

<b>COMPLAINT NUMBER</b>	17/370
<b>COMPLAINANT</b>	K.Jensen
<b>ADVERTISER</b>	BRP
<b>ADVERTISEMENT</b>	BRP, Television
<b>DATE OF MEETING</b>	28 November 2017
<b>OUTCOME</b>	Upheld

### **SUMMARY**

The television advertisement for BRP's Seadoo jet ski, showed it being used in various situations, including a scene where two jet skis appear to cross each other's wake in close proximity. The advertisement included a disclaimer which said "observe applicable laws and regulations. Respect of shoreline residents, and keep a safe distance from other recreationists" and "always ride safely and responsibly".

The Complainant's concern was that advertisement showed jet skis zigzagging backwards and forwards across each other's paths which was dangerous and would encourage people to emulate that behaviour.

The Advertiser said the advertisement was not filmed in New Zealand and carried a disclaimer alerting people to observe applicable laws and regulations. With regard to the scene subject to complaint, the Advertiser said the jet skis were not shown crossing paths, this was only evident from their wake.

The Complaints Board said the scene where the jet skis were shown to cross each other's paths at speed encouraged a disregard for safety, in breach of Rule 12 of the Code of Ethics. The Complaints Board said the advertisement had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld.

### **[Advertisement to be amended/removed]**

Please note this headnote does not form part of the Decision.

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### **COMPLAINTS BOARD DECISION**

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 12 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety and whether it had been prepared with a due sense of social responsibility to consumers.

**The Complaints Board ruled the complaint was Upheld**

### **The Complaint**

The Complainant was concerned the jet skis zigzagging backwards and forwards across each other's paths in the advertisement "contravenes NZ maritime law... and is reckless and encourages illegal behaviour which has caused death in NZ." The Complainant was concerned that "anyone who has watched this advertisement and as a result buys a Seadoo Jet Ski, will have this advertisement in their consciousness and will quite likely want to emulate the behaviour."

### **Response from Advertiser, BRP**

The Advertiser said the advertisement had passed the advertisement through their internal processes for specific publication in international markets and included a disclaimer which said, in part: "*Always observe applicable laws and regulations.*"

In relation to the scene subject to complaint, the Advertiser said, in part: "In regards to NZ maritime law with the very last scene where you can see the wake of the units have crossed at some point, however we do not show them crossing within 50 metres or each other, only after the fact. There are instances where there are PWC units moving alongside each other however you can argue that they are being operated in a safe fashion / within a private / controlled environment...there is great emphasis placed on the responsible use of PWC units, this message is also pushed through key partnerships such as surf-life saving clubs

The Advertiser referred to the Maritime Rules in particular Rule 91.6 which says, in part: "Keep to a safe speed – this means slowing down in situations where you may find it difficult to see another boat, eg in waves, rain, or fog, or when there is glare on the water. Understand and operate within the speed limits – the maximum speed permitted for all boats in New Zealand is 5 knots (about 9 km/h) within 200 metres of shore or any boat with a dive flag, and within 50 metres of any other boat or swimmer."

### **Response from Commercial Approvals Bureau**

The Commercial Approvals Bureau responded to the Complainant's concerns, stating, in part: "In CAB's opinion there is nothing in this commercial that is likely to encourage a disregard for safety. The footage is typical for advertisements for these types of watercrafts and the riders are all wearing appropriate safety equipment. Furthermore, we understand from the Advertiser that this was filmed under controlled conditions and that they do not believe the commercial depicts any unlawful practices.

We appreciate the Complainant's efforts to reduce the harm cause by watercraft accidents; however, to conclude that this commercial's few seconds of footage encourages the reckless use of watercrafts seems unwarranted."

### **Complaints Board Discussion**

The Complaints Board noted the Complainant's concerns the final scene of the advertisement showing jet skis zigzagging backwards and forwards across each other's paths was dangerous and would encourage people to emulate that behaviour.

The Complaints Board noted the response from the Advertiser that the advertisement carried a disclaimer alerting people to observe applicable laws and regulations and the jet skis were not shown crossing paths, this was only evident from their wake.

The Complaints Board considered whether the advertisement contained any visual presentation or any description of dangerous or illegal practices or situations which would encourage a disregard for safety. The Complaints Board said the scene at the end of the advertisement showed jet skis travelling at speed and indicated they had crossed paths in close proximity.

The Complaints Board noted that, according to Maritime Rules, any vessel, including jet skis, operating within 50 metres of any other vessel, without reasonable justification, must not exceed a speed of 5 knots. The Complaints Board was of the view the jet skis were travelling in excess of 5 knots and had clearly crossed paths within 50 metres of each other. In their view this was a depiction of a dangerous practice which was easily emulated and encouraged a disregard for safety.

The Complaints Board considered whether the disclaimer went far enough to mitigate the dangerous depiction in the advertisement. The Complaints Board said the disclaimer did not absolve the Advertiser of its responsibility to ensure their advertisement depicted safe practices. It said the long disclaimer did not use consumer friendly language and the message to “observe applicable laws and regulations. Respect of shoreline residents, and keep a safe distance from other recreationists” and “always ride safely and responsibly” was at odds with the visuals in the advertisement.

The Complaints Board said the scene where the jet skis were shown to cross each other’s paths at speed encouraged a disregard for safety, in breach of Rule 12 of the Code of Ethics. The Complaints Board said the advertisement had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Upheld.

**Decision:** Complaint **Upheld**

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## **DESCRIPTION OF ADVERTISEMENT**

The television advertisement for BRP’s Seadoo jet ski, showed it being used in various situations, including a scene where two jet skis appear to cross each other’s wake in close proximity. The advertisement included a disclaimer, which said:

*“©2017 BRP Australia Pty Ltd.®™ and logo are trademarks of BRP and / or its affiliates. BRP recommends a minimum operator age of 16 years old. Always observe applicable laws and regulations. Respect of shoreline residents, and keep a safe distance from other recreationists. Always wear appropriate protective clothing, including an approved PFD that is suitable for PWC use. Always ride safely and responsibly.”*

## **COMPLAINT FROM K. JENSEN**

On 05/10/17 at 8.21pm on Duke TV an ad for Seadoo Jet Skis showed jet skis zigzagging backwards and forwards across each other’s paths, which actions contravene NZ maritime law. Similar actions have caused numerous deaths both in New Zealand and around the world. Breaking this maritime law and causing death is an offence punishable by jail in NZ law. It is reckless and encourages illegal behaviour which has caused death in NZ. Airing this advertisement could well encourage jetski drivers to do this same behaviour. Therefore I consider it breaches advertising standards in that it is actively encouraging illegal and endangering behaviours. Especially in that anyone who has watched this advertisement and as a result buys a Seadoo Jetski, will have this advertisement in their consciousness and will quite likely want to emulate the behaviour.

## CODE OF ETHICS

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**Rule 12: Safety** - Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

## RESPONSE FROM ADVERTISER - BRP

Been advised that this has been the first and only complaint made in reference to the commercial.

Just some background on the footage; it has been produced by Corporate HQ and passed through the legal team for publication in international markets.

Also, the footage displays the safe riding, personal responsibility disclaimer on screen for the duration of the ad:

*©2017 BRP Australia Pty Ltd.®™ and logo are trademarks of BRP and / or its affiliates. BRP recommends a minimum operator age of 16 years old. Always observe applicable laws and regulations. Respect of shoreline residents, and keep a safe distance from other recreationists. Always wear appropriate protective clothing, including an approved PFD that is suitable for PWC use. Always ride safely and responsibly.*

In regards to NZ maritime law with the very last scene where the you can see the wake of the units have crossed at some point however we do not show them crossing within 50 metres or each other, only after the fact. There are instances where their are PWC units moving along side each other however you can argue that they are being operated in a safe fashion / within a private / controlled environment.

Keep to a safe speed – this means slowing down in situations where you may find it difficult to see another boat, eg in waves, rain, or fog, or when there is glare on the water. Understand and operate within the speed limits – the maximum speed permitted for all boats in New Zealand is 5 knots (about 9 km/h) within 200 metres of shore or any boat with a dive flag, and within 50 metres of any other boat or swimmer.

Ref: <https://www.maritimenz.govt.nz/recreational/the-basics/skipper-responsibilities/>

I know in my time with BRP, it's been clear that there is great emphasis placed on the responsible use of PWC units, this message is also pushed through key partnerships such as surf-life saving clubs.

...

What we do know is that these particular units were not operating in NZL waters, however what we don't know and cannot determine is the validity of those assumptions given there are so many variables in play. This could include the filming technique (helicopter / drone), or video acceleration (videos are filmed in slower motions then accelerated to create a sense of flow) so as you can appreciate it is very difficult to verify.

I want to apologise if I'm being vague however given this is provisional and; the first and only complaint for this commercial, please let me know if there is anything in particular you are looking for in our reply so I can provide a better answer.

**RESPONSE FROM MEDIA – COMMERCIAL APPROVALS BUREAU****BRP TELEVISION ADVERTISEMENT****COMPLAINT: 17/370****KEY: BRP0300001****RATING: G**

Thank you for the opportunity to comment on the complaint that the above commercial is in breach of the ASA's Advertising Code of Ethics (safety).

In CAB's opinion there is nothing in this commercial that is likely to encourage a disregard for safety. The footage is typical for advertisements for these types of watercrafts and the riders are all wearing appropriate safety equipment. Furthermore, we understand from the Advertiser that this was filmed under controlled conditions and that they do not believe the commercial depicts any unlawful practices.

We appreciate the Complainant's efforts to reduce the harm cause by watercraft accidents; however, to conclude that this commercial's few seconds of footage encourages the reckless use of watercrafts seems unwarranted.