



## Case Report

1	Case Number	0335/17
2	Advertiser	eHarmony
3	Product	Professional Service
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	09/08/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a man in a cafe checking out an eHarmony profile on his mobile phone. We then see a woman knocking on the window and waving to attract his attention. The woman comes in and joins the man and we see them talking happily to one another before leaving the cafe, talking and smiling. The next scene shows the couple in the back seat of a car: the woman has her head and an arm leaning out the window whilst the man watches her, smiling. We see the couple shopping together, getting food then enjoying the scenery from a roof top. On screen text reads, "eHarmony. Join now to find your spark".

### THE COMPLAINT

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

*Not sure who slept on the job letting this go through as ok. Completely illegal activity as part of the ad.*

### THE ADVERTISER'S RESPONSE

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

*The scene where the girl puts her arm out of the window is very brief (1s) and meant to metaphorically represent her joy and abandon from having met someone that makes her so happy and free to be herself. It is in no way promoting dangerous actions in general or a part of a situation that would be taken by most people to encourage dangerous actions. The primary context and takeaway is sharing in what is a great date – the sum of both the characters actions promote finding love and the benefits of meeting someone right for you and we believe the vast majority of people will have only that takeaway from watching the ad. In summary we believe that this ad would not encourage or cause anyone to act irresponsibly or dangerously as the action highlighted by the complainant is isolated, not in the context of dangerous activities and very brief in the context of the whole ad, making up 3% of the ads total time and is not a key takeaway from the ad.*

*Additional response regarding the seat belt. The girl is wearing a lap belt, that is why you cannot see the seatbelt visibly over her shoulder. You can also see that she is sitting in the middle (hence the lap belt) and also the guy next to her is clearly wearing a seat belt, which further proves that they would both be wearing a seatbelt. The girl is wearing a lap belt, that is why you cannot see the seatbelt visibly over her shoulder. You can also see that she is sitting in the middle (hence the lap belt) and also the guy next to her is clearly wearing a seat belt, which further proves that they would both be wearing a seatbelt.*

## **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 complainants’ concerns that the advertisement depicts a passenger in a moving vehicle with her arm out of the window which is 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 television advertisement depicts a couple on a date and in one scene they are seated in the back of a car and the woman leans out of the window.

The Board noted it had previously upheld similar complaints about an advertisement featuring Delta Goodrem leaning out of a moving vehicle in case 0293/17 where:

“The Board noted the complainants’ concerns that the advertisement depicts Delta with parts of her body outside of the moving vehicle. The Board noted that Section 268, Part (3) of the Australian Road Rules ([http://www.legislation.act.gov.au/ni/db\\_37271/current/pdf/db\\_37271.pdf](http://www.legislation.act.gov.au/ni/db_37271/current/pdf/db_37271.pdf)) provides:

“A person must not travel in or on a motor vehicle with any part of the person’s body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal...”

The Board noted that in one scene Delta has her head leaning out of the open window with her arm resting just outside the vehicle, and in a later scene Delta has her elbow resting on the open window with her hand resting on the top of the window frame, external to the vehicle. The Board considered that these depictions are a breach of the Road Rules.”

The Board noted in the current advertisement that we see a woman with her fully extended arm and her head leaning out of the window of a moving vehicle and considered that, consistent with its previous determination in case 0293/17, this is a clear breach of the Australian Road Rules.

The Board noted that there are three scenes which depict a woman seated in the rear passenger seat of a moving vehicle and considered that in the first two of these scenes it is not clear if the woman is wearing a seatbelt or not. The Board noted the advertiser provided additional information that “the girl is wearing a lap belt, that is why you cannot see the seatbelt visibly over her shoulder. You can also see that she is sitting in the middle (hence the lap belt) and also the guy next to her is clearly wearing a seat belt, which further proves that they would both be wearing a seatbelt.”

In the Board’s view the overall impression given is that the woman would also be wearing a seatbelt in each scene. The Board considered that the advertisement did not depict, encourage or condone the non-wearing of a seatbelt in a moving vehicle.

Overall the Board considered that the depiction of a passenger in a moving vehicle with parts of their body external to the car are a breach of Prevailing Community Standards on health and safety around travelling in motor vehicles and 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**

The add has been pulled off air more than a month ago, even before the complaint was made. We don’t intend to use this ad anytime soon, so no edits have been made.