



CASE REPORT

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| 1. Complaint reference number | 576/09 |
| 2. Advertiser | Lexus |
| 3. Product | Vehicle |
| 4. Type of advertisement | Internet |
| 5. Nature of complaint | FCAI - Driving practice that would breach the law |
| 6. Date of determination | Wednesday, 9 December 2009 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

This Internet advertisement depicts images of models of Lexus vehicles driving with their fog lights on.

THE COMPLAINT

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

I'm tired of seeing motor cars doing things that are illegal on the road, in their advertising as if it is a perfectly normal thing to do. These cars have their fog lights on, when there is obviously no fog to be seen. In NSW, it is illegal to have front or rear fog lights on with out the obvious presence of fog. This is a good law, for good reasons and is now endemic in Australia, primarily due to advertisers fomenting the myth that 'it looks cool'. Shame it's illegal.

I'm a motorcyclist and in inclement conditions, I have water outside my visor, and mist inside my visor. Due to ads such as this, fools turn their fog lights on when there is no fog (rain still does not count as fog) - quadrupling the glare, as two lights become four - and they all reflect off the road as well - doubling the doubled affect. This is all the more so due to the special angle set with fog lights - for fog conditions. I'll not go into the technical aspect of it here - it's illegal as, to be effective in fog, fog lights create undue glare for oncoming traffic when there is no fog. It is seriously dangerous and contemptuously ignored in this advertisement. Motorcyclists become 'Lexus fodder' in the rain, when they all mimic their stupid and irresponsible advertisement, thinking it's 'cool'. Please pull this ad.

Oh - and don't be fooled if they call them 'driving lights', as is all the rage now - 'driving lights' are effectively a second set of 'high beam' lights, and just as illegal to have on, when there is oncoming traffic for the same reason - undue and dangerous glare. These are not driving lamps, they are fog lamps - but the result would be the same - they are illegal in these conditions.

THE ADVERTISER'S RESPONSE

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

Firstly, it should be known that Lexus Australia takes its responsibility as an advertiser very seriously. We make extensive efforts to understand and respond appropriately to community concerns and issues. Over and above this, we have established our own stringent internal review and approval process including legal advice.

We have carefully reviewed the complaint received by us and take on board the comments made by the complainant that it is illegal to drive with fog lights on in NSW if there is no obvious fog. The

complaint relates to the Motor Vehicle Code, section 2c "Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation."

Upon reviewing laws associated with fog lights we acknowledge that technically the complainant is correct. We have duly noted this oversight and will ensure that those connected with the production of our vehicle advertisements are fully aware of the error and will ensure there is no recurrence.

We would like to point out that the majority of this campaign media spend was on TV and that on our TVC the fog lights were off, as per the mpeg attached. We'd also like to advise that the Lexus vehicles appearing in the advertisements are in fact "virtual vehicles".

With regard to corrective measures, we can advise that the last appearance of the online banner ad is Sunday 29th November and the last appearance for the press advertisement is Saturday 28th November, and all materials have already been dispatched to the publications.

We appreciate the complainant and the ASB bringing this issue to our attention, and again we apologise for any inconvenience caused. We trust that our response is to the ASB's satisfaction.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). The advertisement is an "advertisement for a motor vehicle" and therefore the Advertising Standards Board ("Board") was required to determine whether it was in breach of the Federal Chamber of Automotive Industries' Advertising for Motor Vehicles Voluntary Code of Practice (the "FCAI Code").

The Board noted the complainant's observation that the vehicle was depicted with its fog lights on and considered whether the advertisement was in breach of sections 2(a) or 2(c) of the FCAI Code.

The Board considered whether the advertisement depicted unsafe driving under section 2(a) of the FCAI Code. The Board noted that although the FCAI Code does not expressly refer to breaches of Australian road laws, the Guidelines to the FCAI Code state that advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. The Board noted that Australian Road Rule 217 states that:

"The driver of a vehicle fitted with front fog lights or rear fog lights must not operate the fog light unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility.

The Board also noted Rule 213 Using Lights When Driving At Night or In Hazardous Weather Conditions, which provides that:

(3) Also, a driver driving during the day in fog, or other hazardous weather conditions causing reduced visibility, may drive without the headlights of the driver's vehicle operating if the vehicle is fitted with front fog lights and those lights are operating effectively and are clearly visible.

The Board noted the advertiser's response that the vehicles are virtual vehicles but that technically the complainant is correct as the vehicles are depicted with their fog lights on and there is no fog or vision impairing context that would justify their use. The Board also noted that the advertiser had voluntarily corrected the advertisement. The Board determined that the use of fog lights as used in this advertisement was not justified and that the advertisement did breach section 2(a) of the FCAI Code.

Finding that the advertisement breached the FCAI Code, the Board upheld the complaints.

ADVERTISER'S RESPONSE TO THE DETERMINATION

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

I can confirm that the advertising in question has been discontinued and will not be appearing again. We have since taken the appropriate action to ensure all involved have been made aware of the complaint and the subsequent outcome to ensure this does not occur again in the future.