

## Case Report

<b>1. Case Number :</b>	<b>0269-23</b>
<b>2. Advertiser :</b>	<b>Adani Australia Pty Ltd trading as Bravus</b>
<b>3. Product :</b>	<b>Other</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet</b>
<b>5. Date of Decision:</b>	<b>6-Dec-2023</b>
<b>6. Decision:</b>	<b>Dismissed</b>
<b>7. IR Recommendation:</b>	<b>Panel to Reconsider</b>
<b>8. Date of reviewed decision:</b>	<b>30-Jan-2024</b>
<b>9. Decision on review:</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This website home page includes the statements:

- (a) "Bravus is at the forefront of a global energy transition. Our Australian businesses produce and deliver energy solutions for a sustainable future, both here and around the world."
- (b) "We are progressing the transition to a lower-carbon future."
- (c) "We walk the talk on the energy transition."
- (d) "We believe in uplifting future generations at the same time as we meet the challenge of climate change – and we are doing it now."
- (e) "We are part of the global Adani Group. Together, our operations are progressing the global transition to a lower emissions future – and fast."
- (f) "The Adani Group is the world's largest multinational solar energy company."
- (g) "We're part of the world's largest multinational solar energy company, the Adani Group."
- (h) "We operate responsibly, with a demonstrated adherence to best practice safety, environmental and governance processes."
- (i) "Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have committed to net zero carbon targets in line with the world's leading decarbonisation framework, the Science-Based Targets initiative."

## THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*Complaint about Adani website advertising*

1. *We act for the Australian Religious Response to Climate Change (ARRCC). ARRCC is a network of people of all faiths taking action for climate justice.*

2. *Our client requests that you investigate whether certain statements made in advertisements by Adani Australia Pty Ltd trading as Bravus Australia (Bravus), part of the Adani Group, are in breach of the Environmental Claims Code adopted by AANA as part of advertising and marketing self-regulation (the Code).*

*Claims by Bravus*

3. *On Bravus' website (<https://www.bravus.com.au>), which meets the definition of an advertisement, the following statements are made (reproduced at Annexure A):*

- (a) "Bravus is at the forefront of a global energy transition. Our Australian businesses produce and deliver energy solutions for a sustainable future, both here and around the world."*
- (b) "We are progressing the transition to a lower-carbon future." (c) "We walk the talk on the energy transition."*
- (d) "We believe in uplifting future generations at the same time as we meet the challenge of climate change – and we are doing it now."*
- (e) "We are part of the global Adani Group. Together, our operations are progressing the global transition to a lower emissions future – and fast."*
- (f) "The Adani Group is the world's largest multinational solar energy company."*
- (g) "We're part of the world's largest multinational solar energy company, the Adani Group."*
- (h) "We operate responsibly, with a demonstrated adherence to best practice safety, environmental and governance processes."*
- (i) "Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have committed to net zero carbon targets in line with the world's leading decarbonisation framework, the Science-Based Targets initiative." (together, the Statements).*

4. *Our client considers that the Statements, alone or in combination, represent, expressly or by implication, that:*

- a) all or the majority of Bravus' and / or the Adani Group's operations contribute to addressing climate change and support the clean energy and net zero transition (Transition Claim);*
- b) the Adani Group is exclusively or predominantly involved in the production of solar energy (Solar Energy Company Claim);*

- c) *Bravus operates, and has operated, sustainably in adherence to environmental best practice and environmental protection requirements (Best Environmental Practice Claim); and*
- d) *Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have targets in line with the Science-based Targets Initiative (SBTi) (SBTi Targets Claim),*  
*(together, the Claims).*

5. *Our client considers that the Claims may breach the Code, including sections 1(a), 1(b), 2(a) and / or 2(b), for the following reasons. Why Bravus' Claims may breach the Code Meaning of Environmental Claim*

6. *The Code defines 'Environmental Claim' to mean: 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.*

7. *The Claims are Environmental Claims to which the Code applies because they represent that Bravus' and / or the Adani Group's operations beneficially influence or have the capacity to beneficially influence the Environment (as defined in the Code) including the protection of the environment through tackling climate change and contributing to the clean energy transition.*

*Relevant provisions of the Code*

8. *Our client considers the Claims may breach the following provisions of the Code:*
- a) *s 1(a), which provides that Environmental Claims shall not be misleading or deceptive or be likely to mislead or deceive;*
  - b) *(b) s 1(b), which provides that Environmental Claims shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language;*
  - c) *s 2(a), which provides that Environmental Claims must be relevant, specific and clearly explain the significance of the claim; and / or*
  - d) *s 2(b), which provides that Environmental Claims must not overstate the claim expressly or by implication.*

*Transition Claim*

9. *The Transition Claim may breach the Code in representing that all or the majority of Bravus' and/or the Adani Group's operations contribute to addressing climate change and support the clean energy and net zero transition when, in fact, a significant portion of Bravus' and / or the Adani Group's operations relate to mining and processing of coal and other fossil fuels, which is inconsistent with the current scientific consensus on what is required to address climate change in line with the Paris Agreement. The Code Practice Note specifically states, in relation to section 2(b) of the Code, that "consideration should be given to whether there is sufficient disclosure of any negative impacts". [1]*

10. *Bravus' business activities in Australia include developing the Carmichael thermal coal mine and operating a coal port at Abbot Point (the North Queensland Export Terminal). Coal is one of the most carbon intensive fossil fuels and a key contributor to climate change.*

11. *The Carmichael thermal coal mine currently has approval to produce up to 60mtpa and a reserve of 880 Mt. [2] While Bravus' website states that the Carmichael coal mine produces only 10mtpa of coal, [3] the company has indicated that it intends to increase production significantly. For example, Adani Enterprises Director Vinay Prakash said of production at Carmichael in a Q42022 Earnings Conference Call "[w]e can definitely go beyond 15 and may touch 25 million tonnes to 30 million in the next 2-3 years' times". [4] Further, Bravus' work establishing infrastructure for the Carmichael mine may enable several additional new thermal coal mines of a similar size in the same region. [5]*

12. *Bravus is part of the Adani Group. According to the Global Energy Monitor, the Adani Group has the highest potential tonnage of coal to be mined across its proposed coal mining projects than any other private coal producer globally. [6] Since 2020, the Adani Group has purchased the rights to own or operate at least twelve significant new coal mines across India. [7] Adani Enterprises Limited (part of the Adani Group) alone aims to have at least 11 operating mines in India alone by FY2024-25, with more than 20 coal blocks (which in India are areas containing coal that may be identified and allocated by the Government, including by auction, rendering the allocatee eligible for a prospecting licence or mining lease). [8]*

13. *Research by Market Forces found that the sum of known extractable reserves of thermal coal that Adani is now developing as a MDO (miner, developer, operator) and as a commercial miner totals 6 billion tonnes, excluding the Khargaon, Jhigador and Gondbahera Ujheni East coal blocks for which extractable reserve estimates were unavailable, with another 750 million tonnes of coal resources (inferred) in place. [9] Market Forces estimates that, if all the coal from these mines is extracted and burned, these projects would yield 10130 mt of CO<sub>2</sub> emissions over the course of their lifetimes, which equates to around 28% of global energy-related carbon emissions in 2021. [10].*

14. *In addition to the Adani Group's extensive coal assets, it is also pursuing several new and expanded oil and gas projects. [11]*

15. *It is well established that the development of new fossil fuel supply will hinder tackling climate change and the net zero energy transition. [12] As a recent Climate Council report noted, it is not possible to tackle climate change unless fossil fuels are rapidly phased out. [13]*

16. *Despite this, the Adani Group continues to pursue its current coal production as well as substantial new and expanded projects, contrary to scientific consensus of*

*what is required to address climate change and transition to net zero. For example, the IEA's Net Zero Emissions by 2050 Scenario envisions that all unabated coal generation ends by 2040. [14] A recent IPCC synthesis report observed that pathways consistent with 1.5°C and 2°C CO2 budgets imply rapid, deep, and in most cases immediate GHG emission reductions in all sectors. [15] The report stated that about 80% of coal, 50% of gas, and 30% of oil reserves cannot be burned and emitted if warming is limited to 2°C, and significantly more reserves are expected to remain unburned if warming is limited to 1.5°C. [16]*

*17. While the Adani Group does have some renewable energy projects, as outlined below, the existence of such projects does not counteract the severe impact of the Adani Group's current and proposed fossil fuel projects on climate change and the energy transition.*

*18. Moreover, the Adani Group's financial investment in fossil fuel projects vastly outweighs its investment in renewable energy projects. In Australia, for example, Bravus reportedly invested around \$110 million in the Rugby Run solar farm, [17] in comparison to approximately \$2.5 billion of self-financed investment in the Carmichael coal mine (a previous larger scale development was estimated to cost \$16.5 billion however, as Bravus was unable to secure finance, it pursued a smaller scale initial project). [18] Bravus reportedly sold \$32.5 million worth of coal within its first three months of shipments from Carmichael coal mine in January to March 2022. [19]*

*19. For these reasons, the Transition Claim potentially contravenes the Code, including:*

- a) s 1(a): it is misleading or deceptive or likely to mislead or deceive;*
- b) (b) s 1(b): Bravus does not display sufficiently prominently disclaimers and important limitations on its claims, including that the claims only apply to certain of its projects and its substantial fossil fuels projects have and will continue to have severely detrimental impacts;*
- c) s 2(a): Bravus' claims only disclose partial information, creating the overall impression that overall Bravus' and / or the Adani Group's operations are positive for the environment which is not true; and / or*
- d) s 2(b): Bravus' claims overstate the environmental benefits of certain of its and / or the Adani Group's projects, without sufficiently disclosing the negative impacts of other projects and the overall impact of the businesses.*

#### *Solar Energy Company Claim*

*20. The Solar Energy Company Claim may breach the Code in representing that the Adani Group is exclusively or predominantly involved in the production of solar energy when, in fact, the Adani Group's operations involve significant fossil fuels projects.*

*21. The Solar Energy Company Claim emphasises one aspect of the Adani Group's business in a way that is likely to breach the Code. While the Adani Group does have some renewable energy projects, including Bravus' Rugby Run Solar Farm and Adani Green Energy Limited's projects, it has extensive coal and other fossil fuel projects.*

*The Adani Group is made up of various companies which are involved in fossil fuels industry including in the ownership and operation of coal mines, development and acquisition of coal-fired power plants, operation of ports for coal and oil tank storage. [20]*

*22. As stated above, according to the Global Energy Monitor, the Adani Group has the highest capacity of proposed coal mining projects than any other private coal producer globally. [21] Based on data available at April 2023, it estimates the Adani Group to produce 26Mtpa of coal. [22]*

*23. Based on estimates of gross value of listed shares by Climate Energy Finance, in India the Adani Group has a materially lower investment in its renewable energy projects (including solar) than in its other businesses. [23]*

*24. According to Market Forces, as of June 2022, Adani Group had 12 GW of new coal-burning electricity generation capacity either under construction, planned or proposed, and if all new projects at that date were built, the Adani Group would have a coal power generation capacity of 26 GW. [24] In 2023, the Adani Group's renewable portfolio was 8 GW capacity, [25] however Bravus estimates that the Adani Group has the potential to develop up to 24.3 GW renewable energy capacity. [26] Even on these estimates, the Adani Group's total potential renewable energy capacity (inclusive of solar as well as other renewable energy sources) is less than its potential capacity from coal power generation. Further, as noted above, the Adani Group's investment in fossil fuel projects vastly outweighs its investment in renewable energy projects.*

*25. The interrelated nature of the Adani Group's businesses has been the subject of investigation, [27] including findings that the Adani Group has used shares from its renewable energy companies such as Adani Green Energy as collateral for a credit facility for its Carmichael coal mine project in Australia. [28] This illustrates that even the Adani Group's renewable energy investments are being used to support the continued development and expansion of fossil fuel projects.*

*26. For these reasons, the Solar Energy Company Claim potentially contravenes the Code, including:*

- a) s 1(a): it is misleading or deceptive or likely to mislead or deceive;*
- b) (b) s 1(b): Bravus does not display sufficiently prominently disclaimers and important limitations on its claims, including that only certain of the Adani Group's companies are involved in solar energy while others are heavily involved in the fossil fuels industry;*
- c) s 2(a): Bravus' claims only disclose partial information, creating the overall impression that all of the Adani Group is exclusively or predominantly involved in solar energy which is not true; and / or*
- d) s 2(b): Bravus' claims overstate the environmental benefits of the Adani Group's solar energy projects, without sufficiently disclosing the negative impacts of its other projects and the overall impact of the businesses.*

27. We also note the ACCC's recent draft guidance on environmental and sustainability claims which states in relation to principle 5 (avoid broad and unqualified claims):[29] Emissions intense businesses, such as those that rely on or sell fossil fuels should be particularly careful not to understate the overall environmental impact of their business when making environmental claims.

Some industries are highly polluting by nature. Businesses in these industries should be extra cautious when making environmental claims. If a business in a highly polluting industry does choose to make an environmental claim, they should take extra care to ensure that their claims are truthful and accurate. This is because the overall environmental detriment of these industries is likely to overshadow any environmental improvements made by a business. Broad or unqualified environmental claims made by businesses in these industries have a higher chance of misleading consumers.

#### *Best Environmental Practice Claim*

28. The Best Environmental Practice Claim may breach the Code in representing that Bravus operates, and has operated, sustainably in adherence to environmental best practice and environmental protection requirements when, in fact, there are multiple instances of Bravus breaching its environmental approval conditions. [30]

29. Instances of such breaches by Bravus (formerly trading as Adani) include:

- a) in 2021, it self-reported a breach of its environmental conditions for the Carmichael coalmine by clearing an area surrounded by potential koala habitat without a promised wildlife safeguard; [31]
- b) in October 2020, it was issued two infringement notices totalling \$25,920 by the Department of Agriculture, Water and the Environment for failing to comply with environmental approval conditions which required the implementation of an approved Species Management Plan; [32] and
- c) in November 2019, it was issued a written warning by the Commonwealth Environment Department for unauthorised clearing of vegetation breaching its environmental approvals. [33]

30. We also note that:

- a) Bravus was recently issued with an Environmental Protection Order over its proposed Carmichael mine expansion, requiring it to do extra groundwater modelling after providing Queensland's Department of Environment and Science with new information indicating that future underground mining may draw down on water from the nearby Doongmabulla Springs, which would be beyond the mine's approved impact; [34] and
- b) in February 2020, it was convicted of a criminal offence under section 480 of the Environmental Protection Act 1994 (Qld) and issued with a penalty of \$20,000 plus court costs and investigation costs for providing false or misleading documents to the Queensland Government over its land clearing activities. We note that the Court elected not to record the conviction for reasons including Adani's co-operation with the Department, the fact this

*was a first offence for the company, and that there was no proven illegal environmental harm from the substantial land-clearing that took place. [35]*

*31. For these reasons, the Best Environmental Practice Claim potentially contravenes the Code, including:*

- a. s 1(a): it is misleading or deceptive or likely to mislead or deceive; and / or*
- b. s 1(b): Bravus does not display prominently the essential disclaimers and limitations on its claims, that already it has had several material breaches of its environmental approval conditions.*

#### *SBTi Targets Claim*

*32. The SBTi Targets Claim may breach the Code in representing that Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have targets in line with the SBTi when, in fact, Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have been removed by the SBTi due to inconsistency with SBTi's standards and policy requirements.*

*33. In May 2023, Adani Green Energy Ltd, Adani Transmission and Adani Ports & Special Economic Zone were removed from the SBTi's dashboard of companies and financial institutions that have set science-based targets or have committed to developing targets. [36] Those three Adani companies were removed due to a lack of conformity with the SBTi's standards and policy requirements, including the SBTi's updated Fossil Fuels Policy, and following a request from environmental groups Eko and Market Forces. [37]*

*34. For these reasons, the SBTi Targets Claim potentially contravenes the Code, including:*

- a. s 1(a): it is misleading or deceptive or likely to mislead or deceive; and / or*
- b. s 1(b): Bravus does not display sufficiently prominently the essential disclaimer that, while it may be developing targets, it has in fact been removed from the SBTi.*

#### **FOOTNOTES**

*[1] AANA, 'Environmental Claims Code – Practice Note' (May 2018)*

*<https://aana.com.au/content/uploads/2018/03/180316-Environmental-Claims-Code-Practice-Note.pdf> page 2.*

*[2] Bravus, 'The Carmichael Mine' (accessed 18 October 2023)*

*<<https://www.bravusmining.com.au/the-carmichael-mine-factsheet/>>.*

*[3] Ibid.*

*[4] Adani Enterprises Ltd, 'Adani Enterprises Limited Q4 FY2022 Earnings Conference Call' (4 May 2022) <<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Results-Conference-Call-Transcripts/Q4-22-Centrum-Adani-04May-2022.pdf>> page 10.*

*[5] ABC News, 'Adani could be 'ice-breaker' for six more proposed Galilee Basin mines, resources body says' (12 June 2019) <<https://www.abc.net.au/news/2019-06-12/adani-approval-could-be-galilee-basin-ice-breaker/11194510>>.*



[6] Global Energy Monitor, 'Global Coal Mine Tracker: Production by Company (Top 20 Companies, Proposed Mines)' (April 2023)

<https://globalenergymonitor.org/projects/global-coal-mine-tracker/>.

[7] Market Forces, 'Adani's Massive Fossil Fuel Expansion Plans' (accessed 18 October 2023) <https://www.marketforces.org.au/campaigns/stop-adani/adani-fossil-fuel-expansion-plans/>.

[8] Adani Enterprises Limited, Annual Report 2022-23 (2023)

<<https://www.adanienterprises.com/-/media/Project/Enterprises/Investors/Investor-Downloads/Annual-Report/AEL-2023.pdf>>.

[9] Ibid.

[10] Ibid, citing International Energy Agency, 'Global CO2 emissions rebounded to their highest level in history in 2021' (Press Release, 8 March 2022)

<<https://www.iea.org/news/global-co2-emissions-rebounded-to-their-highest-level-in-history-in-2021>>.

[11] Ibid.

[12] See, for example, IEA, 'Net Zero by 2050' (May 2021)

<<https://www.iea.org/reports/net-zero-by-2050>>; United Nations' High-Level Expert Group on the Net Zero Commitments of Non-State Entities, 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' (8 November 2022) [https://www.un.org/sites/un2.un.org/files/high-level\\_expert\\_group\\_n7b.pdf](https://www.un.org/sites/un2.un.org/files/high-level_expert_group_n7b.pdf).

[13] Climate Council, 'Passing Gas: Why Renewables are the Future' (2020)

<https://www.climatecouncil.org.au/resources/passing-gas-renewables-are-future/> page 11.

[14] IEA, 'Net Zero by 2050' (May 2021) <https://www.iea.org/reports/net-zero-by-2050>

[15] IPCC, Synthesis Report of the IPCC Sixth Assessment Report (AR6): Longer Report (2023) [https://report.ipcc.ch/ar6syр/pdf/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://report.ipcc.ch/ar6syр/pdf/IPCC_AR6_SYR_LongerReport.pdf) page 46.

[16] Ibid, page 24.

[17] See, for example, PV Magazine, 'Adani opens 65 MW Queensland solar farm, puts further investment on hold' (1 November 2019) <<https://www.pv-magazine-australia.com/2019/11/01/adani-opens-65-mw-queensland-solar-farm-puts-further-investment-on-hold/>>;

Financial Review, 'Adani more cautious on renewables growth after solar hitch' (31 October 2019) <<https://www.afr.com/companies/energy/adani-more-cautious-on-renewables-growth-after-solar-hitch-20191030-p535qo>>

[18] The Australian, 'Adani-owned coal mine hits export milestone but company posts \$368m loss' (30 July 2023) <<https://www.theaustralian.com.au/business/mining-energy/adaniowned-coal-mine-hits-export-milestone-but-company-posts-368m-loss/news-story/14f286115e3fc35d485578b39b9304ed>> ; ABC, 'Adani to self fund smaller Carmichael mine' (30 November 2018)

<<https://www.abc.net.au/listen/programs/radionational-breakfast/adani-to-self-fund-smaller-carmichael-mine/10569708>>.

[19] The Sydney Morning Herald, 'Adani mine ramps up production amid surging coal, energy prices' (28 August 2022)

<<https://www.smh.com.au/business/companies/adani-mine-ramps-up-production-amid-surging-coal-energy-prices-20220825-p5bcs9.html>>.

- [20] See further details at Climate Energy Finance, 'The Adani Group is the largest private developer of coal in the world' (14 February 2023) <[https://climateenergyfinance.org/wp-content/uploads/2023/02/ADANI-OP- ED-5-140223-largest-private-developer-of-new-coal-in-the-world\\_14Feb2023.pdf](https://climateenergyfinance.org/wp-content/uploads/2023/02/ADANI-OP- ED-5-140223-largest-private-developer-of-new-coal-in-the-world_14Feb2023.pdf)>.
- [21] Global Energy Monitor, 'Global Coal Mine Tracker: Production by Company (Top 20 Companies, Proposed Mines)' (April 2023) <https://globalenergymonitor.org/projects/global-coal-mine-tracker/>.
- [22] See Global Energy Monitor, 'Global Coal Mine Tracker: Production by Company (Top 20 Companies, Operating Mines)' (April 2023) <https://globalenergymonitor.org/projects/global-coal-mine-tracker/>.
- [23] Ibid.
- [24] Market Forces, 'Adani's Massive Fossil Fuel Expansion Plans' (accessed 18 October 2023) <https://www.marketforces.org.au/campaigns/stop-adani/adani-fossil-fuel-expansion-plans/>.
- [25] Mercom Clean Energy Insights, 'Adani Green's Operating Renewables Portfolio Crosses 8 GW' (3 March 2023) <https://www.mercomindia.com/adani-operating-portfolio-crosses-8-gw>.
- [26] Bravus, 'Rugby Run Solar Farm' <<https://www.bravus.com.au/our-businesses/rugby-run/>> (accessed 18 October 2023).
- [27] See Hindenburg Research, 'Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History' (24 January 2023) <https://hindenburgresearch.com/adani/>.
- [28] Ibid; Eko and Market Forces, Letter to UN Race to Zero (21 March 2023) <[https://adanitoxicbonds.org/wp-content/uploads/2023/04/210323\\_-\\_Letter\\_to\\_UN\\_Race\\_to\\_Zero.pdf](https://adanitoxicbonds.org/wp-content/uploads/2023/04/210323_-_Letter_to_UN_Race_to_Zero.pdf)> .
- [29] ACCC, 'Environmental and sustainability claims: Draft guidance for business' (July 2023) [https://www.accc.gov.au/system/files/Environmental%20and%20sustainability%20claims%20-%20draft%20guidance%20for%20business\\_web.pdf](https://www.accc.gov.au/system/files/Environmental%20and%20sustainability%20claims%20-%20draft%20guidance%20for%20business_web.pdf).
- [30] Some of the broad environmental impacts of the Carmichael coal mine are also summarised at: The Conversation, 'Interactive: Everything you need to know about Adani – from cost, environmental impact and jobs to its possible future' (16 May 2019) <<https://theconversation.com/interactive-everything-you-need-to-know-about-adani-from-cost-environmental-impact-and-jobs-to-its-possible-future-116901>>.
- [31] The Guardian, 'Adani admits breaching environmental conditions for Carmichael coalmine' (16 May 2021) <<https://www.theguardian.com/environment/2021/may/16/adani-admits-breaching-environmental-conditions-for-carmichael-coalmine>>.
- [32] Australian Government Department of Climate Change, Energy, the Environment and Water, 'QLD mining company fined for breaching environmental approval conditions' (1 December 2020) <https://www.dccew.gov.au/about/news/media-releases/qld-mining-company-fined-breaching-environmental-approval-conditions>.
- [33] Adani, 'Compliance Report: Carmichael Coal Mine and Rail Project 13 October 2019 to 12 October 2020' [https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/final\\_epbc\\_2010\\_5376\\_ccmr\\_compliance\\_report\\_21dec20\\_redacted.pdf](https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/final_epbc_2010_5376_ccmr_compliance_report_21dec20_redacted.pdf) pages 7-8.

[34] Queensland Government Department of Environment and Science, 'Review of groundwater modelling at Carmichael coal mine' (3 March 2023) <<https://www.des.qld.gov.au/our-department/news-media/mediareleases/review-of-groundwater-modelling-at-carmichael-coal-mine>>.

[35] Environmental Defenders Office, 'Adani Guilty of Criminal Offence Over Providing False or Misleading Documents' (6 February 2020) <<https://www.edo.org.au/2020/02/06/adani-guilty-of-criminal-offence-over-mine-site-land-clearing/>>.

[36] Bloomberg, 'Three Adani Firms Lose Endorsement of UN-Backed Climate Group' (9 May 2023) <<https://www.bloomberg.com/news/articles/2023-05-09/adani-green-transmission-ports-lose-support-of-climate-group-sbti&cd=11&hl=en&ct=clnk&gl=au>>

[37] *Ibid*; Eko and Market Forces, Letter to UN Race to Zero (21 March 2023) <[https://adanitoxicbonds.org/wp-content/uploads/2023/04/210323\\_-\\_Letter\\_to\\_UN\\_Race\\_to\\_Zero.pdf](https://adanitoxicbonds.org/wp-content/uploads/2023/04/210323_-_Letter_to_UN_Race_to_Zero.pdf)>.

## THE ORIGINAL ADVERTISER'S RESPONSE

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

1. *We refer to Ad Standards' letter to Adani Australia Pty Ltd trading as Bravus (Bravus) dated 15 November 2023 notifying Bravus of a complaint made by the Australian Religious Response to Climate Change (ARRCC) about the Bravus website (Notification of Complaint).*
2. *This letter serves as Bravus' response to the Notification of Complaint.*

### Advertisement

3. *the complaint made by the ARRCC (hereafter, the Complaint) relates to the Bravus Australia website (Website).*
4. *The Website can be accessed using the following hyperlink:  
<https://www.bravus.com.au>.*
5. *A digital copy of each page of the Website can be found at Annexure A to this letter.*
6. *For completeness, no advertising agency or media buyer were engaged in relation to the Website.*

### Comments in relation to the Complaint

7. *Bravus has only responded to the relevant allegations in the Complaint. Where Bravus has not responded to an allegation in the Complaint, this is not an admission by Bravus of the allegation.*

8. *Paragraph 3 of the Complaint states that the Website makes the following statements (the Statements):*
- a. *“Bravus is at the forefront of a global energy transition. Our Australian businesses produce and deliver energy solutions for a sustainable future, both here and around the world”;*
  - b. *“We are progressing the transition to a lower-carbon future”;*
  - c. *“We walk the talk on the energy transition”;*
  - d. *“We believe in uplifting future generations at the same time as we meet the challenge of climate change – and we are doing it now”;*
  - e. *“We are part of the global Adani Group. Together our operations are progressing the global transition to a lower emissions future – and fast”;*
  - f. *“The Adani Group is the world’s largest multinational solar energy company”;*
  - g. *“We’re part of the world’s largest multinational solar energy company, the Adani Group”;*
  - h. *“We operate responsibly, with a demonstrated adherence to best practice safety, environmental and governance processes”;* and
  - i. *Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have committed to net zero carbon targets in line with the world’s leading decarbonisation framework, the Science-Based Targets initiative”.*
9. *Paragraph 4 of the Complaint states that the Statements, alone or in combination, represent expressly or by implication, that (collectively, the Claims):*
- a. *all or the majority of Bravus’ and / or the Adani Group’s operations contribute to addressing climate change and support the clean energy and net zero transition (Transition Claim);*
  - b. *the Adani Group is exclusively or predominantly involve in the production of solar energy (Solar Energy Company Claim);*
  - c. *Bravus operates, and has operated, sustainably in adherence to environmental best practice and environmental protection requirements (Best Environment Practice Claim); and*

- d. *Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have targets in line with the Science-based Targets Initiative (SBTi) (SBTi Targets Claim).*

#### *Environmental Claims*

10. *Paragraph 7 of the Complaint states that the Claims are Environmental Claims to which the Code applies “because they represent Bravus’ and / or the Adani Group’s operations beneficially influence or have the capacity to beneficially influence the Environment (as defined in the Code) including the protection of the environment through tackling climate change and contributing to the clean energy transition”.*
11. *Bravus disagrees that the Website makes the Transition Claim or the Solar Energy Claim. Instead, in Bravus’ view, the Website claims that:*
  - a. *Bravus and the Adani Group are committed to supporting a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future which is only possible through a mixture of renewable energy and efficient thermal coal generation; and*
  - b. *Bravus and the Adani Group have various projects including renewable energy projects and coal mining projects to support the transition to a lower-carbon future through a sustainable, reliable and affordable energy mix.*

#### *Section 1(a) – Misleading or Deceptive*

12. *In accordance with section 1(a) of the Environmental Code, Environmental Claims in Advertising or Marketing Communication shall not be misleading or deceptive or likely to mislead or deceive.*
13. *In accordance with the Environmental Code Practice Note, 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.*
14. *Bravus submits that the target market for its Website are people interested in the operations of Bravus’ businesses who are looking to find out more. This is consistent with the decision made by the Ad Standards Community Panel (Panel) in cases 0224-22 (Case 0224-22) and 0225-22 (Case 0225-22) in which complaints were made that the Glencore Australia Holdings Pty Limited (Glencore) website and social media page were misleading and deceptive.*

#### *Transition Claim*

15. *Paragraphs 9 to 19 of the Complaint, allege that the Transition Claim may be misleading and deceptive or likely to mislead or deceive because the Statements:*

- a. *represent all or the majority of Bravus' / or the Adani Group's operations contribute to addressing climate change and support the clean energy and net zero transition; and*
  - b. *do not disclose that a significant portion of Bravus' and/or the Adani Group's operations relate to mining and processing of coal and other fossil fuels.*
16. *Bravus does not agree with the allegation that the Statements are misleading or deceptive, or likely to mislead or deceive. The website when viewed as a whole and in context accurately describes both Bravus' and the Adani Group's businesses. The language of the Website is clear, plain, and unambiguous and the Statements are factually correct.*
17. *In Case 0224-22, the Panel considered whether Glencore's website was misleading or deceptive, or likely to mislead or deceive, because it was allegedly silent on Glencore's mining production and investment in Australia mostly being related to coal.*
18. *The Panel determined that Glencore's website was not misleading or deceptive or likely to mislead or deceive because the first paragraph at the top of the website read "We are one of Australia's largest producers of coal, cobalt, zinc, nickel and copper" and when considered with the other visuals and references to coal mines in the embedded videos, the website would not mislead consumers into thinking that Glencore only or mainly mines green metals.*
19. *Bravus submits that when reviewing its Website as a whole, it is clear that Bravus and the Adani Group's operations relate to renewable energy and the mining of coal. On the homepage of the Website (<https://www.bravus.com.au/>) it is clear that Bravus engages in the mining of coal from the following:*
  - a. *at the top of the page, there is a photo of the Carmichael Coal Mine;*
  - b. *under the heading "A sustainable and affordable global energy mix", there is text stating "We produce high-quality thermal coal at the Carmichael Mine";*
  - c. *owards the bottom of the page, there is a photo of the Carmichael Coal Mine sitting behind the Bravus Mining and Resources logo and text stating "owning and operating the Carmichael mine".*
20. *Further, the Website includes pages that relate to each of Bravus' businesses including Bravus Mining & Resources. On this page (<https://www.bravus.com.au/our-businesses/bravus-mining-resources/>) the Website makes the following statements:*

- a. *“Bravus Mining and Resources owns and operates the Carmichael mine in central Queensland”;*
  - b. *The Carmichael mine is an open cut thermal coal mine in the Galilee Basin”;*  
*and*
  - c. *“The Carmichael mine produces in the order of 10 million tonnes of coal each year for the export market”.*
21. *Ultimately, Bravus is forthright about having the conversation that the sustainable global energy mix requires both affordable and reliable baseload power and renewable energy for decades to come to ensure an equitable transition for developed and developing nations. This is reflected on the Website, on the “Sustainability” page (<https://www.bravus.com.au/sustainability/>) on which the following statements are made:*
  - a. *“Bravus’ Australian businesses support a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future”;*
  - b. *Our operations include the export of higher-efficiency coal from Queensland, reducing reliance on lower-quality resources from other sources”;*
  - c. *“Renewable energy alone is not sufficient to meet the growing demand for electricity in the developing world at this point in time. Efficient coal generation is part of the transition to a cleaner, greener energy future in the coming decades”;*
  - d. *“Providing reliable baseload power and renewable energy will pave the way for a sustainable future”;* *and*
  - e. *“The Adani Group is also making world-leading investments into solar generation and the emerging hydrogen energy sector to support a sustainable energy mix”.*
22. *Global energy demand is increasing, not decreasing. The International Energy Agency (of which Australia is a member) says demand for coal generation is still rising and is yet to plateau. India’s coal consumption has doubled since 2007 at an annual growth rate of six per cent (6%) and it is set to continue to be the growth engine of global coal demand.*
23. *Bravus can demonstrate in its claim that its businesses and the Adani Group are committed to supporting a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future which is only possible through a mixture of renewable energy and efficient coal generation, as evidenced by the following:*

- a. *the Adani Group has significant renewable energy operations in Australia and overseas including the Rugby Run solar farm near Moranbah in central Queensland;*
- b. *Bravus' Rugby Run solar farm was ranked second in 2022 of the best performing large scale solar farms in Australia by Rystand Energy and continues its top tier performance throughout 2023;*
- c. *outside of Australia, the Adani Group has 9GW of renewable energy in operation and a further 15GW under construction or planned;*
- d. *the Adani Group is an international manufacturer of solar panels and wind turbines;*
- e. *the Adani Group recently installed India's first hybrid wind-solar power plant in Jaisalmer;*
- f. *the Adani Group has recently announced the following projects:*
  - i. *a green ammonia combustion pilot project at the Mundra plant, where the power plant will co-fire up to twenty percent (20%) green ammonia in the boiler of a conventional coal-fired 330 MW unit; and*
  - ii. *the "Green Hydrogen Production and Blending Pilot Project", in which Adani Total Gas will employ the latest technologies to blend green hydrogen with natural gas for over 4,000 residential and commercial customers at Ahmedabad, Gujarat; and*
- g. *Bravus' operations include the export of higher-efficiency coal from Queensland, reducing reliance on lower-quality resources from other sources.*

#### *Solar Energy Claim*

- 24. *Paragraphs 20 to 26 of the Complaint allege that the Solar Energy Claim may be misleading or deceptive, or likely to mislead or deceive, because the Statements represent that the Adani Group is exclusively or predominantly involved in the production of solar energy when, in fact, the Adani Group's operations involve significant fossil fuels projects.*
- 25. *Bravus does not agree with the allegation that the Statements are misleading and deceptive, or likely to mislead or deceive, because the Website does not represent that the Adani Group is predominantly or exclusively involved in the production of solar energy.*



26. On the About page (<https://www.bravus.com.au/about/>) the website describes the Adani Group as follows:

*“Headquartered in Ahmedabad in Gujarat, the Adani Group operates cutting edge technologies at scale. It is one of the world’s largest conglomerates with businesses in the energy, transportation, infrastructure, agribusiness, ports, airports, data centres, cement, and utility sectors”. [Emphasis Added]*

27. The Statements claim that the Adani Group is a solar energy business, but do not claim that the Adani Group are predominantly or exclusively involved in the production of solar energy.

28. The claim that the Adani Group operates in the production of solar energy is not misleading or deceptive because it is factually accurate, as evidenced by the following:

- a. *the Adani Group has significant renewable energy operations in Australia and overseas including the Rugby Run solar farm near Moranbah in central Queensland;*
- b. *Bravus’ Rugby Run solar farm was ranked second in 2022 of the best performing large scale solar farms in Australia by Rystand Energy and continues its top tier performance throughout 2023;*
- c. *outside of Australia, the Adani Group has 9GW of renewable energy in operation and a further 15GW under construction or planned;*
- d. *the Adani Group is an international manufacturer of solar panels and wind turbines; and*
- e. *the Adani Group recently installed India’s first hybrid wind-solar power plant in Jaisalmer; and*
- f. *the Adani Group’s 5.2MW wind turbine generators received certification from Wind Guard GmbH under the IEC System for Certification to Standards Relating to Equipment for Use in Renewable Energy Applications. The certification enables the Adani Group to start series production for global markets;*
- g. *the Adani Group has recently announced the following projects:*
  - i. *a green ammonia combustion pilot project at the Mundra plant, where the power plant will co-fire up to twenty percent (20%) green ammonia in the boiler of a conventional coal-fired 330 MW unit; and*

- ii. *the “Green Hydrogen Production and Blending Pilot Project”, in which Adani Total Gas will employ the latest technologies to blend green hydrogen with natural gas for over 4,000 residential and commercial customers at Ahmedabad, Gujarat.*

*Best Environment Practice Claim*

- 29. *Paragraphs 28 to 31 of the Complaint allege that the Best Environment Practice Claim may be misleading or deceptive, or likely to mislead or deceive because Bravus has not disclosed multiple instances of Bravus’ breach of its environmental approval conditions.*
- 30. *Bravus does not agree with the allegation that the Statements are misleading and deceptive, or likely to mislead or deceive. The Carmichael Coal Mine is one of the strictest licenced and conditioned mines in Australia, specifically:*
  - a. *it was approved under 112 approvals for the Carmichael Mine and Rail Project; and*
  - b. *the Carmichael Mine and Rail Project has been granted approvals under seven (7) different Commonwealth and Queensland Acts.*
- 31. *Our approach is to provide management systems which reduce risk and demonstrate responsible management to all relevant stakeholders. Bravus has taken a holistic view of the environmental management and integrated decision-making processes.*
- 32. *Bravus’ environmental management system has been independently certified as meeting the requirements of the international standard ISO 14001. This certification includes the operations of the Carmichael mine. The systems were also developed to meet the requirements of ISO 31000 - Risk Management – Principles and Guidelines.*
- 33. *Bravus’ environmental management system uses a Plan-Do-Check-Act framework designed to consistently review, evaluate and improve environmental performance. These processes and procedures help to address our regulatory obligations in a systematic manner. They also help identify opportunities to improve environmental performance, which in turn can reduce the risk of non-compliance and assist in controlling potential impacts to the environment.*
- 34. *Bravus has demonstrated adherence to best practice safety, environmental and governance processes, as evidenced by the following:*
  - a. *Bravus Mining and Resources was named as a finalist in the Excellence in Environmental Management and Sustainability category at the 2023*

*Australian Mining Prospect Awards for its Black-throated Finch remote monitoring;*

- b. Bravus' contractor Woongal Environmental Services (Woongal) was nominated as a finalist in the Exceptional Indigenous Business category at the 2023 Queensland Regional Council Indigenous Awards for its environmental work at the Carmichael mine. Woongal performs services at the Carmichael mine including monitoring and surveying across the mining lease, fauna spotting and catching, erosion and sedimentation control, weed and pest management, fencing, research into groundwater-dependent ecosystems, and road and track maintenance;*
- c. Bravus has created a conservation area including a habitat for the Black-throated Finch. Over the last twelve (12) years Bravus has been undertaking industry leading research into the local population of finches. This is world class quality research using new machine learning and bioacoustics, along with traditional methods like radio tagging. This research allows Bravus to understand the bird's habits and needs. This research conducted by Bravus:
  - i. has been published in scientific journals and has been shared with the government to improve finch management elsewhere in Queensland;*
  - ii. has been used to tailor Bravus land management practices for even better outcomes on Bravus' property;**
- d. Bravus has an industry leading Ground Management and Monitoring Plan and Groundwater Dependent Ecosystem Management Plan, both of which were approved by the Australian and Queensland governments following independent review by CSIRO and Geoscience Australia. Under these approved plans, Bravus:
  - i. has installed new monitoring bores on the mining lease boundary to closely monitor groundwater;*
  - ii. upgraded river flow gauging stations on the Carmichael River and Belyando River to continuously monitor water flows and water quality;*
  - iii. has scientists on the ground every two months to observe and record water levels and water quality at more than 135 sites around the Carmichael mine;*
  - iv. reports the data to the government and publishes the data on Bravus' website for the public to see. The data shows is that Queenslanders can have confidence we are managing groundwater well.**

*35. The Statements only claim that Bravus has demonstrated adherence to best practice safety, environmental and governance processes. In Bravus' view a*

*company can demonstrate adherence to best practice safety, environmental and governance processes and have historical minor non-compliances, especially in circumstances where:*

- a. there was no environmental harm caused by the minor non-compliances and no conviction was recorded;*
- b. there was no action taken by any regulatory or judicial body to rescind Bravus' approvals;*
- c. in all instances referred to in the Complaint, Bravus self-reported the minor non-compliances and fully cooperated with the relevant government departments;*
- d. Bravus took corrective actions such as, in relation to the minor non-compliance referred to in paragraph 29(a) of the Complaint, Bravus arranged for contractors to undertake retraining of its legislative requirements per the approvals and resourcing requirements have been enforced; and*
- e. Bravus continues to be committed to best practice safety, environmental and governance processes.*

*36. Further:*

- a. In relation to the Environmental Protection Order referred to in paragraph 30(a) of the Complaint, no damage has occurred to the Doongmabulla springs or to underground water at the Carmichael mine despite the Queensland government issuing an Environmental Protection Order. The order relates to potential future underground mining, which Bravus had already publicly committed to remodeling to ensure Bravus' continued compliance with its approvals. No breach of any environmental authority has occurred; and*
- b. Bravus has appealed the decision to issue the Environmental Protection Order in the Queensland Planning and Environment Court and the matter is still progressing through that court; and*
- c. in relation to the offence under section 480 of the Environmental Protection Act 1994 (Qld) referred to in paragraph 30(b) of the Complaint, Bravus self-reported that it made an administrative error in the 2017/18 Annual Return for the Carmichael mine. Bravus pleaded guilty and importantly:*
  - i. there was no environmental harm, all relevant works were legal, and fully complied with Bravus' project conditions;*
  - ii. no conviction was recorded; and*

- iii. *Bravus took full responsibility for the administrative error at the time and introduced improvements to internal processes to ensure paperwork errors of this nature are avoided in the future.*

*SBTi Targets Claim*

37. *Paragraphs 32 to 34 of the Complaint allege that the SBTi Targets Claim may be misleading or deceptive, or likely to mislead or deceive because:*
  - a. *the Statements represent that Adani Ports and Special Economic Zone Limited, and Adani Transmission Ltd have targets in line with the SBTi; and*
  - b. *the Website fails to disclose that Adani Green Energy Ltd, Adani Transmission Ltd and Adani Ports & Special Economic Zone were removed from the SBTi due to a lack of conformity with the SBTi's standards and policy requirements, including the SBTi's updated Fossil Fuels Policy, and following a request from environmental groups Eko and Market Forces.*
38. *Bravus does not agree with the allegation that the Statements are misleading and deceptive, or likely to mislead or deceive because the wording does not state that the Adani Group targets have been accepted or endorsed by the SBTi.*
39. *The wording specifies that the targets have been developed in line with the SBTi targets. This is factually correct regardless of whether Adani Green Energy Ltd, Adani Transmission Ltd and Adani Ports & Special Economic Zone are included in the SBTi or not.*
40. *In any event, Bravus does not agree that the reason Adani Green Energy Ltd, Adani Transmission Ltd and Adani Ports & Special Economic Zone were removed from the SBTi was due to a lack of conformity with SBTi's standards.*

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

41. *In accordance with section 1(b) of the Environmental Code, Environmental Claims in Advertising or Marketing Communication shall display any disclaimers or important limitations and qualifications prominently, in clear, plain and specific language.*
42. *Bravus does not agree with the allegation that it has breached section 1(b) of the Environmental Code because for the reasons outlined in paragraphs 14 to 40 of this letter, the Statements are not misleading or deceptive, or likely to mislead or deceive, and no disclaimers are required to clarify, expand, or reasonably qualify a representation.*

*Section 2(a) – be relevant, specific and clearly explain the significance of the claim*

43. *In accordance with section 2(a) of the Environmental Code, Environmental Claims must be relevant, specific and explain the significance of the claim.*

44. *The Practice Note for the Environmental Code states in relation to section 2(a):*

*“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.”*

#### *Transition Claim*

45. *Paragraphs 9 to 19 of the Complaint allege that the Transition Claim breaches section 2(a) of the Environmental Code because Bravus’ claims only disclose partial information, creating the overall impression that overall Bravus’ and /or the Adani Group’s operations are positive for the environment.*

46. *For the reasons set out in paragraphs 16 to 23 of this letter, Bravus considers that the Website does not only partially disclose Bravus’ and the Adani Group’s operations to create an overall impression that Bravus’ and/or the Adani Group’s operations are positive for the environment.*

47. *The Website is clear that Bravus and the Adani Group:*

- a. are committed to supporting a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future; and*
- b. believe renewable energy alone is not sufficient to meet the growing demand for electricity in the developing world at this time and that efficient coal generation is part of the transition to a cleaner, greener energy future in the coming decades.*

#### *Solar Energy Claim*

48. *Paragraphs 20 to 26 of the Complaint allege that the Solar Energy Claim breaches section 2(a) of the Environmental Code because the Statements create the overall*

*impression that all of the Adani Group is exclusively or predominantly involved in solar energy.*

49. *For the reasons set out in paragraphs 24 to 28 of this letter, Bravus disagrees that the Statements create an overall impression that all of the Adani Group is exclusively or predominantly involved in solar energy.*
50. *The Statements describe the Adani Group as a solar energy company but do not state the Adani Group is predominantly or exclusively a solar energy company. When viewed in conjunction with the description of the Adani Group set out in paragraph 26 of this letter, the Website does not claim that the Adani Group is exclusively or predominantly involved in solar energy.*

*Section 2(b) – not overstate the claim expressly or by implication*

51. *In accordance with section 2(b) of the Environmental Code, Environmental Claims must not overstate the claim expressly or by implication.*

*Transition Claim*

52. *Paragraphs 9 to 19 of the Complaint allege that the Transition Claim breaches section 2(b) of the Environmental Code, because Bravus' claims overstate the environmental benefits of certain of its and/or Adani Group's projects, without sufficiently disclosing the negative impacts of other projects and the overall impact of the businesses.*
53. *For the reasons set out in paragraphs 16 to 23 of this letter, Bravus considers that the Website does not overstate the environmental benefits of certain of its projects without sufficiently disclosing the negative impacts of other projects.*
54. *The Website is clear that Bravus and the Adani Group:*
  - a. *are committed to supporting a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future; and*
  - b. *believe renewable energy alone is not sufficient to meet the growing demand for electricity in the developing world at this time and that efficient coal generation is part of the transition to a cleaner, greener energy future in the coming decades.*

*Solar Energy Claim*

55. *Paragraphs 20 to 26 of the Complaint allege that the Solar Energy Claim breaches section 2(b) of the Environmental Code because Bravus' claims overstate the environmental benefits of the Adani Group's solar energy projects, without*

*sufficiently disclosing the negative impacts of its projects and the overall impact of the businesses.*

56. *For the reasons set out in paragraphs 25 to 28 of this letter, Bravus considers that the Website does not overstate the environmental benefits of its solar power projects without sufficiently disclosing the negative impacts of other projects.*

57. *The Website is clear that Bravus and the Adani Group:*

- a. are committed to supporting a sustainable and affordable global energy mix, progressing the transition to a lower-carbon future; and*
- b. believe renewable energy alone is not sufficient to meet the growing demand for electricity in the developing world at this time and that efficient coal generation is part of the transition to a cleaner, greener energy future in the coming decades.*

*Conclusion*

58. *For the reasons set out above, Bravus firmly believes that its Website fully complies with the AANA Environmental Code and respectfully submits that the complaint should be dismissed.*

## **THE ORIGINAL DECISION**

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

The Panel noted the complainant's concern that the material published by Bravus Australia on its website contains misleading environmental claims.

The Panel viewed the web page complained about and noted Bravus' response.

### **Is the material advertising?**

The Panel noted that the definition of advertising in the Environmental Code is:

- a. any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,
  - over which the advertiser or marketer has a reasonable degree of control, and
  - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,
- b. but does not include



- labels or packaging for products
- corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
- in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

The definition of Advertising in the Practice Note for the Code of Ethics, which applies to all AANA codes, provides further guidance on what is considered a corporate report:

*“Corporate reports are not covered by the Codes. This includes:*

- *Corporate public affairs messages in press releases and other media statements;*
- *Annual reports; and*
- *Statements on matters of public policy and the like, such as:*
  - a. corporate/stakeholder websites, social media or career sites;*
  - c. internal company communication, sustainability reports, investor documents;*
  - d. submissions, position statements, comments on policy issues; and*
  - e. direct communications to audiences in their capacity as commercial stakeholders of the company.*

*Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand’s consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.”*

The Panel noted that it must have regard to the Practice Note as well as the Code. It noted that the material was published on the home page of the website. The Panel considered carefully whether the material was advertising or excluded corporate report material.

The Panel noted Bravus’ submission that the target market for its Website is people interested in the operations of Bravus’ businesses who are looking to find out more. The Panel considered that while it is not actively brought to the public’s attention in the manner of many forms of advertising, the website is accessible to the public at large and not just existing Bravus stakeholders, and in providing information about the activities of Bravus and/or the Adani Group is intended to advance the interests of the group.

The Panel considered that the website is likely to be accessed principally by a range of interested stakeholders and investors rather than the general public, and rather than selling or promoting is providing corporate information to those stakeholders and investors.

The Panel noted that the Environmental Code excludes “corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like” from the definition of advertising.

The Panel noted the Practice Note and the description of what constitutes corporate reports, including what constitutes a statement on matters of public policy. The Panel considered that while much of the relevant parts of the website is not directed solely at company stakeholders and could be considered “consumer public relations material” as described in the Practice Note, the material is being presented as communications to audiences in a manner consistent with the Practice Note’s description of material which is excluded from the purview of the code as corporate reports and is not, for example, a publication of a media release or a republication of an advertisement published elsewhere.

The Panel considered that taking into account the nature and presentation of the information, the material was not an advertisement.

## **Decision**

Finding that the material does not meet the definition of “advertising” under the Code, the Panel determined that the Environmental Code does not apply and the Panel dismissed the complaint.

## **INDEPENDENT REVIEW**

### **Request for review**

The basis for our appeal is that we believe the Panel misinterpreted the definition of “advertising” in the Code and its subsequent application to the statements the subject of the Complaint. It is contended that this misinterpretation led to an invalid decision in relation to the statements. In more detail:

- We believe that the Panel erred in finding that the material did not meet the definition of “advertising” under the Code. Further, the Panel misinterpreted the definition and application of the Code.
- While we agree that the definition of advertising was reproduced accurately, we respectfully submit that the Panel did not take into account the accompanying AANA Code of Ethics Practice Note [1] (the Practice Note) which provides

comprehensive detail on which material is intended to be covered by the definition of “advertising” in the Code.

- When considering what is included in the definition of “advertising”, the Practice Note [2] states:

Advertising includes consumer public relations communication. Material produced for use in the media or by the media can be presented in a variety of formats, including video, infographics, question and answer articles, photos, audio or online.

- The following are excluded from the definition of advertising:
  - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy
  - any form of editorial content such as independent review content, editorial blog content or claims made in the context of editorial content
  - corporate social responsibility (CSR) programs.

- The Practice Note goes on to clarify that:

*Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand’s consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.*

It is our contention that the statements which are the subject of the Complaint are found in the public facing section of the website and can therefore be properly categorised as material produced for the use in the media, specifically, online consumer public relations communications, not corporate reporting. The material is designed specifically to counter negative impacts of Adani’s coal mining operations and to promote the Carmichael coal mine and its product in Australia.

Thank you in advance.

[1] AANA Code of Ethics Practice Note 2021. Retrieved from [https://f.hubspotusercontent00.net/hubfs/5093205/AANA\\_Code\\_of\\_Ethics\\_Practice\\_Note\\_Effective\\_February\\_2021.pdf?utm\\_campaign=Self-Reg-Codes&utm\\_source=AANA&utm\\_medium=web&utm\\_term=self-reg&utm\\_content=ethics-notes](https://f.hubspotusercontent00.net/hubfs/5093205/AANA_Code_of_Ethics_Practice_Note_Effective_February_2021.pdf?utm_campaign=Self-Reg-Codes&utm_source=AANA&utm_medium=web&utm_term=self-reg&utm_content=ethics-notes)

[2] AANA Code of Ethics Practice Note 2021 at 15. Retrieved from [https://f.hubspotusercontent00.net/hubfs/5093205/AANA\\_Code\\_of\\_Ethics\\_Practice\\_Note\\_Effective\\_February\\_2021.pdf?utm\\_campaign=Self-Reg-Codes&utm\\_source=AANA&utm\\_medium=web&utm\\_term=self-reg&utm\\_content=ethics-notes](https://f.hubspotusercontent00.net/hubfs/5093205/AANA_Code_of_Ethics_Practice_Note_Effective_February_2021.pdf?utm_campaign=Self-Reg-Codes&utm_source=AANA&utm_medium=web&utm_term=self-reg&utm_content=ethics-notes)

### **Independent Reviewer's recommendation**

I recommend that the Community Panel review its determination made on 6 December 2023. In my view there are additional matters the Panel should consider in reviewing its decision that the statements complained about were not an advertisement or marketing communication to which the Environmental Claims Code applied.

I note that Ad Standards currently has before it another application for review of a Community Panel decision that raises much the same issue as in the present case (Case 0254-23, dated 22 November 2023). That case concerns a complaint about statements made in a website hosted by Woodside Energy Group Ltd. I have similarly recommended in that case that the Community Panel review its decision that the statements complained about were not an advertisement to which the Environmental Claims Code applied.

The reasoning in the present case draws on the analysis in that other Independent Review Decision. However, I also note distinguishing features between the two Community Panel decisions.

### Issue in dispute

The issue in dispute in the present case is the meaning of the phrase '*Advertising or Marketing Communication*' in the AANA Environmental Claims Code. The Community Panel decided that the material complained about did not fall within that term and, accordingly, the Code did not apply to the material. The substance of the complaint was therefore not examined by the Panel.

The complainant, Australian Religious Response to Climate Change (ARRCC), contests the Panel's view. ARRCC was represented by the Environmental Defenders Office in making the original complaint, but not in lodging the ARRCC request for independent review.

The material complained about was text on a website hosted by Adani Australia Pty Ltd, trading as Bravus (the advertiser). The website content was on four website pages, titled '*Energy for an advancing world*'.

The complaint alleges that the Bravus website content makes environmental claims that breach several provisions of the Environmental Claims Code – section 1(a) (environmental claims must not be misleading or deceptive); 1(b) (claims must include necessary disclaimers and important qualifications); 2(a) (environmental claims must be relevant and understandable); and 2(b) (environmental claims must not be overstated).

A central complaint allegation was that the website understates the Adani Group commercial reliance on fossil fuel projects. This was crystallised as two complaint claims – a '*transition claim*', that the website wrongly conveys that all Adani Group

operations address climate change and support a clean energy and net zero transmission; and a *'solar energy company claim'*, that the website intimates that solar energy production is the exclusive or predominant activity of the Adani Group. Two other claims in the complaint were – a *'best environmental practice claim'*, that the website intimates that Adani Group operations adhere to Environmental best practice requirements, whereas multiple infringements have been recorded; and a *'science-based targets initiative claim'*, that the website wrongly intimates without proper qualification that selected Adani Group operations comply with those recognised targets.

The advertiser's response directly addressed the four complaint claims and did not object to the classification of the website content as an *'advertisement'* and as *'environmental claims'*. The thrust of the advertiser's response is that the complaint misrepresents the website content. Viewed as a whole, it was argued, the website contains content relating to Adani Group fossil fuel activities; it discusses their continuing importance in achieving a sustainable global energy mix; it does not misrepresent Adani Group investment in solar energy production; and the content accurately reflects the Adani Group commitment to a lower-carbon future. As to other environmental claims, the advertiser's response argued that its environmental management practices display best practice, and that the regulatory breaches referred to in the complaint were misrepresented (eg, as to their magnitude, and that they were self-reported breaches).

#### Community Panel finding

The issue being addressed in this review – whether the Bravus website content should be classified as an *'advertisement or marketing communication'* to which the Environmental Claims Code applies – was not initially raised by either the complainant or the advertiser. However, that issue had recently been considered by the Community Panel in Case 0254-23. The advertiser in that case had raised the issue as a preliminary objection, and the Panel upheld its objection in ruling that the website content under consideration was not an advertisement.

In the present case, the Community Panel reached a similar finding that the Adani Group website was not an advertisement but was *'corporate report material'* that was excluded from the definition of *'advertisement'* in the Code. The Panel's discussion of the issue in the present case was more extensive than in the earlier case. Importantly, the Panel relied on the discussion of advertisement in the Practice Note for the AANA Code of Ethics. The Panel's failure in the other case to refer to the Practice Note was a reason I gave for referring the matter back to the Panel for reconsideration.

Before analysing the Panel finding and the party's submissions in the present case, I will first examine the definition of *'advertising or marketing communication'* in the Environmental Claims Code and other codes the AANA applies. The following discussion is largely similar to that in the other Panel case.

## Environmental Claims Code

The Environmental Claims Code aims to ensure that advertisers and marketers *'develop and maintain rigorous standards when making Environmental Claims and to increase consumer confidence to the benefit of the environment, consumers and industry'*.

The Code applies to *'Environmental Claims in Advertising or Marketing Communication'*. The essence of the Code is that environmental claims must be true, accurate and able to be substantiated.

Three key terms in the Code are defined as follows:

**Advertising or Marketing Communication** means:

- a. any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,
  - over which the advertiser or marketer has a reasonable degree of control, and
  - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,
- b. but does not include
  - labels or packaging for products
  - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
  - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station

**Environmental Claim** means 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.

**Medium** means any medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.

The terms *'advertising'* and *'medium'* are similarly defined in other codes the AANA applies – the Code of Ethics, Children's Advertising Code, Food and Beverages Advertising Code, Wagering and Advertising Code and Voluntary Code of Practice for Motor Vehicle Advertising.

The Codes are supplemented by Practice Notes that provide guidance on interpreting and applying the Codes. The Practice Notes are to be applied by the Community Panel.

The Practice Note for the Code of Ethics (adopted in February 2021) contains guidance on *'Public Relations Communication'*:

Advertising includes consumer public relations communication. Material produced for use in the media or by the media can be presented in a variety of formats, including video, infographics, question and answer articles, photos, audio or online.

The Practice Note goes on to repeat the qualification in the Code that *'advertising'* does not include corporate reports and public policy statements. The distinction between advertising and non-advertising content is further explained in the Practice Note:

- statements on corporate websites and in social media are given as examples of public policy statements that fall outside the definition of advertisement
- by contrast, material that may fall within the definition is *'consumer public relations material ... that is reproduced as public facing content (eg, a press release posted on a brand's consumer facing website) [because it is] used in a manner intended to directly promote a product or service'*.

There is no similar guidance in the Environmental Code Practice Note, which was earlier adopted in May 2018. The AANA commenced a public review of the Code and Practice Note in November 2022. An Exposure Draft for a new Environmental Claims Code was released on 18 January 2024, with comments invited by 22 March 2024.

The Exposure Draft does not contain any changed wording that is directly relevant to this review. Two points are nevertheless noteworthy. Firstly, the draft draws attention to increased consumer concern about business environmental claims and to stamping out greenwashing practices (ie, misrepresenting the environmental impact of a product, service or company). Secondly, the current Practice Note comments that while the Code does not apply to *'labels and packaging'*, an image of a label contained within an advertisement is considered to be an element of the advertisement.

#### Observations on construing 'advertising or marketing communication'

The issue in contention in this case should be evaluated with regard to the following considerations.

- The term *'advertising'* is broadly defined in the AANA Codes. In other contexts that term is sometimes understood more narrowly – for example, as publicising a product, service or event to promote commercial sales or attendance. The

broader definition in the Code is reflected in several ways – the extended phrase is *‘advertising or marketing communication’*; the phrase applies to *‘any material which is published or broadcast using any Medium or activity’*; and the purpose of the advertisement may be to promote *‘a product, service, person, organisation or line of conduct’*.

- The activities falling within the term may expand over time. Thus, an advertisement may be promoted *‘using any Medium or any activity’*. The term *‘Medium’* is defined to mean *‘any medium whatsoever’*, including but not limited to traditional publication methods (print, radio, television and cinema) as well as the internet and *‘new and emerging technologies’*.
- The broad scope of the term *‘advertisement’* is tempered by a list of material that is ordinarily excluded in applying the Codes – such as labels and packaging, corporate reports, media statements and *‘statements on matters of public policy and the like’*. Those excluded items are likely to be the main point of contention in deciding whether an item is an advertisement.
- There may often be room for doubt (or disagreement) as to whether an item is an advertisement or, on the other hand, an item falling within the excluded list. An example of this ambiguity given in the Environmental Claims Practice Note is that a label is not ordinarily an advertisement, yet the Code may apply to the label text if it is contained as an image in an advertisement. The same could be said of other items in the excluded list: a corporate report or statement that would otherwise fall outside the Code may be classified as an advertisement if an advertiser draws attention to the report or statement in a separate document that promotes its products, services or the organisation itself.
- The inherent ambiguity in applying the concept of advertisement means that it is important to take account of the context for a particular statement. Put another way, *‘advertisement’* is similarly defined in all AANA Codes, but each Code applies to statements made in widely differing contexts. For example, the Practice Note for the Children’s Advertising Code points out that a mention of personalities or characters popular with children will be relevant in assessing if a statement is advertising that targets children. Similarly, the prominence the Environmental Claims Code gives to ensuring that environmental claims are rigorously assessed will be relevant in deciding if a corporate message is an advertisement to which the Code applies.
- A corporate website statement may be directed to multiple audiences and, to that extent, have a dual character. A statement that aims to explain in a non-technical way the work of the corporation for the benefit of a general audience may be



viewed as a corporate article. But it may, at the same time, be regarded as a statement designed to project a positive image of the corporation and to counteract negative messaging. In that sense, it is possible that a website statement could be viewed both as a corporate public affairs message as well as a statement that promotes the organisation.

#### The Community Panel reasoning and the submissions of the parties

Having regard to the Code definition of advertising and to the Code of Ethics Practice Note, the Panel decision posed the question whether the website material in question *'was advertising or excluded corporate report material'*.

The Panel noted that the Bravus website was accessible to the public generally, and that some material on the website could be considered consumer public relations material that was intended to advance the interests of the group. However, as to the material in question, the Panel reasoned that it principally aimed to provide corporate information to stakeholders and investors and was not selling or promoting anything. The Panel concluded that the material was being presented as corporate material and was not an advertisement.

The ARRCC request for review dated 21 December 2023 argued that the Panel decision did not properly take into account the discussion of consumer public relations material in the Code of Ethics Practice Note. The ARRCC submitted that the statements in question –

... are found in the public facing section of the website and can therefore be properly categorised as material produced for use in the media, specifically, online consumer public relations communications, not corporate reporting. The material in question is designed specifically to counter negative impacts of Adani's coal mining operations and to promote the Carmichael coalmine and its product in Australia.

The advertiser's submission dated 11 January 2024 expressed support for the Panel's reasoning that the website material was presented in a way consistent with corporate reporting; it aimed to provide accurate information about the business to interested stakeholders and investors. The submission also noted that *'neither the Material, nor the Bravus website, is selling or directly promoting any product or service to consumers'*, and could not properly be classified as consumer public relations material.

Two other prominent themes in the advertiser's submission should be noted. First, it complained that it had been denied natural justice having regard to the short period it was granted to make a submission on the review. Secondly, it took issue in several ways with the ARRCC request for review – for example, as to the basis on which

review was sought, and as to comments in the submission that the Panel had not considered the Code of Ethics Practice Note.

### Analysis of the application for review

I preface my analysis by noting that it is not the role of the Independent Reviewer to review the merits of the Panel's determination or to substitute a new ruling. The Reviewer is limited to recommending that a Panel review its earlier determination for one of three reasons – new and relevant evidence, a substantial flaw in the Panel's decision or reasoning, or a flaw in the Panel's process of determination.

A reason I gave in the other case (Case 0254-23) for recommending that the Panel reconsider its decision was that it had not referred to the Code of Ethics Practice Note, nor to the explanation in the Practice Note that a corporate website may be categorised as an advertisement if it is designed to influence consumers to think favourably of the organisation and its conduct.

The Panel decision in the present case did discuss the Practice Note, and addressed at greater length the distinction between advertisements and corporate reporting.

Another distinguishing feature in the other case that warranted reconsideration by the Community Panel was that the advertiser had drawn attention to its website material in Facebook postings. I recommended that the Panel consider whether this strengthened a finding that the website material was an advertisement.

Although both cases are different, I recommend that the Community Panel reconsider its finding in the present case that the statements on the Bravus website are not advertising to which the Environmental Claims Code applies. There are several matters that warrant further consideration by the Panel:

- There are similarities between both Panel decisions. It is desirable that the Panel consider both decisions to examine whether it will affirm both decisions, change both decisions and classify the website material in both cases as an advertisement, or draw a distinction between both cases and affirm only one of the decisions.
- It is similarly important that the Panel consider whether its existing decision in both cases is consistent with other Community Panel rulings. In the other case I noted that no objection was raised in Case 0281-21 to classifying as an advertisement a Commonwealth Government website that explained technologies and projects adopted by government and industry to reduce environmental emissions. (Two other cases referred to in a submission in this case that may warrant comparative consideration are Cases 0224-22 and 0225-22.)

- My decision in the other case queried if there is a developing trend of more easily classifying corporate website material as an advertisement when it seeks to vindicate the corporation's conduct, particularly as regards its stance on climate change. An example of this trend given in the original complaint in this case (at para [27]) was a draft guide for business issued by the ACCC in July 2023 which is directed at potentially misleading environmental claims by businesses operating in the fossil fuel industry.
- The Environmental Claims Code arguably takes a broader view of what constitutes advertising than is reflected in both the Panel decisions under consideration. For example, the Code applies to '*advertising or marketing communication*' (and not just advertising), and applies to material that promotes, directly or indirectly, an '*organisation or line of conduct*' (and not just a product or service).

I should note briefly that I did consider the advertiser's submission that the ARRCC request for review was narrowly framed and did not properly take issue with the Panel's ruling. However, I believe that ARRCC submission does squarely disagree with the Panel's ruling and the way it defined and applied the concept of advertising.

I therefore recommend the Panel reconsider its determination that the Bravus website page was not an '*advertisement or marketing communication*' to which the Environmental Claims Code applies. If the Panel changes its ruling, it will then need to separately consider whether the statements on the website breach any of the standards in the Code.

## **THE DECISION ON REVIEW**

The Ad Standards Community Panel (Panel) noted the request for review of its decision and considered the findings of the Independent Reviewer. The Panel noted that the Independent Reviewer considered that it did not give sufficient weight to the following elements:

- a developing trend of more easily classifying corporate website material as an advertisement when it seeks to vindicate the corporation's conduct, particularly as regards its stance on climate change
- The inclusion of the term '*marketing communication*' and reference to material that promotes, directly or indirectly, an '*organisation or line of conduct*' in the definition of advertising.
- The Panel has previously considered website content to be advertising

### **Is the material advertising?**

The Panel noted that the definition of advertising in the Environmental Code is:

- a. any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer,
- over which the advertiser or marketer has a reasonable degree of control, and
  - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,
- b. but does not include
- labels or packaging for products
  - corporate reports including corporate public affairs messages in press releases and other media statements, annual reports, statements on matters of public policy and the like
  - in the case of broadcast media, any material which promotes a program or programs to be broadcast on that same channel or station.

The definition of Advertising in the Practice Note for the Code of Ethics, which applies to all AANA codes, provides further guidance on what is considered a corporate report:

*“Corporate reports are not covered by the Codes. This includes:*

- *Corporate public affairs messages in press releases and other media statements;*
- *Annual reports; and*
- *Statements on matters of public policy and the like, such as:*
  - a. corporate/stakeholder websites, social media or career sites;*
  - b. internal company communication, sustainability reports, investor documents;*
  - c. submissions, position statements, comments on policy issues; and*
  - d. direct communications to audiences in their capacity as commercial stakeholders of the company.*

*Consumer public relations material, as distinct from corporate reports, that is reproduced as public facing content (e.g. a press release posted on a brand’s consumer facing website) would be covered by the Codes because the brand owner has retained a reasonable degree of control over the material and it was used in a manner intended to directly promote a product or service.”*

The Panel noted that it must have regard to the Practice Note as well as the Code. The Panel noted that the material was published linked from the home page of the website. The Panel carefully reconsidered whether the material was advertising or excluded corporate report material.

Noting the recommendations of the Independent Reviewer, in particular regarding the additional guidance provided by the Practice Note, the Panel considered that it needed to determine whether the likely audience of the website was corporate stakeholders or the general public.

The Panel noted that the website was not promoted on the brand's social media, and the brand operated a second website which appeared to be promoted through these channels.

The Panel then considered the content of the page. The Panel noted that many people would consider corporate reports to refer to physical documents or pdfs of annual reports and the like, however considered that it is increasingly common for businesses to present corporate report material in visually appealing formats, such as webpages.

The Panel noted that the webpage included a lot of 'we' statements, such as "We are progressing..., we produce resources...we are deeply committed..." and such statements are consistent with language often used in statements of intent or values when being communicated to corporate stakeholders.

The Panel also noted that while the website could be seen to be promoting an organisation, it was not promoting any products or services which are directly available to consumers and as such, it would be unlikely that everyday consumers would be visiting the website.

The Panel noted the independent reviewer's further recommendations that the Panel take into account that the definition of advertising includes marketing communications, and that the Panel has previously considered webpages to constitute advertising.

The Panel noted that it is likely that determinations as to whether the content of webpages were directed at corporate stakeholders or the public and constituted an advertisement would need to be made on a case-by-case basis taking into account a range of factors.

In this instance, the Panel considered that the website does not appear to be promoted on social media, though accessible includes content that appears to be directed to corporate stakeholders, and is not promoting a product or service directly available to consumers, and that taken together these factors support a view that the website is corporate report material.

The Panel considered that the material did not constitute advertising, and as such the provisions of the Environmental Claims Code do not apply.

## **Conclusion**

On reconsideration, the Panel found that the material did not constitute advertising and confirmed its decision to dismiss the complaint.