



## **CASE REPORT**

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|-------------------------------|---------------------------------|
| 1. Complaint reference number | 575/09                          |
| 2. Advertiser                 | Sartso                          |
| 3. Product                    | Clothing                        |
| 4. Type of advertisement      | TV                              |
| 5. Nature of complaint        | Health and safety – section 2.6 |
| 6. Date of determination      | Wednesday, 9 December 2009      |
| 7. DETERMINATION              | Dismissed                       |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement depicts people on motorbikes wearing Sartso denim jeans. The people are doing acrobatic style movements on the bikes which are stunt like. The jeans are shown to be made especially for people who ride motor bikes.

## **THE COMPLAINT**

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

*Sartzo Kevlar Jeans*

*I write to lodge a complaint about an advertisement that violates the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics.*

*Section 1 1.1 states that ‘advertisements shall comply with Commonwealth law and the law of the relevant State or Territory’.*

*Section 2 2.6 states that ‘advertisements shall not depict material contrary to prevailing community standards of health and safety’.*

*The Sartzo Kevlar Jeans television advertisements which breach this Code are currently being aired. The advertisements show a motorcycle being ridden in a dangerous manner and in breach of the following road rules.*

*Road Rules 2008*

*Rule 271 Riding on motor bikes*

*(1) The rider of a motor bike that is moving, or the rider of a motor bike that is stationary but not parked, must:*

- a) sit astride the rider’s seat facing forwards, and*
- b) ride with at least one hand on the handlebars, and*
- c) if the motorbike is moving – keep both feet on the footrests designed for use by the rider of the motor bike.*

*Rule 132 Keeping to the left of the centre of a road or the dividing line*

*(2) A driver on a road with a dividing line must drive to the left of the dividing line, except as permitted under rule 134 or 139 (2)*

*Road Transport (Safety and Traffic Management) Act 1999 No 20 Part 3, Division 1, Section 42*

*42 Negligent, furious or reckless driving*

*(1) A person must not drive a motor vehicle negligently on a road or road related area.*

*(2) A person must not drive a motor vehicle furiously, recklessly or at a speed or in a manner*

*dangerous to the public, on a road or road related area.*

*I therefore ask the Advertising Standards Board to demand the immediate and permanent withdrawal of the Sartzo Kevlar Jeans advertisement referred to above.*

*In the event that these advertisements are not currently being used, a determination is requested so that similar advertisements can be discouraged in the future.*

## **THE ADVERTISER'S RESPONSE**

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

*I refer to your correspondence dated 25/11/2009 case number 575/09 addressed to Ben Kelly, Marketing Director, Sartso and our telephone conversation just now. I am the producer of the advertisement for Sartso and can verify that the entire shoot took place over 2 days on a closed set at an International Raceway in Sydney using professional riders, therefore I fail to see any relevance to the complaint raised with regards to the AANA Advertiser Code of Ethics Section 11.1 and or Section 22.6 and in particular to the Motor Traffic Act as so aptly outlined by the complainant.*

*In essence this complaint could be likened to saying an advertisement for the Australian Moto GP depicts dangerous and reckless control of a motorcycle or and advertisement for the V8 Supercars depicts dangerous and reckless driving.*

*To my knowledge the said advertisement was aired during the Australian Moto GP telecast and has not gone to air since, however notwithstanding this fact I would anticipate that the same advertisement may well be aired on free to air television in Australia again in the future.*

*Obviously we take this complaint seriously but find it unjustified, totally false and frivolous to say the least, and I would not be surprised that it has been initiated by a competitor in the same market even through an independent organisation or body. Perhaps the complainant could be notified of the facts and be given the opportunity to withdraw the complaint?*

*Should the board make a determination to demand the immediate and permanent withdrawal of the said advertisement Sartso with have no hesitation in pursuing all legal avenues including those available under the Freedom of Information Act to discover the identity of the actual complainant to determine the motives behind the complaint which we consider to be anti-competitive in nature and a blatant use of underhanded tactics to impose a restraint of trade. Any potential litigation in this matter would include full discovery by subpoena if necessary, damages for loss of profits and costs.*

*You may download a copy of the advertisement from the following link, to my knowledge some additional voiceover was incorporated by another post production facility and if necessary Ben Kelly from Sartso can give you more detail in this regard if required.*

## **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 is in breach of the codes because it depicts dangerous activity.

The Board noted the advertiser's response and viewed the advertisement. The Board noted that the advertisement is targeted towards motor bike riders and was showing the agility and movement of the denim.

The Board considered whether the advertisement was in breach of 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 was for the sale of denim jeans which were reinforced and targeted directly to the motor bike market. The Board noted that the stunts shown in the advertisement were dangerous and not to be tried by people at home and agreed that most members of the community would understand that the stunts were not implying that similar stunts should be attempted by untrained motor bike riders on a road. The Board considered that the advertisement clearly depicted the stunts occurring at a race track or other enclosed area - not on a road or road-related area. As the riding is depicted in a closed environment there is no suggestion that the relevant Road Rules are being infringed or that the advertisement is encouraging behaviour that would breach the law.

The Board agreed that most members of the community would consider that the advertisement does not depict material contrary to prevailing community standards on safety in breach of section 2.6 of the Code.

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