



**ADVERTISING
STANDARDS
BOARD**

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Case Report

1	Case Number	0315/17
2	Advertiser	Lovett Industries
3	Product	Sport and Leisure
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	26/07/2017
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

We are showcasing by way of an artistic visual display our electric bicycle called the Greaser this is an electric bicycle that is legal to be ridden on pathways and roads in Australia as well as European countries such as Germany, France and Italy

THE COMPLAINT

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

The bike looks great however the ad in question shows a woman riding without a helmet, on footpaths and even riding and then walking the bike on actual train tracks after riding alongside a train. This seems like a bad idea and not something to be promoted.

THE ADVERTISER'S RESPONSE

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

The video that I created was initially to display ones artistic and creative freedom. We do promote our Greaser electric bicycle in other countries around the world, some laws here in Australia are not applicable in other countries if the world. The scene of the woman riding on a railway track was filmed on an abandoned railway track that has not been in use for the last 30-40 years so when creating this my goal was to make it eye catching and artistic. I did not envision someone making a complaint about this, it seems we have taken away people's commonsense. For me expressing my artistic side by way of video is a beautiful thing. The scene where the woman is riding past train carriages covered in Graffiti was also shot in a location where the train carriages were abandoned for some long periods of time. The bicycle was designed here in Australia yet by advertising via Facebook advertising I cannot control who is tagged in the post.

I also use the video to promote my bicycle in other countries where it is not illegal to ride without a helmet. All the scenes in the video were composed and shot in a way that was not harmful to the woman riding or other bystanders, all the scenes were filmed by professionals in a controlled manner in areas In areas I believe we not legally necessary to wear a helmet.

If you require any further clarification please let me know, also can you please point me to where the exact video is located by way of a direct link so I can see the video in question? We may be talking about 2 different videos. Because as I mentioned we advertise the same video in other countries where laws are different, it may be that someone who has complained has been tagged in an advertisement created for another country. I do not believe there is a way to stop people from one country tagging others in other countries and cross promoting. I have also made contact with the person whom I believe placed the complaint I believe they are a competitor wanting to disrupt my product sales.

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 unsafe behaviour with images of a woman riding a motorbike without wearing a helmet.

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 this Facebook advertisement features an electric bike called the ‘Greaser.’ A woman is shown riding the bike alongside and on railway tracks, along a path and near the beach. The woman is not wearing a helmet.

The Board noted the advertiser's response that the advertisement was filmed to be used in various countries and that it is not illegal to ride without a helmet in some of these places. The advertisement is designed to show the product and to display artistic and creative freedom.

The Board noted that advertisements shown in Australia must meet Australian community standards as set out in the Code of Ethics.

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The Board noted that for a motor bike Section 270 of the Australian Road Rules (February 2012) applies and provides that: for a motorbike:

(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).

(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 that it had upheld an advertisement for Lebara mobile (0345/16) and Brand Collective (0162/17) that showed a still picture of a couple on a motorbike without helmets.

The Board noted the NSW Road Rules 2014 section 256 in relation to Bicycle helmets states that:

(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.

The Board noted that it had upheld an advertisement for Dads 4 Kids (0202/13) that showed a scene where the dad is not wearing a helmet while riding a bicycle.

The Board noted that the bike in the current advertisement is an electric bike and based on the specifications of the bike particularly relating to compliance standards, and power output the Road Rules do not apply.

The Board noted that the issue of road safety is a very important community concern and that there are Australian community standards regarding wearing bike helmets for particular bikes as outlined above.

The Board noted that there is currently no national law regarding the wearing of helmets while riding an electric bike but noted that community standards are very clear on the issue of health and safety whilst riding in general, be it a motorbike or a bicycle or an electric bike of this nature. The Board considered that a depiction of an adult riding a bike without a helmet is a depiction which is in breach of these community standards.

The Board noted that whilst the advertisement could be seen in various countries, it 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 riding practices and 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

The video is not actively being advertised anymore.