

<b>COMPLAINT NUMBER</b>	19/309
<b>COMPLAINANT</b>	C Gibbs
<b>ADVERTISER</b>	Mercedes-Benz New Zealand Limited
<b>ADVERTISEMENT</b>	Mercedes-Benz CLA Coupé, Television OnDemand
<b>DATE OF MEETING</b>	15 October 2019
<b>OUTCOME</b>	Upheld Advertisement to be Removed

### **Description of Advertisement**

The OnDemand television advertisement for Mercedes-Benz CLA Coupe shows a man meeting his 16-year-old self and asking what he would make of “your habits, your job, your diet, your car”. The man tells the boy to buckle up and they drive through a shipping yard before heading to a takeaway outlet for food. The voiceover says, “Make him proud” and ends with the tagline “Play by your rules”.

### **Summary of the Complaint**

The Complainant is concerned the advertisement encourages reckless activity on the roads.

### **Issues Raised**

- Social Responsibility
- Safety

### **Summary of the Advertiser’s Response**

The Advertiser said the advertisement shows an older male speaking with his younger self and driving through a shipping yard before purchasing takeaways and driving into the city. The “play by your rules” tagline is meant to celebrate uniqueness and individuality.

The Advertiser said the advertisement does not show the vehicle driving at excessive speed. It is driving in an off-road controlled environment. No other vehicles are shown. The advertisement contains a disclaimer “Overseas model and footage shown”.

### **Summary of the Complaints Board Decision**

The Complaints Board upheld a complaint about an OnDemand television advertisement for Mercedes-Benz CLA Coupe car which shows a man driving with his 16-year-old self.

The majority of the Complaints Board said the advertisement did glorify speed and condoned an unsafe practice under Rule 1(e) of the Advertising Standards Code. The majority said the fast-paced visuals made it difficult to distinguish the shipping yard from the open road. The visuals, including the appearance of the car swerving from side to side and the soundtrack, which included a high revving engine and high-paced music, contributed to the overall takeout of glorifying speed.

## Relevant ASA Codes of Practice

The Acting Chair directed the Complaints Board to consider the complaint with reference to the following code

### ADVERTISING STANDARDS CODE

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

**Rule 1(e): Safety:** Advertisements must not, unless justified on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to precedent Decision 17/164 which was Upheld.

The full version of this decision can be found on the ASA website

<https://www.asa.co.nz/decisions/>

**Decision 17/164** concerned an advertisement for BMW which opened with the sound of acceleration and contained upbeat music and blurry images related to fast-moving vehicles. The advertisement featured two cars being driven on-road. A disclaimer in small print said; "Filmed overseas on closed roads."

The Complaints Board was of the view that the advertisement gave an impression of reckless driving and glorified speed and this was compounded by the initial sound of acceleration, the flashing of images related to speed and the upbeat music accompanying the advertisement.

### Preliminary Matter

The Advertiser advised the ASA secretariat that the YouTube version of the advertisement submitted by the Complainant was not the version which played on the OnDemand platform. The Advertiser provided the 30 second advertisement which was played in New Zealand and it is this version the Complaints Board viewed in relation to the complaint before it.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was it portrayed a revival of youth, showing how driving the new Mercedes could bring back the fun and excitement of the driver's younger days.

#### *Does the advertisement encourage or condone an unsafe practise?*

The majority of the Complaints Board said the fast-paced visuals made it difficult to distinguish the shipping yard from the open road. The Complaints Board said the Advertiser's attempt to differentiate between the closed road of the shipping yard and the open road was diminished by the visuals cutting almost immediately to the fast food outlet, giving the impression of an urban setting rather than a remote, closed location.

The young man's expression as the car accelerated away gave the impression of speed, together with a shot of the driver with an expression of exhilaration. The majority of the Board said the visuals, including the appearance of the car swerving from side to side and

the soundtrack, which included a high revving engine and high-paced music, contributed to the overall takeout of glorifying speed.

A minority of the Complaints Board disagreed. It said that it was clear the car was driving off-road in a shipping yard and the shots of the car on the road did not appear to be at an excessive speed. For the minority the advertisement was selling excitement but was not showing or condoning a disregard for safety or an unsafe practice.

*Is the advertisement socially responsible?*

The majority of the Complaints Board said that in the context of the advertisement's narrative of the driver trying to impress his younger self, the portrayal of the enjoyment of speed could be seen to be condoning an unsafe practice and did not meet the required standard of social responsibility.

A minority disagreed and said the advertisement did not condone an unsafe practice and was socially responsible.

In accordance with the majority, the Complaints Board ruled that the advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(e) of the Advertising Standards Code.

**Outcome**

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed and not used again in its current form.

**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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

## APPENDICES

1. Complaint
2. Response from Advertiser

### Appendix 1

#### COMPLAINT FROM C GIBBS

On 9.8.19, on the TVNZ OnDemand website, I viewed a 38 second ad for the new Mercedes Benz CLA Coupe: <https://www.youtube.com/watch?v=QQ3wgCzfXkO> (You can find it on YouTube by typing in (Mercedes play by your rules)).

The ad compares a mans 2019 self with his 16-year-old self — who has come back to visit him.

His younger self essentially shows him how boring and conservative he has become, as he plays by the rules. The ad shows both men driving the Mercedes at speed in an urban environment. The ad finishes with the narrator encouraging men to make their 16-year-old self proud and the statement "Play by your rules". I believe this ad encourages reckless activity on our roads.

I was wondering how this ad is appropriate in light of the fact that each year in New Zealand/Aotearoa, we have over 300 fatalities on the road. The average value of the loss of a life has been quantified at \$2 million. The yearly total social cost is \$5 billion.

NZTA is currently running a campaign called "Your speed is shared" and they are pleading with drivers to slow down. You follow this link to view their ad: <https://www.youtube.com/watch?v=r1w4vltJk9c8> Or go to YouTube and enter "your speed is shared".

I believe the Mercedes ad is in violation of the Advertising Standards Code, Rule 1e-Safety. It states, "Advertisements must not... encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety". The example your site gives is "reckless activity on roads".

Can you please address my concern with Mercedes and let me know the outcome.

### Appendix 2

#### INITIAL RESPONSE FROM ADVERTISER, MERCEDES-BENZ NEW ZEALAND LIMITED Mercedes-Benz New Zealand Television – Complaint 19/309

1. We act for Mercedes-Benz New Zealand Limited ("**MBNZ**") and refer to your letter of 26 August 2019 regarding a complaint made in relation to MBNZ's advertisement for a CLA model vehicle.
2. The complainant includes a link in her letter to what she believes is the advertisement she saw. However, the 38 second advertisement referred to in the complaint is not the advertisement that aired in New Zealand. The New Zealand version was edited and also contained an additional on screen disclaimer.
3. Two versions of the advertisement were aired in New Zealand:

- (a) 15 second version available to be viewed at this link: <https://www.youtube.com/watch?v=Q5muc6gYOoo&feature=youtu.be>;
- (b) 30 second version attached to our email for your reference (please note this video is not available to be viewed on You Tube).
4. We confirm the two advertisements aired in New Zealand were aired on TVNZ On Demand (online) not on television.
  5. Given the decision to hear the complaint appears to be based on a consideration of the incorrect version of the advertisement we would be grateful if you could advise if the Chairman considers there are still grounds to proceed with the complaint and let us know accordingly.
  6. In the meantime we note that the advertisement is set to be removed from 31 August 2019 and that MBNZ has no intention to air this advertisement in the future.

#### **FURTHER RESPONSE FROM ADVERTISER**

##### **Mercedes-Benz New Zealand Limited – Complaint 19/309**

1. We refer to your letter of 18 September 2019 addressed to our client Mercedes-Benz New Zealand Limited ("**MBNZ**") regarding a complaint made in relation to MBNZ's advertisement for a CLA Coupé model vehicle.
2. We also refer to our letter of 30 August 2019 in which we referred to the correct versions of the advertisement aired on TVNZ On Demand and MediaWorks On Demand (online only). For ease of reference, the following two versions of the advertisement were aired in New Zealand:
  - (a) a 15 second version available to be viewed at this link: <https://www.youtube.com/watch?v=Q5muc6gYOoo&feature=youtu.be>; and
  - (b) a 30 second version attached to our email (please note this video is not available to be viewed on YouTube).
3. The complaint refers to the vehicle being driven "*at speed in an urban environment*". It also references the narrator "*encouraging men to make their 16 year old self proud and the statement "Play by your rules"*". The complainant states that they think this encourages reckless activity on our roads.
4. You have advised that the relevant section of the Advertising Standards Code is Rule 1(e). That Rule states that "*advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.*"
5. The advertisement shows an older male speaking with his younger self and then driving through a shipping yard before purchasing takeaways and driving into the city.
6. The concept of the tag line "*Play by your rules*" used in the advertisement is designed to celebrate uniqueness and individuality. The new CLA Coupé model represents progressive values and dynamic design focussed on making a lifestyle statement in the lives of MBNZ's customers.
7. The advertisement's target audience is "*young-at-heart*" adults in their mid-40s desiring the newest high-tech gadgets. They are young professions with busy lifestyles who are part of the "*always connected*" generation.
8. The narrator speaking to his younger self and the "*play by your rules*" tag line is intended to invoke emotion in this target audience while celebrating uniqueness and individuality.

9. The advertisement does not show the vehicle driving at excessive speed. It is driving in an off-road, controlled environment but we would submit not in a way that glorifies speed. As noted, the vehicle is clearly being driven in a closed environment, there are no other vehicles featured and the closed off environment is clearly a shipping/docking yard. This helps viewers understand that it is not an open/public road.
10. The speed of the vehicle is not shown nor is there any depiction of a speedometer. Given the window of the car is down and the young boy has long hair, this may give an impression of speed, but it is not a depiction of excessive speed.
11. The advertisement clearly shows both the driver and the passenger wearing a seat belt. The part of the video showing the vehicle being driven on the road does not show any irresponsible, dangerous, reckless or driving at excessive speed.
12. The advertisement is in no way intended to showcase unsafe driving practices or encourage reckless driving activity.
13. MBNZ advertisements are generally not filmed in New Zealand due to global brand alignment and practical budget restrictions.
14. The advertisement was part of a global, internationally produced campaign filmed in off-road, controlled and closed-road conditions.
15. MBNZ sought to localise the advertisement by removing a scene showing the vehicle going quickly around a corner and this footage does not appear in the advertisements aired in New Zealand. MBNZ also included a disclaimer "*Overseas model and footage shown*".
16. MBNZ does not believe the advertisement to be in breach of Rule 1(e) of the Advertising Standards Code. The combination of the depiction of non-excessive speed in a closed, off-road environment, the tag line "*play by your rules*" and the younger self in the advertisement does not meet the threshold to "*encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.*"
17. MBNZ takes vehicle safety and social responsibility to consumers and society as an advertiser very seriously and always takes the utmost care not to encourage unsafe driving practices.
18. The advertisement was removed on 31 August 2019 and MBNZ has no present intention to air this advertisement on TVNZ or MediaWorks On Demand platforms in the future. However, the advertisement will remain available on MBNZ's YouTube channel and website.
19. On the basis of the above, MBNZ maintains that the advertisement is not breach of the Advertising Standards Code and we respectfully request that the complaint not be upheld.
20. We look forward to hearing from you.

A basic, neutral description of the advertisement	<p>"Play by your rules". This creative concept celebrates uniqueness and individuality.</p> <p>The new CLA Coupé represents progressive values and dynamic design, making it the perfect lifestyle statement in the lives of our CLA customer.</p>
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Date advertisement began	1 <sup>st</sup> August 2019
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Online TV. <ul style="list-style-type: none"> <li>• TVNZ Floating Layer</li> <li>• TVNZ OnDemand</li> <li>• MediaWorks OnDemand</li> <li>• Programmatic Whitelists Programmatic / YouTube</li> </ul>
Is the advertisement still accessible – where and until when?	No, it concluded on 31 <sup>st</sup> August 2019.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Refer to attachment. File title: 30sec_CLA_NZ_18LKFS_MediaWorks.mp4
Who is the product / brand target audience?	An ice-breaker' model for the young-at-heart buyer who is ready to transition to the premium mid-sized segment. <ul style="list-style-type: none"> <li>• Mid 40's tech-obsessed independent No children, lives together with a partner/ or single in an urban environment</li> <li>• Limited spare time, seeks adventure and desires the newest high-tech gadgets.</li> <li>• Young working professionals, with busy lifestyles. Less inclined to desire classic saloon or estate cars.</li> <li>• People who are part of the 'always on' or 'always connected' generation</li> </ul>
Clear substantiation on claims that are challenged by the complainant.	Overseas model and footage shown.
<b>For Digital advertisements:</b>	
What platform tools have you used to target your audience?	<ul style="list-style-type: none"> <li>• TVNZ Floating Layer</li> <li>• TVNZ OnDemand</li> </ul>

	<ul style="list-style-type: none"><li>• MediaWorksOnDemand</li><li>• Programmatic Whitelists Programmatic / YouTube</li></ul>
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