



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0018-21</b>
<b>2. Advertiser :</b>	<b>Hoglights</b>
<b>3. Product :</b>	<b>Automotive</b>
<b>4. Type of Advertisement/Media :</b>	<b>Transport</b>
<b>5. Date of Determination</b>	<b>10-Feb-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.5 Language

### DESCRIPTION OF ADVERTISEMENT

This transport advertisement features wording on a vehicle which includes the words "Can you see me now arsehole!" on the back and side, as well as an illustration of a pig on a motorbike and the business name.

### THE COMPLAINT

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

*The language used is offensive and I believe it contravenes section 2.5 of the AANA Code of Ethics*

### THE ADVERTISER'S RESPONSE

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

#### *Background*

*We are a small family business, which employs myself full-time, my wife part-time, my son casually and one other casual staff member. We sell automotive LED lights, primarily headlights for motorcycles. All our advertising and marketing is done in-*



*house. Like many small businesses, we have struggled during COVID. As a result, we do not have any budget to obtain legal advice on this issue, so I hope my layman's response will suffice.*

*The stickers on the Jeep have been in place since approx. August 2017. We have not had anyone complain about them in the almost 3.5 years they have been in situ. We have had a lot of positive comments and thumbs up from other road users.*

*Prior to having the stickers printed in 2017, I telephoned the following agencies, to seek their advice and/or comments on the phrase, 'can you see me now arsehole' ('the phrase'):*

- *Queensland Police – Ferny Grove Office, both front desk & Road Policing Command;*
- *Queensland Police Road Policing Command Headquarters;*
- *Brisbane City Council;*
- *Morton Bay Regional Council;*
- *City of Gold Coast Council;*
- *Sunshine Coast Regional Council;*
- *Advertising Standards Bureau;*
- *Office of Fair Trading Queensland;*
- *Department of Transport and Main Roads – Qld; and*
- *Australian Communications and Media Authority*

*All agencies did not see any issue with either the use of the word 'arsehole' or the phrase as a whole, finding it innocuous. Most didn't seem to care particularly, and some found it humorous and had a laugh about it. In the 3.5 years the stickers have been on the Jeep, I have not had any trouble with traffic police or any other person or agency.*

*By way of an explanation of the phrase, it isn't just an attention-grabbing slogan, it's our response, as motorcycle riders, to being told "sorry mate, I didn't see you". This is such an issue that there is a widely accepted acronym in place ('SMIDSY') which, as riders, we are routinely told after an accident. The phrase highlights a safety issue that motorcycle riders face on the road. We genuinely do not wish to offend anyone, but we feel that the phrase raises attention around this life-threatening issue. Basically, it sums up our mission to eliminate SMIDSY by making riders more visible. LED lighting is one of the ways we hope to achieve greater visibility, awareness and improve motorcycle safety.*

*Although we only had a week to respond, we felt that a quick petition might evidence the support that the phrase has, and we were able to obtain over 430 signatures (attached) in that timeframe. The feelings of importance on this issue by others is evidenced by the comments section (reasons for signing) which is also attached. Obviously, it is the panel's decision that matters, not the opinions of others, however if this gives any insight into how the slogan is regarded more widely by the public, then perhaps it is of use to your considerations.*



*Attached are photographs of the stickers on the Jeep. You will note the variation in sizing of the words in the stickers. The word 'see' is double the size of all the other words in the phrase, including 'arsehole'. The emphasis is on visibility, rather than any perceived attempt to insult anyone.*

#### *Section 2.5 of the AANA Code of Ethics*

##### *Appropriateness in the circumstances*

*There is a suggestion in the complaint that the phrase may breach s. 2.5 of the AANA Code of Ethics. As you are aware, this sections states that language should be appropriate in the circumstances for the relevant audience and medium. The circumstances are motorcycle safety and a response to being roadkill, so it seems proportionally appropriate in response to a serious issue to pose a question, such as the phrase. That being said, the question is posed in a light-hearted manner to so as to raise interest, not to offend.*

##### *Appropriateness for audience*

*The audience is anyone in the general public. The complainant seems to have drawn attention to the fact that they saw the Jeep at a playground, however the location in question was general parking opposite Jason Scott Park and the Samford District Historical Museum (not a playground), as we were having Sunday brunch in a nearby café. We don't have young children ourselves and do not frequent areas specifically designed for children. Kids have read the stickers at the shops and had a giggle, but their parents have not mentioned any issue with them. I imagine they hear considerably more in the playground or on television. The question is posed to road-users generally and it is not directed at any specific individual to cause them any personal slight.*

##### *Appropriateness for medium*

*In terms of the medium (transport), I have seen Wicked Vans with actual swear words getting around uncensored and people have bumper stickers which much stronger language. It is an appropriate medium, as the issue surround the phrase is a road safety concern. Our market is road users, so this is where we are advertising. We are actively involved the motorcycling community promoting road safety awareness and these stickers align with that promotion, and the subsequent promotion of our lights, via the appropriate medium of transport.*

##### *Question of strong/obscene language*

*Section 2.5 also states that strong or obscene language shall be avoided. Obviously, the classification of obscene language is somewhat subjective (apart from the obvious words such as 'f\*\*k' and 'c\*\*t', which are agreed upon, universally, as obscene). In relation to the word 'arsehole', we would ask whether the words 'bum' or 'anus', or just arse on its own, is obscene? Is it the attachment of the word 'hole' that the complainant found offensive? Would they complain about a sticker that said 'bum-hole'. They are all similar and have the same meaning. When I search on Facebook for the word 'arsehole', many results come up. If I search an actual swearword such as 'f\*\*k' all the results are censored or manipulated in some way. Nowadays, everyone is*



*trying to be witty with their obscuration of profanity – FCUK (French Connection UK), CU in the Northern Territory, WTF etc. We could have chosen to end the phrase with a strong/obscene word and censored it, but we felt that that would actually be obscene. ‘Arsehole’ is widely used and in common use in the Australian vernacular. The manner in which the word has been used is consistent with its colloquial use of humorously ‘taking the piss’ out of someone – an Australian past-time. It is not being used in an aggressive or demeaning way.*

*In further support of word arsehole lacking in obscenity, please see attached headline by Business News Australia – “Can you see me now arsehole? – the question that inspired a booming business”. This was an unpaid feature article about myself and the business by a major Australian publication. This article highlights the motorcycle road safety issues we have previously mentioned and uses the word arsehole in both the headline and body of the article. It also displays a photograph of me wearing a shirt with the phrase clearly visible. Had the phrase included any actual vulgar/swear/offensive/obscene words, it would not have been published in a headline or it would have been at least censored in some way.*

#### *Discussion on offensiveness*

*Although s. 2.5 does not speak about offense, the complaint states that the language is believed to be offensive so we will respond to this issue also. ‘Offensive’ is defined as ‘causing someone to feel resentful, upset or annoyed’. Resentfulness is based in unfair treatment. In order to feel offended by the stickers, the reader must first assume that they are targeted towards them specifically as an individual and that they are being treated unfairly in some way, which causes them to feel upset or annoyed. We would suggest that the complainant has taken the phrase literally, as though it were directed to them specifically, which is obviously not the case. We understand that not everyone will understand that background of the phrase and may just see it as a question we are posing out of the blue, but to assume we are asking of them specifically is unusual, as the lack of any other complaints would suggest.*

#### *Summary*

*In summary, we are a small business who have been displaying the stickers on a Jeep for some years. The phrase is intended to highlight a motorcycle safety issue, which our product assists in remedying. The font size of the word ‘arsehole’ is proportionally smaller than the word ‘see’, which is the focus of the message. We sought advice and from multiple different agencies, prior to using the phrase. Other than this complaint, we have had no issues with traffic police or any other persons or agencies. A major Australian publication has utilised the phrase as a headline without any censure. We have highlighted the appropriateness of the language for both the audience and the medium and responded to the issues surrounding any perceived obscenity raised in s. 2.5 of the AANA Code of Ethics. We thank you for considering our submission and look forward to the outcome of your considerations.*



## THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the language is offensive.

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

**Section 2.5: Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.**

The Panel noted the advertisement was on a vehicle and that the relevant audience would be broad and would include children.

The Panel noted the Practice Note for Section 2.5 of the Code states:

*"Words and phrases which are innocuous and in widespread and common use in the Australian vernacular are permitted provided they are used in a manner consistent with their colloquial usage, for example with gentle humour, and not used in a demeaning or aggressive manner."*

The Panel noted the advertiser's response that the phrase was not directed at any specific individual, rather it is response to the statement "I didn't see you" which is often said to motorcycle riders after an accident.

A minority of the Panel considered that the phrase "can you see me now arsehole", has an aggressive tone and in the context of a transport advertisement could be associated with road rage. A minority of the Panel considered that some members of the community would still consider 'arsehole' to be strong language which was inappropriate for use in an advertisement which can be seen by children.

The majority of the Panel considered that the word is not used in a manner that is overly aggressive, rather it is highlighting an issue of visibility on the road and accident prevention. The Panel considered that the advertisement did not highlight the word "arsehole" and that the word "see" was the most prominent in the advertisement. The Panel considered that most members of the community would not see the word "arsehole", in this context, as strong or obscene, rather the word was used in a manner consistent with its colloquial usage.

The Panel considered that the advertisement did not use strong or obscene language and that the language used was appropriate for the circumstances.

## Section 2.5 conclusion



The Panel determined that the advertisement did not breach Section 2.5 of the Code.

**Conclusion**

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