



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0343-21
2. Advertiser :	Lexus Australia
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Dec-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a promotion for the Lexus UX 300e. A person asks "Lexus Electric...Why?" and people respond "Zero emissions" and "more power". Someone else then asks "Where do you charge that?" and a person responds "Here. There. Anywhere." A person then states, "There are perks too". A person is seen loading things into the back of a car when someone comments, "Won't fit". They respond, "I can borrow a bigger one". The question "Electric! Why?" is asked again and the response "Zero emissions... more power" is provided.

The following disclaimers also appear:

- Pre-production model shown.
- Pre-production model shown. Zero tailpipe emissions.
- Charging stations provided by Chargefox. Not available in NT or some rural areas. See lexus.com.au/charging for details. Pre-production model shown.
- T&Cs apply. See your Lexus Dealer or lexus.com.au/encore for details & eligibility requirements



THE COMPLAINT

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

The ads claim that Lexus Hybrid are zero emissions. This is false as creating the car causes emissions, charging the car causes emissions and filling the tank with petrol causes emissions

Electric battery powered vehicles such as the LEXUS in the ad are not, taken as a whole of life sense are in no way ZERO EMISSION VEHICLES. The manufacturing process of the materials, the production of the vehicle from the component parts, in all of the supply chain activities produce emissions. When the vehicle is purchased and then driven it needs constant charging from charging points which in all circumstances cannot be guaranteed as zero emissions sources. In fact I have seen papers which mention higher whole of life emissions for electric vehicles versus a similar size LEV powered by petrol diesel or gas. In addition disposal of the vehicle at end of life is currently intensive and requires significant energy input from currently non zero emissions sources. Simply this particular vehicle is not zero emissions and should not be marketed as such. I do not have access to documents currently however these can be provided upon request. Any qualified and experienced automotive engineers with no ties to the electric vehicle industry could confirm the basic premise that this vehicle is not a zero emissions vehicle.

THE ADVERTISER'S RESPONSE

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

We refer to your recent letter dated 24 November 2021 in relation to Complaint Reference 0343-21 (the Complaint) and your subsequent email dated 29 November 2021 confirming that due date for response by Lexus was updated to 6 December 2021. Thank you for granting our request for a short extension.

Your letter refers to two advertisements broadcast on free to air channels SBS and Ch7, by Lexus Australia (Lexus) featuring electric vehicles. Lexus takes any complaints relating to its advertisements seriously and responds as follows.

The Advertisement

Firstly, Lexus was unable to identify the advertisement mentioned in the complaint received on 19 November 2021, as Lexus does not claim hybrid vehicles as zero emission in any of its advertisements. As a consequence Lexus cannot respond to this complaint.

A digital copy of the advertisement received on 22 November 2021, together with associated documents featured in this campaign have been enclosed with this letter (Advertisement).



By way of general summary, the Advertisement was created for the launch of Lexus UX 300e, the brand's first all-electric vehicle. The Advertisement introduces benefits of owning the vehicle by starting with the question "Lexus electric... Why?" The audience is taken through different scenes and occasions where drivers answer the question with short statements such as "zero emissions." Relevant disclaimers are shown throughout the Advertisements to contextualise the general statements in the voice over.

The Complaint

In your letter, you advise that the following two complaints were received.

On 19 November 2021, which stated:

"The ads claim that Lexus Hybrid are zero emissions. This is false as creating the car causes emissions, charging the car causes emissions and filling the tank with petrol causes emissions."

As identified above, Lexus was unable to identify the advertisement mentioned in this complaint. As a consequence, Lexus cannot respond to this complaint.

On 22 November 2021, which stated:

"Electric battery powered vehicles such as the LEXUS in the ad are not, taken as a whole of life sense are in no way ZERO EMISSION VEHICLES. The manufacturing process of the materials, the production of the vehicle from the component parts, in all of the supply chain activities produce emissions. When the vehicle is purchased and then driven it needs constant charging from charging points which in all circumstances cannot be guaranteed as zero emissions sources. In fact, I have seen papers which mention higher whole of life emissions for electric vehicles versus a similar size LEV powered by petrol diesel or gas. In addition disposal of the vehicle at end of life is currently intensive and requires significant energy input from currently non zero emissions sources. Simply this particular vehicle is not zero emissions and should not be marketed as such. I do not have access to documents currently however these can be provided upon request. Any qualified and experienced automotive engineers with no ties to the electric vehicle industry could confirm the basic premise that this vehicle is not a zero emissions vehicle."

(22 Nov Complaint)

You have advised that the 22 Nov Complaint falls under the AANA Environmental Claims in Advertising and Marketing Code (Environmental Claims Code) and Section 2 of the AANA Advertiser Code of Ethics (AANA Code). Lexus responds to each of the sections in the Environmental Claims Code and each of the subsections in Section 2 of the AANA Code below.

Lexus Response to 22 Nov Complaint

Lexus does not believe that the "zero emission" statement made in the Advertisement is in breach of Section 1 to 3 of the Environmental Claims Code for the following reasons:



Section 1 – Truthful and Factual Presentation

- *Lexus is aware that the whole lifecycle of electric vehicles is not zero emissions and carefully structured the Advertisement in such a way that consumers are not misled and deceived. In particular, each time zero emissions are mentioned in the Advertisement, a qualification is prominently displayed as a disclaimer at the bottom of the screen in clear language that states ‘zero tailpipe emissions.’ Lexus believes that the Advertisement in its totality makes it clear to consumers that zero emissions only relate to the vehicle itself (specifically the emissions or lack thereof, from its tailpipe) not the whole lifecycle of the vehicle’s production.*

Section 2 – A Genuine Benefit to The Environment

- *“Zero emissions” are a simple and short statement accompanied by a disclaimer. In the Advertisement, there are no other environmental claims about the vehicle which could potentially be deemed to expressly or by implication overstate the benefit to the environment, nor suggest that zero emissions are applied to any other aspects of the vehicle but tailpipe emissions.*

Section 3 – Substantiation

- *Please refer to the enclosed Letter of Confirmation submitted to ClearAds, which substantiates the claims made in the Advertisement.*
- *The UX 300e adopted an FF-EV system equipped with a large-capacity lithium-ion battery and a high-output motor, which replaces the combustible petrol engine cutting out petrol emissions from the vehicle, hence “zero emission from tailpipe (as disclaimed).”*

Lexus is of the view that subclauses 2.1 to 2.7 of the AANA Code are not relevant to the Advertisement. As the concepts covered by those sections do not arise in the 22 Nov Complaint.

In light of the above,

- *Lexus submits that the 22 Nov Complaint misinterprets the content of the Advertisement and that the Advertisement has not breached the Environmental Claims Code or AANA Code. Consequently, Lexus requests that the 22 Nov Complaint be dismissed.*
- *As Lexus was unable to identify the advertisement mentioned in the complaint dated 19 November 2021, Lexus is unable to respond to that complaint, Lexus requests that it also be dismissed.*

If you require any further assistance or information, please do not hesitate to contact me.

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 car advertised is not zero emissions as there are emissions used in production, transport and powering of the vehicle.

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

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 noted that at two points during the advertisement people say, “zero emissions”. The Panel considered that zero emissions is a claim that the vehicle being promoted has a lesser negative impact on the environment than other vehicles. The Panel considered that this was an environmental claim.

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.

Factors to consider include:

- *An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. 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.”*

The Panel considered that the Environmental Claim in the advertisement is that the vehicle produces ‘zero emissions’.

The Panel noted substantiation provided by the advertiser that the vehicle produces zero tailpipe emissions.

The Panel noted that each time the phrase ‘zero emissions’ is used the disclaimer ‘zero tailpipe emissions’ is shown on screen.

The Panel considered that most members of the community would understand that an electric vehicle being promoted as zero emissions is a reference to tailpipe emissions, and not to the overall production and charging of the vehicle.

The Panel considered that this understanding in combination with the disclaimer meant 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 Code.

1 c) Environmental Claims in Advertising or Marketing Communication...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.

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

The environmental claim should not be extended, or implied to be extended, to a whole product or service when it relates only to one aspect of the product eg packaging or energy use, or service. For example, if the claim relates to the:

- *packaging only, but not the use of that product, the claim should not imply that it relates to the product as well as the packaging;*
- *energy use in the manufacture of a product, the claim should not imply that it relates to the energy use in the manufacture of the packaging as well. Relevant information should be presented together.*

Consistent with the determination under Section 2a) the Panel considered that the advertisement does not imply that the entire production and use of the vehicle



produces no emissions. The Panel considered that the claim zero emission would be understood to be limited to tailpipe emissions and that this was communicated in a manner that would be clearly understood by the consumer.

Section 1 c) conclusion

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

2 a) Environmental Claims must... be relevant, specific and clearly explain the significance of the claim

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

“Environmental claims should only be made where there is a genuine benefit or advantage. Environmental benefits should not be advertised if they are irrelevant, insignificant or simply advertise the observance of existing law. Advertising and marketing communication should adequately explain the environmental benefits of the advertised product or service to its target audience. It is not the intent of the advertiser making the claim that will determine whether it is considered misleading; it is the overall impression given to the consumer that is important. Advertising therefore should not inadvertently mislead consumers through vague or ambiguous wording. Providing only partial information to consumers risks misleading them. Generally a claim should refer to a specific part of a product or its production process such as extraction, transportation, manufacture, use, packaging or disposal.”

The Panel noted that the advertisement and disclaimers were clear in limiting the environmental benefit to the vehicle having zero tailpipe emissions.

Section 2 a) conclusion

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

Consistent with the determinations above, 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 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 the advertiser had provided a substantiation document showing that the vehicle had zero tailpipe emissions.

In particular, the Panel noted in testing the validity of the Environmental Claims it was entitled to rely on the information provided by the advertiser and the complainant.

The Panel noted that the information provided by the advertiser meant 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 3 a) of the Environmental Code.

Conclusion

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