



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0333/18
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/08/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows a father travelling in a car with his baby asleep in its baby seat. The father goes into the McDonald's drive thru and continuously loops around whilst trying to order a coffee, so as to not stop the car and awake his sleeping baby.

THE COMPLAINT

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

With all the money spent on road safety you have a driver driving through continually through to pick up a cup of coffee so the child doesn't wake up. Each time he hangs out the window doesn't look for anyone in front of him to pay and pick up a hot cup of coffee. Mcdonald must not remember the case in USA when a women drop a hot coffee in her lap. This is a disregard for any road safety campaign.

The add breaks the Law. The car does not stop to pay and get the coffee. Breaks a number of road rules.



1. Two hands should be on steering wheel not one.
 2. It is an offense to have hand outside of window while car is driving.
 3. The driver is acting dangerously while driving the car in tap a payment while in motion and two taking a coffee while the car is driving.
 4. All these road rule breaches while a child is in the car.
- The add is a disgrace and promotes reckless driving and the road people and police should be abhorant.

Given the Fact that there is a child in the back seat of the vehicle while he is operating a vehicle with 1 hand while trying to utilize the services of the teller several times, confirming his order while driving with one hand on the steering wheel, making the purchase without stopping the vehicle to retrieve his mastercard from his wallet and then swiping the card while driving through the drive in, and then obtaining the finished article still while the child is in the back seat and still while driving a vehicle with one hand, completely shows a complete disregard of this company with ROAD SAFETY and support the many hundreds of drivers that are killed in MVA accidents EVERY year from irresponsible driving habits.

THE ADVERTISER'S RESPONSE

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

Thank you for requesting a response to complaint number 0333/18 (Complaint).

The Complaint refers to a television commercial a part of the 2018 McCafe campaign (Advertisement). The Complaint is made under section 2.6 of the AANA Code of Ethics (AANA Code) and alleges that the Advertisement encourages unsafe behaviour in the use of motor vehicles.

McDonald's takes community standards seriously in the preparing and publishing of its advertising materials and communications. We acknowledge the Complaint's concern with road safety in general and its impact on the community and note that we share the same concern. However, the Advertisement is not one to be concerned about.

The Advertisement shows the driver continuously looping in the McDonald's drive thru. The reason for this is so that his baby remains soundly asleep – a common parenting technique. The driver is continuously checking his rear view mirror, his surroundings, where he is going and for the majority of the Advertisement, has two hands on the wheel. Nonetheless, the minority of the Advertisement for where the driver has one hand on the vehicle is not a cause for concern either. According to the Australian Road Rules, "a driver must not drive a vehicle unless the driver has proper control of the vehicle". Based on this rule, it is not illegal to drive with one hand as depicted in the



Advertisement. It is not questionable whether or not the driver in this Advertisement appeared in proper control of the vehicle in all scenarios of the Advertisement and did not appear to be driving dangerously or in a manner that may be uncontrolled.

The Advertisement was filmed under controlled circumstances. This included a safety supervisor on set monitoring the shoot who was accompanied by a nurse who was tasked to identify any issues during filming to which the team would respond accordingly. We also note that the Advertisement received CAD approval and the issue of road safety was not raised. Furthermore, it is important to recognise that the advertisement is for the McCafe/ drive thru service, not a motor vehicle. McDonald's does not condone unsafe or illegal driving practices and there was no intention to depict or encourage such behaviour in the Advertisement. We believe that it would be taking the Advertisement out of context to conclude that there is a breach of the Code. Finally, we have considered advertisements which received similar complaints/ concerns which were subsequently dismissed by the Ad Standards board for reasons similar to those in this response (case references: 0242/12, 0162/15, 0278/14).

Accordingly, the Advertisement complies with the Code and so the Complaint should be dismissed. We have considered other matters under section 2 of the AANA Code of Ethics and submit that the Advertisement does not breach any of the other matters covered by that section.

THE DETERMINATION

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

The Panel noted the complainants' concerns that the advertisement shows a disregard for road safety.

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

The Panel noted that the television advertisement depicts a man going through the McDonalds drive-through several times to order a coffee so as not to stop the vehicle and wake a sleeping baby.

The Panel 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 Panel noted the complainants' concerns that the advertisement shows a man driving a vehicle with one hand and not stopping a vehicle to perform tasks such as ordering coffee or retrieving his key-card from his wallet, which is contradictory to road safety.

The Panel noted the advertiser's response that Section 297 of the Australian Road Rules states "a driver must not drive a vehicle unless the driver has proper control of the vehicle". The Panel also noted Section 268 (3) of the Australian Road Rules states "A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal", however the Panel noted the exception to that rule in Section 268 (5) which states "This rule does not apply to a person who is...(c)...in or on a motor vehicle that is not travelling over 25 kilometres per hour."

The Panel noted it had previously upheld an advertisement in which a person's hand was outside the vehicle in case 0293/17 in which:

"The Board noted that in one scene Delta has her head leaning out of the open window with her arm resting just outside the vehicle, and in a later scene Delta has her elbow resting on the open window with her hand resting on the top of the window frame, external to the vehicle. The Board considered that these depictions are a breach of the Road Rules."

The Panel noted that in the previous case, the vehicle is shown to be on a normal roadway rather than a driveway, and therefore the vehicle was travelling at a speed higher than 25km/h. The Panel considered that in the current advertisement the vehicle is clearly driving under 25km/hour, both due to the confines of a drive-through and in order to keep his child asleep. The Panel considered that the vehicle is clearly under the driver's control.

The Panel noted a complainant's secondary concern that the driver makes a purchase without stopping the vehicle to retrieve his key-card from his wallet and then swiping the card while driving through the drive-through without stopping.

The Panel noted that the viewer does not see a scene of the driver removing his key-card from his wallet. The Panel considered that his key-card may have been stored within the car, or removed from his wallet prior to driving. The Panel also noted that the driver does not swipe his key-card when paying, he uses the pay-pass function and taps his card which requires him to take his eyes off the roadway for less time. In the Panel's view this action was a fleeting scene in the advertisement and is not encouraging irresponsible driving habits, but is a necessary part of the storyline of the advertisement.

The Panel considered that members of the broader community would likely recognise



the humour of a parent's caution to not wake a sleeping child that is depicted in this advertisement. The Panel 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 Panel determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Panel dismissed the complaints.

