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| COMPLAINT NUMBER | 17/164 |
| COMPLAINANT | S Barns |
| ADVERTISER | BMW NZ |
| ADVERTISEMENT | BMW NZ, Television |
| DATE OF MEETING | 27 June 2017 |
| OUTCOME | Upheld |

SUMMARY

The 30-second BMW television advertisement opened with the sound of acceleration and contained upbeat music and blurry images related to fast-moving vehicles. The advertisement featured two cars, one red and one white being driven on-road. A disclaimer in small print at the bottom left of the screen in the opening images said: "Filmed overseas on closed roads." The disclaimer appeared intermittently until halfway through the advertisement. The images were overlaid with slogans beginning with "Ultimate thrills" and ending with "Ultimate driving experience." At the 16-second mark in the advertisement the two cars appeared to move side-by-side, one passing the other, around a corner.

The Complainant was concerned that the advertisement appeared to show two BMW cars racing around a blind corner, one in each lane with no surety that there was an additional lane for oncoming traffic. The Complainant believed regardless of the existence of another lane, the message of racing on the open road was irresponsible.

The Complaints Board referred to Principle 2 of the Code for Advertising Vehicles which requires advertisements not to encourage unsafe driving. The Complaints Board agreed 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.

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

[Advertisement to be removed]

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 of the Code of Ethics and Principle 2 and Guideline 2(a) of the Code for Advertising Vehicles. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society. The Complaints Board was also required to consider whether the advertisement encouraged unsafe practices or glorified excessive speed.

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

The Complaint

The Complaints Board first addressed the Complainant's concerns. The Complainant said the advertisement showed two BMW cars racing along South Island roads and that they appeared to race around a corner, one car in each lane. The complainant said: "The clip is pretty quick, so it is hard to see whether there is an additional lane for a car that may come the other way, but regardless of whether there is, the message of racing on the open road is irresponsible."

The Advertiser's response

The Complaints Board then considered the Advertiser's response. The Advertiser, BMW New Zealand, said the advertisement was filmed overseas, not on South Island roads, as part of a global campaign on a closed road and that the words "Filmed overseas on closed roads" were visible for the first four seconds of the advertisement. The Advertiser said the two cars were not racing and not travelling at speed and that in two short sequences where one car overtakes the other the road marking show this was not done illegally. The Advertiser, addressing the Complainant's concern that "the cars appear to race around a blind corner, one in each lane" said the cars were not passing on a blind corner. The Advertiser said: "Instead, the camera filming the cars passes behind a hill, obscuring the view of the cars as they go behind the hill. You can see from the road markings on this stretch of road that the passing car is driving legally within the road rules as indicated by the road markings."

The Media's response

The Complaints Board then turned to the response of the Commercial Approvals Bureau (CAB) on behalf of the Media. CAB said the advertisement was approved on May 4, 2017 with a G classification as a Motor Vehicle advertisement. CAB noted that the Complainant submitted the advertisement showed two cars driving on South Island open roads and such driving would be dangerous. CAB said the advertisement was not filmed on South Island roads but overseas on closed roads and in every scene where these roads were seen was a disclaimer reading "filmed overseas on closed roads." CAB said in part: "There is little room for misinterpretation given the stated and twice re-stated conditions for filming of this BMW commercial and CAB believes the Complainant's view is exceptional within the wider audience of New Zealand viewers. The actions taken by the advertiser to observe good advertising practices also satisfy NZTA guidelines for showing overseas driving."

The Precedents

To assist in coming to its decision the Complaints Board reviewed two precedent decisions: Complaint 14/168 which was Upheld and Complaint 16/390 which was Upheld in part and Settled in part.

The first precedent decision concerned a television advertisement for the Nissan X-Trail. The Complaints Board noted the advertisement had an overall tone of speed and dangerous manoeuvrability and the disclaimers did not save the advertisement from the overall visual presentation which encouraged a disregard for safety and encouraged unsafe and dangerous road practices.

The second precedent decision concerned a television advertisement for BMW X range cars. The majority of the Complaints Board said the Advertiser's proposed disclaimer, that the advertisement was "filmed overseas in closed-road conditions," settled any problem of unsafe driving practices. However, the majority of the Complaints Board also said that the combination of images, music and words in the advertisement reached the threshold to glorify speed and therefore the advertisement had not been prepared with a due sense of social responsibility.

The Complaints Board discussion

The Complaints Board observed that the disclaimer that said “Filmed overseas on closed roads” appeared intermittently in small print on the bottom left of the screen for the first half of the advertisement. The Complaints Board noted the NZTA Guidelines referred to by the Commercial Approvals Bureau require in part that:

“Disclaimers should be on-screen for the duration of the illegal driving practice on NZ roads, and in a font size and colour that can easily be read by a typical viewer.”

The Complaints Board considered the disclaimer should have been visible in all the road scenes shown advertisement. The Complaints Board’s view was that the size, colour and location of the disclaimer made it difficult to read when it did appear.

Did the driving appear unsafe?

The Complaints Board noted the Advertiser's explanation that the image that appeared to show one car passing the other on a blind corner was due to the camera passing behind a hill as it filmed the cars, obscuring the view of the cars as they turned behind the hill. The Complaints Board also noted the Advertiser said that the passing car was driving legally within the road rules as indicated by the road markings in the country where the advertisement was filmed.

The Complaints Board said the fleeting view of lines on the road made them difficult to distinguish from lines that might be on New Zealand roads. The Complaints Board view was that even if the passing manoeuvre on what would be interpreted by New Zealand viewers as a blind corner met driving regulations where the advertisement was filmed, and was not unsafe there, the take-out by New Zealand consumers would be that the overtaking of one vehicle by another was dangerously done on what appeared to be a blind corner. Similarly, the Complaints Board agreed the image in the advertisement of one car passing another on either side of yellow lines on what could be misconstrued as open road in New Zealand would be viewed as illegal by New Zealand viewers. The Complaints Board agreed this take-out was more likely given that the size, colour and location of the disclaimer made it difficult to read when it did appear.

The Complaints Board said the legality of the driving where the advertisement was filmed was not at issue. The issue was, if the advertisement was filmed overseas on a closed road, whether this had made clear with a disclaimer throughout. A further issue was the impression the advertisement gave to New Zealand viewers. The impression was of reckless driving and this was compounded by the initial sound of acceleration, the flashing of images related to speed such as the speedometer and the upbeat music accompanying the advertisement. This glorified speed and encouraged unsafe driving practices.

The Complaints Board said the advertisement had not been prepared with a due sense of social responsibility to consumers and to society and had breached Basic Principle 4 of the Code of Ethics. Further the advertisement did encourage unsafe practices and glorified excessive speed and had breached Principle 2 and Guideline 2(a) of the Code for Advertising Vehicles.

The Complaints Board accordingly ruled to **Uphold** the complaint.

DESCRIPTION OF ADVERTISEMENT

The 30-second BMW television advertisement opened with the sound of a vehicle accelerating and contained upbeat music and images suggesting fast-moving vehicles. The advertisement featured two cars, one red and one white, being driven on-road and briefly

side-by-side on two occasions including, at the 16-second mark, at a corner of the road around a hill.

A disclaimer in small print at the bottom left of the screen in of opening images said: “Filmed overseas on closed roads.” The disclaimer appeared intermittently until half-way through the advertisement. Onscreen images were overlaid with slogans following on from each other. They were: “Ultimate thrills,” “Ultimate pleasure,” “Ultimate action,” “Ultimate style,” and “Ultimate driving experience.” When the last slogan appeared, a voiceover said: “The new BMW Series 3 range. Now from \$59,900 and the advertisement ended with the BMW logo and “Ultimate Driving Machine”.

COMPLAINT FROM S BARNS

The advert shows two BMW cars racing along South Island roads. The two cars appear to race around a blind corner - one car in each lane. The clip is pretty quick, so it is hard to see whether there is an additional lane for a car that may come the other way, but regardless of whether there is, this message of racing on the open road is irresponsible.

CODE OF ETHICS

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

CODE FOR ADVERTISING VEHICLES

Principle 2: Advertisements should not encourage unsafe practices.

Guideline 2(a): Advertisements should not glorify excessive speed and /or unsafe driving practices.

RESPONSE FROM ADVERTISER: BMW NZ

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| Where the advertisement appeared: | <ul style="list-style-type: none"> • TV and online video: TVNZ / Media Works; Sky Television • Facebook video |
| Is the advertisement still accessible — where and until when? | This TV campaign burst ended Sat 3 ^d June 2017. Further flighting to be confirmed. |
| Who is the product / brand target audience? | AP aged 40-64, HHI \$120k+ |

This letter is a written response on behalf of BMW New Zealand and our agency partners, in relation to the above Complaint.

Your letter refers to the following sections in the Advertising Codes of Practice:

Code of Ethics — Basic Principle 4; Code for Advertising Vehicles — Principle 2, Guideline 2 (a)

We do not believe this advertisement is glorifying speed or portraying unsafe driving practices.

The TV commercial (TVC) was filmed overseas as part of a global campaign on a closed-road. There is a super on screen for the first four seconds of the advertisement, which highlights this: "**Filmed overseas on closed roads.**"

We would like to address the specific points raised by the complainant, in particular, "two cars racing along South Island roads"; "the cars appear to race around a blind corner — one car in each lane"; "message of racing on the open road":

- The TVC is filmed overseas, not on South Island roads. This is characterised by the yellow line markings, which are very different to the standard white markings of New Zealand roads.
- The two cars featured in the ad are not racing and are not travelling at speed. There are two short sequences in the ad where one car overtakes the other. You can see from the road markings that this is within the road rules and not done illegally.
- The cars are not passing on a blind corner. Instead, the camera view filming the cars passes behind a hill, obscuring the view of the cars as they go behind the hill. You can see from the road markings on this stretch of road that the passing car is driving legally within the road rules as indicated by the road markings. These road markings would not be on the road in the lead up to a blind corner.
- In no way is BMW promoting a message of racing on the open road. To allay any concerns, there is a graphic at the start of the commercial to point out that this road is closed and filmed overseas.

It is also worth pointing out that a version of this advertisement ran, featuring only one car (the red BMW 3 Series sedan) from April 16th — May 6th 2017, without complaint. This TVC was replaced with the version the Complainant refers to, with the inclusion of a second car (the white Touring model) on 7th May 2017.

RESPONSE FROM THE MEDIA: COMMERCIAL APPROVALS BUREAU

CAB approved this BMW commercial on 04/05/17 with a G classification. Under CAB's internal procedures, the commercial is categorised as a Motor Vehicle advertisement.

A complainant submits that this commercial shows two cars driving on South Island roads. They further submit that such driving on open roads would be dangerous.

The advertisement was filmed overseas, and on closed roads. In every scene where overseas closed roads are shown a disclaimer reading 'Filmed overseas on closed roads' is shown on screen.

There is little room for misinterpretation given the stated and twice re-stated conditions for filming of this BMW commercial, and CAB believes the complainant's view is exceptional within the wider audience of New Zealand viewers.

The actions taken by the advertiser to observe good advertising practices also satisfy the NZTA guidelines for showing overseas driving:

NZTA Guidelines on the use of overseas motor vehicle advertising in New Zealand

The NZ Transport Agency (Transport Agency) is the Crown agency responsible for an affordable, integrated, safe, responsive and sustainable land transport system in New Zealand (NZ). This includes the implementation of laws, regulations and rules.

The Transport Agency encourages motor vehicle advertisers to, where possible, avoid using footage of driving that would be illegal on NZ roads. If this is unavoidable, a clear disclaimer should appear on-screen stating that the advertisement was "Filmed overseas".

Disclaimers should be on-screen for the duration of the illegal driving practice on NZ roads, and in a font size and colour that can easily be read by a typical viewer.

For example, in NZ, vehicles drive on the left-hand side of the road. However, a lot of motor vehicle advertising that appears in NZ is filmed in Europe or America - countries where the law requires driving on the right-hand side of the road.