



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0402/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Milk &amp; Co</b>
<b>3</b>	<b>Product</b>	<b>Toiletries</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Pay</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/09/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

Aqua Beyond Deep Blue is the second fragrance released by KLIM as a follow up to Aqua Beyond. The advertisement features Michael Klim diving from a cliff face into the ocean at night.

## THE COMPLAINT

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

*Dangerous precedent for people to think they can do.*

## THE ADVERTISER'S RESPONSE

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

*Aqua Beyond Deep Blue is the second fragrance released by KLIM as a follow up to Aqua Beyond. Given the name of the product and Michael's background as a swimmer, the focus for the TVC was to get him back into the water in a new way. With the ocean being more colloquially known as the big blue or the deep blue, having Michael dive into the ocean*

*rather than into a swimming pool resonated better with the product name.*

#### *Comments in relation to the complaint*

*The intention of the TVC was to clearly align Michael Klim with Deep Blue – and that means the ocean rather than a pool. We wanted to capitalise on Michael Klim's recognisable silhouette, which is almost as recognisable as his name as well as focus on his power and his abilities in the water. This is a refreshing fragrance ad celebrating the strength and power of one of our best known Olympic swimming champions. And this TVC (unlike many fragrance commercials) doesn't rely on sex to sell.*

#### *Complaint 0402/17*

*We do not believe that a reasonable person would look at the KLIM Deep Blue TVC and consider it a precedent or an invitation for attempting such a dive themselves, particularly as the protagonist is clearly Olympic Swimming Champion, Michael Klim.*

#### *Section 2 of the AANA Advertiser Code of Ethics*

##### *2.1 Discrimination or vilification*

*The KLIM Deep Blue television commercial does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

##### *2.2 Exploitative and degrading*

*The KLIM Deep Blue television commercial does not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.*

##### *2.3 Violence*

*The KLIM Deep Blue television commercial does not present or portray any violence.*

##### *2.4 Sex, sexuality and nudity*

*The KLIM Deep Blue television commercial does not portray sex, sexuality or nudity. Michael Klim is wearing bathers and no shirt however in the context of Michael being an Olympic swimmer and preparing to dive into the water, this is relevant to the narrative.*

##### *2.5 Language*

*The KLIM Deep Blue television commercial only uses language which is appropriate in any circumstance.*

##### *2.6 Health and safety*

*The KLIM Deep Blue television commercial sets out to slowly reveal Michael Klim as the protagonist of his television commercial. There is no suggestion that everyone/anyone should replicate his dive. He takes his time and it is a professionally executed dive by a person who is clearly identifiable as an Olympic swimming champion completely at home in the water. This is 100% confirmed by the conclusion of the television commercial via a pack shot featuring the Klim name, a super stating it is by Michael Klim and in voice over. Michael is a household name in Australia and is physically quite recognisable as one of Australia's greatest Olympic Swimmers.*

##### *2.7 Distinguishable as advertising*

*The KLIM Deep Blue television commercial appears on free to air television within*

*commercial breaks and is clearly promoting a fragrance product. As such is distinguishable as advertising.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement shows an activity that could be lethal and promotes suicide.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that this television advertisement features a man – Michael Klim walking toward the edge of a cliff face at night time. He prepares himself on the edge of the cliff and then is seen confidently diving into the water below. He is seen moving through the water as the voiceover introduces the new fragrance. A shot of the bottle of cologne appears on screen.

The Board noted the complainants concerns that the activity shown could influence young people to copy the behaviour and promotes suicide.

The Board noted that the man diving into the water is Michael Klim and that the product is a fragrance for men called Klim. The Board noted that Michael Klim is well known as a swimmer and that he is clearly dressed in swim wear in the advertisement.

The Board noted it had previously considered advertisements for Evocca College (0379/14) and Sanofi (0355/12) that featured people jumping or diving into bodies of water. In both of these cases, the Board’s view was that there was nothing in the advertisements to suggest that the area had not been thoroughly assessed prior to the people entering the water and that the advertisements were stylised giving the impression that the activity was more risky than it actually was.

The Board acknowledged that there is concern in the community about entering any body of water without checking for dangers and assessing the risks of such activity. Consistent with the determinations above, the Board noted that the advertisement is highly stylised and considered that it depicts a body of water which appears to be safe to use for swimming and that Michael is seen swimming under the water after entry.

The Board noted that the swimmer is dressed in appropriate swim clothing and that his entry into the water by diving is a planned and considered entry carried out by an athlete known to most as a swimmer.

The Board noted that the situation of diving into water from such a great height and in darkness is not one that should be encouraged but in this instance, in the Board's view the overall impression was not one of risk and considered that the advertisement did not depict, encourage or condone behaviour contrary to prevailing community standards on health and safety.

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

The Board noted it had dismissed the same advertisement on Free TV – 0400/17.

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