



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0022-21
2. Advertiser :	Audi Australia
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	10-Feb-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(b) Breaking the speed limit
FCAI Motor Vehicle Advertising Code\3 Motor Sport

DESCRIPTION OF ADVERTISEMENT

There are three versions of this advertisement for the Audi Etron, two 15 second versions and one 30 second version.

Version 1 - 30 seconds.

This version of the advertisement features a voice over stating, "I know what you're thinking. Electric. It's not for you. You're probably right. Electric just doesn't have enough range. Everyone knows water and electricity don't mix. No more hanging out here either. Electric just can't keep up. So maybe an electric car isn't for you. Or is it?"

Scenes from the advertisement include:

- A man standing in a driveway reading a newspaper with a small dog next to him watches a garage door open and sees the vehicle in the garage .
- The same man and dog are seen standing next to a dirt road as the vehicle drives past, and continues up a hill leaving a trail of dust.
- The man shelters under his newspaper as he stands by the road in pouring rain and the vehicle drives by.
- The man and his dog watch people move around a busy petrol station.
- A formula one car appears to be racing against the vehicle on a race track. The man and dog stand in between the two cars.
- The man is back in his driveway watching the car drive away.



- The vehicle drives along a dirt road.

Version 2 - 15 seconds.

This version of the advertisement features a voice over stating, "I know what you're thinking. Electric just doesn't have enough range. So maybe an electric car isn't for you. Or is it?" Scenes from the advertisement include:

- A man standing in a driveway reading a newspaper with a small dog next to him watches a garage door open and sees the vehicle in the garage .
- The same man and dog are scene standing next to a dirt road as the vehicle drives past, and continues up a hill leaving a trail of dust.
- The man is back in his driveway watching the car drive away.
- The vehicle drives along a dirt road.

Version 3 - 15 seconds.

This version of the advertisement features a voice over stating, "I know what you're thinking. Electric just can't keep up. So maybe an electric car isn't for you. Or is it?" Scenes from the advertisement include:

- A man standing in a driveway reading a newspaper with a small dog next to him watches a garage door open and sees the vehicle in the garage .
- A formula one car is racing against the vehicle on a race track. The man and dog stand in between the two cars.
- The man is back in his driveway watching the car drive away.
- The vehicle drives along a dirt road.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The entire add is promoting the vehicle at excessive speed and is designed to promote the ability of this vehicle to be driven above speed limits

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We refer to your letter dated 28 January 2021 enclosing a complaint (Complaint) received in relation to Audi Australia Pty Ltd's (Audi Australia) advertisement.

Audi Australia takes its legal responsibilities under the Competition and Consumer Act, AANA Advertiser Code of Ethics (AANA Code) and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) very seriously. Further, Audi Australia adheres to the Commercial Advice Division (CAD) pre-approval process to ensure approval classification before the commercial is aired. This reflects Audi Australia's robust commitment to complying with advertising and motor vehicle safety regulations.



The Advertisement

The Complaint relates to the Audi e-tron 55 quattro (Vehicle) TV Commercial (Advertisement) with the title “Not for you – e-tron TVC” which tells the story of a man in his pajamas and dressing gown, accompanied by his dog, collecting the morning paper and observing his neighbour’s electric vehicle leaving its garage. The man does not think an electric vehicle is a suitable vehicle for him, however, he then starts to daydream about the capabilities of an electric vehicle. In the man’s daydream, we see him and his dog being tele-transported to different locations. We see the Vehicle driving past them across a dirt road in the desert and then they are standing in the rain in a forest. We then see the man and his dog at a petrol station. Finally, race cars are shown racing around a racetrack. The Vehicle joins the race cars, driving past the man and his dog. The daydream ends and the man begins to think that maybe an electric vehicle might be suitable for him. Every scene was created to dispel common preconceptions about electric vehicle capabilities, with the daydream designed to exaggerate each scenario.

Relevant Legislation and Regulations

The Complaint referred to in your letter raises issues under FCAI Code and/or the AANA Code. Audi Australia has considered the specific matters noted in your letter, which relate to the FCAI Code and the AANA Code.

Audi Australia’s Response to the Complaint

Audi Australia takes compliance with the AANA Code, the FCAI Code and the self-regulation of advertising in Australia very seriously.

We understand that the Complaint relates only to the desert sequence and racetrack sequence. Accordingly, we have not addressed the rainforest or petrol station sequence in our response.

We note the requirements under the FCAI Code (in particular clause 2) and the AANA Code to depict safe behaviour in motor vehicle advertising and we actively take this into account and strive to ensure our advertised content is consistent with prevailing community standards.

We regret if any members of the public were offended by any content in the Advertisement.

The Advertisement shows specific action sequences, including in a desert and motor sport track setting, depicted through the fantasy “daydream” of the man. These action sequences were not designed to promote the speed capacity of the Vehicle. Rather, the action sequences, in conjunction with the voiceover, were designed to emphasise and promote the capabilities of an electric vehicle on different terrain and environments, including on dirt roads, in the middle of the outback and in wet weather.



Audi Australia respectfully submits that the Advertisement is not in breach of the FCAI Code or the AANA Code. Our reasons are set out in further detail below.

General Provisions of the FCAI Code

Audi Australia submits that the Advertisement does not portray or encourage excessive speeding or dangerous, illegal, aggressive or reckless driving. Audi Australia notes that there is no evidence of the Vehicle speeding or being driven illegally, dangerously or recklessly. At all times, the Vehicle is depicted as being in the driver's full control, in compliance with all road safety regulations and the driving depicted would not endanger any driver or passengers if attempted.

The sequences do not depict any screeching of tyres, breaks in traction, erratic movements, drifting, or unnecessary, sudden or extreme changes in direction.

The racetrack sequence depicts the race car turning a corner, however, this is an appropriate style of driving in a controlled racetrack environment. Additionally, in respect of the desert sequence, the Vehicle is being driven on a dirt road in a sparse open landscape and features no other vehicles or potential obstacles (noting that the man and the dog were superimposed into the sequence after filming).

In response to the questions set out in your letter, Audi Australia responds as follows:

1) What assurances can the advertiser provide that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?

All driving depicted in the Advertisement is not in breach of or contrary to the FCAI Code and is not contrary to any road safety regulations.

The desert sequence was filmed on private closed roads in Slovenia, under controlled conditions and using professional drivers. Use of onscreen wording in the Advertisement as follows confirms this: "Filmed on closed roads under controlled conditions using professional drivers. Image of person and dog is superimposed."

The racetrack sequence used footage from an organised motor sport event using professional drivers. Use of onscreen wording in the Advertisement as follows confirms this: "Footage shown from organized motorsport events with professional drivers. Image of person and dog is superimposed." We understand that the Vehicle was also superimposed on the racetrack, however, we are currently confirming this.

2) Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?

As the Advertisement was filmed in private roads in Slovenia, Audi Australia understands that there were no legal speed limits in place. However, there is no



evidence to suggest that the Vehicle was driving in excess of the speed limits allowable in Australia. There are also no visuals of the speedometers of the Vehicle. The Advertisement does not indicate or suggest that the Vehicle is being driven at excessive speed, the Advertisement does not refer to the speed or horsepower capabilities of the Vehicle and at no time is speed the focus of the Advertisement. Any perceived speeding of the Vehicle is a consequence of the filming technique, camera angle and quick editing. Audi Australia notes that in respect of the desert sequence, the dust that flew up after the Vehicle is a natural consequence of driving on unsealed dirt roads and does not indicate that the Vehicle was driving at excessive speeds.

3) *Was it necessary for the advertiser to obtain any special permission/permits to undertake filming of any driving sequences depicted in the advertisement?*

Permits were obtained to film the sequences on private and closed roads.

4) *Has the advertisement being published/broadcast in all of Australia? Are there any States/Territories where the advertisement has not been published/ broadcast?*

The Advertisement has been published and broadcast in all States/Territories across Australia on 'free to air' TV during the periods between 4 to 31 October 2020, 6 to 13 December 2020 and 26 December 2020 to 2 January 2021. However, the Advertisement is no longer being screened on 'free to air' TV.

The Advertisement is also screened at select Open Air Cinema events in Sydney starting from 15 December 2020 (except during the COVID-19 lock down periods).

5) *Has the advertisement been made available on the internet?*

The Advertisement has been available on the internet during the periods between 4 October to 21 November 2020 and 6 December 2020 to 10 January 2021. However, the Advertisement is no longer actively distributed on the internet.

Use of Motor Sport in Advertising

Audi Australia submits that the racetrack sequence in the Advertisement complies with clause 3 of the FCAI Code as:

- a) the sequence is clearly identifiable as part of an organised sport activity as shown by the racetrack, the barriers with automotive advertising, the grandstand seating and the crowd visible in the background; and*
- b) the race car depicted is in clearly identifiable racing livery.*

The FCAI Code Explanatory Notes state that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in advertising motor vehicles. The depiction of the Vehicle competing against the race car was a figment of the man's fantasy "daydream" and was intended to demonstrate, in a self-evident exaggerated



and humorous fashion, that electric vehicles are capable of performing as well as petrol-fuelled vehicles.

It is self-evident that the Vehicle's participation in the race was also a figment of the man's fantasy "daydream". There was no suggestion in the Advertisement that the depictions would be suitable for a street environment and the community would be able to ascertain this. Nonetheless, at all times during the racetrack sequence, the Vehicle was driven in a safe manner that would not contravene any road safety regulations were it to occur in a street environment. Additionally, Audi Australia notes that the Vehicle only appears in the racetrack sequence when the race car is driving in a straight line on a straight stretch of track and the Vehicle does not undertake any manoeuvres that would not be appropriate in a street environment or endanger any driver or passenger if attempted.

In response to the questions set out in your letter, Audi Australia responds as follows:

1) What evidence can be provided to demonstrate that any scenes of motor sport or simulated motor sport are activities of a kind for which a permit would normally be available in Australia? For example, do such scenes comply with the requirements for any of the recognised forms of motor sport governed by the National Competition Rules of the Confederacy of Australian Motor Sport (such as circuit racing, drag racing, rallying, etc.) or other similar recognised body?

We are currently awaiting further input from the Agency on how the racetrack sequence was produced. It is possible, that the Agency used existing footage from an organised motor sport event with professional drivers. If so, the scene would comply with the requirements of motor sports in the jurisdiction where the footage was taken.

We note that it is our understanding that the man and the dog were not physically present whilst the desert and racetrack sequences were filmed and were subsequently superimposed. It is also our understanding that the Vehicle was superimposed on the racetrack, however, we are currently confirming this with the Agency and will provide you with additional information shortly.

2) What evidence can be provided to demonstrate that the activities in such scenes conform to the requirements of relevant rules or regulations governing safety for competitors, official, and spectators?

We are currently in the process of confirming whether the Vehicle was merely superimposed onto the racetrack. As mentioned above, we are currently awaiting confirmation from the Agency on how the race track sequence was produced and will provide you with additional information shortly.

Depiction of Off-Road Vehicles

In response to the specific queries in your letter, Audi Australia responds as follows:



1) Do any/all vehicles portrayed being driven in an off-road setting in the advertisement conform to the requirements of the definition an off road vehicle as provided in the Australian Design Rules (MC category)? If so, please outline the key criteria which are met?

The Vehicle is certified as an MA category vehicle (passenger) and complies with the Australian Design Rules. In any case, Audi Australia submits that the Vehicle is not being driven in an off-road setting. Rather, it is being driven on dirt roads, as can be seen in the screen capture below. The Vehicle is suitable for driving on dirt roads.

2) What is the maximum number of seating positions in the vehicle/s?

The Vehicle has a maximum of five seating positions.

3) Does the vehicle/s have four-wheel drive/all-wheel drive?

The Vehicle is fitted with quattro all-wheel drive.

Section 2 of AANA Code

In relation to section 2 of the AANA Code, the Advertisement does not portray people or depict material in a discriminatory, exploitative or degrading manner. There is no sexual appeal whatsoever. There is no portrayal of violence in any way whatsoever. The Advertisement does not portray any acts that are in reference to sex, sexuality or any nudity. There is no inappropriate language used in the Advertisement. The Advertisement does not depict material that is contrary to the prevailing community standards on health and safety, and Audi Australia directs the Ad Standards Panel to the comments above in relation to the FCAI Code.

Final Comments

Audi Australia submits that the broad majority of people would, when considering the Advertisement as a whole, understand that the Advertisement does not promote the Vehicle at excessive speeds and is not designed to promote the Vehicle being driven above the speed limit. The Advertisement is set in a fantasy “daydream” setting and the montage of events in this setting are unlikely to encourage viewers of the Advertisement to imitate the driving behaviour.

Audi Australia maintains that the Advertisement complies with the FCAI Code, and that a reasonable person would not have grounds for a complaint, as it does not display any condoning behaviour or depict material that is in any other way contrary to FCAI Code and the AANA Code. Based on the above, we respectfully submit that the Advertisement falls within acceptable community standards and complies with the FCAI Code and the AANA Code.

We appreciate the opportunity to respond to the Complaint and look forward to hearing from you following a decision by the Ad Standards Panel.



THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concern that the advertisement depicts the vehicle driving at excessive speeds and encourages people to speed.

Is this an advertisement for a motor vehicle?

The Panel considered whether the advertisement was for a motor vehicle. Motor vehicle is defined in the FCAI Code as meaning: "passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle". The Panel determined that the Audi Etron was a Motor Vehicle as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

Clause 2(a): Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or 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.

The Panel noted that version one and version two of the advertisement feature a vehicle driving along a dirt road leaving a trail of dust. The Panel noted that the trail of dust, the sounds of the engine and the movement of the camera do make it appear as though the car is driving fast.

The Panel noted the advertiser's response that any perceived speeding of the vehicle is a consequence of the filming technique, camera angle and editing, and the dust after the vehicle is a natural consequence of driving on unsealed dirt roads.

The Panel considered that although the car appears to be going fast, there is no actual indication of the speed the car is going. The Panel considered that the vehicle appears to be in the control of the driver at all times and did not portray unsafe driving which would breach any Commonwealth law or the Law of any State or Territory.

The Panel noted that versions 1 and 3 of the advertisement include a scene showing the vehicle racing against a formula one vehicle on a racetrack.



The Panel noted that a disclaimer on the advertisement states, “Footage shown from organized motorsport events with professional drivers. Image of person and dog is superimposed.”

The Panel noted Clause 3 of the FCAI code provides:

“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.”

The Panel noted that the advertised vehicle is not in racing livery and was depicted in a motor sport scene. However, the Panel noted that the scene was not intended to show a real-life scenario and was instead meant to be part of a fantasy of the man in the advertisement.

The Panel noted the FCAI Code provides the following guidance:

“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.”

The Panel noted that the scene showing the cars racing included the man and his dog standing on a track. The Panel considered that the scene was clearly not real and was part of a fantasy sequence. Further, the behaviour shown in the scene was not reckless or dangerous and would not encourage unsafe driving behaviour. The Panel considered that the depiction of the fantasy scene would not contradict, circumvent or undermine Clause 2 (a) of the FCAI Code.

Overall, the Panel considered that the driving behaviour in all three versions of the advertisement did not portray unsafe driving which would be a breach of the law.

Clause 2(a) conclusion

The Panel determined that the advertisement did not breach Clause 2 (a) of the FCAI Code.



Clause 2(b) Advertisers should ensure that advertisements for motor vehicles do not portray people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

Consistent with the discussion under Clause 2(a), the Panel considered that the actual speed of the vehicle cannot be determined from the advertisement and there is no indication the vehicle is driving at speeds in excess of speed limits in Australia.

Clause 2 (b) conclusion

The Panel determined that the advertisement did not breach Clause 2 (b) of the FCAI Code.

Conclusion

Finding that the advertisement did not breach Cause 2(a) or Clause 2(b) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.