



## **CASE REPORT**

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| 1. Complaint reference number | 276/07  |
| 2. Advertiser                 | Kellogg Aust Pty Ltd (Sustain - Unofficial Competition) |
| 3. Product                    | Food & Beverages  |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Health and safety – section 2.6                         |
| 6. Date of determination      | Tuesday, 11 September 2007                              |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement opens on an announcement for the Sustain Unofficial Competition, and crosses to a desk where two men, supposedly professional sports commentators dressed in suits with earpieces and microphones, are sitting with monitors in front of them, welcoming viewers. Morning commuters are shown waiting to cross the street and the cameras pick out two young men and in a glance we notice an unspoken challenge between them. The traffic light changes and the two men catapult to the front, walking at pace then dividing on either side of a partition as they both break into a sprint until the end when they resume normal pace. One man streaks ahead of the other running up a huge set of stairs as the other tries to keep up but starts to tire and loses ground rapidly. He stops and leans on the wall looking tired whilst the first man moves on. The commentator announces "The right breakfast makes all the difference. Nutritionally balanced and low G.I...for longer lasting energy..." The first man is then seen running down the steps of a railway station and onto a train carriage, and it is seen that the commentary desk is now in the train carriage and the commentators are eating a bowl of Kellogg's Sustain as they share their final thoughts..."Well, I think we learned something today. That's right, Kellogg's Sustain gives you longer lasting energy." As the train pulls into the next station the winner of the race locks eyes with a new man as if eyeing his next competitor who instinctively realises a competition is on. The commentator exclaims "No way! He's having another go! "

## **THE COMPLAINT**

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

*It is very bad timing that this advertisement modelling irresponsible and dangerous behaviour is being screened in the middle of a very expensive advertising campaign by railway authorities to promote safe behaviour around stations and railway crossings. The behaviour the advertisement advocates is so irresponsible and dangerous that it poses an unacceptable risk to rail passengers and the wider community. Not only is this ad campaign a very poor example of public relations and risk management. Advocating dangerous and irresponsible behaviour leaves the Kellogg corporation open to criticism and an unacceptable legal liability in our litigious society. Kellogg Australia thinks that the ad is of an acceptable standard and that public transport users are fair game. Reckless running out of a train, up and down station stairs and diving in through a closing train door is clearly unsafe behaviour. Not to recognise it is a denial of community standards.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*In response to the complaint that the ad "models dangerous behaviour on trains and railway stations" we submit that sensible safety is woven throughout the commercial:*

*The two guys obey the red/green traffic signals at the start of the action*

*The two guys do run down station stairs however they make use of the hand rails and clearly avoid other station users.*

*As our hero enters the train, the commercial clearly shows him changing pace and slowing down, 'shimmying' on to the train.*

*We consider reference in the final paras of the letter to "reckless running" and "diving" are overdramatic. In addition the commercial is not aimed at "the young or impressionable", rather it is targeted at people aged 27-35yrs as represented by the talent.*

*The fact is that the advertising campaign launched at the same time as the railway authorities campaign is a co-incidence. There was no way that our campaign could be held to have "unfairly disparaged a direct competitor."*

*For all the reasons above, we do not believe the commercial advocates "...irresponsible and dangerous (behaviour)..." and that Kellogg is, and always has been, conscious of its legal and moral corporate responsibility.*

*We would like to emphasize that both Kellogg and JWT have operated in the Australian market since the 1920s; as active members of our respective industry bodies, we adopt a responsible community position and rely upon consumer goodwill by ensuring we uphold the Codes of Ethics of both the AANA, and the AFA, plus the letter and the spirit of the law.*

## **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 this advertisement undermines public safety messages about safe behaviour in and around trains and train stations. The Board also noted that it has previously considered this type of issue and has held that some types of behaviour depicted in advertisements can undermine public safety messages.

In the context of the current advertisement the Board noted that the men crossed the road on the walk sign, that they did not push people out of the way and that the man boarding the train slowed down as he approached the stationary train. The Board considered that the actions of the men in this particular advertisement were not unsafe and did not depict material that was contrary to prevailing community standards on safe behaviour around trains.

Finding that the advertisement did not breach the Code the Board dismissed the complaint.