



## Case Report

1	Case Number	0169/10
2	Advertiser	Mercedes-Benz Aust/Pacific P/L
3	Product	Vehicles
4	Type of Advertisement / media	Pay TV
5	Date of Determination	28/04/2010
6	DETERMINATION	Dismissed

### ISSUES RAISED

Motor vehicles          Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

This TV advertisement for a Mercedes-Benz C-Class vehicle titled “Run” depicts a vehicle being driven around various locations in the city, close to buildings but not on a road, and adjacent to waterways.

It opens with a man dressed in shorts, t-shirt and sneakers stretching before his workout. When leaving the curb he turns on music with the following text appearing during the advertisement - "Daytime runing lights", "Turbo charged engine". Whilst driving near or on a wharf the vehicle does a u-turn and the man drinks from a bottle. Ends with man exiting car and stretching before returning to the workplace. Voiceover says “C-class for the thrill of it”. End image is of Mercedes-Benz logo and website.

### THE COMPLAINT

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

*In the first instance the vehicle is seen being driven at speed along what is clearly a dedicated pedestrian walkway adjacent to a waterway. There are park benches on either side. Any person seated on these benches or using this area for walking would be in grave danger. The Advertiser should be required to state and show where this was filmed. If it is the vehicle is being driven dangerously and illegally and breaches sections 2 (a) 2(b) and 2 (c) of the Code. There is no doubt that this vehicle is being driven at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.*

*The second instance the vehicle is also seen being driven at speed amongst and very close to buildings but not on a road. If these areas are dedicated pedestrian thoroughfares (and the Advertiser must be required to show where the advertisement was filmed) then this is illegal and dangerous driving and breaches sections 2 (a) (b) and 2 (c) of the Code. If this is a dedicated pedestrian area (a) it is illegal for the vehicle to be driven there and (b) then there is no doubt that this vehicle is being driven at dangerous speeds.*

*In the third instance the vehicle is seen being driven at a dangerous speed on the right hand side of a dock. There's a super: Turbocharged engine (indicating speed). Then there's film of the steering wheel being turned and the vehicle is seen doing a sudden u-turn (a sudden change in direction) to end up facing the other way. This behaviour would be illegal and dangerous on any public road in Australia: (a) to drive on the wrong side (not keep to the left) and (b) to make a sudden u-turn without caution and end up again facing the wrong way on the wrong side of the road. U-turns in Australia must be undertaken with caution not suddenly and in 2 ways streets/roads they must be from left to right not right to left. If the advertiser were to argue that the dock is one-way then it would be illegal to do a sudden and unnecessary U-turn and face the oncoming traffic anyway. The dock should be also checked to see if there is a sign-posted speed limit as it is clear from the advertisement the vehicle is being driven far too fast for these conditions.*

*CODE: [Examples: Vehicles travelling at excessive speed; sudden extreme and unnecessary changes in direction and speed of a motor vehicle;]*

*In the fourth instance just before the driver's face can be seen in the rear vision mirror the vehicle is deliberately driven across an unbroken line. It is deliberate because the indicator is flashing. It is an offence to drive across an unbroken line in NSW (where the advertisement was shown) and most jurisdictions throughout Australia. It therefore definitely breaches sections 2 (a) and 2 (c) of the Code.*

*We ask that the advertisement be withdrawn immediately.*

*We ask that you ensure the Board is subject to no outside interference influence or instruction particularly from the FCAI.*

*We ask that the Board considers the complaint only and entirely in relation to the published FCAI Code and that it ensures that it does not take into consideration any other material or instructions as it did when it reviewed the recent Range Rover Sports commercial. It must be noted that the Independent Reviewer found the Board's decision was fundamentally flawed because it was incorrectly influenced by the FCAI's unpublished guidelines.*

#### **RELEVANT SECTIONS OF THE CODE:**

##### **2. GENERAL PROVISIONS**

*Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(a) Unsafe driving including reckless and menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation if such driving were to occur on a road or road-related area regardless of where the driving is depicted in the advertisement.*

*[Examples: Vehicles travelling at excessive speed; sudden extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]*

*(b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.*

*(c) Driving practices or other actions which would if they were to take place on a road or road-related area breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.*

*[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]*

## **THE ADVERTISER'S RESPONSE**

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

## **THE DETERMINATION**

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code).

To come within the FCAI Code, the material being considered must be an advertisement. The FCAI Code defines an advertisement as follows:

"matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

The Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Mercedes-Benz C-Class vehicle in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that advertisement was for a motor vehicle. Motor vehicle is defined in the FCAI Code as meaning:

"passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle".

The Board determined that the Mercedes-Benz C-Class was a Motor vehicle as defined in the FCAI Code.

The Board determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Board noted the complainant's concern that the advertisement depicted the vehicle speeding amongst and very close to buildings and a pedestrian walkway, doing a u-turn and crossing an unbroken line.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(a) and 2(b) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached.

The Board considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.' For example, vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle ...

The Board noted the depictions of the vehicle driving in a number of 'off road' situations and noted that in all of these depictions there were no images of people, other vehicles or other road users. The Board considered that the advertisement was clearly depicting the image in unrealistic situations – indeed it was intended to simulate the path that the man (a runner) would normally run. The Board considered that the vehicle was being driven at a safe speed and in a safe manner in all of the depicted situations. The Board considered that there was no unsafe driving and that were the car depicted driving on a road it would also not be unsafe.

The Board noted that there is a brief image of the vehicle crossing an unbroken line while indicating. The Board considered that this depiction was extremely brief and that it was difficult to ascertain whether the car was pulling out from the kerb (the place in which the car is parked is indicated with an unbroken line) or is in traffic. The Board considered that the depiction, as brief and ambiguous as it was, did not suggest or depict unsafe driving and did not breach section 2(a) of the FCAI Code.

The Board considered section 2(b) of the FCAI Code which requires that advertisements do not portray ‘people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.’

The Board considered that the depictions of the vehicle did not suggest excessive speed and do not breach section 2(b) of the FCAI Code.

On the above basis, the Board determined that the advertisement did not breach clauses 2(a) or 2(b) of the FCAI Code. Finding that the advertisement did not breach any other provisions of the Code, the Board therefore dismissed the complaint.