



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph: (02) 6173 1500 | Fax: (02) 6262 9833
www.adstandards.com.au

Case Report

1	Case Number	0147/13
2	Advertiser	Hollard Financial Services
3	Product	Insurance
4	Type of Advertisement / media	TV
5	Date of Determination	22/05/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

A young man is shown using a nail gun and then later a hammer inside of the framework on a building site for a home whilst explaining about the insurance cover he receives from Real Insurance.

THE COMPLAINT

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

The advert features a gentleman playing a carpenter, using a nail-gun in one scene; without any protective equipment (eye protection, noise protection etc.) In a second scene in the advert, the same gentleman is up a ladder using a hammer in the same manner; without any protective equipment.

How can an insurance company promote the use of using no safety equipment when spruiking income protection - surely should they receive a claim from an individual who was not using personal protection gear, they would reject the claim!

THE ADVERTISER'S RESPONSE

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

The complainant is concerned that the principal actor in the advertisement is portraying a carpenter who is in the process of constructing a home and in doing so comments on the value he see in the insurance product being advertised.

The complainant has taken exception to the fact that the actor is not wearing certain protective equipment, in particular eye and ear protection when he purports to operate the equipment.

In addition the complainant alleges that we are advocating practices that would invalidate claims under the policy being advertised.

We acknowledge that our advertisement does have a segment as described. However we dispute that this portrays a dangerous use of the items and we can confirm that the use as portrayed in the advertisement would not prejudice the ability of a policyholder to successfully claim under the policy being advertised.

At the outset we can confirm that the advertisement the subject of the complaint is not currently being broadcast and was last broadcast some near 2 weeks from the date of this letter.

Whilst we may in future re-broadcast the advertisement for a limited period, at present the advertisement has, given their relatively short life cycle, "passed its useful shelf life". We would of course take into consideration any feedback received from the public or the ASB when considering whether to broadcast in the future.

For the avoidance of any future doubt, we have also as a matter of prudence briefed both our marketing team and our production company as to the concerns and asked that they incorporate these in any future productions of this nature.

In any case, in response to the complaint we provide the following.

Whilst the actor who portrays the "tradie" is not a tradesperson by profession, the surrounds in which the advertisement was filmed was indeed an operational building site and the equipment was supplied by the site operators.

At all time during the filming the presence on the site was supervised by representatives of the site operator and guidance was sought from them as to appropriate and safe practices.

They did not raise the manner in which the activity was portrayed as being a concern.

Further, whilst we are not specialists in the area of industrial and work place health and safety legislation, we have in preparation of this report conducted analysis of such requirements within Australia. This research shows that the obligations are broadly aligned in each state and territory but it appears that they are documented and regulated by differing entities.

For the purposes of our submission, given the advertisement was filmed in New South Wales (NSW), that the entity on whose behalf it is broadcasted it is based in NSW and, given the anonymous nature of the complaint have no guidance as to the state in which the complainant viewed the advertisement, we have limited ourselves to the legislation within NSW.

From our review the primary government entity charged with oversight and the giving of guidance on these matters is Workcover.

We have extracted the following guidance with respect to the use of personal protective equipment:

Employers' obligations to personal protective equipment

You must provide personal protective equipment (PPE) to workers and visitors as a control measure when work hazards are unable to be eliminated or adequately controlled by other methods. PPE can be used as an interim control measure whilst employers develop and implement more effective control measures, wherever possible.

Clause 15 of the Occupational Health and Safety Regulation 2001 states that the employer must:

- determine if PPE is the most appropriate control, based on risk assessment*
- ensure that the equipment provided is appropriate for the person and controls the risk for that person*
- ensure that the person using PPE is informed about any limitations of the equipment*
- ensure that appropriate instruction and training is provided so that the equipment controls the risk for the person*

- *ensure that additional training for supervisors so they understand their role in enforcing the use of PPE*
- *provide or pay for all PPE for every person at risk*
- *ensure that the equipment is properly maintained, repaired or replaced as necessary to control the risk for the person*
- *provide clean and hygienic equipment*
- *ensure that equipment is stored in a place provided by the employer for that purpose*
- *Clearly identify places of work where PPE must be used*
- *Individually issue PPE if necessary*
- *ensure the PPE conforms to the relevant Australian Standard, where appropriate.*

For confirmation the above can be found at:

<http://www.workcover.nsw.gov.au/healthsafety/healthsafetytopics/Personalprotectiveequipment/Pages/PPEobligations.aspx>

From our research it appears that the legislation does not mandate the use of such equipment but rather tasks the organisation and individuals concerned to consider whether in the circumstances PPE's they are the most appropriate manner in which a risk is to be mitigated.

In the absence of any guidance from the supervising site operator we are of the view that the devices were used in an appropriate manner in the advertisement, that they had considered the environment and that PPE's were not required either in the reality of the filming or the perception that the advertisement could give.

To this point it appears that the complaint is also concerned about the perception that could have been obtained by a viewer as to the appropriate uses of the devices.

As I have outlined above, it is our view that the manner by which the device was used was appropriate. However, even if it wasn't best practice, we believe that the view that this would influence the users of such equipment is not a reasonable one for the following reasons:

- The advertisement was not portraying any message with regard to the use of such equipment. The main focus of the advertisement was never about the equipment and its uses but rather an insurance product.*
- An advertisement run for a relatively short period of time is not enough to offset other messages in the public domain about the prudent use of such equipment.*
- People do not look to advertising of insurance products as an authority on safe work practices.*

Conclusion

In conclusion we have outlined that in producing the advertisement HFS had taken what it believed to be prudent direction all relevant safety precautions.

Further we have demonstrated that the use of such equipment is not mandatory but is discretionary based on reasonable self-assessment by the responsible entity or the individual themselves.

We have also argued that it would be unreasonable for a viewer to take this advertisement as an endorsement of a particular manner of using such equipment.

Accordingly we request that the Advertising Standards Board find that there is no reason to restrict the use of the advertisement in this instance.

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 concerns that the advertisement depicts actions in a

building situation that would be considered unsafe and likely not be covered by an insurance company in the instance of a claim being made.

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

The Board felt that the issue of whether or not the company would cover an accident that could happen where a person was not wearing protective gear is not a matter that can be adjudicated on by the Board and that this would be a matter for an individual to ascertain when seeking the right insurance product for their own situation.

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 a home handy man working on the building site of what appears to be his family home. The man is using a nail gun and other tools and devices in different scenes. The voiceover outlines the benefits of having income protection and the contact details for Real Insurance to discuss a plan suitable for various scenarios.

The Board noted that there is a genuine community concern for workplace health and safety including construction sites and around the home and that much community education and workplace compliance has attempted to change the culture of safe behaviour and the use of protective gear on commercial building sites.

The Board viewed the advertisement and discussed the scenes of the man using tools and equipment without wearing personal protective gear such as eye protection and a hard hat. The Board also discussed the scene of the man seemingly up a ladder and using a hammer without a harness or restraints.

The Board noted that legislation does not always require use of personal protective equipment (PPE), so what is depicted is not contrary to law.

The Board considered that although this may not be the preferred manner in which to carry out these tasks, it is a very common behaviour carried out by many tradesmen as well as home renovators. The Board considered that most reasonable members of the community would consider this behaviour as common practice and that as this is not the focus of the advertisement, it is unlikely to encourage or promote this type of behaviour.

The Board considered that the advertisement is not encouraging or condoning the performing of tasks without appropriate protection and does not portray material which is contrary to prevailing community standards on workplace safety.

The Board determined that the advertisement did not depict material which would be in breach of Section 2.6 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.