



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0130/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Brand Developers</b>
<b>3</b>	<b>Product</b>	<b>Hardware/Machinery</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>11/04/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

An infomercial for the Dual Saw, a hand held electric saw with counter rotating blades. Two men demonstrate how the saw can be used and discuss its advantages over other types of saws.

### THE COMPLAINT

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

*The advertisement is in clear breach of health and safety regulations. Using this tool in the manner portrayed has the potential to cause significant injury.*

*Throughout the advertisement the saw is used with the guard locked open. With a safety feature as important as a spring loaded guard this is an incredibly hazardous procedure and whether it is understood to be a demonstration or not is an unacceptable risk to any potential user. It's like advertising a car with the driver not wearing a seatbelt.*

*The saw is often shown being used with one hand at one time the demonstrator is using a saw in each hand with the guard locked open in a confined space and with no ear protection or dust mask.*

*The demonstrator is seen to reach under the moving blades. The demonstrator cuts fibreboard without a dust mask. This advertisement contradicts the safe operating procedure defined in the user's manual.*

## **THE ADVERTISER'S RESPONSE**

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

*Brand Developers take a very responsible view of both our products and our advertising. The success of our business is totally dependent on our ongoing credibility with the viewer's/customers.*

*In this instance we utterly refute the points raised by the complainant. The advertisement was given CAD acceptance No GVHDLROF with no queries or questions raised.*

*While this product is relatively new to Australia, it has been sold in USA, Canada and Mexico since 2009. In USA alone, \$12M has been invested in media. More recently it has made a huge impression in the European markets.*

*The product is compliant with all safety requirements, and the manual that comes with the product sets out in very clear terms the relevant safety procedures that a consumer should follow. In no way could it be claimed to transgress prevailing community standards.*

*Any deviation (if any) from best practice within the advertisement is done by an expert demonstrator purely in the context of a sales commercial, necessary to explain the special features of this product. Without these exhibition cameos by an expert, the remarkable and special features of the saw would be difficult to explain to buyers.*

*Given the user guide that goes with the product, and the obvious "expert demo" aspect of the advertisement we do not believe it contravenes the Code of Ethics by any interpretation.*

*However, we are currently adding to all our Dual Saw advertising a Warning/Disclaimer intro to the infomercial, and in the controversial sections of the infomercial, also adding a super at the bottom of the advert. We are adding the following disclaimer:*

*'WARNING: The following show features demos performed either by professionals or under the supervision of professionals. Accordingly, Brand Developers, Ltd. and the producers must insist that no one attempt to recreate or re-enact any demo or activity performed on this show without following the safe operating procedures included in the owner's manual. Please read, understand and follow all safety rules and operating instructions in the included owner's manual before using this product. '*

*This disclaimer is a modified version of the disclaimer opening for the controversial show JACKASS on MTV, which, if you're not familiar, is known for outrageously dangerous stunts. SUPER: 'This is a demonstration only. Please always follow the safe operating procedures included in the owner's manual.'*

*We look forward to your positive agreement on our point of view.*

## **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 depicts dangerous, unsafe behavior that could potentially cause injury.

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

The Board considered whether the advertisement was in breach of 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 depicts two men (Billy Mays and Anthony Sullivan) performing renovation tasks as they and the voiceover provide information about the benefits and many functions of the dual saw.

The minority of the Board considered that inappropriate use of power tools can be very dangerous, and it is not ideal to depict an activity such as using a saw with the guard lock open in an advertisement.

The majority of the Board considered that the men in the advertisement are clearly professional handymen and their technical ability is in keeping with someone who is confident and competent with home renovations. The majority of the Board considered that most members of the community would recognise that the handymen were not acting on an uneducated impulse but were performing renovation activities with due care and consideration. The majority of the Board determined that the advertisement did not depict or condone unsafe behaviour and noted that the handling of the tool in this manner was done so as to display how the product differs to other saws by way of superior safety. The Board noted that the product itself, when purchased, comes with multiple warnings and statements regarding the safe use of the tool.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

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