



Case Report

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| 1 | Case Number | 0091/13 |
| 2 | Advertiser | Chrysler Australia Pty Ltd |
| 3 | Product | Vehicle |
| 4 | Type of Advertisement / media | TV |
| 5 | Date of Determination | 27/03/2013 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

A young couple are heading home for the evening and walking through the carpark. Before they arrive to their respective cars they use the central locking and realize that they have the same Fiat 500. The couple gaze at each and their friendship begins. The couple are seen exploring the city from cool restaurants and costal drives all the while they are listing to a great track – The Romantic’s “What I like about you”.

THE COMPLAINT

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

Road rules state in the NSW road rule book on page 145 "Front and rear fog lights must only be used in fog or rain, or when conditions such as smoke and dust limit your vision. It is a legal requirement that once conditions improve and you can see more clearly, the front and rear fog lights are switched off."

THE ADVERTISER’S RESPONSE

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

The Complaint consists of a written complaint received on 6 March 2013.

In the Complaint, the complainant alleges that the car in the Advertisement is being driven with fog lights on when there is no indication of raining or fog, in breach of the road rules in NSW which provide that "front and rear fog lights may only be used in fog or rain, or when conditions such as smoke and dust limit your vision".

Contrary to what the complainant alleges in the Complaint, the car in the Advertisement is being driven with its headlights and driving lights on, not its fog lights. The fog lights of the car in the Advertisement are situated in an area below the car's number plate and are not on at any stage during the Advertisement.

I note that you request CAPL to respond to the Complaint with reference to Section 2 of the AANA Code. This section deals with the AANA Code specifically and sets out CAPL's comments in relation to the specifics of the Complaint, while issues relating to the FCAI Code are dealt with in Section 5 below.

CAPL does not believe the Advertisement breaches any part of Section 2 of the AANA Code. In particular, it is our view that the Advertisement:

(a) does not discriminate against or vilify any person or section of the community (section 2.1);

(b) does not employ sexual appeal in a manner which is exploitative and degrading of any individual

or group of people (section 2.2);

(c) does not portray violence (section 2.3);

(d) treats sex, sexuality or nudity with sensitivity to the relevant audience (section 2.4);

(e) does not contain strong or obscene language (section 2.5); and

(f) does not depict material contrary to prevailing community standards on health and safety (section 2.6).

This section addresses the FCAI Code.

CAPL sees no basis for construing the Advertisement as being in breach of any part of clauses 2(a) to (e) of the FCAI Code as CAPL believes that the Advertisement does not depict:

(a) any unsafe driving that would breach any Australian law. The FCAI Code refers to examples such as excessive speed, sudden, unnecessary changes in direction, unnecessarily setting motor vehicles on a collision course.

The Advertisement does not in any way display this.

(b) people driving at speeds in excess of the limit.

The Advertisement does not in any way display this.

(c) any driving practices or other actions that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction. For example, use of hand held mobile phone, not wearing seatbelts.

As stated above, the car in the Advertisement is not being driven with its fog lights on; and there is no evidence that the Advertisement contains depiction of any other practices that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction.

(d) any people driving whilst fatigued or under the influence of drugs or alcohol.

The Advertisement does not in any way display this.

(e) any environmental damage whatsoever.

There was no environmental damage depicted or caused by the creation of this Advertisement.

CAPL further confirms that:

(i) the Advertisement has been released nationally; and

(ii) the Advertisement has been made available on the internet.

CAPL takes its responsibilities as an importer and distributor of motor vehicles seriously and this extends to CAPL's obligations under the AANA Code and the FCAI Code. When preparing advertisements including the Advertisement CAPL is conscious of the provisions of the AANA Code and the FCAI Code.

CAPL believes that the Advertisement is advertising the car in the Advertisement appropriately, with no intention to undermine the provisions of the AANA Code and/or the FCAI Code. As such, CAPL does not believe that the Advertisement breaches either the AANA Code or the FCAI Code and therefore requests that the Complaint be dismissed.

CAPL will endeavour to continue to produce advertisements consistent with the standards as

set down by the AANA Code and the FCAI Code.

THE DETERMINATION

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code) and the AANA Advertiser Code of Ethics (the “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 Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Fiat 500 in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that 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 Board determined that the Fiat 500 is a motor vehicle as defined in the FCAI Code.

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

The Board noted that the advertisement features footage of the Fiat 500 being driven and analysed specific sections of the FCAI Code and their application to the advertisement.

The Board 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. Motor cyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion]."

The Board noted that the advertisement includes footage of the Fiat 500 being driven on city streets and around the town eventually ending up at the beach side. The Board noted that these scenes include the vehicle being driven with the headlights on and the additional use of driving lights. The Board noted that the advertiser has confirmed that the fog lights for this vehicle are situated underneath the car's number plate and are not illuminated at any stage of the advertisement.

On the above basis, the Board determined that the advertisement does not depict a driving practice that would breach any law and does not breach clause 2(c) of the FCAI Code.

The Board noted that the complainant had not raised concerns about the scene toward the end of the advertisement where the woman removes her jacket from inside the vehicle and is not wearing a seatbelt at this point. The Board reviewed this section of the advertisement and noted that although it appears the vehicle may be in motion, the Board agreed that it is the camera that is moving and that the vehicle is stationary and therefore it is acceptable that the woman could be in the vehicle and shown with her seatbelt removed.

The Board then considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted that the man and woman in the advertisement are seen to be intimately embracing and kissing at various places throughout the advertisement. The Board noted that the age of the couple was indicative consenting adults. The Board considered that the advertising of a motor vehicle is not likely to draw the attention of children.

The Board noted that the advertisement had been given a 'W' rating by CAD and that it had been broadcast in a timeslot appropriate to that rating. The Board determined that the advertisement did treat the issue of sex with sensitivity to the relevant audience and did not breach section 2.4 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics, the

Board dismissed the complaint.