



Case Report

1	Case Number	0357/11
2	Advertiser	Mercedes-Benz Aust/Pacific P/L
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	28/09/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Speeding

DESCRIPTION OF THE ADVERTISEMENT

A young couple sitting on a bed contemplating their next trip. The woman suggests going to the mountains or the sea and the man imagines them driving the Mercedes-Benz C-Class Coupe during each of the various trips suggested. The final suggestion of going to Venice (with its lack of roads) is quickly refused by the male as this would not allow the couple to drive the car.

The advertisement closes with a standard shot of the Mercedes-Benz C-Class Coupe being driven along a road.

THE COMPLAINT

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

The ad was clearly intended to portray fast driving. This is obviously unsafe and against the motor vehicle industry's code of conduct.

THE ADVERTISER'S RESPONSE

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

Mercedes-Benz Australia/Pacific Pty Ltd (“MBAuP”) takes its responsibility as an advertiser very seriously. We make extensive efforts to understand and respond appropriately to community concerns and issues. Over and above this, we have established our own stringent internal review and approval process, which includes consultation with our in-house legal team and may include our advertising agency obtaining external legal advice. Additionally, we adhere to the Commercials Acceptance Division (“CAD”) pre-approval process to ensure approval classification before the commercial is aired. This is both a rigorous and robust process.

We have carefully considered the complaint made and do not agree with the concerns put forward by the complainant.

Whilst we respect the right of personal opinion, we believe that this complaint does not accurately or fairly represent the content, tone or intention of the advertisement. It is MBAuP’s firm belief that the advertisement does not breach the AANA Advertiser Code of Ethics (“AANA Code”), nor the FCAI Code of Practice for Motor Vehicle Advertising (“FCAI Code”).

From your letter dated 2 September 2011, we note that the complaint you have received relates to a perceived breach of the AANA Code (specifically Section 2). Section 2 of the AANA Code requires MBAuP to consider the advertisement’s compliance with the FCAI Code.

Please find below our response to both issues.

THE COMPLAINT

An anonymous complaint was received by the ASB on 22 August 2011 in relation to the Mercedes-Benz C-Class Coupe’ television commercial. The complainant stated that:

Ad description: “The ad showed a couple discussing possible holiday destinations cut between scenes of the car being driven at what seemed to be high speeds.”

Reason for concern: “The ad was clearly intended to portray fast driving. This is obviously unsafe and against the motor vehicle industry’s code of conduct.”

Although the exact version of the advertisement has not been identified in the complaint, we have assumed that the complaint relates to the longest version of the advertisement (30 seconds) as it is most representative of the other cut-down versions and based on the wording of the complaint is most likely the version of the advertisement to which the complaint relates. For your information, there were other smaller cut-down versions of the advertisement created, but in each case the cut-down versions contain no new footage or content at all.

The advertisement has been broadcast across all States and Territories of Australia, and has also been made available on the internet, since its initial release on 31 July 2011.

SECTION 2 OF THE AANA CODE

MBAuP is fully supportive of the AANA Code. By virtue of section 2.7 of the AANA Code of Ethics, which reads as follows:

“2.7 Advertisements for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertisements to which the Federal Chamber of Automotive Industries Code of Practice applies”.

The Mercedes-Benz C-Class Coupe’ ADVERTISEMENT was compiled with the FCAI Code in mind and it is MBAuP’s contention, as supported below, that the advertisement complies with the FCAI Code.

FCAI CODE CONSIDERATIONS

The FCAI Code acknowledges that advertisers may make legitimate use of humour in creative ways in advertising of motor vehicles as long as such executions do not contradict,

circumvent or undermine the provisions of the FCAI Code. The advertisement attempts, as part of the TVC, to introduce humour and, as will be indicated below, MBAuP considers that the advertisement does not contradict, circumvent or undermine the provisions of the FCAI Code.

The relevant sections of the FCAI Code applicable to the assessment of the Mercedes-Benz C-Class Coupe' advertisement are the following subsections of section 2:

"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.

The driving depicted in the advertisement is not unsafe, reckless or menacing. It cannot be seen to be breaching any Commonwealth law or the law of any State or Territory of Australia. MBAuP's position in this regard is supported by independent legal advice obtained by MBAuP's advertising agency. Furthermore, the vehicles are not travelling at an excessive speed nor involved in any sudden, extreme or unnecessary changes in direction. The direction and speed of the Mercedes-Benz C-Class Coupe' depicted in the advertisement is constant.

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

There is no evidence within the advertisement of the vehicle driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement was published or broadcast. There is no evidence in the advertisement which indicates that the Mercedes-Benz C-Class Coupe' is speeding or breaching any road rule, and the complainant's comment that the scenes depicted the vehicle "being driven at what seemed to be high speeds" would likely be explained by the quick editing used by the producers of the advertisement, coupled with the up-beat background music. By the complainants own admission, the C-Class Coupe' "seems to be" driven at high speed. Nothing in the advertisement, other than the quick editing techniques used, supports that the C-Class Coupe' was travelling at high speed.

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.

As previously indicated, the C-Class Coupe' in the advertisement is not displaying unsafe driving, nor is the driving reckless or menacing in any way that would breach any Commonwealth law or the law of any State or Territory directly dealing with road safety or traffic regulation.

The protagonists in the advertisement are clearly seen enjoying their Mercedes-Benz C-Class Coupe' on beautiful roads, to the point of exhilaration. Indeed this is the very point of the advertisement, to convey the sort of feeling that a driver and passenger can expect from driving the new Mercedes-Benz C-Class Coupe'. It is MBAuP's view that a driver can and should be exhilarated by the driving experience (especially on such beautiful roads as those depicted) without driving illegally or in an unsafe manner. For example, such exhilaration can be enjoyed through the cornering and controlled acceleration of a well-engineered vehicle. It is that level of controlled exhilaration which is depicted in the protagonist's reactions and expressions in this advertisement.

Contrary to the complainant's view, it does not automatically follow that the advertisement was intended to portray "fast driving", by which we assume the complainant means "speeding". Simply because the protagonists are seen to be enjoying the driving experience, and the advertisement is cut and edited in a quick-shot manner, it should not automatically be assumed that this means that the vehicle is speeding or driving recklessly or illegally, or that the advertisement somehow depicts, encourages or condones such behaviours.

It is also worth noting that there are clearly audible engine tones within the advertisement to provide an idea of the sound of the vehicle's engine under acceleration, and again, this is not banned under the FCAI Code and nor does it, of itself, imply unsafe, illegal or reckless driving or speeding. In the context of this advertisement the engine sounds combine with the exhilarated expressions on the face of the protagonists to provide an idea for the viewer of the enjoyment of driving the vehicle, and at no time is there any speeding or unsafe driving pictured as a result of the engine revving.

Finally, the most accurate consideration of the manner in which the Mercedes-Benz C-Class Coupe' is being driven throughout the advertisement can be made from the final few seconds of the advertisement, where the framing and editing of the advertisement is returned to a more conventional or "normal" state. Indeed, these final few seconds of the advertisement are perhaps easier to assess in terms of the depiction of the driving because of the nature of the editing, and should assist satisfying the ASB in this case of the vast difference between unsafe/reckless driving/speeding and quick-shot editing.

On the basis of the above, MBAuP maintains that the advertisement is not in breach of the AANA Code or the FCAI Code and requests that the ASB accordingly dismiss the complaint.

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 Coupe 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 Coupe 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 concerns that the advertisement portrays fast driving which is unsafe.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

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.'

The Board noted the advertiser's response that the advertisement is intended to show how exhilarating it is to drive the vehicle and that although the advertisement is "cut and edited in a quick shot manner" there is no depiction of speeding or of unsafe driving.

The Board noted that the overall tone of the advertisement is one of fantasy as the main characters are imaging where they could drive their Mercedes-Benz C-Class Coupe. Some members of the Board expressed concern over the suggestion of the thrill of driving and the fact the editing is so quick it could imply speed. The Board also expressed concern over the concept of and/or perceived portrayal of speed used in the advertisement, however the Board considered that the vehicle is shown being driven in a controlled manner throughout the advertisement and that the vehicle does not appear to be driven in a manner which is unsafe.

On the above basis, the Board determined that the advertisement does not depict unsafe driving nor reckless or menacing driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement breached clause 2(b) of the Code. Clause 2 (b) provides that advertisements should not depict "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 noted that there is no indication of the speed the car is driving at in the advertisement or of the speed limits of the roads the car is driving on and considered that it is the editing of the advertisement which gives the illusion of speed.

The Board considered that the car is not shown to be driving in excess of speed limits and determined that the advertisement did not breach clause 2(b) of the Code.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.