



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0545/14</b>
<b>2</b>	<b>Advertiser</b>	<b>Subway Franchisee Advertising Fund</b>
<b>3</b>	<b>Product</b>	<b>Food / Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>14/01/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

## DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a man going through the learning stages of trying to surf and his continued efforts to try and stand up on the surf board until he finally succeeds. The advertisement shows the man falling off the board until toward the end of the advertisement he shares a Subway sandwich with his partner and then returns to the surf, finally succeeding. The end of the advertisement shows the Subway logo and catch phrase "eat fresh."

## THE COMPLAINT

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

*The person surfing is portrayed not using a leg rope and/or flotation device. No safety devices at all.*

## THE ADVERTISER'S RESPONSE

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

*We refer to your letter regarding a complaint received from a member of the public concerning the 'Handmade for your Summer' 30 sec TVC. The concern raised by the*

*complainant is that ‘the person surfing is portrayed not using a leg rope and/or floatation device’.*

*Thank you for the opportunity to comment. We have considered section 2 of the AANA Advertiser Code of Ethics (the “Code”).*

*We respectfully deny the complaints pursuant to provision 2.6 (health and safety – unsafe behaviour) of the Code and assert that the advertisement is not in breach of this provision or any other provision of the Code.*

*We refer to the specific allegation that the surfer is portrayed not using a leg rope. In the above scenario, the hero character is wearing a leg rope for safety which is attached to his left ankle at all times when in the ocean. The leg rope is attached to the surfboard. This is difficult to see on the underwater shot, as the strap is on the opposite leg shown. However it can be seen in shots 0:07, 0:09, 0:13 and 0:21.*

*We refer to the allegation that the surfer is not wearing a floatation device and note that in the above scenario, the surfboard acts as a floatation device for the surfer. We also note that it is not standard practice for a surfer to wear a life jacket or floatation harness while surfing.*

*In the above scenario, SFABA was careful to depict that the Surfer was a confident swimmer, and ensured that the shots of the waves, or depth of the water was not a depth or size that would put the surfer in dangerous swimming conditions.*

*SFABA goes to great lengths throughout the production process to ensure the advertisement is not misleading or contains deceptive information or perceptions for consumers. We certainly also do not intentionally set out to contravene prevailing safety standards. SFABA also works to ensure that all claims relating to material characteristics and representations of Subway® products are verified and accurate by working with our suppliers, in line with the Food and Beverage Advertising and Marketing Communications Code.*

*On the basis of the above, we respectfully submit that the complaints received to date should 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 features a person surfing without using a leg rope or personal flotation device which is against prevailing community standards on health and safety.

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 going through the learning stages of trying to surf and his continued efforts and trying to stand up on the surf board until he finally succeeds. The advertisement shows the man falling off the board until at the end of the advertisement he shares a Subway sandwich with his partner and then returns to the surf, finally succeeding. The end of the advertisement shows the Subway logo and catch phrase “eat fresh.”

The Board noted the complainant's concerns about the use of a leg rope for safety. The Board then noted the advertiser's response that the man is wearing a leg rope at all times when in the ocean and that on occasion this is difficult to see as the images are fleeting but the Board noted that the rope is visible and that it is reasonable to expect that the man has the rope around his ankle at all times.

The Board noted the complainant's concerns relating to the use of a personal flotation device (PFD) and noted that personal flotation devices are not generally used by surfers and that the behaviour depicted in the advertisement is behaviour that is typical of surfers in Australia. The Board considered that the advertisement did not depict material contrary to prevailing community standards and 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.