



Case Report

1	Case Number	0345/16
2	Advertiser	Lebara mobile
3	Product	Mobile Phone or SMS
4	Type of Advertisement / media	Poster
5	Date of Determination	24/08/2016
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

This advertisement features an image of a man and woman on a scooter. The woman is standing up behind the seated man and neither are wearing helmets. The woman has her arms outstretched and the man is gripping the handlebars. The text reads, "Lebara Mobile. 5GB Unlimited...National Plan \$29.90".

THE COMPLAINT

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

The two people on the motorbike are not wearing helmets. The rear passenger appears to be standing up off her seat.

THE ADVERTISER'S RESPONSE

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

We refer to the complaint made in relation to the 'Lebara – 5GB Unlimited Plan' advertisement featured at Platform 6, Town Hall Railway Station, Sydney (Advertisement) and thank you for the opportunity to provide a response.

We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion.

Having considered the Advertisement and the complaint, and the requirements of the AANA Code of Ethics (Code), we respectfully submit that the Advertisement does not contravene the Code.

The Advertisement features a couple on a motorcycle which includes the text, "5GB, unlimited national talk, text and MMS and up to 150 international minutes". The Advertisement has been used as part of a broader campaign to feature the inclusion of 150 international minutes as part of Lebara's \$29.90 National Plan.

Lebara is one of Europe's fastest growing mobile companies and we currently operate in eight countries. Our current National Plan generally appeals to individuals in the age range of 21-45 years that may have family or friends living or travelling abroad. Prior to May this year, Lebara customers on an unlimited national plan were required to pay extra (outside their plan inclusions) for making overseas calls – the recent addition of the 150 international minutes has been a great way for Lebara to provide a broader appeal to those customers who enjoy calling friends or family abroad.

The Advertisement was intended to convey to customers the freedom of having a large amount of data (5GB), unlimited national talk, text and MMS with the addition of 150 international minutes – giving the user the freedom to get on with their life and not worry about their phone plan or data usage, whether they call others in Australia or friends or family overseas.

We submit, having regard to Section 2 of the Code that:

2.1 the Advertisement does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief, and accordingly, the Advertisement does not contravene Section 2.1 of the Code;

2.2 the Advertisement does not employ sexual appeal, and accordingly, the Advertisement does not contravene Section 2.2 of the Code;

2.3 the Advertisement does not contain any violent graphics or imagery, and accordingly, the Advertisement does not contravene Section 2.3 of the Code;

2.4 the Advertisement is not in any way sexually suggestive, and accordingly, the Advertisement does not contravene Section 2.4 of the Code;

2.5 the Advertisement does not feature strong or obscene language or language which is inappropriate for the relevant audience and medium, and accordingly, the Advertisement does not contravene Section 2.5 of the Code; and

2.6 the Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images.

We acknowledge the Complainant's concern that the couple on the motorcycle who are featured as part of the Advertisement are not wearing helmets and that the rear passenger appears to be standing up off her seat.

The picture of the couple is an image that has been used as part of our business in many countries. Indeed, it is an image that was taken overseas and conveys a couple perhaps on holidays, outside of Australia, where motorcycle laws are more relaxed.

The Advertisement does not feature minors and it does not show any unsafe practices, it does not convey the persons other than in a stationery position, the couple's hair or clothing do not appear to be moving and the hat on the girl is fixed to her head (which would unlikely remain on her head if the bike was moving at any speed). There are no other persons or cars featured nearby, nor is it clear that they are even on a street.

The Advertisement is merely used as a way to convey a sense of freedom and being carefree, typical of a person on a holiday, and accordingly, the Advertisement does not contravene Section 2.6 of the Code.

We submit, having regard to Section 3 of the Code that:

3.1 the Advertisement does not feature children, nor is it intended to appeal to children, and accordingly, the Advertisement does not contravene Section 3.1 of the Code;

3.2 the Advertisement is not promoting motor vehicles, and accordingly, the Advertisement does not contravene Section 3.2 of the Code; and

3.3 the Advertisement is not promoting food or beverages, and accordingly, the Advertisement does not contravene Section 3.3 of the Code.

On the basis of the above, we do not consider that the Advertisement contravenes the Code, having regard to Sections 2 and 3 of the Code, or otherwise.

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, and one of them is also standing up.

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 poster advertisement features an image of a couple on a motorbike, neither of whom are wearing a helmet.

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 overseas where "motorcycle laws are more relaxed". The Board noted that the Code of Ethics says, "Prevailing Community Standards on health and safety" and that this is the standards of Australia regardless of what the laws are in the country where an advertisement was made or originally shown. 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 motor bike is in a stationary position and it is not clear whether the motor bike is even on a street.

The Board noted that 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 couple are both on the motor bike 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 background scenery is strongly suggestive of the motor bike being on a road-related area.

The Board considered that the advertisement did breach the Australian Road Rules with regards to the wearing of helmets while on a motor bike.

The Board noted the complainant's concern that the passenger on the motor bike is standing up.

The Board noted that it is not clear whether the motor bike is moving or not and considered that the overall impression is that the motor bike is in the process of being used and in the Board's view a depiction of a passenger on a motor bike standing up with arms outstretched is a depiction of unsafe behaviour.

Based on the above the Board considered 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

We refer to the decision made by the ASB to uphold the complaint, in relation to complaint number 0345/16.

We wish to re-iterate that we are committed to conducting all advertising to the highest standards. We respect the decision made by the ASB and advise that we are in the process of finalising new advertising to replace the existing advertisements. We anticipate that the replacement advertisements will be rolled out within the next few weeks.

INDEPENDENT REVIEWER'S RECOMMENDATION

THE DETERMINATION ON REVIEW

ADVERTISER'S RESPONSE TO IR DETERMINATION