

Case Report

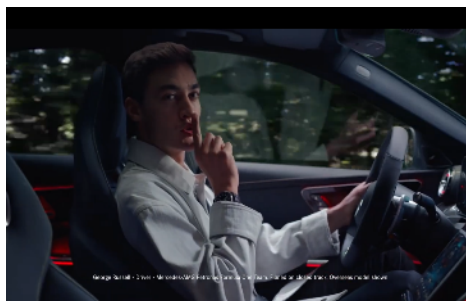
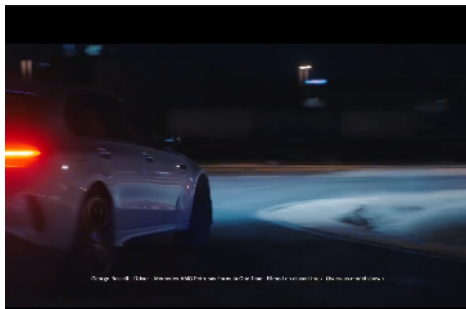
1. Case Number :	0198-24
2. Advertiser :	Mercedes-Benz Australia/Pacific Pty Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	Internet - Social - YouTube
5. Date of Decision:	7-Aug-2024
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving

DESCRIPTION OF ADVERTISEMENT

This YouTube advertisement features scenes of a person in a silver room dancing between images of some driving a car on a road and through a tunnel. The advertisement features the disclaimer, "George Russell - Driver - Mercedes-AMG Petronas Formula One Team. Filmed on closed track. Overseas model shown".



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

Vehicle shown speeding and losing traction/driftng - dangerous driving. Car driven illegally, company purposely using illegality to sell cars.

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 takes its legal responsibilities and responsibilities under the AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) very seriously.

Although the Ad Standards Email identified an advertisement that 'might be' the advertisement in question, that advertisement is, on its face, an advertisement authorised by Mercedes-Benz Financial Services Australia Pty Ltd – a separate and independent legal entity and business.

At this stage, MBAuP has not been provided with – and the Ad Standards Community Panel will unfortunately not be able to review – a specific advertisement authorised on its behalf that is said to be in contravention of the FCAI Code or any other advertising code. It may be the case that the individual who made the complaint saw an advertisement made by another Mercedes-Benz entity around the world or that the video they saw was not an advertisement for a motor vehicle at all.

The Advertisement

Putting to one side the lack of identification of any specific advertisement authorised by Mercedes-Benz Australia/Pacific Pty Ltd, MBAuP does not believe that the advertisement identified in the Ad Standards Email contravenes clause 2(a) or any other clause of the FCAI Code for the following reasons:

- *The advertisement does not show unsafe driving, but rather shows the vehicle's capabilities when undergoing testing or proving on a closed-circuit without any other vehicles present – scenes that are permitted under clause 3 of the FCAI Code.*

- *Clause 3 of the FCAI Code provides that:*

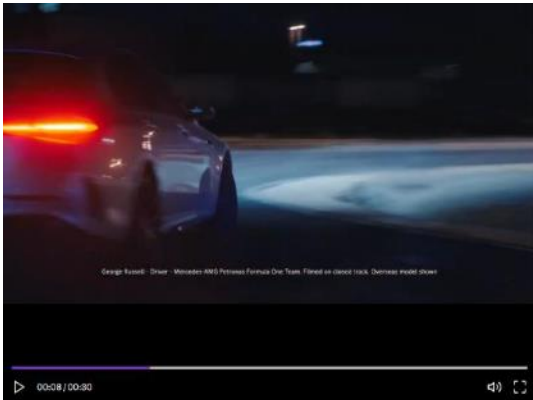
'...advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

(a) Such scenes should be clearly identifiable as part of an organised motor sport activity, testing or proving activity, or vehicles being driven in a high-performance sports nature, provided that this activity is within a closed-circuit environment (off public roads) of a type for which a permit would normally be available in Australia.

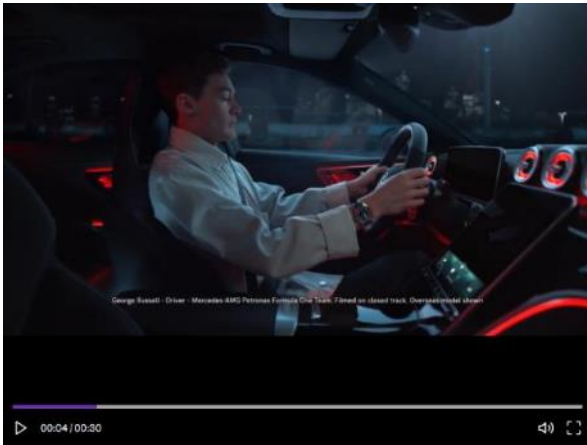
(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.'

- *One of the clear takeaways of the advertisement is that Mercedes-Benz develops and tests its new vehicle technology on closed-circuit courses. It should also be noted that the advertisement is for a vehicle that can participate in motorsport events, and further, that there are no other vehicles on the closed-circuit course which makes it clear that the vehicle is not in a race but is undergoing testing and proving.*

- *The use of a closed-circuit track is clearly identifiable at the 0:08 mark of the advertisement where a reasonable viewer can identify the track ripple strips and the wide, closed-circuit racetrack.*

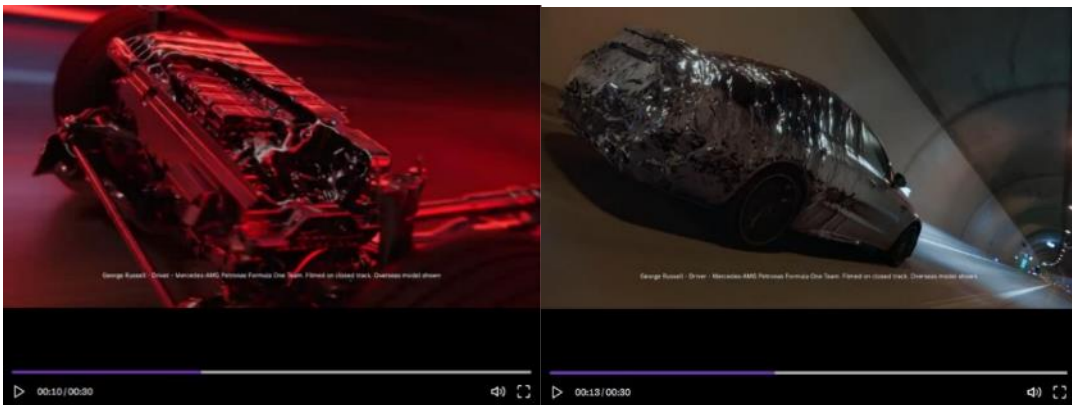


- *The driver of the vehicle in the advertisement is a professional Formula 1 driver who at all times throughout the advertisement is engaging in vehicle testing and proving and is in full control of the vehicle on a closed-circuit environment. The fact that the driver is a professional Formula 1 driver is specifically called out with the disclaimer 'George Russell – Driver – Mercedes-AMG Petronas Formula One Team. Filmed on a closed track. Overseas model shown'. MBAuP believes that any reasonable consumer would be unable to ignore this very specific message that is clearly visible for the entirety of the advertisement.*



- *The advertisement does not portray unsafe driving that would contravene the laws of the State or Territory in which the advertisement is published and broadcast. Throughout the advertisement it is clear that the professional driver is in full control of the vehicle, on a closed-circuit track to which speed limits or other road rules would not typically apply.*

- *The advertisement evidently makes use of fantasy, self-evident exaggeration and creative filming techniques. For example, between 0:10 and 0:14 of the advertisement, a vehicle seems to be forming from nothing, between 0:20 and 0:22, there seems to be a heart-shaped aluminium object morphing into a female dancer and from 0:22, the advertisement uses filming techniques to elongate the lights in the video to create a sense of sportiness and dynamism.*





We note that a specific advertisement authorised by MBAuP has not been identified, however, for the reasons described above, MBAuP believes that the advertisement identified by Ad Standards complies with clause 2(a) of the FCAI Code.

THE DECISION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concerns that advertisement promoted unsafe driving.

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

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 Panel considered whether the 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 Panel determined that the Mercedes-AMG vehicle depicted was a Motor Vehicle as defined in the FCAI Code.

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

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

Clause 2(a) - 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 Panel noted the complainants concerns that the advertisement depicted dangerous and illegal driving.

The Panel considered that elements which made the vehicle appear to be driving in a manner which was unsafe or which would breach road rules included:

- The flashing image of a race helmet, before changing to a vehicle which is not in racing livery, suggesting that the vehicle is designed to go fast or race
- The scene at eight seconds where the vehicle is seen from the behind, turning around a corner at what seems to be a high speed
- The driver holding his finger up to his lips in a “shhh” motion, as though he is doing something wrong.

The Panel noted the advertiser’s response that the advertisement makes use of fantasy, self-evident exaggeration and creative filming techniques. The Panel noted that the advertisement was clearly filmed as part of a professional stunt, with a professional driver, and was not a portrayal of usual driving behaviour.

The Panel noted that some scenes were highly stylised, however considered that the scenario was not unrealistic or fantastical and could be replicated by other drivers in the same vehicle.

The Panel considered that people viewing the advertisement could receive the message that this vehicle is designed to be driven at high speeds around corners including on public roads.

The Panel considered that if a non-professional driver attempted to drive in the same manner it could lead to an accident resulting in significant injury to the vehicle’s occupants. The Panel considered that the advertisement portrayed unsafe driving.

The Panel noted Clause 3 of the FCAI Code provides:

“USE OF MOTOR SPORT IN ADVERTISING

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, testing or proving activity, or vehicles being driven in a high-

performance sports nature, provided that this activity is within an closed circuit environment (off public roads) of a type for which a permit would normally be available in Australia.

(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.”

The Panel noted the advertiser’s response that the use of a formula one driver, the disclaimer and the scene at eight seconds where a track can be scene meant that the advertisement was clearly identifiable as vehicle testing or proving.

The Panel considered that while a professional driver was used, he was not depicted wearing a helmet or race gear of the kind which would usually be used in vehicle testing or racing. The Panel considered that while the scene at eight seconds may be recognised as a race track, the other scenes in the advertisement showing a tunnel and tree-lined road were not. The Panel considered that the advertisement did not comply with the provisions of Clause 3 of the Code.

The Panel noted the advertisement had included a disclaimer stating that the advertisement had been *“George Russell - Driver - Mercedes-AMG Petronas Formula One Team. Filmed on closed track. Overseas model shown”*.

The Panel noted the Guidance Note for the FCAI Code states:

“In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the FCAI Code.”

The Panel considered that the advertisement depicts a scene of unsafe driving by showing a vehicle driving in a manner which if copied could lead to a serious accident, and that it was not clearly identifiable as part of a testing or proving activity.

Clause 2(a) conclusion

The Panel considered that the advertisement did breach Clause 2(a) of the FCAI Code.

Conclusion

Finding that the advertisement did breach Cause 2(a) of the FCAI Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

MBAuP can confirm that the advertisement has been discontinued.

MBAuP is considering the Case Report and awaits your further correspondence in relation to the option to request an independent review of the Community Panel's decision.