

COMPLAINT NUMBER	18/081
COMPLAINANT	G Wong
ADVERTISER	Mercury Energy
ADVERTISEMENT	Mercury Energy, Television
DATE OF MEETING	10 April 2018
OUTCOME	Not Upheld

SUMMARY

The television advertisement for Mercury Energy featured a 1957 Ford Fairlane that had been converted to an electric vehicle named Evie. The advertisement shows a man in a car waiting to turn left at the traffic lights ask the men driving Evie “What’s under the hood bro?” to which the driver of Evie replies “you wouldn’t believe me.” As the light turns green, Evie is seen heavily accelerating straight ahead while the other car is left waiting at the lights with its indicator blinking. Evie is also seen with a series of different passengers sitting in the back seat. The advertisement concluded with the tag line “Mercury. Energy made wonderful.”

The Complainant was concerned the advertisement showed the vehicle “breaking traction with excessive acceleration” where the car is seen “drag racing at the lights”. The Complainant said the advertisement also showed passengers riding in the car in dangerous positions without wearing seatbelts and glamourised a car street racing.

The Advertiser said there was no depiction of street racing in the advertisement and no promotion of street racing. All passengers are wearing seatbelts and Evie is stationary when passengers enter and exit. The Advertiser said the advertisement does not contain any visual presentation of situations which encourage a disregard for safety and has been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board said the advertisement did not depict street racing or show the car obviously speeding at any time. While it noted the tyre noise as part of the acceleration at the lights, when considered against the hyperbolic nature the advertisement as a whole, it was unlikely to encourage a disregard for safety. The Complaints Board acknowledged it was difficult for the viewer to see the rear lap belts being worn in the advertisement but said that, in itself, did not mean the advertisement encouraged a disregard for safety.

A minority disagreed and said the noise of the tyres exacerbated the impression of excessive acceleration and speed and the scene was likely to encourage a disregard for safety.

However, in accordance with the majority view, the Complaints Board ruled the advertisement was not in breach of Basic Principle 4 or Rule 12 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 12 of the Code of Ethics. Basic Principle 4 required the Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and society. Rule 12 Required the Board to consider whether the advertisement, unless justifiable on educational or social grounds, contains any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety..

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant was concerned the advertisement showed the vehicle “breaking traction with excessive acceleration” where the car is seen “drag racing at the lights”. The Complainant said the advertisement also showed passengers riding in the car in dangerous positions without wearing seatbelts and glamourised a car street racing.

The Advertiser’s Response

The Advertiser addressed the Complainant’s concerns the advertisement portrayed unsafe driving behaviours. It disagreed the advertisement encouraged a disregard for safety. It said “Mercury takes its advertising responsibilities seriously and through its agency has all commercials vetted by the Commercial Approvals Bureau who approve TVCs for broadcast use. Mercury undertakes its own thorough review and approval process, including legal review of all final advertisements. Both the Commercial Approvals Bureau and Mercury Legal take account of ASA Codes of Practice during their review.”

The Advertiser explained the car used in the advertisement was a 1957 Ford Fairlane that was recently converted to an Electric Vehicle by Mercury with the help of EV conversion specialists from Dunedin. Mercury Energy said it has named the car “Evie”. The Advertiser said, in part: “Evie is powered by a bus strength Siemens electric motor and 218 battery cells. Evie was painted a vibrant yellow and has “WONDFL” as her number plate. Evie was converted by Mercury to get kiwis thinking about EVs in a “wonderful” new way.”

The Advertiser said the advertisement “uses nostalgia and interest with the converted 1957 Ford Fairlane and also provides humour, with the two older gentlemen sneaking out and behaving like younger men again by ‘cruising the town’” in order to promote Electric Vehicles “as a fun and genuine alternative to fossil fuel powered vehicles” and encourage uptake.

The Advertiser said there was no depiction of street racing in the advertisement and explained the scene of concern showed Evie waiting to proceed straight ahead, while the Brown Car is signalling and waiting to turn left.

The Advertiser said the scenario showed “the younger drivers in the Brown Car are portrayed as being curious about ‘what’s under the hood’. At no time do they express any interest in racing their vehicles. As the light turns green, the road ahead is clear with good visibility. Evie is shown to accelerate briskly, to demonstrate the acceleration capability of an EV. There is a sound effect of the chirp of tyres added for effect. There is no loss of traction, sustained or otherwise. Evie never gets above 50km an hour... and the Brown Car remains stationary, waiting to turn left.

...The interaction ultimately shows some young men cheekily interested in two older gentlemen and their car, only to be impressed with the qualities of the car when they realise

it's electric (hence the close up on the EV badge) – silent running, no lack of get-up-and-go. Ultimately the young men find the older gentlemen's zest for life and cheeky attitude to be humorous and fun. This further reinforces that there was never any aggression, challenge or intent to race."

The Advertiser said the advertisement "breaks stereotypes around younger and older men and the dynamic that can often play out in media: young men as "boy racers" or "hoons" and older men as forgetful, boring or narrowminded."

The Advertiser also addressed the Complainant's concerns about the depiction of passenger safety in the advertisement. It said "Evie is certified safe by NZTA, and fitted with lap-belts as seatbelts. In all instances where a passenger is seen entering or exiting Evie (in any way, including climbing over the side), the car is stationary. In all instances where anyone is shown riding in Evie while moving, they are wearing seatbelts as checked and approved by the Production Company's health and safety officer."

Response from the Commercial Approvals Bureau (CAB)

The CAB responded to the complaint stating that the "CAB approved this Mercury commercial on 23/01/18 with a 'G' general classification... Two elderly male characters board a futuristic electric powered Cadillac and escape their retirement home. In CAB's view, this scenario is unlikely to be imitated by viewers either young or not-so-young, given its far-fetched nature."

The CAB noted the Advertising Codes of Practice "give specific remit to the expression of hyperbole for comedic effect, and this commercial comfortably falls within that category. The average New Zealand viewer will appreciate the tone put forth by the advertiser."

Complaints Board Discussion

The Complaints Board considered whether the advertisement depicted unsafe driving behaviours including drag racing and passengers not wearing seatbelts while the car is moving. It noted the Complainant was also concerned the practices shown in the advertisement were illegal.

The Complaints Board considered the likely consumer take-out of the advertisement and said the focus was on the 1957 Ford Fairlane electric vehicle Evie and the juxtaposition of the old car with new electric technology. The Complaints Board said the advertisement had an intended light-hearted and humorous portrayal of two older men escaping their retirement village for a night driving round town which would be easily understood by viewers.

Street Racing

The Complaints Board noted the advertisement did not show street racing. It said the advertisement showed a man in a car waiting to turn left at the traffic lights ask the men driving Evie "What's under the hood bro?" to which the driver of Evie replies "you wouldn't believe me." As the light turns green and Evie is seen heavily accelerating straight ahead while the other car is left waiting at the lights with its indicator blinking.

Complaints Board acknowledged the Complainant's interpretation and noted the brevity of the scene, but it said the advertisement did not depict street racing and therefore was unlikely to encourage a disregard for safety. It was therefore not in breach of Rule 12 of the Code of Ethics.

The Complaints Board ruled this aspect of the complaint was Not Upheld.

Excessive Acceleration and Speed

The Complaints Board considered the Complainant's concerns the advertisement showed excessive acceleration. The Complaints Board noted the advertisement appeared to focus on the acceleration of Evie when the older men leave the retirement village and again when taking off from the red stop light.

The majority of the Complaints Board said the advertisement demonstrated key features of the electric vehicle and an element of that was the ability to accelerate. The majority said the advertisement did not show the car obviously speeding at any time and took into account the Advertiser's assurance the vehicle never exceeded 50km per hour. While it noted the tyre noise as part of the take off at the lights, when considered against the hyperbolic nature of the advertisement as a whole, it was unlikely to encourage a disregard for safety.

The majority said the advertisement was not in breach of Rule 12 of the Code of Ethics and had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

A minority disagreed. It said the screeching noise of the vehicles tyres combined with the imagery of the car as it sped away from the intersection was an unnecessary exhibition of acceleration. The minority said the noise of the tyres exacerbated the impression of excessive acceleration and speed and the scene was likely to encourage a disregard for safety. The minority said the advertisement had therefore reached the threshold required to breach Rule 12 of the Code of Ethics and had not been prepared with a due sense of social responsibility to consumers required by Basic Principle 4 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled this aspect of the complaint was Not Upheld.

Passengers without seatbelts

The Complaints Board considered whether the passengers were shown in the moving vehicle without wearing seatbelts.

It noted the response from the Advertiser which explained that all rear passengers were wearing lap belts while the vehicle was moving and noted the two people in the front had visible shoulder belts. The Complaints Board took into account the vehicle had been certified as safe by the New Zealand Transport Authority.

While the Complaints Board acknowledged it was difficult for the viewer to see the rear lap belts being worn in the advertisement, it said this in itself did not mean the advertisement encouraged a disregard for safety. The Complaints Board ruled this aspect of the complaint was therefore not in breach of Rule 12 of the Code of Ethics and the advertisement had been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

Summary

The Complaints Board said the advertisement did not depict street racing or show the car obviously speeding at any time and while it noted the tyre noise as part of the take off at the lights, when considered against the hyperbolic nature the advertisement as a whole, it was unlikely to encourage a disregard for safety. The Complaints Board acknowledged it was difficult for the viewer to see the rear lap belts being worn in the advertisement but said that, in itself, did not mean the advertisement encouraged a disregard for safety.

A minority disagreed and said the noise of the tyres exacerbated the impression of excessive acceleration and speed and the scene was likely to encourage a disregard for safety.

However, in accordance with the majority view, the Complaints Board ruled the advertisement was not in breach of Basic Principle 4 or Rule 12 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Mercury Energy a 1957 Ford Fairmont that had been converted to an electric vehicle called Evie. The advertisement follows two older men escaping the retirement village for a night driving round town in Evie and meeting various night life characters, including a drag queen, a bride to be on her hen's night and a group of men in a "boy racer" car. The advertisement showed a man in a car waiting to turn left at the traffic lights ask the men driving Evie "What's under the hood bro?" to which the driver of Evie replies "you wouldn't believe me." As the light turns green and Evie is seen heavily accelerating straight ahead while the other is left waiting at the lights with its indicator blinking.

The advertisement concluded with the tag line "Mercury. Energy made wonderful."

COMPLAINT FROM G WONG

Its the Mercury: The Great Escape TV add with the yellow electric car and two old guys. it is showing car street racing being glamorous sending the wrong message to the youth of today. they are breaking the law by breaking traction with excessive acceleration, drag racing at the lights with the guys in the brown car. they are also allowing passengers to ride in the car in dangerous position while wearing seat beats. all of which would get you a traffic offence

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 12 Safety: - Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

RESPONSE FROM ADVERTISER,

Contact person for advertising complaints	Julia Jack, Mercury julia.jack@mercury.co.nz
Name and contact at creative agency	Toby Sellers, FCB toby.sellers@fcb.com
Name and contact at media agency	Daniel Currin, FCB daniel.currin@fcb.com
A basic, neutral description of the advertisement	Two older gentlemen sneak out of their retirement home to take their 1957 Ford Fairlane for a drive. One of the men has owned this classic car for some time, and he has recently converted it into a plug-in

	electric vehicle. The advertisement depicts some of the adventures the two enjoy with the help of their newly converted electric vehicle (EV).
Date advertisement began	1 March 2018
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Television, cinema, external websites, Mercury websites, billboard, social media and email.
Is the advertisement still accessible – where and until when?	The advertisement will air on television up to and including 19 May 2018. Further airings on television are yet to be confirmed. The advertisement will be accessible on Mercury's website and YouTube page indefinitely.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	60 second You-Tube file
Who is the product / brand target audience?	Product: Mercury Target Audience: Mercury's existing and potential customers. Potential EV owners.
Clear substantiation on claims that are challenged by the complainant.	<p>Mercury takes its advertising responsibilities seriously and through its agency has all commercials vetted by the Commercial Approvals Bureau who approve TVCs for broadcast use.</p> <p>Mercury undertakes its own thorough review and approval process, including legal review of all final advertisements. Both the Commercial Approvals Bureau and Mercury Legal take account of ASA Codes of Practice during their review.</p> <p>We appreciate Mr Wong's concern and would like to make it very clear that there is no racing portrayed in this advertisement and no intention to glorify any dangerous driving behaviours.</p> <p>The advertisement uses nostalgia and interest with the converted 1957 Ford Fairlane and also provides humour, with the two older gentlemen sneaking out and behaving like younger men again by 'cruising the town'.</p> <p>This aims to promote EVs as a fun and</p>

genuine alternative to fossil fuel powered vehicles to encourage uptake. It also sets out to break a number of common stereotypes around EVs, youth and older people. This is set out in more detail below.

The 1957 Ford Fairlane used in the advertisement was recently converted to an EV by Mercury with the help of EV conversion specialists from Dunedin. Mercury has named the car "Evie". Evie is powered by a bus strength Siemens electric motor and 218 battery cells. Evie was painted a vibrant yellow and has "WONDFL" as her number plate. Evie was converted by Mercury to get kiwis thinking about EVs in a "wonderful" new way. The "making of Evie" is explained on the Mercury website at <https://www.mercury.co.nz/Evie>.

The advertisement promotes 'living life to the full', but not being foolhardy.

With regard to the specifics in Mr Wong's complaint:

Street Racing

We would like to be specific about there being no street racing:

In the scene Mr Wong would be referring to, Evie is waiting to proceed straight ahead, while the Brown Car is signalling and waiting to turn left.

The younger drivers in the Brown Car are portrayed as being curious about 'what's under the hood'. At no time do they express any interest in racing their vehicles.

As the light turns green, the road ahead is clear with good visibility. Evie is shown to accelerate briskly, to demonstrate the acceleration capability of an EV.

There is a sound effect of the chirp of tyres added for effect. There is no loss of traction, sustained or otherwise. Evie never gets above 50km an hour (please refer to the attached affidavit).

The Brown Car remains stationary, waiting to turn left.

The interaction ultimately shows some young men cheekily interested in two older gentlemen and their car, only to be impressed with the qualities of the car when they realise it's electric (hence the close up on the EV badge) – silent running, no lack of

	<p>get-up-and-go. Ultimately the young men find the older gentlemen's zest for life and cheeky attitude to be humorous and fun. This further reinforces that there was never any aggression, challenge or intent to race.</p> <p>This interaction also breaks stereotypes around younger and older men and the dynamic that can often play out in media: young men as "boy racers" or "hoons" and older men as forgetful, boring or narrowminded.</p> <p>Passenger Safety Evie is certified safe by NZTA, and fitted with lap-belts as seatbelts.</p> <p>In all instances where a passenger is seen entering or exiting Evie (in any way, including climbing over the side), the car is stationary.</p> <p>In all instances where anyone is shown riding in Evie while moving, they are wearing seatbelts as checked and approved by the Production Company's health and safety officer (please refer to the attached affidavit).</p> <p>As there is no promotion of street racing, all passengers are wearing seatbelts and Evie is stationary when passengers enter and exit, we maintain that the advertisement does not contain any visual presentation of situations which encourage a disregard for safety. The advertisement has been prepared with a due sense of social responsibility to consumers and society as a whole.</p>
<p>The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.</p>	
<p>For Broadcast advertisements:</p>	
<p>A copy of the script</p>	<p>Original 90 second script provided along with transcript of final dialogue.</p> <p>NB: Final advertisement differs a bit to the original script due to changes in final edit. 60 second ad is a cut down of 90 second.</p>

A copy of the media schedule and spot list (Please remove all financial information)	Provided.
CAB key number and rating	MER0633/60/2 CAB approval number #80123043 Date 23/01/18 Rating G
For Digital advertisements:	
What platform tools have you used to target your audience?	TVC played on TVNZ On Demand and YouTube. No specific targeting. Audience was all people aged 18+.

RESPONSE FROM MEDIA, CAB

MERCURY ENERGY TELEVISION ADVERTISEMENT

COMPLAINT: 18/081

KEY: MER0633/60/2

RATING:

G

We have been asked to respond to this complaint under the following codes:
Code of Ethics – Basic Principle 4, Rule 12;

CAB approved this Mercury commercial on 23/01/18 with a 'G' general classification. Under CAB internal policies, this commercial is classified as an Electricity advertisement.

Two elderly male characters board a futuristic electric powered Cadillac and escape their retirement home.

In CAB's view, this scenario is unlikely to be imitated by viewers either young or not-so-young, given its far-fetched nature.

The codes of practice give specific remit to the expression of hyperbole for comedic effect, and this commercial comfortably falls within that category. The average New Zealand viewer will appreciate the tone put forth by the advertiser.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.