



Case Report

1	Case Number	0462/15
2	Advertiser	OPSM Pty Ltd
3	Product	Retail
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/11/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A man on a skateboard cruises through the streets of Sydney to meet his mates for a gathering on the beach. To get there, he wears his prescription Ray Ban sunglasses. Along the way, he passes by a diverse range of characters wearing designer sunglasses and a male voiceover says that summer looks even better through designer sunglasses. After skateboarding down a hill we see the man on the beach and then there is a close-up of his sunglasses and the OPSM logo.

THE COMPLAINT

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

As the man skateboards to the beach he is seen to be travelling at speed on a public road with a solid white line which is illegal in South Australia and also not wearing a helmet, also illegal. I feel this sends the wrong message to people which could possibly result in injury/death.

THE ADVERTISER'S RESPONSE

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

Thank you for the opportunity to respond to the complaint 462/2015 made in relation to the OPSM television commercial for Ray-Ban prescription sunglasses (“OPSM TVC”). Luxottica Retail Australia Pty Limited operates OPSM stores in Australia (there is no “OPSM Pty Ltd” as set out in your letter dated 6 November 2015).

We note that a complaint has been made about the OPSM TVC on the grounds that it has been alleged to breach clause 2.6 of the AANA Advertiser Code of Ethics which relevantly provides that Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standard on health and safety.

The OPSM TVC and the complaint

The OPSM TVC depicts a man in his mid to late 30s (the actor is 38 years old) looking through the lenses of his new Ray-Ban (polarised prescription) designer sunglasses towards the beach, where (thanks to his new prescription sunglasses), he can see the surf off the Bondi headland. He gets out his skateboard and is shown riding down the hill towards the beach, where he sees and passes several other people engaged in activities and wearing their sunglasses on a hot summer day. In a relatively short time, he arrives at the beach and greets his friends on the sand for drinks and a BBQ. In addition to the music, the voiceover states “Summer looks even better through designer sunglasses custom made with your prescription...OPSM loves eyes”.

A complaint has been made about the OPSM TVC on the grounds that it has been alleged to breach clause 2.6 of the AANA Advertiser Code of Ethics. The complaint states that “as the man skateboards to the beach he is seen to be travelling at speed on a public road with a solid white line which is illegal in South Australia and also not wearing a helmet, also illegal. I feel this sends the wrong message to people which could possibly result in injury/death”.

Luxottica Retail Australia Pty Limited’s response

Luxottica Retail Australia Pty Limited is a responsible company, and OPSM has operated in the healthcare and eye care sector for 83 years. We ensure that our advertising is pre-vetted by our in-house legal team prior to publication and in many cases, we have our advertising campaigns externally vetted by experts in the advertising law field. It has always been our intention for OPSM’s Advertising or Marketing Communications to comply with the law and not to depict material contrary to prevailing community standards on health and safety in the community.

Wearing a helmet when riding a skateboard

We have asked our external lawyers, King & Wood Mallesons, to review the laws throughout Australia as they pertain to any legal requirement to wear a helmet when riding a skateboard. They have confirmed that except in South Australia, there is no law or rule which requires adults to wear a helmet when riding a skateboard in NSW, Australian Capital Territory, Victoria, Queensland, Western Australia, Tasmania or the Northern Territory.

The OPSM TVC was filmed in the Eastern Suburbs of Sydney, NSW – the Bondi headland can be seen through the man’s glasses in the opening shot and he is skateboarding towards Coogee Beach, NSW. In NSW, there is no law which requires an adult skateboarder to wear a helmet while riding a skateboard on a road. Accordingly, the activity depicted is legal

where the OPSM TVC was produced and in the majority of jurisdictions where it has been and will be broadcast.

We submit that prevailing community standards on safety in the community would not expect that a mature adult male riding a skateboard wear a helmet. The man is riding his skateboard so that he does not have to try and park at the crowded beach: the OPSM TVC is intended to represent the feeling of freedom and escaping to the beach on a hot Sydney's summer day.

The OPSM TVC is intended to be cool and the Ray-Ban (prescription) designer sunglasses are intended to be the 'hero' or feature product in the OPSM TVC. The advertising agency and marketing team wanted the vibe of the OPSM TVC to be edgy, cool and hip. If the male lead wore a helmet covering his shaggy surfer dude haircut, it could detract from the cool and hip image that the Ray-Ban brand is intending to convey.

The man arrives safely at Coogee Beach, where he joins his friends. From the advertiser's point of view, we do not think the OPSM TVC sends any "wrong message to people which could possibly result in injury/death".

Dividing line

The Australian Road Rules state that people must not travel on a wheeled recreational device or wheeled toy (skateboard) on a road with a dividing line or median strip. There is no median strip shown in the OPSM TVC.

In the 30 second OPSM TVC, there are three shots where the man is shown on the skateboard and a dividing line is visible:

1 in the first shot (approximately 1 second), the main focus is on his white sandshoes on the skateboard with an incidental glimpse of a white dividing line on the right hand side of the screen;

2 in the second shot (approximately 1 second), his blue shirt and moving body is the focus of the shot: the road behind him shows a white line in the distance;

3 in the third shot (towards the end of the OPSM TVC), there is a key segment of approximately 2 seconds where the man is shown skateboarding down a road, almost at the beach. Importantly, the road does not have a dividing line in the middle of the road. Because the road does not have a dividing line or median strip in the middle of the road, there is no illegality or wrongdoing being committed by the skateboarder at this time. He is heading towards the beach, down a road with an incline – skateboarding is fun and depicted responsibly.

In the 15 second version of the OPSM TVC, only shots 1 and 3 are present. The complainant has alleged that the skateboarder is seen to be travelling at speed on a public road with a solid white line which is illegal in South Australia. The only part of the OPSM TVC where the skateboarder is seen to be travelling at any speed on a public road is towards the end of the OPSM TVC. The activity depicted occurs in NSW (not in South Australia) and the man is, clearly in control of his skateboard and riding to his ability. Further, he is skating on a road with no traffic and his speed is moderate. The depiction is responsible and safe: it is not

contrary to prevailing community standards on health and safety in the community.

The above references to the white line are incidental and unlikely to be noticed by a viewer of the OPSM TVC in normal viewing circumstances: they can be seen only after repeatedly viewing the OPSM TVC in a manner unlikely to be replicated in viewers' homes. Overall the OPSM TVC is a light hearted feel-good television commercial about a normal Australian bloke skateboarding to the beach with his friends on a hot summer day. We respectfully request that the complaint be dismissed.

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 man riding a skateboard at speed on a public road and not wearing a helmet, both of which are 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 features a man skateboarding through the streets of Sydney to meet friends at the beach. The Board noted the man is skateboarding on a public road and that he is not wearing any safety equipment such as a helmet or knee pads.

The Board noted that it had previously dismissed a similar complaint in case 0388/13 where:

“The Board noted the advertisement features various scenes of young adults in different scenarios including skateboarding with friends.

The Board noted the advertiser’s response that the young males who are skateboarding are in a quiet laneway and that it is common for young men to not wear any protective gear whilst skateboarding. The Board noted that whilst there is a general consensus in the community that wearing appropriate safety gear including helmets is preferable when using a skateboard, there are no rules regarding the use of helmets except in South Australia (http://www.transport.sa.gov.au/pdfs/safety/skateboarders_brochure.pdf). The Board noted that the scene featuring the young men on their skateboards is fleeting and considered that the depiction of the men using their skateboards is consistent with how youth use their

skateboards.

The Board considered that the brief scene in the advertisement showing young males not wearing any safety equipment including helmets is not a depiction which is contrary to prevailing community standards on health and safety and that it is unlikely to encourage people to use skateboards in a manner which is unsafe.”

The Board noted that riding a skateboard without a helmet is illegal in South Australia. In the current advertisement the Board noted that the advertisement was filmed in Sydney and that there are no laws in NSW which require the wearing of a helmet when riding a skateboard. Consistent with its previous determination the Board considered that whilst many people would consider wearing a helmet and other appropriate safety gear when riding a skateboard would be preferable it is not a legal requirement in most of Australia and overall the advertisement depicts a scene which is consistent with how skateboards are ridden.

The Board noted that there are no other road users visible when the man is skateboarding and considered that the man appears to be confident and in control of the skateboard at all times. Overall the Board considered that the depiction of a man riding a skateboard without safety equipment does not breach Community Standards on health and safety.

The Board noted the complainant’s concern that it is illegal for a skateboard to be ridden on a road with a dividing line. The Board considered the Australian Road Rules as follows:

240 Wheeled recreational devices and toys not to be used on certain roads

(1) A person must not travel in or on a wheeled recreational device or wheeled toy on:

(a) a road with a dividing line or median strip; or

(b) a road on which the speed-limit is greater than 50

kilometres per hour; or

(c) a one-way road with more than 1 marked lane.

The Board noted the definition of a wheeled recreational device means “a wheeled device, built to transport a person, propelled by human power or gravity, and ordinarily used for recreation or play, and:

(a) includes rollerblades, rollerskates, a skateboard, scooter,

unicycle or similar wheeled device...”

The Board noted that at the nine second mark, 15 second mark, and 18 second mark of the 30 second version of the advertisement there are fleeting glimpses of line markings on the road. The Board noted that two of these three scenes are also present in the 15 second version of the advertisement. The Board noted that in order to assess whether these markings are dividing lines, a person would need to watch the advertisement in slow motion or freeze frame and considered that overall the focus is on different types of sunglasses rather than the road. The Board acknowledged that if the markings are dividing lines then technically the

actions portrayed in the advertisement would be in breach of the Road Rules but considered it is not sufficiently clear for the Board to make that assessment and overall the advertisement is unlikely to encourage someone who wouldn't normally ride a skateboard to copy the man's behaviour.

The Board noted the overall tone of the advertisement is laid-back and considered that there is no suggestion of danger, either to the man on the skateboard or to other road users or pedestrians.

The Board considered that the 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.