



Case Report

1	Case Number	0162/15
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	13/05/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

McDonald's Drive Thru commercial promoting McCafe coffee being available in McDonald's Drive Thru and how it allows customers to have their own cafe anywhere they want. We see different people collecting their coffees to be drunk in different locations as a passenger in a car.

THE COMPLAINT

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

The first time I saw the ad was straight after a news article about distractions while driving and including drinking and eating while driving. Definitely in poor taste. The ad is still being played.

There has also been an ad that shows a man with his child in the back seat of an SUV pulling out of the driveway of a McDonalds drive through service area with a hot coffee in his hand into traffic.

We are told that eating or drinking or looking at the passengers in the back seat and anything that distracts the driver from being in complete control of a car is just as, and possibly more dangerous than using a phone.

I believe that this advertising should be withdrawn from TV as it shows that McDonalds is not being the community minded lot they like to tell they are.

In my opinion they are being stupid in promoting such stupidity and it should be brought to their attention as soon as possible.

Clearly, this advertisement depicts unsafe and unlawful driving practices and as the demographic of McDonald's is skewed to young, impressionable drivers, the message that is conveyed is inappropriate.

In this ad we are shown a selection of people at a drive through purchasing coffee. What follows then is: a woman holding the coffee in her right hand and marking time to music? With her left hand: then we see a man conducting? An orchestra? Again holding the coffee in right hand and vigorously conducting! With his left: then another man driving and drinking the coffee. My complaint is there are enough deaths and serious injuries caused on Australian roads, particularly in WA, without promoting these actions in a TV ad.

I object that it shows two drivers who are not fully in charge of their vehicles sending a very negative road safety message.

Showing people driving with coffee, or one handed, or No-hands with people tapping the steering wheel but with children in the car. Queensland has just had a record death toll through road accidents where it is thought inattention may have played a major role. Small children are often active in and around the areas being advertised. The inference is that people obtain the product and are driving off in celebration of the product. I wouldn't want my grandchild to be anywhere near people being copycats of the shown behaviour, and some people mindlessly copy.

In 2013 nationally, the fatal four was changed to the fatal five, "Driver Inattention", or as known internationally in road safety "Distracted Driving" added, making fatal five.

I'm aware of various stats in each Australian state but on average with inexperienced drivers, [apparently the target audience of this commercial], approx. 40% all crashes crash causal factor is distracted driving.

A major problem enforcement and road safety practitioners have, is distracted driving can be children in the back seat, excess noise, other passengers, external influences, food, drinks, plus phones, GPS, texting, often all going on at the same time!

Only last week, the latest stats from the USA, was an estimated 60% of crashes involving young people involved distractions.

Frankly, am astounded a commercial with distracted driving overtones would get through the vetting process.

Am even more annoyed when I rang McDonalds' in Sydney and "David" would not take my concerns seriously, he might have his protocols, of not taking details, he would not even give me contact details!

Your earliest concern would be most appreciated.

Encourages people to drive with only one hand or no hands on the steering wheel. One old man is conducting with his left hand in time to music with only his right hand on the steering wheel. A lady is banging both hands on the steering wheel in time to music. It is against the law not to have both hands on the steering wheel (except when the left hand has to be used to change gear). By airing this advert, McDonald's is actively encouraging drivers to break the law.

THE ADVERTISER'S RESPONSE

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

We thank the Advertising Standards Bureau (ASB) for the opportunity to provide a response to complaint number 0162 of 2015 (Complaint).

We were surprised to hear that the television commercial (TVC) the subject of the complaint had caused concerns about safe driving practices.

We do not consider that the TVC includes any portrayal of unsafe driving practices and no driving practices depicted in the TVC would be illegal on Australian roads. Further, we do not believe that the TVC is in breach of the AANA Code of Ethics, specifically section 2.6 (Code).

McDonald's has rigorous internal checking processes for consumer communications and is acutely aware of the reach of its advertising. Accordingly, McDonald's is very sensitive to ensuring that important issues like health and safety are considered and appropriately addressed. For this particular TVC, because there were various driving scenes, McDonald's worked with its National Workplace Safety and Security Consultant (who has previous experience as a Traffic Sergeant in the NSW Police covering motor accident review and road safety matters) to ensure that the driving scenes were appropriate, lawful and didn't promote any unsafe driving practices.

The complaints focus on a male driver pretending to conduct an orchestra and a female driver tapping her hands on the steering wheel.

In neither instance is there any indication that the vehicles are travelling at excessive speed, nor is either driver seen at any stage to be driving recklessly, erratically or in a dangerous manner. Both drivers are at all times in control of the vehicle, are looking straight ahead and are focused on the road. At all times they are driving in a safe and controlled manner.

Male driver pretending to conduct an orchestra

The man has one hand firmly on the steering wheel. His eyes are focused on the road and he is shown driving at a low speed.

Female driver tapping her hands on the steering wheel

The woman is shown very briefly (approx. 1 second) tapping her hands on the steering wheel. Her eyes are focused on the road and there is nothing to suggest that she is behaving

recklessly. The depicted scenes are a common way in which drivers enjoy music while driving and the average viewer would recognize this as an acceptable and common place driving practice.

There is one scene where a passenger is seen enjoying a coffee in the passenger back seat with the wind blowing through his hair. No driver is shown drinking or eating while any car is moving. In any case, it is not illegal to consume beverages while driving a motor vehicle provided the driver remains in control of the motor vehicle.

We refer to a Kia commercial (Salt 'n' Pepa) which is currently on air and depicts a woman dancing to music while driving without both hands on the steering wheel - ASB Case Reference 0278/14. This commercial received similar complaints which were subsequently dismissed by the ASB.

In light of the above and given that the depicted behaviours are compliant with Australian road rules and the Code it is our view that the complaint 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 complainants’ concerns that the advertisement shows poor driving practices that are dangerous and could cause an accident.

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 advertisement features customers ordering coffee through the drive through service at McDonald’s as the voiceover describes how you can control the café environment (of your car) by managing for example the rain (by the use of windscreen wipers), the sun (with the use of a sun roof) and the wind (with the windows up or down). Some drivers are seen conducting music and tapping the steering wheel as they drive. The final shot shows the McDonald logo for McCafe – Drive thru.

The Board noted that while some vehicles are moving, others are stationary and considered that none of the drivers are performing any illegal driving practices and are not driving recklessly.

The Board noted the complaint’s concerns that in more than one scene the driver is seen holding a coffee in one hand and conducting music with the other and that this is an unsafe practice. The Board reviewed the advertisement and noted that in the scenes mentioned the driver is not holding the purchased coffee and that one hand is on the steering wheel and the other conducting to the music.

The Board then considered the scene with a woman tapping the steering wheel to the music and noted that as the woman is drumming her hands there is a fleeting moment where she is not holding the wheel at all. The Board noted however that she is continually looking out and around at the traffic and is conscious of her surroundings and the traffic she is among. The Board noted that each of these scenes are fleeting and that the focus of the advertisement is not on any one particular scene within the advertisement but rather on the different ways that people enjoy coffee in their cars.

The Board noted that according to the Australian Road Rules relating to control of a vehicle

“...A driver must not drive a vehicle unless the driver has proper control of the vehicle...”
The Board noted that based on the road rules above, it is not illegal to drive with one hand as depicted in this advertisement, and that the drivers appear in proper control of the vehicle in all scenarios in this advertisement and do not appear to be driving dangerously or in a manner that may be uncontrolled.

Based on the above, the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety relating to the driving of vehicles and does not condone or encourage unsafe driving practices.

The Board determined that the advertisement did not breach of Section 2.6 of the Code. Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaints.