



FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES

VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

EXPLANATORY NOTES

CONTEXT

The Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code) has been instituted by the Federal Chamber of Automotive Industries (FCAI) as a means of industry self-regulation of motor vehicle advertising in Australia. The primary purpose of the FCAI Code is to provide guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety.

Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community and fully supports the efforts of all relevant Commonwealth, State and Territory authorities to secure this outcome.

OBJECTIVES

This Explanatory Note is provided as a guide to interpretation to assist advertisers, their agencies and the community. The interpretations in this Explanatory Note are based on the FCAI's intent in relation to the FCAI Code and relevant determinations of the Ad Standards Community Panel. This Explanatory Note must be applied by the Ad Standards Community Panel in making its determinations. In the event of ambiguity, the provisions of the Code will prevail. The Explanatory Note may be amended by the FCAI from time to time.

SCOPE AND COVERAGE OF THE FCAI CODE

The FCAI Code is to be applied to all forms of advertising of motor vehicles in Australia across any Medium (as defined within the Code).

GUIDANCE TO ADVERTISERS

Clause 2(a): Unsafe driving:

The FCAI supports a responsible approach to advertising for motor vehicles. The FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.

Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Advertisers need to be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.

The FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the FCAI Code.

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.

Advertisers should not use references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds") on a public road where the driving depicted and the reference to such capabilities would contravene clause 2(a). Depictions of such capabilities in a closed-circuit environment must comply with clause 3. Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the FCAI Code.

Clause 3: Use of motor sport in advertising:

The FCAI Code contains a specific clause (clause 3) relating to the use of motor sport, simulated motor sport and similar vehicle testing or proving activities in advertising. It is acknowledged that motor sport plays a critical role in brand promotion and the development and testing of crucial technologies, many of which result in safer vehicles. Accordingly, the FCAI Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context. The FCAI also urges advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving, are in any way associated with normal on-road use of motor vehicles.

Clause 4: Depiction of off-road vehicles:

In addition, it is noted that the FCAI Code contains a clause (clause 4) relating to the depiction of off-road vehicles which have been designed with special features for off-road operation. This clause provides some limited flexibility allowing advertisers to legitimately

demonstrate the capabilities and performance of such vehicles in an off-road context. Care should be taken to ensure that all other provisions and the underlying objectives of the FCAI Code are still adhered to. In particular, advertisers should ensure that advertisements for such vehicles do not involve the depiction of 'excessive' or 'unsafe' speed. Equally, advertisers should avoid portrayal of images of off-road driving which could otherwise be construed as being unsafe.

General guidance:

In interpreting and applying the FCAI Code, the FCAI asks that advertisers consider both the explicit and implicit messages conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the FCAI Code, but are also consistent with the objectives and guidelines expressed in the Explanatory Notes which accompany the FCAI Code.

CONSULTATION

In developing the FCAI Code, the FCAI has undertaken an extensive process of consultation with a wide range of stakeholders, including representatives of the following:

- (a) The Federal Government and its agencies (including the Australian Transport Safety Bureau);
- (b) Relevant State and Territory Government authorities;
- (c) The National Road Safety Strategy Panel (which comprises representatives of police services, road safety authorities, motoring organisations and industry groups);
- (d) The Australian Automobile Association;
- (e) The Australian Association of National Advertisers; and
- (f) Ad Standards Limited (Ad Standards).

REVIEW OF THE CODE

The FCAI will undertake reviews of the FCAI Code on an ongoing basis (approximately every five years).

PRACTICE NOTE – AD STANDARDS COMMUNITY PANEL

1. This FCAI Code only applies to advertisements for motor vehicles.

Complaints determine which Code applies

2. Advertisements for motor vehicles, which raise issues or complaints concerning safety, are to be determined according to the FCAI Code as opposed to the AANA Advertiser Code of Ethics (AANA Code).
3. Advertisements for motor vehicles which raise issues or complaints on grounds other than safety are to be determined according to the AANA Code.
4. Advertisements for motor vehicles which raise issues or complaints about both safety and issues under the AANA Code will be considered under the provisions of both the AANA Code and the FCAI Code.
5. Advertisements for products or services which are not directed towards the promotion of motor vehicle brands are to be determined according to the AANA Code.

Complaints that will not be considered under the FCAI Code

6. The Ad Standards Community Panel will not consider complaints which relate solely to:
 - (a) The use of images produced overseas which may depict number plates from jurisdictions outside of Australia or left-hand drive vehicles travelling on the right-hand side of the road when the footage is provided for an Australian company by its overseas parent company; and
 - (b) The absence of number plates on motor vehicles being advertised.

The Ad Standards Community Panel has previously considered that such images do not raise an issue of road safety or vehicle occupant protection. These matters are outside the scope of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising and will not be submitted to the Ad Standards Community Panel for determination.

In considering this Practice Note, advertisers should be mindful of obligations under the AANA Code, in particular Section 1.2 regarding misleading or deceptive advertising.

FCAI CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

1. DEFINITIONS

In this Code, the following definitions apply:

- (a) *Advertising or Marketing Communication* means any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and:
- over which the advertiser or marketer has a reasonable degree of control, and,
 - that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct,
- but does not include Excluded Advertising and Marketing Communications.
- (b) *Medium*: is defined as any Medium whatsoever including without limitation cinema, internet, outdoor media, print, radio, telecommunications, television or other direct-to-consumer media including new and emerging technologies.
- (c) *Excluded Advertising and Marketing Communications*: includes labels or packaging for products, corporate reports (and associated public affairs messages), annual reports, statements on matters of public policy and the like.
- (d) *Off-road vehicle*: means a passenger vehicle with up to nine seating positions including that of the driver and designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have four-wheel drive.
- (e) *Motor sport*: means racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.
- (f) *Motor vehicle*: means passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle.
- (g) *Road*: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles.
- (h) *Road-related area*: means an area that divides a road; a footpath or nature strip adjacent to a road; an area that is not a road and is open to the public and designated for use by cyclists or animals; an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles.

2. GENERAL PROVISIONS

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

- (a) Unsafe driving, including reckless and 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.

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

- (b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.
- (c) 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.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]

- (d) People driving while being apparently fatigued, or under the influence of drugs or alcohol to the extent that such driving practices 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 directly with road safety or traffic regulation.
- (e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

3. 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.

4. DEPICTION OF OFF-ROAD VEHICLES

An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.

5. COMPLIANCE AND ADMINISTRATION

Complaints about advertising and marketing communications for motor vehicles can be made under this Code to Ad Standards.

Complaints are assessed by Ad Standards to determine if they are appropriate for consideration by the Ad Standards Community Panel (Community Panel). Complaints accepted for consideration under the Code are forwarded to the advertiser/marketer for response. Both the complaint and advertiser response are considered by the Community Panel and the advertiser and complainant(s) are advised of the determination. A case report is then published.

The original complainant or advertiser/marketer can also request a review of the determination via the Independent Review process. A lodgement fee applies to requests for review.

Ad Standards will ensure that all complaints are considered in a timely fashion. As a general rule the panel should finalise its determination within one calendar month of a complaint having been received. Where necessary, the Community Panel may be required to meet more frequently to ensure the timely consideration of complaints.

Ad Standards also offers a fee-paying Copy Advice Service to advertisers, agencies and businesses, providing expert advice on the Code in advance of broadcast or publication of those ads.

Information about the complaint and review processes, and the copy advice service is available on the Ad Standards website www.adstandards.com.au.