



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0092/19
2	Advertiser	ALDI Australia
3	Product	Sport and Leisure
4	Type of Advertisement / media	Print
5	Date of Determination	03/04/2019
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This catalogue advertisement features a man on a bicycle. He is not wearing a helmet. This catalogue states that items are on sale from 13 March 2019.

THE COMPLAINT

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

Your Code states: 2.6 Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety.

*Under your Code (notes) - Health and Safety (Section 2.6) it states: .
UNSAFE PRACTICES - Images of bike riding without helmets or not wearing a seatbelt will be contrary to prevailing community standards relating to health and safety.*

On 7 March I wrote to Aldi:

Subject: Formal Complaint re Aldi brochure featuring Crane E-bike





Dear Mr

This is a formal complaint regarding your advertisements in your latest catalogue 13/16 March 2019, showing a man on the cover and on Page 6, riding a "Crane folding E-bike" in a public place, without a helmet.

The penalty for this offence in NSW is over \$300, reflecting the seriousness of this behaviour. It's not good enough to have a disclaimer in 4 point font attempting to contract out of your legal obligations.

Clearly you knew it was illegal. The behaviour you have depicted in your photos is illegal and extremely dangerous.

You only have to read about the hundreds of serious head injuries experienced by riders of Lime and other E-scooters to realise the gravity of this problem. And you are promoting it.

We look forward to your urgent reply advising how you intend to undo this utterly unacceptable and socially irresponsible advertising.

For your information: Time Magazine – 5 Feb 2019

<http://time.com/5521308/electric-scooter-safety/>

So far, what's believed to be the first published study examining scooter injuries was released in January in JAMA Network Open, a peer-reviewed medical journal. UCLA researchers studied 249 patients (228 scooter riders and 21 pedestrians) treated at two emergency departments over a year's time. Head injuries and fractures were the most common diagnosis. Among scooter riders, 80% were injured in a fall, 11% collided with an object and almost 9% were hit by a moving vehicle or object. For almost 5% of patients, intoxication was a factor. Just 4% of riders wore a helmet.

Such findings don't surprise physicians.

"We're seeing five to six minor injuries a week, almost one a day — hand and arm fractures, broken bones and facial injuries, such as scrapes and bumps and fractures," said Dr. Oscar Guillamondegui, trauma ICU medical director at Vanderbilt University Medical Center in Nashville.

"Approximately one to two major traumatic brain injuries a month are admitted to the trauma center. The reason is simple. Who's carrying a helmet? No one. No one is wearing them because no one is carrying them." (END QUOTE)



The advertisement has a disclaimer: "Note: Bicycle imagery depicted on this page is for advertising purposes only. Road rules state that bicycle riders on roads and road-related areas must wear an approved bicycle helmet, securely fitted and fastened."

Clearly, Aldi was aware that this is an offence, yet they went ahead and on the cover and page 6, they produced two full page ads, deliberately depicting a man riding the E-bicycle without a helmet.

I have since sent two reminders to Aldi. All I have received, yesterday, is an email stating they are elevating the complaint to another team.

THE ADVERTISER'S RESPONSE

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

In relation to the attached complaint please see below specific steps taken by ALDI to mitigate.

- 1. Complaint refers to the Electronic Bike which was advertised on front cover and an inside spread. Catalogue was in market from 6th-16th March 2019. Please see attached PDFs of aforementioned pages. Please note disclaimer on the bottom of the image on the inside spread designed to alert readers to road rules.*
- 2. Catalogue spread featuring the acknowledgement that the talent in the shot was not wearing a helmet as required by law. This was in market on 3 April 2019.*

If you have any questions or require further information please do let me know.

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 advertisement depicts material contrary to prevailing community standards on health and safety.

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

The Panel noted that this print advertisement appears in a catalogue and features two images of a man on an electric bicycle. The first image depicts the man standing astride the bicycle, and the second image depicts the man appearing to be riding the bicycle. In both images, the man is not shown to be wearing a helmet.



The Panel considered whether the advertisement breached 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 Panel noted the complainant’s concern that the advertisement depicts a man riding a bike without a helmet, and that this is a breach of prevailing community standards on health and safety.

The Panel noted clause 256 of the Australian Road Rules (March 2018 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 Panel noted that the man is depicted on a sidewalk, and considered that the sidewalk is a road related area.

The Panel considered 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 secured is a depiction which is in breach of these community standards.

The Panel noted that the advertisement includes a disclaimer at the bottom of the second image stating “Bicycle imagery depicted on this page is for advertising purposes only. Road rules state that bicycle riders on roads and road related areas



must wear an approved bicycle helmet, securely fitted and fastened.” The Panel considered that the inclusion of this disclaimer does not exempt the depiction of material which would breach the law.

In the Panel’s view the advertisement does depict material contrary to Prevailing Community Standards on health and safety and that it did breach Section 2.6 of the Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser did not provide a response to the determination, however Ad Standards has confirmed that a written acknowledgement that the talent in the shot was not wearing a helmet as required by law, was printed in a subsequent catalogue (for items are on sale from 10 April, 2019).

INDEPENDENT REVIEWER'S RECOMMENDATION

THE DETERMINATION ON REVIEW

ADVERTISER'S RESPONSE TO IR DETERMINATION