



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0198-19
2. Advertiser :	Hankook Tyres
3. Product :	Automotive
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	10-Jul-2019
6. DETERMINATION :	Dismissed
7. IR Recommendation	Reconfirm original decision

ISSUES RAISED

2.6 - Health and Safety Motor vehicle related

DESCRIPTION OF ADVERTISEMENT

This Pay television advertisement features a man behind wheel, staring focused. Man transitions into helmet, hands being lifted off visor.

Cut to shot of rocks, transition to surfer standing looking at sea, cut back to long shot of rocks with surfer.

Close up of hand on steering wheel, close up of zipper being pulled on wetsuit, close up of wheel gun going into rims.

Long shot of surfer, cut to close up of burnout, cut to shots of surfer mixed with close up shots of car/race car being driven.

Car driving around hairpin, cut to close up of Hankook Tyre.

Cut to Hankook Tyre logo with NRL logo.

THE COMPLAINT

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

A motor vehicle is seen clearly speeding and cornering recklessly and doing a protracted wheel spin.

FCAI CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

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.]

(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.*

(e) *Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.*

AdStandards nearly always rejects complaints about speeding when clearly and unequivocally the advertiser is portraying a vehicle or vehicles speeding. It's part of the rort. Too difficult to prove. But it's certainly subliminal. In any event, in this ad, the vehicle is definitely wheel spinning. This is a very serious driving offence in every jurisdiction in Australia, commonly known as "hooning". As such, the ad breaches 2(a) and 2(c) of the Code.

Comment:

And as stated on numerous occasions, this is what will occur:

- 1 It will take at least four weeks to get a determination. Most motor vehicle advertising campaigns run for much shorter times – by which time all the damage will have been done.*
- 2 The ASB (which is funded by the motor vehicle industry - he who pays the piper calls the tune) will generally find some sort of loop-hole to dismiss the complaint*
- 3 If we appeal, which costs more time, money and resources, that will be another two to four weeks.*

Many offending ads are now made overseas with minor changes to suit the Australian market.

That means that even if it is found to breach the Code, it will have cost the manufacturer/supplier virtually nothing.

There will be no consequences.

No fine/penalty.

No formal apology.

No requirement to run the same amount of ads at the same time and station informing the public of their disgraceful behaviour and how they will never do it again – and promoting safe driving.

Nothing.

Just keeping up the image and impression that driving like this is perfectly acceptable.

We have scores of examples.



It proves the aphorism: SELF-REGULATION IS TO REGULATION AS SELF-IMPORTANCE IS TO IMPORTANCE.

Meanwhile the Australian Road Toll is going through the roof, primarily due to speeding and dangerous driving.

And impressionable (mainly young) drivers will die and kill other innocent victims, trying to emulate the behaviour portrayed in these utterly irresponsible advertisements - all under your watch.

THE ADVERTISER'S RESPONSE

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

We respond to the complaint as follows:

The "Be One With It" advertising campaign for Hankook Tyres is promoting the message of acceptance of environment and being part of the potentially harsh environment around you. When driving the Hankook tyre it connects you to the road so as to be part of that natural environment. The imagery is of the road in an environment of harsh nature.

Complaint One: Protracted Wheel Spin

There is a brief scene where a vehicle accelerates from a standing start and there is wheel squealing. The scene does not depict a car losing control nor a drag start or loss of traction on Australian roads (as regulated by road safety rules) and therefore is not in breach of any road rule. This shot was filmed as part of a motor sport racing scene and indicates the tyre is a performance tyre. (Filmed in controlled racing conditions). Accordingly, the depiction is not in breach of Section 2 of the FCAI Code of Practice for Motor Vehicle Advertising as it does not depict:

- unsafe, reckless or menacing driving that would breach any Commonwealth or State or Territory law;*
- a person driving at excessive speeds;*
- driving practices which would if taken place on a road would breach any Commonwealth or State or Territory law.*

It is also allowable under Section 3 of the FCAI Code as it forms part of a motor sport scene, and it is identifiable as such with the scene upon which the driver has donned a racing helmet.

Complaint Two: Vehicle Speeding and Cornering Recklessly

Generally, the film imagery in this 15 second TVC move dramatically from scenes of a man



preparing for big wave surfing and then scenes to the start of an off road rally race to the actual surfing and the race. The intermingled shots of the road car on the roads do not depict a vehicle speeding or driving recklessly nor breaching any road rules. The speed of the frames create excitement and drama but do not depict a vehicle being operated recklessly or at excessive speeds or driving practices which contravene Commonwealth of State or Territory law. The pictures of the road rally illustrate that Hankook supplies to racing teams and is a performance quality tyre. Therefore is no imagery in breach of Section 2 of the Code.

General Consideration of Section 2 of the Advertiser Code of Ethics

We have considered as to whether the TVC contravenes section 2 of the Code of Ethics adopted by the Australian Association of National Advertisers and confirm it does not do so as the TVC:

- make any statements or depict any material which discriminates against or vilifies a person on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief;*
- does not depict any violence;*
- does not involve any sex, sexuality or nudity;*
- does not contain any strong or obscene language;*
- does not depict any material which is contrary to prevailing community standards for health and safety. You will note that the depiction of big wave surfing is the depiction of an extreme and risky sport which likely requires skill, experience and courage but it is not depicting images whereby it is supporting a view that an everyday person can undertake the sport recklessly and without thought.*
- Clearly distinguishes the product being promoted is Hankook tyres.*

Additionally the TVC does not involve the advertising of food or beverages and is not using themes, images or language to promote to children.

Conclusion

From the submission contained we summarise that the TVC is compliant with:

- FCAI Code of Practice for Motor Vehicle Advertising, and in particular Section 2 of this code;*
- The Code of Ethics.*

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 concern that the advertisement contained material which went against prevailing community standards on health and safety

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 noted the complainant's concern that a motor vehicle is seen clearly speeding and cornering recklessly and doing a protracted wheel spin.

The Panel noted the advertiser's response that the shot of the wheel spin was not a depiction of a car losing control, it was filmed as part of a motor sport racing scene. Further, the Panel noted the advertiser's response that the vehicle was not depicted cornering recklessly or speeding, it was depicted as a vehicle participating in an off-road rally race.

The Panel noted the Pay television advertisement features a number of scenes quickly transitioning into each other and includes:

- a man sitting the driver's seat of a car with his hands on the wheel
- a man wearing a racing helmet
- a surfer standing on a cliff surrounded by the ocean
- a close up of a wheel gun going into rims
- a close up of a tyre on a car as it starts to move forward
- a surfer on a large wave
- a close up of a car tyre causing smoke on the road as the vehicle moves forward
- a rally car being driven on a dirt track
- a sports car being driven around a winding road

While the scenes transition a voice over states, "Be one with it. And it will be one with you. Be one with your tyres and the road will be one with you. Hankook Tyres the official tyre of the NRL."

The Panel considered that the quick moving transitions between scenes create the impression of speed, but that it is not possible to tell the actual speed of the vehicles in shots that last less than a second. The Panel considered that a significant part of the advertisement contains racing imagery, including a close up of a racing helmet and a scene of a rally car being driven on a dirt track and considered that the advertisement conveyed the message that the tyres are used in professional motor sports.

The Panel considered there was one brief scene shown of a sports car driving on a windy mountain road. The Panel considered that the speed of the vehicle cannot be seen, but the driver appears to be in control of the vehicle at all times and is not depicted driving in a manner that would indicate that the driver does not possess the necessary skills to drive the vehicle as portrayed.

The Panel considered the brief scene where the car's tyres are seen smoking as the car begins to move forward and considered that this is also consistent with scenes from motor sports and was a demonstration of the tyre's capabilities. The Panel noted that this type of driving may breach road rules if it were to take place on an ordinary road but the overall impression of the advertisement is that these tyres are being used in a motor sport context.

The Panel considered that most members of the community would not consider the depiction of professional drivers demonstrating the capabilities of performance tyre to be unsafe or contrary to prevailing community standards.



The Panel considered that the advertisement did not depict material contrary to prevailing community standards on road safety and did not breach Section 2.6 of the Code.

The Panel noted the complainants concern that the advertisement was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

To come within the FCAI Code, the material being considered must be an advertisement 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 Panel determined that Hankook Tyres was not a Motor Vehicle as defined in the FCAI Code.

The Panel determined that the material before it was not an advertisement for a motor vehicle and therefore that the FCAI Code did not apply.

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.

INDEPENDENT REVIEWER'S RECOMMENDATION

REVIEW APPLICATION

The grounds for requesting a review of a determination of the Community Panel (the Panel) are as follows:

Where there was a substantial flaw in the Panel's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)

Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided

Where there was a substantial flaw in the process by which the determination was made

The Appellant has requested a review of the above determination of the Panel and has cited as the ground for the request:

"New or additional evidence now available, which could have a significant bearing on the decision".

The Appellant submitted a review application which largely consisted of an email sent on behalf of NSW Police Assistant Commissioner M Corboy. The letter was sought from the Assistant Commissioner by the Appellant. The Appellant has not supplied an explanation of why this information was not submitted previously as is required by the grounds for review.

The substance of the review application is as follows:



New or additional evidence now available, which could have a significant bearing on the decision

I have sought the advice of (NSW Police) Assistant Commissioner Michael Corboy. His Staff Officer, Mr Robert Toynton has replied on his behalf. His email dated 2 August 2019 is below supporting my view about the wheel spinning "burnout". It is irrelevant where this illegal and clearly very dangerous behaviour is filmed. It is considered so serious that in most states, police automatically confiscate the vehicle and there's an automatic loss of licence. On 17 August 2018, advertising expert Robert Belgiovane said on 2GB: "millennials react to car ads in the same way as tobacco, alcohol and gambling." He noted that advertising normalises the behaviour. He recalls the effectiveness of the RTA pinkie ad. Belgiovane says kids are also being encouraged to imitate what they see when they play on Xbox and other games.

From: Robert Toynton [mailto:toyn1rob@police.nsw.gov.au]

Sent: Friday, 2 August 2019 11:34 AM

To:

Cc: Michael Corboy

Subject: RE: URGENT Ad Standards Notification regarding a complaint [SEC=UNCLASSIFIED]

Good morning Harold,

Thanks for your email. I have reviewed the attached information and briefed Mr Corboy. We have both seen the advertisement in the attached U-Tube video.

In regards to this particular advertisement we support your position regarding the wheel sustained loss of traction. In our view this image potentially gives the impression that burnouts are acceptable behaviour and contrary to a responsible road safety message. We are unable to make comment regarding the other issues within the advertisement/complaint.

Kind regards

Robert Toynton
Staff Officer to Assistant Commissioner Michael Corboy APM
Command Office | Traffic & Highway Patrol Command

The original complaint was made in respect of a Pay TV advertisement which was reproduced on UTube and is described in the Case Report above.

Following acceptance of the review application, an invitation was sent to parties to make a further submission to the Independent Reviewer. A submission consisting of two separate documents was received from the Advertiser: one relating to the AANA Code and one relating to the FCAI Code. The Advertiser initially responded in terms of the FCAI Code and upon



clarification that the complaint was considered under the AANA Code, the Advertiser submitted a second response. It is unclear why the Advertiser had overlooked the Panel's comments in the Determination about the FCAI Code not being applicable to the complaint. For the sake of completeness both responses are included here:

We wish to make the following further submissions for consideration by the independent reviewer for the above case:

The relevant code applicable to this advertisement is the VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING issued by the FCAI (Code), and in particular its states in section 2:

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.

The 2 elements required for breach of this code is that the tyre squeal is both (a) unsafe or reckless; and (b) would breach a Commonwealth law.

We submit that the depiction is neither – please refer to our previous submission. Mr Robert Toynton (*Mr Toynton*) of Traffic & Highway Patrol Command stated the following:

In our view this image potentially gives the impression that burnouts are acceptable behaviour and contrary to a responsible road safety message. We are unable to make comment regarding the other issues within the advertisement/complaint.

Mr Toynton did not state that the depiction was either unsafe or reckless and a breach of law. This was because this depiction was neither. The vehicle had not loss control. The decision by the Ad Standards Board is therefore correct.

We understand dangerous driving may involve this component but it must show loss of control, or a drag start which it does not depict. The use of the word burnout is a very emotive word and we appreciate these acts by teenagers can be considered illegal. Tyre spinning caused by quick acceleration is not a burnout. A burnout or drag start is the practice of keeping a vehicle stationary using brakes and spinning its wheels, causing the tires to heat up and smoke due to friction. This is not depicted.

While it is not relevant as to whether the Code has been breached, we do not agree that the tyre squealing gives the impression that a burnout is acceptable behaviour. We consider the depiction shows where a powerful vehicle is encountering challenging conditions, it will maintain control on the road, and that Hankook is a performance tyre.

Additionally we refer to Section 3 which states:



Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following: (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia; or (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.

You will note that in our previous submission the wheel spin also forms part of a motor sport scene, and it is identifiable as such with the scene upon which the driver has donned a racing helmet and is operating a rally car.

We refer to your review of the case 0198/19 based on comments made by Mr Robert Toynton of the NSW Traffic Command. We understand that the review is being considered in light of section 2.6 of the Code of Ethics which states:

Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety.

Additionally the practice note states:

Advertisements are subject to the health and safety section. This means that a motor vehicle advertisement cannot depict images contrary to public health and safety notwithstanding the images being unrelated to the motor vehicle advertised.

We also note the commentary within the Code as follows:

Prevailing Community Standards apply to all parts of Section 2. This means that the Ad Standards Community Panel will have regard to community standards at the time the advertising or marketing communication was published. Prevailing Community Standards are determined primarily by the Community Panel, whose members are representative of the community, on a case by case basis, as part of the complaints process. To assist advertisers and complainants, this Practice Note provides some guidance into Prevailing Community Standards. It is influenced in part by previous decisions of the Community Panel, the AANA's intent in developing this Code and any relevant research of the AANA or Ad Standards. There is no one test of Prevailing Community Standards. The Prevailing Community Standard will differ in relation to health and safety, nudity, language, violence and portrayal of people.

Mr Toynton's comment

Mr Toynton made the following comment for consideration:

In our view this image potentially gives the impression that burnouts are acceptable behaviour and contrary to a responsible road safety message

Depiction is not a Burnout

We agree that depicting a burnout or drag start may be contrary to prevailing community



standards. This circumstance often depicted at racing meets, show cars intentionally braking and burning out their rubber or sliding or drifting around in a 360 degree circle while burning rubber. This will obviously cause serious concern on public roads where teenagers gather to race or show off their burn outs to others. A burn out or drag start as mentioned in our previous submission is:

The practice of keeping a vehicle stationary using brakes and spinning its wheels, causing the tires to heat up and smoke due to friction

The depiction of the wheels squealing occurs because of an abrupt start on an uneven surface or slippery surface and is not a burn out and can be a relatively common occurrence on roads. Therefore the depiction is not of a burn out or drag start or has the impression that the driver is attempting such act.

Further we do not consider that the mere depiction of wheel spinning during a start is in itself contrary to prevailing community standards for health and safety. It is neither illegal nor as a sole consequence of dangerous driving but can indicate slippery surface conditions. To the contrary, the purpose of this advertisement is to show the importance of good tyres when driving in road conditions which are challenging.

Does depiction give impression a burnout or drag start is acceptable – as a broader definition of Prevailing Community Standards

While we cannot agree that a depiction of an act should be considered on the basis that “it may encourage a breach of a prevailing community standard” or “it may cause an audience to believe that a breach of a prevailing community standard be acceptable” we are obliged to consider it based on Mr Toynton’s comments. We consider this a dangerous interpretation of section 2.6, as it invites uncorroborated speculation as to the effects of advertising. For example, any advertising of alcohol could suggest that it encourages drunken behaviour and violence, if an expert on physical injury (such as a doctor) states that most violent assaults involve an intoxicated person and an alcohol advertisement encourages a person to drink alcohol increasing the risk of intoxication. Or any advertisement depicting a person at the beach but not being located or swimming within the safety flags of the lifeguards may encourage a person to recklessly swim at a beach which breaches prevailing community standards. And any advertisement for motor vehicle racing events would need to be banned as it may potentially encourage speeding.

Firstly, we cannot give weighting to Mr Toynton in relation to his comments as he is not a psychologist or marketing specialist who is an expert on the effect of images or messages. Additionally he has not provided any specific studies or objective evidence to support his claims. For example, has there been an increase in this behaviour and what has been the cause behind this. It is likely that any increase may be because of the sheer number of cars which are more powerful – however no evidence is available. We acknowledge that Mr Tonyton may have expertise on the dangers of burn outs and drag racing for young drivers and its prevalence (as well as enforcement) but that is a different issue. Contrary to Mr Toynton’s opinion we have the opposite conclusion. Our different views are as follows:



It does not depict a person racing another vehicle or encouraging someone to race at a set of traffic lights;

The person depicted driving the vehicle is a more mature person not aimed at young men, or having the effect that teenagers or young men can relate to;

The image is for less than half a second with a voice over being "Be one with your tyres" which is clearly not encouraging unsafe behaviour but rather safety where conditions are challenging.

The advertisement is definitely not providing any context which puts the driver in a position where he will be street racing another person or impressing them with his starts.

The Reviewer notes that although the Advertiser refers to the comments in the above email as those of Mr Toynton, the actual comments are made on behalf of A C Corboy and I have referred to them as his, as this is clearly what the Appellant intended.

Appellant's Grounds

In the request for review, the Appellant contends that the letter from the Assistant Commissioner for Police NSW represents new or additional evidence which could have a significant bearing on the decision of the Panel. In this regard it is important to note that the email from A.C. Corboy refers to only one element of the advertisement (the "wheel sustained loss of traction") and states that the Assistant Commissioner is "unable to make comment regarding the other issues within the advertisement/complaint". It follows from this that the Appellant is contending that the email represents new or additional relevant evidence which could have a significant bearing on the decision of the Panel in respect of this element of the advertisement, i.e. the only element the Assistant Commissioner confined himself to: "the wheel sustained loss of traction". I have accepted and considered this additional information although I note that no explanation was provided by the Appellant as to why this evidence was not submitted at the time of the original complaint. This issue will be addressed within my recommendation.

INDEPENDENT REVIEWER'S RECOMMENDATION

As noted above, I have accepted the request and have read, viewed and considered all of the material that was before the Panel together with the subsequent submissions made to me as reviewer.

It is important to note that the original complaint regarding this advertisement was made citing breaches of the FCAI Code of Practice alone and that the complainant did not specifically address the AANA Code of Ethics. In that complaint, the complainant cited speeding, cornering recklessly and a protracted wheel spin as issues of concern and quoted the FCAI Code provisions which the complainant thought were breached by the advertisement.

The Panel considered the original complaint and also considered the response of the Advertiser which responded both in terms of the FCAI Code and of the AANA Code of Practice.



In its determination, the Panel correctly points out that the FCAI Code did not apply to the complaint, as the advertisement for Hankook Tyres was not an advertisement for a motor vehicle. Its comments regarding this finding are reproduced in the Case Report above.

The Panel did, however, correctly also consider whether the advertisement breached Section 2 of the AANA Code of Ethics. Although the complainant had not specifically mentioned the AANA Code the Panel must consider advertisements against all relevant Codes. In doing so, the Panel considered the complainant's concerns in terms of whether the advertisement 'contained material contrary to prevailing community standards of health and safety' (Section 2.6 of the Code).

In considering the advertisement against Section 2.6 of the AANA Code, the Panel took into consideration the Advertiser's response (see Case Report above) that the 'wheel spin' shot was filmed as part of a motor sport racing scene and was not a depiction of a car losing control, and that a vehicle was not depicted cornering recklessly or speeding but rather as a vehicle participating in an off-road rally race. The Panel further noted that the advertisement "features a number of scenes quickly transitioning into each other". The Panel listed those scenes, which involve at least four different scenarios involving surfing scenes and vehicle scenes. The voiceover included the statement "Hankook Tyres the official tyre of the NRL".

The Panel commented that the fast transitions between scenes in the advertisement created the impression of speed, but also made it impossible to ascertain the actual speed of the vehicles 'in shots that last less than a second'. The Panel considered that "a significant part of the advertisement contains racing imagery, including a close up of a racing helmet and a scene of a rally car being driven on a dirt track and considered that the advertisement conveyed the message that the tyres are used in professional motor sports".

The Panel considered that the brief scene of a sports car driving on a winding mountain road, despite the speed not being ascertainable, was a scene which depicted the driver appearing to be in control of the vehicle at all times and not driving in a manner that would indicate that the driver did not possess the necessary skills to drive the vehicle as portrayed.

The advertisement is correctly described by the Panel, as consisting of rapid scene transitions which make ascertaining actual speed impossible. There is a mixture of shots of racing cars and on road vehicles which are not always easy to distinguish from each other. When shots of the hero as racing car driver are shown, the exterior of his car is not and vice versa. The same man is the surfer and the driver of the on-road vehicle. He transitions from scene to scene and so do the featured vehicles. The nexus between Hankook Tyres and professional car racing is the clear message of the advertisement, with the aim of demonstrating the capabilities of Hankook Tyres.

Given the content of the advertisement and its analysis of the context of those scenes, the Panel was entitled to conclude that the scenes mentioned above did not depict material contrary to prevailing community standards and accordingly did not render the advertisement in breach of Section 2.6 of the AANA Code.



The application for this Review, as noted above, contends that the email sent on behalf of Assistant Commissioner Corboy, represents new or additional relevant evidence which could have a significant bearing on the decision. As noted above, in that email, the Assistant Commissioner confines himself to comment on only one scene of the advertisement: the brief scene where one rear tyre is seen smoking as the car moves off.

The Panel considered that this scene (almost one second in duration) was consistent with scenes from motor sports and was a demonstration of the tyre's capabilities. The Panel concluded that:

"the overall impression of the advertisement is that these tyres are being used in the motor sport context.

The Panel considered that most members of the community would not consider the depiction of professional drivers demonstrating the capabilities of performance tyre [sic] to be unsafe or contrary to prevailing community standards."

The Advertiser, in its original response to the complaint, states in respect of this scene that:

"This shot was filmed as part of a motor racing scene and indicates the tyre is a performance tyre. (Filmed in controlled racing conditions)."

A careful examination of the advertisement indicates that the car with the smoking tyre is likely to be the racing car in the advertisement and not the on-road car, which is of a lighter colour and different shape. The scene is so short that there is no long shot of the car as it moves off. The scenery reflected in the car's surface also seems to be consistent with the scenery shown in other scenes of the racing car. Without evidence to the contrary, on balance, it appears that the car in this scene is a racing car and that it is not likely to be being driven in an ordinary road environment. In view of this balance of probabilities and on the evidence before it, the Panel was entitled to take the view that this scene was "consistent with scenes from motor sports and was a demonstration of the tyre's capabilities". Given the content of the advertisement, the Panel was also entitled to take the view that the 'overall impression of the advertisement is that these tyres are being used in a motor sports context'. This conclusion does not require every scene of the advertisement to be in a motor sports context.

The issue to be decided is whether the new/additional evidence submitted to the Reviewer is both relevant and "could have a significant bearing on the determination". Thus, the new or additional evidence in the email from A C Corboy must be relevant to the determination of the Panel and its bearing on that determination must also be significant and of corresponding impact.

The Panel's decision in relation to the above scene of the advertisement turns on its view that it is a motor sports scene and that it represents a demonstration of the tyre's capabilities.

The email on behalf of A C Corboy, which relates only to this scene, makes no mention of a motor sports context, concentrating rather on a view that the image '*potentially gives the impression that burnouts are acceptable behaviour and contrary to a responsible road safety*



message”.

The quote above from the email qualifies the statement by adding the word “potentially” -- the indication being that in the view of the Assistant Commissioner, the image may or may not give that impression.

It seems evident that A C Corboy’s comments relate to a car in an ordinary road environment, calling into question their relevance to the Panel’s determination, as the Assistant Commissioner does not address at all the image in a motorsports context/scene and makes no comment on the other scenes in the advertisement, which formed part of the view of the Panel that “the overall impression of the advertisement is that these tyres are being used in a motor sports context”. Further, the expression “burnout” and the concept of responsible road safety messages are not usually employed in a motor sports context. There is no indication in the review application that the Assistant Commissioner had the benefit of reading the Panel’s determination before making his comments – only that he viewed the advertisement. He would not, in that case, have been aware of the contextual view taken by the Panel in making its determination.

As the Panel’s view of this scene places the car firmly in a motor sports context, the result is that the comments of A C Corboy relate to a different context – a non-motor sports environment. The Panel and the Assistant Commissioner are thus considering the image within different contexts and are not taking opposing views of the image within the same context. The result is that the relevance of the Assistant Commissioner’s comments to the determination is not established.

In addition, A C Corboy characterises the wheel spin in terms of ‘burnouts’ – a characterisation which the Advertiser does not accept. In its submissions to this Review, the Advertiser specifically rejects any claim that the image is that of a burnout, describing a burnout as:

“The practice of keeping a vehicle stationary using brakes and spinning its wheels, causing the tyres to heat up and smoke due to friction”.

This description is consistent with usual definitions of the expression “burnout”.

In his email A C Corboy also refers to a ‘sustained loss of traction’. However, the entire scene referred to lasts less than one second, making it difficult to accept the description of the loss of traction as being ‘sustained’.

The Advertiser characterises the image in question as:

The depiction of the wheels squealing occurs because of an abrupt start on an uneven surface or slippery surface and is not a burn out and can be a relatively common occurrence on roads ... the purpose of this advertisement is to show the importance of good tyres when driving in road conditions which are challenging”.

As noted above, the Panel concluded that this scene was ‘consistent with scenes from motor sports and was a demonstration of the tyre’s capabilities’.



The Reviewer wishes to take this opportunity to comment on the second leg of the ground for review discussed above. This states: "An explanation of why this information was not submitted previously **must be provided**" (emphasis added). This present case is yet another of a number over the years where the appellant has failed to provide such information. I have been unable to locate a precedent review where the review application was refused due to this requirement and have, accordingly, accepted the review application. However, I would like to echo the comments of a previous Reviewer in 0182/10:

"I think it is also relevant for me to raise the issue of the importance of requiring complainants, wherever possible, to submit all the evidence and material available to them at the time of the original complaint. Clearly, when new or additional evidence is provided at the time of a request for review, there is potential for a recommendation to be made that the original decision be reviewed. A better option, in my view, would be that, if reasonably available, all of the relevant evidence be provided in the first instance to the Board. This is more likely to lead to a decision that is satisfactory, or acceptable, to all parties and would avoid unnecessary cost and time delays".

I would add to these comments, made a significant time ago, that in my view, the lack of a precedent for enforcing the second leg of this ground raises the obvious issue of whether it is intended to be strictly enforced.

In summary, the Assistant Commissioner's comments on the scene referred to in his email do not constitute "new or additional relevant evidence which could have a significant bearing on the determination", as they address the scene in a totally different context to that of the Panel's determination, i.e. the context of motor sports/demonstration of capabilities of the tyre. A C Corboy's comments, though clearly well-intended, are thus not relevant to the determination and are not demonstrated to be capable of having a significant bearing on the determination, causing the Panel to reconsider that determination.

This ground for review is therefore not made out.

I recommend that the determination of the Panel be affirmed.