



Case Report

1	Case Number	0162/17
2	Advertiser	Brand Collective
3	Product	Retail
4	Type of Advertisement / media	Internet
5	Date of Determination	26/04/2017
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

Online advertising. Showing 2 people on a motorcycle in the country. One image has the male model with his foot on the ground and the other image has both feet on the pegs.

THE COMPLAINT

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

I object to this advertising on the grounds that it is misleading with regards to safety and irresponsible given the efforts by government and other groups to encourage motorcyclists to wear adequately protective clothing. Indeed, in relation to helmet it could be seen as encouraging people to disregard the laws. I have included my email correspondence string below. Today I was contacted by [name provided] from Volley who advised me that Volley did not intend to take any action in response to my complaints. I advised him that I would pursue the matter with other authorities, hence this submission. Please see my complaint details in the emails below.

To: Online Support

Subject: Re: Volley contact form

Dear Volley,

Thanks for your reply.

You say that, “the imagery is not intended to endorse riding a motorcycle without proper protective gear”, but this claim is demonstrably false in that the clear message being conveyed is that Volleys can be worn ANYWHERE including riding a motorcycle. The imagery DOES endorse riding without proper protective gear by the very fact of showing it. How could one conclude otherwise? Volley’s ‘intention’ is undermined by the facts of the imagery.

There are no laws in Australia governing the wearing of any motorcycle clothing other than high viz clothing for learners and the requirement to wear a helmet. Volley’s images clearly condone not wearing helmets by the very fact that the riders are not wearing helmets. How could any person conclude that because the riders are not wearing helmets, you are not condoning motorcycle riders not wearing helmets? You should also note that, “Helmets approved to Australian Standard 1698 give your head the best protection available. Approved helmets are compulsory when riding on any road, in State forests and State parks, and on all motorcycle club tracks.”

(<http://www.depi.vic.gov.au/forestry-and-land-use/visiting-parks-and-forests/visiting-state-forests/activities/trail-bike-riding/ride-safe-ride-legal>) So, your point about the imagery not being “... depicted on a public road.” is not relevant here because there is no way for an audience to tell what the legal status is of the off-road area the motorcyclists are traversing. It is misleading to show an image of a motorcycle being ridden off-road, with riders not complying with helmet laws, as if riding off road necessarily means that the helmet laws do not apply. Besides this, your advertising explicitly says “ANYWHERE” and does not distinguish between public roads, private property or off road tracks in State forests or parks or on club tracks. Furthermore, as I mentioned previously, riding off road is arguably as dangerous, if not more so, than riding on public roads.

Sadly, your audience’s imagination, subjected to this campaign, may lead them to be seriously injured and potentially break helmet laws. It is not responsible of Volley to use the notion of “ANYWHERE” in relation to footwear, when all the evidence, professional and government advice is aimed at encouraging motorcyclists to wear adequately protective gear. Volley shoes are not adequately protective for motorcycling and this is a demonstrable fact.

As I said in my first email to you, it is a problem when a clothing company gives social license to motorcycling with completely inadequate clothing protection, but this is in fact exactly what the imagery is conveying to your audience. I understand that Volley may not want to condone any illegal activity, but unfortunately, in the case of helmet laws, this is effectively what the imagery does and seems to reflect inadequate research and appreciation of the seriousness of this matter by Volley. By showing images which ‘resonate’ with your audience and that also show unsafe clothing practices, Volley is not only misleading its audience but also being disrespectful both to their audience, the legal requirements and the pursuit of adequate protective clothing by governments and motorcycle groups throughout Australia. It is very sad that Volley would see fit to undermine this messaging in its ANYWHERE campaign.

Once again I ask Volley to withdraw the motorcycling related advertising in the ANYWHERE campaign and to support positive messaging for protective clothing for motorcyclists. I look

forward to your serious consideration of, and response to, this matter. Thank you.

From: Online Support

Date: Wednesday, 22 March 2017 6:00 pm

Thanks for your email. We have taken your feedback on board and completely understand your point.

However, this is a creative campaign and the imagery is not intended to endorse riding a motorcycle without proper protective gear, nor is any of the imagery depicted on a public road.

The imagery is there purely to resonate with our audience and capture their imagination, not condone any illegal activity.

Thanks again for reaching out to us and we hope you have a lovely day.

*Hello customer service crew, we have an enquiry from [name provided]
Dear Volley,*

I write in reference to your 2017 ANYWHERE campaign and the images of people on motorcycles in both print and electronic media formats e.g. <https://www.volley.com.au/campaign.html>. I think it is a problem when a clothing company gives social license to motorcycling with completely inadequate clothing protection. Whilst the image shows the motorcycle is 'off-road', it is arguably just as dangerous to wear inadequate protection there as it is on the road. Beyond the inadequate Volley footwear which is being promoted, the rider wears a leather jacket which is not properly secured and passenger has no protective clothing whatsoever – again giving social license to inappropriate standards of dress for motorcycling which runs contrary to the nation-wide road safety messaging that the Australian government is pursuing. If Volley want to make a motorcycling boot which provides adequate protection I would be the first to applaud their efforts, but the 'sandshoes' promoted as being suitable to be worn 'ANY WHERE' is clearly very bad advice and increases the risk to safety for motorcycle riders. Perhaps Volley would consider making images which show the paramedics and surgeons wearing Volley sandshoes as they repair the shredded and broken bodies of motorcyclists who have failed to wear adequately safe clothing? I ask you to withdraw this particular motorcycle related advertising immediately. I have written to the Victoria Motorcycle Council and the Victorian Minister for Roads and Road Safety about the inappropriate nature of this advertising. I look forward to hearing your response to these concerns. Thanks.

THE ADVERTISER'S RESPONSE

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

It is alleged that the advertisement raises issues under section 2.6 of the AANA Advertiser Code of Ethics (the Code).

This section states: '2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.' Your letters of 30 March 2017 also express this as "2.6 Health and Safety Unsafe Behaviour". We also refer to AANA Code of Ethics Practice Note 2017 on Health and Safety.

The images complained are part of the Volley "ANYWHERE 2017" advertising campaign, and are two (2) of (18) eighteen images comprising the campaign "Lookbook". The target market is fashion conscious, men and women aged 20 to 35, and the campaign aesthetic draws on Volley's history as an iconic 1970s brand. The intention of the campaign is to promote the Volley product, engaging the target market through the following concept: "Fight for FREEDOM and stand for life being LIVED. LOVE can't be denied, so embrace it, RUN FREE & GO ANYWHERE."

The Lookbook in its entirety shows a young couple enjoying life together in various locations (such as a church, a field, the beach, a café and a forest) and travelling between them by various modes of transport (including their own feet, a boat and a motorcycle). We note that the images complained of are only two (2) of the eighteen (18) images comprising the Lookbook.

We note that Australian government agencies and motoring groups have conducted extensive public education programs in the past 20-30 years around road safety laws and the consequences (both legal and personal) of disregarding these laws. We therefore submit that the Australian community is very well informed about these issues, including current mandatory helmet laws and the importance of wearing appropriate clothing for motorcyclists. Reviewing the elements of section 2.6 of the Code, we submit that there is no contravention:

- We believe that (particularly in light of community understanding of road safety issues), it is clear to the reasonable adult and teenaged viewer that the Volley "ANYWHERE 2017" campaign:*

- o is for a well known, lifestyle fashion and footwear range and evokes a nostalgic aesthetic; and*

- o is not an advertising campaign for motor cycle riding apparel or accessories, or for motorcycles; and*

- o is not a public service announcement, nor an educative program about road safety and/or appropriate apparel for motor cycle riding, and is not intended to be taken as such; and*

- o does not promote, encourage or condone riding a motor cycle without a helmet or other appropriate attire; and*

- o does not promote, encourage or condone disregard for the law or road safety rules, including compulsory helmet laws.*

- o The images do not show people engaging in unsafe behaviour on motorcycles, such as racing, speeding or doing "wheelies" or "burn outs". Indeed, in one image, the motorcycle is clearly stationary in a paddock and one of the models has his foot on the ground.*

- o The campaign does not feature children and is not pitched at children. It is unlikely that child viewers of the campaign (if any), would be encouraged to ride a motorcycle without suitable protective gear, or in an unsafe fashion, by virtue of seeing these images.*

In reviewing the other sections in section 2, we do not consider that any are relevant to these complaints or the Volley "ANYWHERE 2017" campaign.

Conclusion

1. We submit that the advertisements do not breach Section 2.6 (or any other section) of the

Code as they do not depict or condone:

- *unsafe behaviour by people riding motorcycles; or*
- *behaviour that is not consistent with prevailing community standards of Health and Safety.*

2. The advertisements should be considered in the context of:

- *the target audience of sophisticated adults aged 20-35 years; and*
- *the comprehensive road safety education campaigns by Australian government agencies and motoring groups over the past 20-30 years, which have resulted in a high level of community understanding of road safety laws and issues (including mandatory helmet laws).*

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 two people on a motor bike not wearing helmets which is dangerous and illegal.

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 this internet advertisement features two (2) images. The first one is a couple in a field on a motorbike, neither of whom are wearing a helmet. The woman is sitting behind the man and has her legs around his waist. The man is seated with his foot on the ground. The second image shows the couple front on and the man’s feet are on the pegs and the girl has her arms raised and is leaning back slightly.

The Board noted the complainant’s concern that the riders are not wearing helmets.

The Board noted the advertiser’s response that the image in the advertisement was taken as part of a broader campaign and that this image comprises a small part of the campaign.

The Board noted Section 270 of the Australian Road Rules (February 2012) which provides:

- (1) The rider of a motor bike that is moving, or is stationary but not parked, must:
 - (a) wear an approved motor bike helmet securely fitted and fastened on the rider’s head; and
 - (b) not ride with a passenger unless the passenger complies with subrule (2).

Offence provision.

Note Motor bike and park are defined in the dictionary.

- (2) A passenger on a motor bike that is moving, or is stationary but not parked, must wear an approved motor bike helmet securely fitted and fastened on the passenger’s head.

The Board noted the advertiser's response that the campaign is not an educational campaign but rather a fashion shoot and that the educational component of road safety regarding motor bikes and accessories is sufficiently covered by government campaigns.

The Board noted that it had upheld an advertisement for Lebara mobile (0345/16) that showed a still picture of a couple on a bike without helmets.

Similarly in this advertisement, the Board noted that in image 2 while it is not clear if the motor bike is moving or stationary the Board considered that the provisions of the Australian Road Rules are very clear that even if a motor bike is stationary, a helmet must be worn by both the driver and any passenger. The Board noted that the exception to this rule is if the motor bike is parked and considered that as the male driver has his feet up on the pegs, there is a strong suggestion that the bike is not parked but is in the process of being used and in the Board's view the position of the woman with her head back and arms raised is strongly suggestive of the motor bike being in motion across the paddock.

A minority of the Board considered that in relation to image 1, the man with his foot on the ground was a very clear indication that the bike was not in motion. In the Board's view in the context of a fashion shoot, the use of the models on the bike was to appeal to the target audience of young adults and was not a suggestion that motorbikes should be ridden without the use of a helmet. The Board considered that the stylised nature of the image made it clear that it was a staged photo for the promotion of the brand and did not amount to an image that was condoning or encouraging unsafe driving practices and did not breach section 2.6 of the Code.

The majority of the Board however referred to the road rules and noted that the rules state that even if a motor bike is stationary, a helmet must be worn by both the driver and any passenger.

The Board considered that the advertisement did breach the Australian Road Rules with regards to the wearing of helmets while on a motor bike and noted that those road rules are the prevailing community standard on the safe use of motorbikes.

The Board considered that the context of a fashion shoot, which could be clear to a consumer, did not excuse the depiction of unsafe images around an issue of significant public concern such as road safety.

Based on the above the Board determined that the advertisement did depict material contrary to Prevailing Community Standards on safe driving practices.

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

You have asked us to provide an Advertiser's Statement advising of the measures that Brand Collective has taken in response to the determination. I am instructed that the following measures have been or will be taken:

- Two images from “Volley 2017 ANYWHERE” Lookbook showing couple sitting on motorbike - The campaign imagery has been removed from www.volley.com.au to allow for advertising of current “Volley 40% Off Sale”. When the Volley 2017 ANYWHERE campaign imagery is reinstated on the website (anticipated to be in the next 2-4 weeks), these two images will be removed from the Look Book.