



Case Report

1	Case Number	0438/15
2	Advertiser	Bingle Insurance
3	Product	Insurance
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/11/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

On 18 October 2015, Bingle launched a new television advertisement featuring our lead talent Eric, roman riding two singing horses down a secluded and deserted beach singing Daryl Braithwaite's 90's classic Australian song 'Horses'. The TVC shows how simple and fast it is to get a quote with Bingle. This is dramatised by the concept of being so easy that even Eric could get a Bingle quote while riding two horses and singing 'Horses' while two horses are singing. The TVC is designed to advertise the fact that consumers can readily get a quote in under 2 minutes with Bingle, so no matter what people might prefer to be doing in their spare time, getting a quote on their car insurance from Bingle need not get in the way. The creative involves a fictional character named Eric, who the viewer first sees riding on top of two white horses down a secluded beach on a sunny morning. Eric has one foot on each horse, the beach is deserted with no one around for miles and this gives Eric the opportunity to start belting out his favorite 90's Australian classic song 'Horses' while he is still standing a top of his two steeds. Eric continues cantering down the beach singing 'Horses' and filling out a Bingle quote on his SMART phone. The 'Horses' music continues to play as we pull back to reveal the horses are actually singing the backup vocals with Eric. As Eric finishes the chorus "I'll pick you up, I'll pick you uuupppppp" the camera fades into the end hero frame which shows the green Bingle mini driving along a country road with the two white horses cantering freely alongside the car.

THE COMPLAINT

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

Encourages people to operate a mobile phone while operating a vehicle - not only is a riding a horse legally considered operating a vehicle under the NSW Road Act, but the horses galloping beside the car indicates that you can consider that driving a car is like riding two horses, and hence OK to operate a mobile phone doing so.

THE ADVERTISER'S RESPONSE

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

We have reviewed the complaint and the TVC in light of the provisions of the AANA Code of Ethics ("the Code") and provide our response below. We note that the nature of the complaint relates to section 2.6 of the Code which states that:

Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

The complainant's concerns can generally be described as:

- that the TVC encourages people to operate a mobile phone while operating a vehicle (as horses are technically a vehicle); and*
- that horses galloping beside the car implies that Bingle are likening a horse to a motor vehicle and that be extension, that Bingle are encouraging the use of a mobile phone with driving a motor vehicle.*

The key points that Bingle considers should be taken into consideration by way of response are as follows:

a) As noted, the TVC went through both an internal legal and external compliance approval process. The advertisement received advertising approval from CAD with a "W" rating, and our media agencies have made sure that all our programming is booked in accordance with the W guidelines;

b) The TVC is clearly targeted at adults, who are now may soon be in the market for insurance and uses heightened fantasy and exaggerated situations that members of the target audience would easily comprehend and distinguish from reality. No children are depicted in the TVC;

c) The scenarios are obviously designed to be light hearted and comedic in value. The fact that the horses are also singing in the TVC and the whole concept of a man standing on top of two horses while singing is completely fanciful and in no way based on any form of reality. The voiceover tone when he explains 'and singing horses' is explained in a humorous and sarcastic tone further denoting it's just fantasy and make believe. The fact that the TVC is filmed in slow motion capture further highlights the heightened fantasy nature of the TVC;

d) We have reviewed the Australian Road Rules (ARRs) and acknowledge that the definition of a "vehicle" does appear to include "an animal-drawn vehicle, and an animal that is being ridden or drawing a vehicle". However, it would also appear that the ARRs only apply to vehicles and road users on "roads" and in "road-related areas". A beach that is not open to or ordinarily used by the public for driving, riding or parking vehicles is not a road or a "road-related area". In no way does the TVC give the impression that this particular beach is an area that is open to or used by the public for driving, riding or parking vehicles. In this regard we note that there are no other motor vehicles (or indeed people) visible in the TVC. The TVC does not suggest any connection whatsoever between riding a horse on a private secluded beach being akin to driving a car on a road;

e) The over dramatized stunt depicted in the TVC was filmed under controlled conditions, on a secluded private beach with no other people, horses or motor vehicles around. The actual

riding sequence was performed by a trained professional and all possibly safety measures were taken to ensure that the stunts were safe to perform;

f) To further highlight that Bingle takes seriously concern for the health and safety of the general public a safety message to further highlight we don't want people replicating the TVC was included ('Don't try standing on your own horses!'). Although we don't consider it is warranted, a further extension of this might be to amend the disclaimer to state 'Don't use your mobile or try standing on your own horses!';

g) In regards to the scene where the horses are galloping next to the car, we note that in the last frame when a car is actually visible, the driver has both his hands on the steering wheel and is concentrating on the road. At no time does Eric use his mobile phone while in the car. A reasonable person would not draw the conclusion that because the horses are galloping alongside the car that a horse by implication is a car. Again, this is an extension of the fantasy because it shows a car being driven rather than horses in a fantasy and the horses could be argued not to even exist but to be a figment of the main character's imagination (linked to the previous fantasy scene on the beach).

With respect to section 2.6 of the Code and for all of the above reasons, we do not accept the TVC depicts anything that is contrary to prevailing community standards in relation to health and safety. We further do not consider that Code sections 2.1, 2.2, 2.3, 2.4, 2.5 are relevant to the TVC. The TVC does not discriminate against any person based on any regulated reason, it doesn't depict any violence of any type, nor does it employ sexual appeal in an exploitative or degrading manner, nor does it insensitively treat nudity or have offensive language as a part of the TVC.

Bingle is committed to advertising in a responsible manner. Under no circumstances does Bingle encourage or condone unsafe practices while driving a motor vehicle. In relation to Code section 2.6 Bingle does not accept that there is any presentation or portrayal of health and safety within prevailing community standards. The TVC depicts a man riding along a beach acting out a roaming riding stunt on two horses while filling out a Bingle quote on his phone. In clearly legible text we have put a safety disclaimer that says 'Don't try standing on your own horses' as we don't want to encourage anyone in the general public to undertake a similar stunt. It is clear in context especially with the singing horses that the stunt is a heightened, fictional and fanciful representation of how easy a quote with Bingle is. The voiceover tone when he explains 'and singing horses' even is explained in a humorous and sarcastic tone further denoting it's just fantasy and make believe. The scene is clearly a performance and done under strict stunt conditions; eg: it's filmed on a private, deserted beach with no one else around. Furthermore, Eric our lead character is not riding the horses on a public road and filling out a quote on his mobile phone and in the end frame when Eric is seen in the car he is focused at the task at hand (driving) with both hands firmly on the wheel. Eric isn't seen driving or operating a mobile phone in a car throughout The TVC. Further to this there are a number of commercials on TV where they do depict people driving and doing other activities at the same time, eg: The Toyota Hilux ad where a man is shown shaving and doing his eye brows while driving. Inattention while operating an actual vehicle is seen on national TV and it's clear to see the Bingle ad is even further removed from reality in that it is horses on a beach juxtaposed to a car on a road. In line with previous comical and light hearted advertisements in the Bingle series, we believe that most community members would understand the scene is contrived reflecting a heightened reality stunt and that it does not endorse or condones the use of mobile phones while operating a motor vehicle.

Bingle does not accept that the TVC, nor its 15 second edited version, contravenes any part of section 2 of the AANA Code of Ethics. We appreciate the level of community concern on the issue of inattention on our roads especially when it comes to using a mobile phone while

*operating a motor vehicle.
Bingle rejects this complainant's allegations in full.*

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 concern that the advertisement depicts a scenario where the use of a mobile phone could be considered illegal and may encourage people to use a mobile phone inappropriately.

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 the advertisement features a man riding two horses at the one time along the beach. He is obtaining an insurance quote from Bingle as he rides. The man is singing (and the horses join in the song). The voiceover describes how easy it is to get a quote. The last scene shows a car being driven along a country road with one horse on either side galloping along with the car.

The Board noted the complainant's concern that riding a horse is considered as legally operating a vehicle and therefore the use of a mobile phone would be against the law.

The Board noted that an animal that is being ridden does meet the definition of a vehicle within the Australian Road Rules 2006 however the Board considered that the advertisement is clearly presenting an unrealistic and fanciful sequence which is not intended to be an actual portrayal of how a person could or should ride a horse.

The Board noted it had previously considered a complaint about a child riding a horse on a beach before turning in to a man driving a car in case 0298/13 where the Board:

"...considered that the overall image is a fantasy and does not amount to a depiction which is contrary to prevailing community standards on health and safety."

In the current advertisement the Board noted that the horses are singing and considered that overall the impression is given of a dream sequence and not an actual depiction of a man riding two horses.

The Board noted the complainant's concern that the advertisement also shows a car being driven with a horse either side of it and that the suggestion is that if you can ride two horses whilst using a mobile phone then you can drive a car whilst using a mobile phone.

The Board noted that in the scene showing the car accompanied by the horses we cannot see the man and therefore it is not possible to see if he is using a mobile phone. The Board noted that when the man is using the phone whilst riding the horses the voiceover says he is obtaining a quote and considered that the most likely interpretation is that now the man has car insurance he can drive his car. The Board considered that the complainant's interpretation that the advertisement suggests that it is okay to use a mobile phone whilst driving a motor vehicle is unlikely to be shared by the broader community.

The Board noted the final scene showing the horses next to the car and considered that there are no other road users visible and the scene is clearly fanciful and does not encourage or condone the driving of motor vehicles between horses on public roads.

Consistent with previous determinations in cases 0020/15 and 0227/15, the Board considered that this advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.