



Case Report

1	Case Number	0481/17
2	Advertiser	Westfield Group
3	Product	Retail
4	Type of Advertisement / media	Cinema
5	Date of Determination	22/11/2017
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

A newly wed couple ridding in the back of a FB/FC Holden ute. The rest of the advertisement shows scenes from the wedding and party.

THE COMPLAINT

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

I only object to the first scene on the grounds of health & safety, as well as breaking law. Scene depict a newly wed couple ridding in the back of a FB/FC Holden ute. It is now illegal to carry more occupants than a car was designed to carry – and to carry passengers in “a part of a vehicle not designed for carrying passengers”.

This means the back of a wagon, van and ute – and the boot of a hatchback or sedan. In Victoria the fine for this offence is \$282 and no demerit points, and in NSW it’s a \$298 ticket and three demerit points.

This ad may encourage people to do the same. Many people have died or suffered serious head trauma from falling out of the back of a ute.

THE ADVERTISER'S RESPONSE

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

This response is in reference to complaint reference number 0481/17. This advertisement is no longer on-air; however please find detail regarding the advertisement in question below.

Comprehensive comments in relation to the complaint (taking into account the need to address all aspects of the advertising codes)

- This scene was filmed on a private road with the cast harnessed into the Ute.*
- On set, we can confirm that Photoplay Films followed all film industry safety protocols in the filming of this TVC, and also according to NSW OH&S Laws. This included a comprehensive number of measures to ensure complete safety of our film crew & talent during the shoot. We had a Safety Officer supervising the shoot which included a tech recce and safety report prior.*
- Our Safety Officer advised that we could film on a private road with the cast harnessed into the back of the Ute, and that the vehicle should be driven at a slow speed by an experienced driver. He also advised that we lock down the road and any access to the property. All of these precautions were taken.*
- During the stages of pre-production & ahead of the shoot, storyboards were shared with Val Morgan at which no issues were flagged. Whilst CAD approval is not relevant for cinema, content does comply with the AANA and Industry Codes of conduct.*
- When we had an initial edit, this was also shared, without any issues flagged.*

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 shows a dangerous activity which is against prevailing community standards on health and safety and 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 features a “just married’ couple in the back of a ute being driven along a country looking road. The words appear on screen “Fall in love this spring.” Various people are then seen at a wedding or celebration dancing, laughing and playing together. There are adults and children in the advertisement. The last scene has the logo for Westfield and includes the words “a new season to love.”

The Board noted the complainant’s concern about the very first scene of the couple in the

back of a ute.

The Board noted the advertiser's response that "the scene was filmed on a private road with the cast harnessed into the Ute."

The Board noted Section 268 of the New South Wales Road Rules (2014) which provides:

268 How persons must travel in or on a motor vehicle

(1) A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods.

(2) A person must not travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods unless:

(a) the part is enclosed, and

(b) he or she occupies a seating position that is suitable for the size and weight of the person and that is fitted with a seatbelt.

The Board noted that states and territories are responsible for road safety legislation and noted that the provisions of the road rules are accepted as the prevailing community standards on health and safety.

The Board noted that the advertisement was depicting a wedding celebration and considered that the scene at the beginning of the advertisement showing the recently married couple was fleeting and was not the focus of the advertisement. The Board noted that the depiction of the couple in the back of the ute was however a is an activity that would be in breach of the road rules.

The Board noted that it had upheld similar cases where road rules had been breached (0450/17 and 0293/17), and considered that the depiction of an illegal activity in motor vehicles was against prevailing community standards on health and safety. The Board considered that even if the activity was not against the law it is a prevailing community standard that travel in the rear of motor vehicles is unsafe and in this case 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

Confirming the advertisement in question is no longer on-air and there is no intention to screen it in cinema in the future.

