



ADVERTISING  
STANDARDS  
BUREAU

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## Case Report

1	Case Number	0430/13
2	Advertiser	Hungry Jacks
3	Product	Food / Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	11/12/2013
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

2.6 - Health and Safety Motor vehicle related

### DESCRIPTION OF THE ADVERTISEMENT

The television commercial depicts a group of friends in a car at the beach. The driver of the vehicle is reverse parallel parking and stops when he hears a loud "crunch" noise. The "crunch" noise comes from the sound a female passenger in the vehicle makes when biting into a Hungry Jack's® Chicken Crunch burger. The driver and passengers laugh together in the parked vehicle when the driver realises the "crunch" noise has emanated from the female passenger. The remainder of the TVC describes the new Chicken Crunch and pricing information.

### THE COMPLAINT

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

*No one appears to be wearing seat belts !*

*It is quite obvious none of the occupants of the vehicle are wearing seat belts (you can clearly see the girl in the front seat, the buckle is hanging beside her shoulder in the close up...) even though the vehicle is in motion, ie they are just parking at the beach after picking up lunch. In this day and age of safety and doing the right thing in cars here you have an add showing people in a car not wearing seat belts!*

### THE ADVERTISER'S RESPONSE

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

*Hungry Jack's® takes complaints about its advertising seriously and endeavours to be a responsible advertiser.*

*We note that the two complaints forwarded by the ASB relate to the depiction of occupants of a vehicle not wearing seatbelts, which is relevant only to section 2.6 of the AANA Code of Ethics. We note that section 2.6 of the AANA Code of Ethics provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety" and that the AANA Code of Ethics Practice Note indicates that Section 2.6 deals with matters such as not wearing a seatbelt.*

*However, in the TVC depicted, there has been no breach of the Australian Road Rules. The National Transport Commission's Australian Road Rules ("ARR")(the model rules which have been implemented in each State and Territory's road safety legislation, with only minor variations) states:*

*264 Wearing of seatbelts by drivers*

*(1) The driver of a motor vehicle that is moving, or is stationary but not parked, must comply with this rule if the driver's seating position is fitted with an approved seatbelt.*

*Offence provision.*

*Note Driver is defined in rule 16, approved seatbelt, motor vehicle and park are defined in the dictionary.*

*(2) The driver must wear the seatbelt properly adjusted and fastened unless the driver is:*

*(a) reversing the vehicle; or*

*(b) exempt from wearing a seatbelt under rule 267.*

*Note Rule 267 provides exemptions from wearing seatbelts.*

*265 Wearing of seatbelts by passengers 16 years old or older*

*(1) A passenger in or on a motor vehicle that is moving, or that is stationary but not parked, must comply with subrule (2) if he or she:*

*(a) is 16 years old or older; and*

*(b) is not exempt from wearing a seatbelt under rule 267.*

*Offence provision.*

*(2) The passenger:*

*(a) must occupy a seating position that is fitted with an approved seatbelt; and*

*(b) must not occupy the same seating position as another passenger (whether or not the other passenger is exempt from wearing a seat belt under rule 267); and*

*(c) must wear the seatbelt properly adjusted and fastened.*

*Note Approved seatbelt is defined in the dictionary.*

*In particular, in the first scene (showing the front of the vehicle as the driver attempts to reverse park) the driver is not wearing a seatbelt whilst he reversing the vehicle. As noted above, ARR 264(2) does not require drivers to wear a seatbelt when reversing the vehicle. In respect of the passengers of the vehicle, it is not possible in this scene to ascertain with any degree of certainty whether or not passengers are wearing seatbelts.*

*In the next scene (which shows a side view of the vehicle as the driver has parked), the driver and passengers are depicted not wearing their seatbelts. However, the car is parked at this time. As noted above, ARR 264 and 265 does not require drivers or passengers to wear seatbelts when the motor vehicle is parked.*

*The focus of the TVC is at all times is on the humorous and exaggerated noise of the "crunch" noise emanating from the burger being eaten. Hungry Jack's® at no time intended to imply or condone drivers or passengers travelling in motor vehicles without seatbelts,*

*other than in a manner in accordance with the Australian Road Rules. Hungry Jack's is committed to complying with the AANA Code of Ethics and will continue to ensure that its advertisements are in accordance with prevailing community standards on health and safety.*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement features unsafe behaviour as the occupants of the vehicle are not wearing seatbelts.

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

The Board 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 Board noted the advertisement features a group of friends in a car at the beach. The driver of the vehicle is conducting a reverse park and stops when he hears a loud "crunch" noise. The "crunch" noise comes from the sound of a passenger biting into a Hungry Jack's Chicken Crunch burger. The remainder of the TVC describes the new Chicken Crunch and pricing information.

The Board noted that the advertiser's response includes information relating to the Australian Road Rules surrounding the wearing of seatbelts. The road rules state the following:

### 264 Wearing of seatbelts by drivers

(1) The driver of a motor vehicle that is moving, or is stationary but not parked, must comply with this rule if the driver's seating position is fitted with an approved seatbelt.

Offence provision.

Note Driver is defined in rule 16, approved seatbelt, motor vehicle and park are defined in the dictionary.

(2) The driver must wear the seatbelt properly adjusted and fastened unless the driver is:

(a) reversing the vehicle; or

(b) exempt from wearing a seatbelt under rule 267.

Note Rule 267 provides exemptions from wearing seatbelts.

### 265 Wearing of seatbelts by passengers 16 years old or older

(1) A passenger in or on a motor vehicle that is moving, or that is stationary but not parked, must comply with subrule (2) if he or she:

(a) is 16 years old or older; and

(b) is not exempt from wearing a seatbelt under rule 267.

Offence provision.

(2) The passenger:

(a) must occupy a seating position that is fitted with an approved seatbelt; and

(b) must not occupy the same seating position as another passenger (whether or not the other passenger is exempt from wearing a seat belt under rule 267); and

(c) must wear the seatbelt properly adjusted and fastened.

The Board noted that the laws surrounding the wearing of seat belts are stipulated by the relevant authorities within each state and territory. The Board noted that based on the above the advertiser has determined that the driver of the vehicle is not required to wear a seatbelt while reversing.

“As noted above, ARR 264(2) does not require drivers to wear a seatbelt when reversing the vehicle.”

The Board noted that the way that the advertisement is filmed makes it difficult to ascertain the differences between when the car is reversing and when it is stationary.

The Board noted as the advertisement commences the driver is clearly not wearing a seatbelt and at the point where the sound of the ‘crunch’ is heard, it is evident that the passenger is not restrained either. The Board noted that as the driver reverses the car, he is positioned in a way that shows that the seat belt is not across his torso. The Board noted that at this point the passenger can be seen holding the burger closely to her mouth and that her seatbelt is not visible across her.

The Board agreed that the scene that follows directly afterwards confirms that her seatbelt is not being used as the belt is seen in a retracted position. The Board noted that the vehicle could be stationary at this point, however it is unlikely that the passenger would have the time to undo her belt. The Board agreed that the most likely interpretation of the scene is that the passenger did not have her seatbelt fastened at any stage while the vehicle was moving.

The Board noted that it had previously upheld complaints relating to advertisements that show people not wearing seatbelts. Consistent with their upheld decision in case 0274/09, the Board noted that: “section 2.6 of the Code prohibits depictions of material that contravene prevailing community standards on health and safety and considered that wearing a seatbelt while driving a vehicle is a key factor in road safety and is a legal requirement.”

Based on the above, the Board determined that the advertisement was contrary to prevailing community standards on health and safety and did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Board upheld the complaint.

### **ADVERTISER RESPONSE TO DETERMINATION**

Thank you for your response in regard to our Hungry Jack's advertisement.

We do believe that you have not correctly considered the fact that the car was reversing and therefore legally seat belts are not required to be worn.

Despite this, we have decided to discontinue the advertisement.