



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0183-20</b>
<b>2. Advertiser :</b>	<b>BMW Group Australia</b>
<b>3. Product :</b>	<b>Vehicle</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>10-Jun-2020</b>
<b>6. DETERMINATION :</b>	<b>Upheld – Modified or Discontinued</b>

### ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts a man sitting in a dark room, a person viewed through a window as it rains, a man laying down using his phone, close up imagery of a vehicle, people hugging, a couple on a beach and in the water, people playing basketball, people sitting on the beach, a group of women laughing in a vehicle, a man and two children running through the woods, a vehicle parked on a cliff, and a person skateboarding down the centre of a road.

### THE COMPLAINT

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

*The advertisement ends with a young person skate boarding right down the central white line of a main road with the caption "Joy of Living" this practice is actually illegal and very very dangerous and should never be shown on TV where young people who can be easily influenced to "copy-cat" this action leading to injury or death not to mention the deleterious effect it would have on any motorist colliding with the person. I consider this advertisement to be very irresponsible and it should be modified or removed.*



## THE ADVERTISER'S RESPONSE

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

*The complaint refers to the second to last shot from the TVC that depicts a man skateboarding along a road (0:23") including a super that appears and states: 'JOY IS COMING'.*

*A potential breach of the requirements of Section 2 of the AANA Code of Ethics ("Code") has been raised.*

*BMW Australia provides its substantive response below.*

*Issues raised to date – section 2.6 of the Code (Unsafe behaviour)*

*The notice sets out under the heading "Issues raised to date" that the relevant complaint relates to a potential breach of item 2.6 of the Code (Unsafe behaviour).*

*Item 2.6 of the Code sets out that "Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety." BMW Australia notes that the Prevailing Community Standards ("Standards") on health and safety are those that are determined by the Community Panel from time to time, and are therefore subject to change.*

*Notwithstanding this, BMW Australia submits that the depicted behaviour should not offend the Standards.*

*Skateboarding without a helmet is not prohibited under the Australian Road Rules.*

*Whilst the road depicted in the advertisement has a dividing line, the skateboarder depicted in the advertisement has a clear line of sight for the road ahead and is not skateboarding around a blind corner or over a horizon.*

*To mitigate the risk of creating "copycat" behaviour as the complaint suggests may be a risk created by the advertisement, a disclaimer has been shown in subtitle to clarify that this shot was "filmed under controlled conditions".*

*The TVC campaign launched on Saturday 9 May in Australia nationally, and concluded on Sunday 31 May. The TVC is no longer being broadcast in free-to-air or digital channels.*

*Whilst BMW Australia allows that the circumstances of filming are not a primary consideration of whether an advertisement depicts material in breach of item 2.6 of the Code, the agency that originally produced this film has confirmed to BMW Australia that the filming took place under controlled circumstances. The scene was*



*shot during a roadblock with a professional skateboarder. A statement from the relevant agency can be procured by BMW Australia and provided to you if required.*

*Other matters in section 2 of the Code*

*For completeness, BMW Australia provides the following responses relating to any potential breach of any other item of section 2 of the Code:*

*2.1 - Discrimination or vilification*

*Response: There is no discrimination or vilification present within the TV commercial, nor is this raised in the complaint.*

*2.2 - Exploitative or degrading*

*Response: There is no exploitative or degrading behaviour present within the TV commercial, nor is this raised in the complaint.*

*2.3 – Violence*

*Response: There is no violent behaviour or consequences of violent behaviour present within the TV commercial, nor is this raised in the complaint.*

*2.4 - Sex, sexuality and nudity*

*Response: There is no presence of nudity, sex, or sexuality present in the commercial, nor was this raised in the complaint.*

*2.5 – Language*

*Response: The use of language in the TV commercial is appropriate. There is no obscene language present, nor is this raised within the complaint.*

*2.7 - Distinguishable as advertising*

*Response: The TV commercial is clearly distinguishable as advertising and features both BMW product and the BMW logo. This was not raised as an area of concern as part of the complaint.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement depicts illegal and unsafe behaviour and would lead young people to be influenced to copy-cat such behaviour.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel 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 Panel considered that the scene depicted a man on a skateboard riding down the centre of a road with no helmet. The Panel noted that the scene was approximately four seconds long.

The Panel noted that the Australian Road Rules contained the following provision

*“240 (1) A person must not travel in or on a wheeled recreational device or wheeled toy on:*

*(a) a road with a dividing line or median strip; or*

*(b) a road on which the speed-limit is greater than 60 kilometres per hour; or*

*(c) a one-way road with more than 1 marked lane.”*

The Panel noted that wheeled recreation device is defined as *“a wheeled device, built to transport a person, propelled by human power or gravity, and ordinarily used for recreation or play, and:*

*(a) includes rollerblades, rollerskates, a skateboard, scooter, unicycle or similar wheeled device...”*

The Panel noted that there is no requirement in the Australian Road Rules for skateboard users to wear a helmet.

The minority of the Panel considered that the overall advertisement was highly stylised and promoted a feeling of anticipation and freedom. The minority considered that the image of the man on the skateboard riding into the forested distance was symbolic of the exhilaration of country driving and would be unlikely to be considered to be promoting unsafe behaviour.

The minority of the Panel considered that the depiction of an exhilarating and potentially dangerous activity filmed under controlled conditions is not in itself promoting dangerous copycat behaviour

The Panel noted the disclaimer on screen stating that the advertisement was filmed under controlled conditions and also noted the advertiser’s response that the road was closed during the filming of the advertisement, and the Panel noted that there are no other vehicles or people depicted on the road in the advertisement.

The majority of the Panel considered that the man is depicted riding down the centre of a road that has a dividing line and that this depiction is in breach of the law. The majority considered that although the Panel is not a law enforcement agency, the majority of the community would consider that laws relating to road use and safety are the prevailing community standards.

The majority of the Panel considered that although there is not a legal requirement that skateboard users wear a helmet, the law is clear on where skateboards may be



used on roads or road related areas. The majority considered that most members of the community would consider that wearing a helmet while using a skateboard, either on the road or in a designated skateboard venue, is a generally accepted community standard on safety.

The majority of the Panel considered that the advertisement gives the impression that riding a skateboard in the middle of the road is a positive experience. The majority considered that some children who view the advertisement may seek to imitate the behaviour, including not wearing any safety equipment, and considered that such copy cat behaviour would not be overly difficult for children to attempt.

Overall, the Panel considered that the advertisement did depict material contrary to prevailing community standards on safety and did breach Section 2.6 of the Code.

Finding that the advertisement did breach section 2.6 of the Code the Panel upheld the complaint.

#### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We confirm that the advertisement ended on 31 May and will not be used again.