



CASE REPORT

1. Complaint reference number	243/09
2. Advertiser	Mercedes-Benz Australia/Pacific Ltd
3. Product	Vehicle
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Speeding
6. Date of determination	Wednesday, 24 June 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This Billboard is headed “A wicked beast. Mercedes-Benz M-Class” The Mercedes-Benz logo is prominent. Below the heading is a picture of the vehicle appearing to be slashed with water.

The text below the image says “A choice of petrol or turbo diesel engines that roar to life when awoken makes the M-Class a wicked beast indeed. Tailor yours with the COMAND system featuring inbuilt navigation, reversing camera and Bluetooth compatibility plus aggressive 20" sport alloy wheels, so you can prowl the streets in menacing style. To book a test drive, contact your nearest authorised Mercedes-Benz dealer or visit www.mercedes-benz.com.au/m”

THE COMPLAINT

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

The advertisement promotes aggressive driving through the combination of visual impact and particularly wording of the ad. The terms "wicked beast", "prowl the streets" "in menacing style" clearly advocate aggression on the roads.

As a South Australian Country Fire Service volunteer I am often confronted with the devastating results of aggressive driving. Promoting this sort of behaviour endangers lives and safety on the roads.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*Thank you for extending the time for Mercedes-Benz Australia/Pacific Pty Ltd (“**MBAuP**”) to provide a response to the Complaint.*

Outline of the Advertisement and the Complaint

*The Complaint relates to an advertisement for a Mercedes-Benz M-Class vehicle, captioned “A Wicked Beast” (“**the Advertisement**”). The Advertisement shows a stationary M-Class Vehicle splashed with water. The text of the advertisement refers to features of the pictured vehicle, characterising the vehicle as a tough animal.*

*It appears that the Complaint has been made under s 2(a) of Federal Chamber of Automobile Industry Code of Practice for Motor Vehicle Advertising (“**FCAI Code**”), which provides:*

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.]

The Complainant objects to the Advertisement on the grounds that the visual image and the wording of the advertisement promote aggressive driving.

MBAuP's response to the Complaint

MBAuP does not consider that the Advertisement is in breach of the Code, and respectfully submits that this Complaint should be dismissed.

With respect to the Complainant's views, MBAuP considers it is difficult to interpret this advertisement as depicting, encouraging or condoning "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...."

The advertisement characterises the vehicle as strong, tough and durable. Imagery of the lion, the "king of the beasts" is invoked, for example by the words "roar to life". However, the advertisement refers primarily to the look and styling of the vehicle rather than the driving or performance capabilities of the vehicle. In fact, the only reference in the advertisement to driving at all is to "prowl the streets". Rather than depicting aggressive driving, or driving at high speed as alleged by the Complainant, the word "prowl" suggests a slow, measured pace.

The Complainant refers to the "vehicle splashing off a curtain of water as if driving at high speed". However, the vehicle is not being driven at high speed or at all. The image is of a stationary vehicle.

Instead, there is a splash of water over the vehicle. This is a solely visual aid, to display the vehicle to greater effect and to invoke a sense that this is a tough vehicle, made to withstand the elements. However, it does not suggest that the vehicle is being driven at all, and certainly not at high speeds.

The use of the words "aggressive" and "menacing" relate to the look and styling of the vehicle, and not to the driving of the vehicle. This is evident when the words are read in context with reference to the features of the vehicle, for example the "aggressive" 20 inch alloy wheels, and the "menacing style" of the vehicle. Certainly, MBAuP is not advocating that a purchaser drives in an aggressive or menacing manner by the use of this text.

Furthermore, the interpretation put forward by the Complainant ignores the various meanings of the words used. The Complainant interprets the word "aggression" for example as having only violent or negative connotations, which MBAuP respectfully considers is a limited interpretation. "Aggressive" also means to be bold, enterprising, assertive and forward, to make an all out effort to succeed, to be competitive, and to be the best. Similarly, "menacing" can be used in many different contexts.

MBAuP has also given consideration not only to the formal provisions of the FCAI Code but also with the objectives and guidelines in the Explanatory Notes of the FCAI Code. Examples given in clause 2(a) and in the Explanatory Notes refer primarily to vehicles travelling at excessive speeds and other forms of dangerous driving involving the manoeuvring of the vehicle in a manner that may prove dangerous or unsafe. Neither the FCAI Code nor the guidelines refer to advertising the look or styling of the vehicle.

While MBAuP is aware of and tries to provide for both explicit and implicit messages in its advertisement, MBAuP considers that the interpretation offered by the Complainant is not one which is readily ascertainable from the material in the advertisement. The advertisement does not depict, encourage or condone illegal, aggressive or reckless driving.

MBAuP takes its responsibilities as an advertiser seriously. When preparing its advertisements,

MBAuP is acutely aware of the provisions of the Australian Association of National Advertisers Code of Ethics (“AANA Code”), the FCAI Code, the law and its responsibilities to the general community. All of MBAuP’s proposed advertisements are subject to a series of checks before publication, including approval by MBAuP’s legal department.

With the greatest of respect for the opinion of the Complainant, MBAuP does not consider the Advertisement can fairly be interpreted in the manner suggested by the Complainant.

However, MBAuP will take the Complainant’s views into account when creating further advertisements.

AANA Advertiser Code of Ethics and FCAI Code of Practice for Motor Vehicle Advertising

Your letter has requested that MBAuP respond to any issues in the advertisement which fall broadly within section 2 of the AANA Code. MBAuP does not consider any other sections of either the AANA Code or the FCAI Code can be interpreted to apply to the Complaint, and briefly addresses each section of the Code as follows:

Section 2.1: Does not discriminate against or vilify any person or section of the community

The Advertisement does not discriminate against or vilify any person or section of the community, nor are any such allegations made.

Section 2.2: Does not portray violence

The Advertisement does not portray violence, nor are any such allegations made.

Section 2.3: Does not contain reference to or depiction of sex, sexuality or nudity

The Advertisement does not portray depictions of sex, sexuality or nudity, nor are any such allegations made.

Section 2.4: Is not directed at children 14 years or younger, or targeted at children

As a motor vehicle advertisement, the Advertisement is not directed towards children, nor are any such allegations made.

Section 2.5: Does not contain strong or obscene language

The Advertisement does not contain strong or obscene language, nor are any such allegations made.

Section 2.6: Does not portray material contrary to prevailing community standards of health and safety

The Advertisement does not contain any such material which could be constructed as contrary to such standards, nor are any such allegations made.

Section 2.7: Does not breach the FCAI Code

Clauses 2(a)–(e)

As discussed above, the Advertisement does not portray:

- reckless or dangerous driving;*
- driving in excess of speed limits;*
- driving practices in breach of relevant laws and regulations;*
- driving when not in a fit state; or*
- causing environmental damage.*

Clause 3

The Advertisement does not portray any motor sports, and there are no allegations in the

Complaint relating to motor sports.

Clause 4

The Advertisement does not depict off-road vehicles being used in an offroad capacity, and there are no allegations in the Complaint relating to offroad vehicles.

Section 2.8: Must comply with the AANA Food and Beverages Marketing

Communications Code

The Advertisement is not in respect of a food or beverage product.

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”). The Board determined that the material before it was an “advertisement for a motor vehicle” and therefore that the FCAI Code applied.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement. The Board considered clauses 2(a) and (b) of the Code. Clause 2(a) prohibits

'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.'

Clause 2(b) prohibits:

'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 that the vehicle is being driven in the advertisement. The Board considered that the image of the water splashing did not make it appear that the car was driving unsafely or at high speed through water. The Board noted the references to 'prowling the streets in menacing style'. The Board considered that the references to prowling suggests slow driving, not unsafe driving. The Board considered that there were no depictions of driving that would be illegal or unsafe.

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

The Board also considered the advertisement under the Code of Ethics (the Code) and considered that references to the vehicle being 'wicked' and to 'prowl the streets in menacing style' were unlikely to be considered references to violence. The Board considered that the advertisement did not breach section 2.2 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.