be removed or corrected for TRUTH and to stop insulting our intelligence.

THE ADVERTISER'S RESPONSE

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

The advertisement does not contain material which gives rise to any issues under clauses 2.1 to clause 2.7. Our comments on each of those clauses are as follows:

- 2.1 - *Discrimination or vilification – there is no discrimination or vilification content in this advertisement*
- 2.2 - *Exploitative or degrading - there is no exploitative or degrading content in this advertisement*
- 2.3 – *Violence – there is no violent content in this advertisement*
- 2.4 - *Sex, sexuality and nudity – there is no sex, sexuality and nudity content in this advertisement*
- 2.5 – *Language – there is no inappropriate language in this advertisement*
- 2.6 - *Health and Safety – there is no health and safety claims in this advertisement*
- 2.7 - *Distinguishable as advertising – the advertisement is distinguishable as advertising*

AANA Environmental Code\1 Truthful and Factual\ not misleading or deceptive

- *The advertisement contains accurate information about the matters it deals with. This section explains the factual basis for the statements in the advertisement.*
- *The M4 Tunnels link the inner-west Sydney suburbs of Homebush and Haberfield and were constructed as part of WestConnex, Australia's largest road infrastructure project. They were opened to traffic on 13th July 2019 and thousands of motorists use the tunnels each day. It largely provides an underground alternative to Parramatta Road whose route it generally follows. By opening the tunnels, traffic volumes were reduced along Parramatta Road, especially for heavy vehicles., Transurban commissioned an independent assessment of our air quality monitoring before and after the M4 Tunnels opened to traffic to identify any differences within the local community. During the 8 months following the opening of the M4 Tunnel, and prior to the first restrictions related to COVID-19, air quality related to traffic exhaust emissions (represented by concentrations of oxides of nitrogen) substantially improved in the vicinity of the M4 Tunnel. The improvement has been estimated for the first 12 months using two scientific methods to disregard the impact of Greater*



Sydney COVID-19 restrictions on emissions. Our independent expert confirmed an improvement in air quality of between 10 and 15% was observed along the Parramatta Road corridor (with the improvement increasing with the proximity to the road). No worsening of air quality was observed at any monitoring location.

- *The complaint refers to the omission of information about tolls payable on the M4 Tunnels. That is outside the scope of the advertisement. The advertisement does not contain any material in relation to tolls, and we respectfully submit there is no basis to find that it is misleading in relation to that subject matter. Likewise, the advertisement makes it clear that traffic is diverted underground, and in those circumstances, there is no basis to suggest that viewers are misled about this. The advertisement does not make any claims about the underground air quality, and only addresses the question of the impact on the above ground environment, in which communities reside.*

AANA Environmental Code\3 Substantiation\}a) claims able to be substantiated and verifiable

- *The statements made in this advertisement are verifiable through the completion of an Independent Report completed in August 2021 by Dr. Ian Longley, from National Institute of Water & Atmospheric Research, titled 'Changes in local air quality associated with opening of the M4 Tunnel' The report is available on our website here: <https://www.westconnex.com.au/media/txeljlzw/air-quality-report-new-m4-tunnels.pdf>. You may contact Dr. Ian Longley for further verification if required.*

AANA Environmental Code\2 Genuine Environmental Benefit\}b) not overstate claims

- *The report identified an improvement in air quality of between 10 and 15% along the Parramatta Road corridor (with the improvement increasing in line with proximity to the road). In the advertisement we use 10%, and not 15%, so as to take a conservative approach and not overstate the claim.*

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).

- Misleads the viewer through the use of the phrase 'as much as 10%' which could mean anywhere less than 10%
- Fails to mention the pollution which has been created in the tunnels
- Is deceptive in the use of imagery of blue skies and fresh air
- Fails to mention the financial burden of the toll.

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

Matters outside of the Codes



The Panel noted that the complainant's concern that the advertisement doesn't mention the cost of the toll, or the financial burden that could be experienced because of the toll. The Panel noted that this concern does not fall within any of the Codes or Initiatives administered by Ad Standards, and as such is outside the jurisdiction of the Community Panel.

Is an environmental claim being made?

The Panel considered whether the advertisement made an Environmental Claim.

The Environment Code applies to 'Environmental Claims' in advertising and marketing communications.

The Code defines Environmental Claims as "any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment".

The Panel considered that the advertisement includes the environmental claim that West Connex is "Improving local air quality by as much as to 10% along Parramatta Road".

1 a) Environmental Claims in Advertising or Marketing Communication...shall not be misleading or deceptive or be likely to mislead or deceive

The Panel noted that the Practice Note for this Section includes:

"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."

The Panel noted the Environmental Claim in the advertisement is limited to the air quality along Paramatta Road. The Panel noted that the advertisement has stated that air quality in this area was improved because of the construction of the tunnel and reduction of traffic along the road. The Panel considered that the average consumer in the target market would understand that air quality has only been improved in this area because traffic is being diverted elsewhere, and that the advertisement was not suggesting that air quality overall had been improved.

Overall, the Panel considered that the average consumer in the target market would not be likely to be misled or deceived by the material.

Section 1 a) conclusion



The Panel determined that the advertisement did not breach Section 1 a) of the Environmental Claims Code.

2 b) Environmental Claims must...not overstate the claim expressly or by implication

The Panel noted that the Practice Note for this Section includes:

Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.

The Panel noted the complainant's concern that the advertisement used imagery of blue skies and green grass when speaking about air quality, and the advertisement failed to mention that pollution had just been moved elsewhere.

The Panel considered that the Environmental Claim made in the advertisement was limited to air quality along Parramatta Road, and the advertisement did not expressly or impliedly state that there were benefits outside of the air quality along this road. The Panel noted that the advertisement did mention that the improvement in air quality was due to traffic being diverted to the M4 tunnel, and that this was not withholding information about the air quality in the tunnels.

The Panel considered that the advertisement did not overstate the claim expressly or by implication.

Section 2 b) conclusion

The Panel determined that the advertisement did not breach Section 2 b) of the Environmental Claims Code.

**3 a) Environmental Claims...shall be able to be substantiated and verifiable.
Supporting information shall include sufficient detail to allow evaluation of a claim**

The Panel noted that the Practice Note for this Section includes:

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 noted that the advertiser had provided an assessment of the air quality before and after the M4 tunnel opening, which showed an improvement in air quality along Paramatta Road between 10 and 15 per cent. The Panel noted the advertiser's response that it had used the 10 per cent figure so as not to overstate the claim.

The Panel noted that the Environmental Claim in the advertisement was substantiated and verifiable.

Section 3 a) conclusion

The Panel determined that the advertisement did not breach Section 2 a) of the Environmental Claims Code.

Conclusion

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