



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0036-21
2. Advertiser :	KIA Automotive Australia
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	24-Feb-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement features three vehicles driving together and all performing a J turn simultaneously.

THE COMPLAINT

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

The ad featured loud tyre squealing and aggressive driving which was incongruent with the car featured and jarring instead of funny. The tyres squealing caused us to look outside as it sounded like a car accident. We live on a busy road and the sound invoked danger.

I think this advertisement would encourage drivers, particularly young impressionable people, to drive like this thinking it must be okay to do so if it's shown on TV. I feel we will soon hear about a serious accident caused by a driver trying to copy the behaviour shown in this ad.

We live in an age of easily influenced young offenders and other mindless people who get their kicks out of stealing cars, or hotting up cars and then hooning in suburban



streets at night and thumbing their nose at the authorities. All incredibly stupid. Where is the moral conscience? This type of rubbish gets far too much oxygen and influences the weak minded amongst our population. Previously Kia also previously advertised a model called the Stinger (a sports type car) also aimed at motoring hotheads. Very selfish and irresponsible on the part of Kia and should be banned. I know people will tell me to harden up and get over it ; taking life too seriously etc but we constantly have to confront the consequences of out of control behaviour and we wring our hands and collectively say, "Isn't it terrible?". It will never be a perfect world but why inflame impressionable minds of immature thrill seekers with these type of ads.? The modern world is far too crazy enough as it is. We seem to live in an age where anything goes and then wring our hands at the consequences of irresponsible behaviour. Eg. also alcohol, gambling etc. And there is far too much crude language on TV (the F... and C... words all liberally used) All very pathetic. Are we a yobbo nation lacking some maturity and class? It seems that there is a mentality that being a crude yobbo makes us the quintessential Aussie. I would hope we are better than that.

Vehicles shown performing J turns which is a breach of the FCAI guidelines.

I have never complained about an ad before, but I was horrified when I saw this tonight. Three Kia cars are moving rapidly together along a road with a white line in the middle. They are spread out across the entire road. Then the cars do a "hoon" style 180 degree turn, at speed, to face the other way.

In the light of our road toll and hoon driving causing so much trouble, this ad is irresponsible and appalling. It models to young drivers totally stupid and unsafe driving.

I'll try to upload the ad, but my computer skills are not great. You can view the ad by googling "Kia ad".

Please consider this seriously. I thought we were well past this calibre of irresponsible advertising. Sadly and worryingly, it appears not.

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 letters of 15 February 2021 and 18 February 2021, concerning the complaints received by Ad Standards in respect of Kia Motors Australia's (Kia) television advertisement (Advertisement).

The complainants allege that the Advertisement raises issues under section 2 of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (Code).

Kia takes compliance with the Code very seriously.



For the reasons set out below, Kia disagrees that the Advertisement infringes section 2 of the Code or any other section of the Code.

Background to the Advertisement

The Advertisement was created to promote the Kia Sorento, Seltos and Carnival (Kia SUVs), each of which are part of the Kia SUV range.

The Advertisement depicts an event which is analogous to a testing or proving event for the Kia SUVs, which is intended to illustrate the improved handling and capabilities of the vehicles under controlled conditions. The Advertisement is intended to target a broad range of consumers across various demographics.

The Advertisement was created to be broadcast to coincide with the Australian Open 2021. The Advertisement draws on the themes of high level professionalism and elite athleticism associated with the Australian Open and grand slam tennis tournaments in its depiction of professionals test driving the Kia SUVs to exhibit their improved handling and capability.

The Advertisement has been broadcast in all States and Territories of Australia since 7 February 2021. The Advertisement has been broadcast online on Kia's YouTube and social channels since 7 February 2021.

The Advertisement

The purpose of the Advertisement is to showcase the improved handling and capabilities of the Kia SUVs in conditions which are intended to mimic Kia's testing or proving conditions.

The Advertisement opens with a ground level shot depicting the three Kia SUVs in the distance driving towards the camera in reverse. The Kia SUVs are driving on a wide airstrip that is clearly situated in a remote area. There are no pedestrians or cars on the airstrip and the Kia SUVs are at all times driving at safe distances from each other. A high angle shot displays the Kia SUVs driving in formation and then an eye level shot shows the Kia SUVs driving in reverse closer to the camera.

The number plates "SRENTO" "CARNVL" and "SELTOS" indicate the different Kia SUV models.

A low angle, close up shot of the wheels of the middle car illustrates the Carnival model's traction and superior handling on the track that appears partially wet. The Carnival model starts to turn to the left and the inside of the car is shown indicating the speed limit is 50 km/h. The front of the Sorento model is shown indicating it is performing a similar turn and then a high angle shot shows the three Kia SUVs turning in synchronisation, which is also shown from an eye level shot in which the drivers in each car are visible. The drivers are wearing uniform black hats and headsets indicating they are professional stunt drivers.



The Kia SUV's are shown from behind driving forward away from the camera. The Sorento Kia SUV is shown from the front approaching the camera. The screen is blacked out and the tagline "Why move forward the same way as everyone else?" appears. The Kia SUVs return to the screen and the Carnival model approaches the camera. The screen is blacked out and the tagline "This is Kia" appears, followed by the Kia logo situated on top of the tagline "Movement that inspires".

The Advertisement was shot under controlled circumstances using professional drivers Ben Toya, Harry Bates and Fernando Wiehrl, on a closed airstrip. The Advertisement was choreographed by a qualified stunt coordinator, Harry Dakanalis, who assessed the safety of the manoeuvres and coordinated the drivers through headsets. The manoeuvres were performed by qualified precision drivers who communicated between themselves and the stunt coordinator through the headsets.

In order to film the Advertisement under the requisite testing conditions on the closed airstrip, the production company was required to obtain relevant permits, including permission from Shellharbour City Council for the exclusive hire of the airstrip.

For the duration of the Advertisement when the Kia SUVs appear on screen, a prominently featured super is displayed which states "Filmed under controlled conditions on a closed location. Vehicles driven by professional stunt drivers. Do not attempt this stunt in your own Kia vehicle".

The complaints

Kia takes compliance with the Code very seriously. Kia considers that the Advertisement does not depict conduct which is in contravention of the Code and submits that the complaints should be dismissed.

Depiction of unsafe driving or unsafe driving that would breach road rules

The Advertisement does not depict unsafe driving or driving that would breach road rules in contravention of the Code.

Clause 3 of the Code provides that advertisers may make use of scenes of motor sport, simulated motor sport, or vehicle testing or proving, provided that such scenes are clearly identifiable as part of an organised activity of a type which would normally be permitted in Australia and that they also conform to general safety requirements associated with such activities.

The Advertisement clearly depicts conduct which is analogous to the testing or proving which would ordinarily be conducted by Kia in respect of its vehicles to ensure that they are safely able to handle different kinds of conditions and, accordingly, the Advertisement should be considered under clause 3 of the Code. The purpose of the activity shown in the Advertisement was to illustrate the improved handling and



capability of the Kia SUVs and counter traditionally held perceptions of Kia cars as merely value for money vehicles.

There is no suggestion in the Advertisement that the driving shown is associated with normal on-road use of motor vehicles.

The location of a closed airstrip was sourced specifically in order to show driving which is analogous to testing or proving activity. All caution was taken to indicate to the audience that the manoeuvres in the Advertisement were performed under controlled conditions by professional stunt drivers. The visible lines on the runway clearly indicate that the location is a closed airstrip.

There are no pedestrians or other cars in the Advertisement and the Kia SUVs are at all times driven at safe distances from one another.

Kia engaged various safety measures in order to conduct the testing event including having a safety supervisor on site. As set out above, the manoeuvres were choreographed by a qualified stunt coordinator who communicated with the professional qualified drivers through headsets. The drivers of the Kia SUVs are visible at 00.13 and 00.25. Their hands are shown holding the wheel and they are shown wearing headsets and black cap hats, attire that is indicative of professional drivers who use the headsets to communicate and coordinate their manoeuvres.

It would also be clear to reasonable viewers that the scene is performed by professional stunt drivers, including by reference to the prominent disclaimer which appears throughout the Advertisement stating “Filmed under controlled conditions on a closed location. Vehicles driven by professional stunt drivers. Do not attempt this stunt in your own Kia vehicle”. The drivers are depicted as professionals executing manoeuvres with a high degrees of skill and are at all times shown in full control of the Kia SUVs.

In regard to the complainants’ specific concerns that the Advertisement promotes reckless and dangerous driving, including encouraging drivers to attempt the manoeuvres shown in the Advertisement, we note the nature of the Advertisement and the combination of the above elements makes it evident the Advertisement clearly depicts a demonstration which is analogous to a Kia testing or proving event, conducted by professionals under specific and controlled conditions. Accordingly, reasonable viewers would consider the manoeuvres in the Advertisement to be performed by professionals under strict testing control conditions.

In light of these factors, we respectfully submit that the Advertisement does not and could not be considered by any reasonable person to encourage or condone unsafe copycat behaviour in breach of the Code.

2. Depiction of breaking the speed limit or driving at speeds in excess of speed limits



The Advertisement is not intended to promote the speed capacity of the Kia SUVs. The purpose of the Advertisement is to demonstrate the handling and capability of the Kia SUVs. The manoeuvres, whilst complex and performed by professionals, are completed within the legal speed limit and were closely monitored at all times during filming in particular by the experienced stunt coordinator. At 00.10 of the Advertisement the dashboard of one of the Kia SUVs is visible and the speed is shown at 50 km/h, being well within what is considered an acceptable speed for safe driving.

Other considerations under the Code

Kia notes that in addition to considering specific issues raised by the individual complainants, the Community Panel will also review the Advertisement in its entirety against the Code.

Whilst Kia considers the Advertisement should be assessed in accordance with clause 3 of the Code as it depicts an activity which is analogous to a testing or proving activity that Kia would ordinarily conduct for its cars, for completeness, Kia also considers that the driving in the Advertisement performed in the context of a controlled testing activity does not breach clause 2 of the Code.

The drivers are at all times in complete control of the vehicles and execute the manoeuvres with a high degree of skill to prove the Kia SUVs' capabilities. The manoeuvres are complex and can only be explained as having been undertaken as part of an event similar to a testing or proving event.

The driving, whilst dynamic and skilful, is not menacing, aggressive or "hooning". The manoeuvres are calculated, coordinated and appropriate as manoeuvres designed to test the Kia SUVs' handling capabilities. The speed at which the vehicles are travelling is appropriate in the context of a testing event. When the dashboard is visible during the advertisement, the speedometer shows that the vehicle is actually travelling no more than 50km/h, well within what would be considered to be a safe driving speed.

AANA Code of Ethics not relevant for consideration

Kia notes that, under the Motor Vehicle Advertising Code Practice Note, advertisements for motor vehicles which raise issues or complaints concerning safety are to be determined according to the Code as opposed to the AANA Code of Ethics. Accordingly, Kia has not dealt with the AANA Code of Ethics in its response.

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).



To come within the FCAI Code, the material being considered must be an advertisement. The FCAI Code defines an advertisement as follows: "matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

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 Kia vehicle depicted were a Motor Vehicles 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.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

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 a scene in the advertisement showing the three vehicles performing a 'J turn', a driving manoeuvre in which a reversing vehicle is spun 180 degrees and continues, facing forward, without changing direction of travel.

The Panel noted Provisions 296 and 297 of the Australian Road Rules which state:

"296 Driving a vehicle in reverse

(1) The driver of a vehicle must not reverse the vehicle unless the driver can do so safely. Offence provision.

(2) The driver of a vehicle must not reverse the vehicle further than is reasonable in the circumstances. Offence provision.

"297 Driver to have proper control of a vehicle etc

(1) A driver must not drive a vehicle unless the driver has proper control of the vehicle. Offence provision."

The Panel noted the disclaimer on screen stating "Filmed under controlled conditions on a closed location. Vehicles driven by professional stunt drivers. Do not attempt this stunt in your own Kia vehicle". The Panel further noted the advertiser's response that the vehicles were driven by professional drivers.



The Panel noted the Guidance Note in the Code which states:

“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. “

The Panel considered that while the drivers in the advertisement may be professional drivers, such driving manoeuvres (reversing for a long distance and performing a J-turn) would breach relevant Commonwealth or State or Territory law were it to occur on a road or road related area and is a depiction of unsafe driving.

Clause 2(a) conclusion

The Panel considered that the advertisement did breach Clause 2(a) of the FCAI Code.

Clause 2(b) - 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.

The Panel noted the complainants’ concerns that the advertisement promotes speeding and may influence people to speed.

The minority of the Panel considered that the vehicles depicted were shown to be travelling very quickly, and considered that the depiction of such speed would be a breach of speed limits. The minority noted the advertiser’s response that in one scene a vehicle is shown to be travelling at 50km/h, however considered that this scene is very brief and would be unlikely to be seen by viewers.

The majority of Panel noted that it is unclear what the speed limit was on the roads shown in the advertisement. The Panel considered that the speed of two of the drivers in the advertisement is unclear and that one is shown to be travelling at 50km/h. The majority considered that while there may be an impression of speed due to the sound of the engines and the camera techniques used, the vehicles do not appear to be driving at excessive speeds.

The Panel noted that the feeling of the advertisement is one of speed however considered that there is no indication that any vehicle was exceeding the speed limit and that while it is unclear what speed was reached, it is unlikely to have been a speed which breached the law.

Clause 2(b) conclusion

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

Conclusion



Finding that the advertisement did breach Cause 2(a) of the FCAI Code, the Panel upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Kia Australia confirms that this advertisement was discontinued from 8th March 2021 and we will be taking steps to modify the advertisement for future use.