



**Ad Standards** Community Panel  
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Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0070/19
2	Advertiser	Subaru (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	06/03/2019
6	DETERMINATION	Dismissed

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a father and a boy going on a road trip. They stop at a level crossing and while waiting for a train to pass, the father realises that his son is watching in awe. The two of them are then seen standing outside the car and watching the train pass by.

## THE COMPLAINT

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

*Isn't it law in Australia that you be in control of your vehicle at all times when on a road . they have left the vehicle and are between the car and the train tracks watching the train What if another car hits their car and forces it to push them into the passing train,*

## THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this





advertisement include the following:

*Subaru Australia believes in responsible marketing and accordingly, takes its responsibilities under both the Advertiser Code of Ethics and FCAI Code of Practice for Motor Vehicle Advertising seriously. As such, all marketing material produced by Subaru Australia is carefully vetted for compliance with these two Codes.*

*As we understand it, the complaint referred to in your letter of 25th February 2019 raise concerns regarding NSW Road Safety Rules, specifically:*

*REASON FOR CONCERN: "Isn't it law in Australia that you be in control of your vehicle at all times when on a road. they have left the vehicle and are between the car and the train tracks watching the train What if another car hits their car and forces it to push them into the passing train,"*

#### *Description*

*The commercial features a father and a boy going on a road trip. They stop at a level crossing and while waiting for a train to pass, the father realises that his son is watching in awe. The two of them are then seen standing safely by and watching the train pass by in amazement.*

#### *Background*

*In September 2018 Subaru launched a new commercial for the 2019 Subaru Forester. The commercial features a father and a boy going on a road trip. They stop at a level crossing and while waiting for a train to pass, the father realises that his son is watching in awe. The two of them are then seen standing safely by and watching the train pass by in amazement. A 60 second version of the advertisement ran from September until the end of 2018 on national broadcast television and the internet. From February 2019, a 30 second version of the advertisement has been running nationally on broadcast television and the internet.*

#### *Submissions*

*Having considered the FCAI Code of Practice for Motor Vehicle Advertising General Provisions that requires advertisers ensure that advertisements for motor vehicles do not portray unsafe driving, including speeding or other practices which would contravene road safety regulations, if they were to take place on a road or road-related, below are our responses to the specific questions raised: -*

*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?*

*Specifically addressing the complaint; all vehicle filming conformed to the relevant safety regulations and NSW Road Rules. Our reference was the NSW Government Road User's Handbook (attached).*



*Railway level crossings – NSW Road Rules and the NSW Government Road User's Handbook states you must stop if red lights are flashing and if carrying flammable, explosive or dangerous goods, you must stop between 3-15 metres before the crossing (page 147).*

*Additionally, in regard to general parking rules, it states you must not stop your vehicle (that is, bring it to a stop and either stay with the vehicle or leave it parked) within 20 metres before and after a railway level crossing (page 136).*

*The railway crossing red lights can be seen flashing in the subject advertisement and we confirm the car was legally stopped and parked over 20 metres from the crossing. This distance was specifically measured on set. Whilst it may not be obvious from the perspective of the camera, the car was in fact parked legally and in accordance with NSW Road Rules.*

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

*We confirm that during the filming of the advertisement, the vehicle adhered to the NSW road safety regulations and was driven at or under the posted speed limit at all times.*

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

*The crossing where the filming took place did not have any warning lights or boom gates. The warning lights in the subject advertisement were installed by the production company in line with RailCorp regulations. No special permissions were required for driving, although the shoot was supervised by representatives from RailCorp who were on site to ensure we did not breach any safety regulations.*

*4. Has the advertisement been published/broadcasted in all of Australia? Are there any States/Territories where the advertisement has not been published/broadcast?*  
*The advertisement has been broadcasted nationally from September 2018.*

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

*The advertisement has been made available on the internet from September 2018.*

*Use of Motor Sport in Advertising Clause 3 of the FCAI Code*

*In respect to the Clause, Subaru Australia does not believe the subject advertisement has any content relevant to this Clause in the FCAI Code.*

*Depiction of off-road vehicles in Advertising Clause 4 of the FCAI Code*

*In respect to the Clause, Subaru Australia does not believe the subject advertisement has any content relevant to this Clause in the FCAI Code.*

*Section 2 of the Advertiser Code of Ethics*



*In respect of the balance of the provisions of Section 2 of the Advertiser Code of Ethics, Subaru Australia notes that whilst it would appear that there is no complaint in regards to breaches of these provisions, the Ad Standards Community Panel will nevertheless review the advertisement in its entirety against all of section 2. Accordingly, Subaru Australia makes the following further submissions:*

*Section 2.1 – Discrimination or vilification – the subject advertisement does portray or depict material in which a person or section of the community is discriminated against or vilified.*

*Section 2.2 – Exploitative or degrading – the subject advertisement does not employ sexual appeal in any way, shape or form.*

*Section 2.3 – Violence – the subject advertisement does not present or portray violence in any way, shape or form.*

*Section 2.4 – Sex, sexuality and nudity – the subject advertisement does not portray sex, sexuality or nudity in any way, shape or form.*

*Section 2.5 – Language – the subject advertisement uses language appropriate to the circumstances. There is no strong or obscene language present.*

*Section 2.6 – Health and Safety - the subject advertisement does not depict material contrary to prevailing community standards on health and safety.*

#### *Conclusion*

*Subaru Australia believes that the subject advertisement was filmed in a way that complies with Road Safety laws and does not breach either the Advertiser Code of Ethics or the FCAI Code of Practice for Motor Vehicle Advertising and as such, respectfully submits that the Ad Standards Community Panel should dismiss the complaint outright.*

*Further, whilst this response is intended to deal with matters specifically raised in the one complaint filed with the Ad Standards, for the avoidance of doubt, Subaru Australia fervently believes that the subject advertisement is compliant with all provisions of both section 2 of the Advertiser Code as well as the FCAI Code.*

*In all the circumstances, Subaru Australia submits that the Ad Standards Community Panel ought to dismiss the complaints without further action.*

## **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 Subaru Forester 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.

The Panel noted that this television advertisement shows a father and son in a car stopping at a train crossing, and getting out of the car to watch the train pass by.

The Panel noted the complainant's concern that the advertisement depicts a car stopped in an illegal manner where the man is not in control of it.

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

The Panel considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: '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 the complainant's concern that the man was not in control of his vehicle.

The Panel noted the advertiser's response that the legally parked away from the crossing in accordance with NSW Road Rules.

The Panel considered that the man and boy are not seen exiting the vehicle, but the impression of the advertisement is that the man parked the car and turned off the engine before exiting the vehicle.

The Panel considered that the advertisement did not depict the man engaging in unsafe driving or any behaviour likely to breach relevant Commonwealth law were it to occur on a road or road related area.



The Panel considered that the advertisement did not portray unsafe driving. The Panel then considered clause 2(c) of the FCAI Code. Clause 2(c) requires that:

“Advertisements for motor vehicles do not portray ...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 seat belts in a moving motor vehicle].”

The Panel noted the complainant’s concern that the advertisement depicts the man’s car stopped in a position where it may be hit by another vehicle and pushed onto the tracks.

The Panel noted NSW Road Rules state:

175 Stopping on or near a level crossing

(1) A driver must not stop on a level crossing, or on a road within 20 metres before the nearest rail or track to the driver approaching the crossing and 20 metres after the nearest rail or track to the driver leaving the crossing, unless the driver stops at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under these Rules.

(<https://www.legislation.nsw.gov.au/#/view/regulation/2014/758/part12/div3/rule175>)

The Panel noted the advertiser’s response that the vehicle was parked over 20 meters away from the crossing in accordance with NSW Road Rules.

The Panel considered that it is not clear from the advertisement whether the vehicle was parked over 20 meters away from the crossing, however noted the advertiser’s response and considered the vehicle did appear to be parked a safe difference away.

The Panel considered that the vehicle was parked in a position that would be clearly seen by any approaching vehicle.

The Panel considered that the advertisement did not portray driving practices or other actions which would if they were to take place on a road or road related area, breach any commonwealth law.

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

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

