



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0421/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Alinta Energy</b>
<b>3</b>	<b>Product</b>	<b>Professional Service</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</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

- 2.5 - Language Inappropriate language
- 2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

The TVC depicts four hypothetical dissatisfied energy customers disposing of their energy bill in an unconventional, exaggerated and humorous way, being:

- inserting the bill into a vacuum cleaner;
- putting the bill through a mincer;
- turning the bill into a paper aeroplane and throwing it off a balcony; and
- folding the bill and inserting one end of it into a circular fan.

## THE COMPLAINT

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

*Alinta uses the tongue in cheek, " flick them", with the context of " fuck them"  
Inappropriate.*

*This commercial shows a male folding up his energy bill and inserting it into a plugged in moving pedestal fan to shred it. This should not be seen by children due to the obvious conclusion that they will lose their fingers if they insert things into an active fan*

## THE ADVERTISER'S RESPONSE

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

*Alinta Energy is a strong supporter of, and has great respect for, the ASB and the codes it administers. This includes the AANA Code of Ethics (Code). Accordingly, Alinta Energy is very concerned that a complaint has been made against it under the Code.*

*Alinta Energy takes great care to ensure that its advertising and marketing materials - including TVCs - are compliant with all relevant laws and codes. Alinta Energy has carefully considered the complaint, the TVC and the relevant provisions of the Code. For the reasons set out below, Alinta Energy strongly disagrees that the TVC contravenes the Code in any way.*

#### *Application of clause 2 of the Code*

*The ASB has identified clause 2.6 of the Code as being potentially relevant to the TVC. For the reasons set out in section 6.3 of this response, Alinta Energy disagrees that it has contravened clause 2.6 of the Code.*

*For the avoidance of doubt, and although no such allegation has been made against Alinta Energy, Alinta Energy notes that the TVC clearly does not contravene any other clause of Section 2 of the Code. In particular, the TVC does not:*

- portray people or depict material in a way which discriminates against or vilifies a person or section of the community in any way (clause 2.1);*
- employ sexual appeal (clause 2.2);*
- present or portray violence (clause 2.3);*
- involve sex, sexuality or nudity (clause 2.4);*
- use strong or obscene language, or any other language which is inappropriate in the circumstances (clause 2.5); or*
- suggest that the TVC itself is anything other than an advertisement for Alinta Energy's services (clause 2.7).*

*Further, the TVC is not an advertising or marketing communication to children, nor does it market food or beverages. Accordingly, we have not addressed the specific AANA Codes relating to such advertising and marketing communications in this response.*

#### *The Requirements of Clause 2.6 of the Code*

*Clause 2.6 of the Code provides that "Advertising and Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".*

*"Prevailing Community Standards" are defined as "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1?–?2.6 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau".*

*Further, the current Practice Note for the Code states that "the Board will have regard to community standards at the time the advertising or marketing communication was published.*

*Prevailing Community Standards are determined primarily by the Board, whose members are representative of the community, on a case by case basis, as part of the complaints process... It is influenced in part by previous decisions of the Board, the AANA's intent in developing this Code and any relevant research (of the AANA or Advertising Standards Bureau as relevant). There is no one test of Prevailing Community Standards. The Prevailing Community Standard will differ in relation to the different restrictions in relation to health and safety, nudity, language, violence and portrayal of people".*

*The Practice Note also states that advertisers "should take care not to depict behaviour that children may imitate". Examples of such behaviour given in the Practice Note include:*

- riding a bike without a helmet;*
- not wearing a seatbelt;*
- riding down a hill in a wheelie bin;*
- using a mobile phone while driving; and*
- hiding in a chest freezer.*

*The TVC Complies with Clause 2.6 of the Code*

*The TVC depicts four hypothetical dissatisfied energy customers disposing of their energy bill in an unconventional, exaggerated and humorous way, being:*

- inserting the bill into a vacuum cleaner;*
- putting the bill through a mincer;*
- turning the bill into a paper aeroplane and throwing it off a balcony; and*
- folding the bill and inserting one end of it into a circular fan.*

*The complainant appears to be concerned about the scene involving the circular fan, suggesting that this scene "should not be seen by children due to the obvious conclusion that they will lose their fingers if they insert things into an active fan".*

*With respect to the complainant, Alinta Energy disagrees that the TVC encourages any person - particularly children - to engage in any conduct which could cause injury. It is very clear that the TVC depicts exaggerated, comedic scenarios to convey Alinta Energy's commercial message. It does not encourage, suggest, condone or depict any activity or material which is contrary to Prevailing Community Standards on health and safety.*

*For good reason, the Board has dismissed complaints of this kind on many occasions, examples of which are described further below.*

*(a) The Doritos Case*

*A complaint along similar lines was considered by the Board in Case Number 0351/11 involving a Smith's Snackfood Co Ltd TVC. That case concerned a TVC promoting Doritos chilli flavoured chips and a complementary beverage product designed to counteract the spice of those chips, being Pepsi Max Ceasefire Lime. The TVC depicted a fireman using an axe to smash a fridge to retrieve a bottle of Pepsi Max Ceasefire Lime, who then pours it into the mouth of a man who has just eaten some Doritos chilli flavoured chips.*

*The complainant in that case appears to have been concerned that the TVC may, when seen by children, lead them to believe that it is safe to smash a fridge and that this may lead children to suffer injuries. However, as explained by the advertiser, the smashing of the*

*fridge was done "in a comedic way - with no one being hurt". Accordingly, the Board dismissed the complaint on the basis that the TVC had "a comic tone in that the fireman is overstating the seriousness of the issue of the Doritos being so hot that you need Pepsi Max to cool down your mouth".*

*Further, the Board considered that "whilst it was not necessary to smash the glass with the axe" the "humorous tone of the advertisement, as the playing out of a mock emergency fire situation" ensured that the "advertisement does not encourage members of the community to copy the actions of the fireman and does not endorse or condone the use of an axe to access a refrigerator".*

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

*Alinta Energy submits that the same conclusion should be reached in this instance. The insertion of an energy bill into a circular fan in the TVC is done in a comedic way, with nobody being hurt. Indeed, the TVC is presented with a comic tone in which the characters are gleefully disposing of their energy bill in a humorous manner. There could be no serious suggestion that the TVC encourages members of the community to actually copy the actions of the characters in the TVC, any more than the Doritos TVC encouraged the use of an axe to smash a fridge.*

*(b) The Captain Risky Case*

*The Board has also considered a TVC that was part of Budget Direct's "Captain Risky" series" in Case Number 0001/15.*

*In that case, complaints were made about a TVC depicting a fictional character ("Captain Risky") engaging in certain conduct, such as jumping from a high ladder into a small backyard swimming pool. The complainants were concerned that the TVC may induce children to copy the behaviour depicted in the TVC, which may cause them to suffer injuries.*

*There, the advertiser submitted that, as is the case in relation to Alinta Energy's TVC:*

- the TVC was clearly targeted at adults, who were (unlike children) the target market for the relevant services, and no children were depicted in the TVC; and*
- the TVC was not depicting real world activities but was depicting an exaggerated and stylised world involving comedic scenarios - a form of "visual puffery and comedy".*

*Again, Alinta Energy submits that the Board should reach the same conclusion in relation to its TVC. The TVC is not directed at children and is specifically directed towards adults, given that (as with insurance) children are not consumers in the energy market. With this in mind, Alinta Energy has only purchased advertising space for the TVC during shows which are intended for adults, with specific requests for advertising during the television shows "The Block", the broadcasting of the National Rugby League, "The Project", and peak time programming of the news (6-9pm).*

*Further, the TVC received CAD approval and was ascribed a W rating ("General/care in placement: may be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in G (General) programs principally directed to children"). The TVC has been scheduled according to that rating such that television*

*networks were well aware and required not to broadcast the TVC during C (Children) and P (Parental guidance) rated programming.*

*Further, the scenarios depicted in the TVC are clearly comedic. No more could it be said that the TVC encourages children to consume mince made from an energy bill, than it could be said that the TVC encourages children to engage in unsafe conduct in relation to a circular fan.*

*(c) The Allianz Hose Case*

*The Board considered another analogous TVC in the insurance industry in Case Number 0014/16. That TVC showed a father trying to wash his car, but no water was coming out of the hose. His son notices a kink and straightens the hose to allow the water to flow, which surprises the father as the water sprays in to his face. The hose spraying water becomes out-of-control, firstly breaking a house window and then squirts a passing ice cream van driver in the face, causing him to crash into the mother's car.*

*Complaints were made in relation to this TVC on the basis that some children may "take this scenario on board and play a prank on one of their friends or family". The complaints further suggested that "a force of water being released into an eye at such a close distance is a very dangerous act that in real life could cause someone to lose an eye, especially if a child or youth copies the ad".*

*The Board found that, as was clear from the "overall theme" of the Allianz TVC, the TVC "did not encourage or condone members of the community to spray a hose in their or anyone else's face". Indeed, as Allianz submitted and which applies equally in relation to Alinta Energy's TVC, these were exaggerated, humorous scenarios that members of the target audience would easily comprehend.*

*For the reasons set out above, Alinta Energy respectfully asks that the Board dismiss the complaint.*

## **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 complainants' concerns that the advertisement shows unsafe behaviour and uses inappropriate language

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

The Board considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Board noted the advertisement features various scenarios of adults reviewing their electricity bills and showing their unhappiness with the amount of the bill. Each of the adults then says “flick them” and destroys the bill in various ways such as, vacuuming it up, putting it through a pasta maker, turning it into a paper aeroplane and inserting it into a fan. The last scene shows Matthew Haydn talking to the camera about changing electricity providers. The sign in the background provides details of the offer by Alinta energy.

The Board noted the complainant’s concern that the use of the phrase “flick them” is intended to mean “fuck them.”

The Board noted that the people in the advertisement using the phrase “flick them” are adults and it was clear that they were saying flick. The Board considered that there was a direct relevance to the term flick in an advertisement for electricity suppliers.

The Board considered that the term ‘flick them’ was intended to suggest that consumers should get rid of their existing supplier and switch to Alinta Energy and was not intended to have an alternate meaning.

The Board considered that the language was not inappropriate in the circumstances and did not breach section 2.5 of the Code.

The Board then 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 the complainant’s concern that one scene shows a man putting the bill into a pedestal fan and that this is dangerous and could encourage children to do something similar.

The Board noted that each of the scenarios shown in the advertisement are unrealistic and are intended to depict a humorous way of dealing with expensive bills. The Board noted that the particular scene mentioned shows the man holding the very end of the bill with his fingers as far from the fan as possible. The Board noted that the result of the action was shown as the paper was dispersed through the air and the man was not injured in any way.

The Board considered that whilst the action of putting anything into a fan was not recommended, the Board was of the view that most members of the community would recognise that the fan would not have the sharpness or capacity to shred the paper in this way and it was likely that the blades would stall and the fan stop.

The Board considered that overall the advertisement and this scene especially did not encourage or condone unsafe behaviour and was unlikely to create copycat behaviour from children.

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

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

