



Case Report

1	Case Number	0011/15
2	Advertiser	Fernwood Fitness Centres Aust Pty Ltd
3	Product	Sport and Leisure
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	28/01/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features women undertaking various outdoor activities such as playing on a beach or enjoying a picnic. In one scene we see two women riding on a bicycle without safety helmets. A female voiceover says, "Get fit. Lose weight. Feel free. Become the woman you've always wanted to be."

THE COMPLAINT

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

State law requires helmets.

THE ADVERTISER'S RESPONSE

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

We acknowledge the non-use of helmets by the women on bikes in our commercial, however it was filmed on private property, not on the road. Being just a three second segment in a 30 second commercial, the bike riding is not a major focus. The TVC is not aimed at children and is not shown in a time slot indicative of children's viewing times.

THE DETERMINATION

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

The Board noted the complainant’s concern that the advertisement features two women riding a bicycle without safety helmets.

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

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

The Board noted that the advertisement features women enjoying various outdoor activities together and that in one scene we see two of the women riding on the same bicycle.

The Board noted it had previously upheld a similar complaint in case 0202/13 where:

“The Board noted that that the boy is shown to be wearing a safety helmet but that his dad is not...

...The Board noted that community standards are very clear on the issue of health and safety whilst riding a bicycle and considered that a depiction of an adult riding a bicycle without a helmet is a depiction which is in breach of these community standards.”

In the current advertisement the Board noted that the two women on the bicycle are not wearing safety helmets. The Board noted the advertiser’s response that the advertisement was filmed on private property. The Board noted that the women are depicted riding on a footpath adjacent to a road and considered that it is not obvious that this area is private therefore the most likely interpretation is that the women are riding on a road-related area.

The Board noted clause 256 of the Australian Road Rules (February 2012 version):

“Bicycle helmets

(1) The rider of a bicycle must wear an approved bicycle helmet securely fitted and fastened

on the rider's head, unless the rider is exempt from wearing a bicycle helmet under another law of this jurisdiction.

Offence provision.

Note Approved bicycle helmet is defined in the dictionary.

(2) A passenger on a bicycle that is moving, or is stationary but not parked, must wear an approved bicycle helmet securely fitted and fastened on the passenger's head, unless the passenger is:

(a) a paying passenger on a three or four-wheeled bicycle;

or

(b) exempt from wearing a bicycle helmet under another law of this jurisdiction.

Offence provision.

(3) The rider of a bicycle must not ride with a passenger on the bicycle unless the passenger complies with subrule (2).

Offence provision.”

The Board considered that the depiction of the women riding a bicycle without safety helmets was in clear breach of prevailing community standards.

The Board noted that the two women are riding the same bicycle and noted it had previously upheld a similar complaint about a print image which showed a person seated on the back of a bicycle (0296/12).

The Board noted clause 246 of the Australian Road Rules (February 2012 version):

“Carrying people on a bicycle

1) The rider of a bicycle must not carry more persons on the bicycle than the bicycle is designed to carry. Example A single-seat bicycle with a child's seat attached is designed to carry 2 people, 1 on the bicycle seat and 1 on the attached child's seat.

2) A passenger on a bicycle that is moving, or is stationary but not parked, must sit in the seat designed for the passenger.

3) The rider of a bicycle must not ride with a passenger unless the passenger complies with subrule (2).”

The Board noted that the bicycle featured in the advertisement does not have an approved seat for a passenger and considered that consistent with its previous determination the

depiction of two people riding on a bicycle designed to carry a single passenger is in breach of the Australian Road Rules and is therefore contrary to Prevailing Community Standards on the safe use of a bicycle.

Overall the Board considered that the advertisement did depict material contrary to prevailing community standards on health and safety.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Fernwood Fitness is in the process of having the TV commercial edited to remove the footage in question and will have the updated commercial sent to television networks as soon as it is available.