



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0108/19
2	Advertiser	Fiat Chrysler Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	17/04/2019
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit
FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a red Alfa Romeo Stelvio driving on a winding road. A voice over states 'Alfa Romeo Stelvio, the only SUV you choose with your heart'.

THE COMPLAINT

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

Last year we complained about a Ford Raptor ad. Our complaint was dismissed. We appealed the decision and in one of the most scathing attacks on the FCAI the independent assessor stated: However, I echo the sentiments of my predecessor in 0215/10 (Lexus) in observing that this BMW advertisement clearly ignores the exhortation in the Explanatory Notes to "avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle ...Advertisers should





avoid references to the speed or acceleration capabilities of a motor vehicle (for example, '0-100 km/h in 6.5 seconds)').

It is difficult to imagine words which could make clearer the intention of the framers of the Explanatory Notes, which go on to state: "Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code".

To ignore the guidance of the Explanatory Notes, in my view, constitutes a clear disregard of the spirit and intention of the Code as expressed in the Explanatory Notes. I share this view with my predecessor in 0215/10. In the Reviewer's recommendation in that case, seven years ago, it was noted that the above situation had been brought to the attention of the relevant industry body. In the same year, the ASB, in its Fact Sheet "Issues to consider -the FCAI motor vehicle advertising code" highlighted, inter alia, that:

"Advertisers must be aware of the need to meet the intent and spirit of the FCAI Code as expressed in the Explanatory Notes, not just the substantive provisions".

In November 2012, the ASB pointedly again raised this issue with the FCAI in a submission to the FCAI Code Review, which cited cases 0215/10 (Lexus), 0298/10 (Porsche) and 0311/12 (Nissan) and requested more direct guidance from the FCAI on the intended application of the Explanatory Notes. The submission also recommended a consequent revision of the substantive provisions of the Code. No response to these requests has been forthcoming from the FCAI over the years which have intervened. This failure to resolve the misalignment between the Explanatory Notes and the substantive provisions of the Code continues to be as problematic in 2017 as it was in 2010 and it is to be hoped that the FCAI will speedily act to resolve the issue."

The ad and the decisions received widespread and damaging publicity. We immediately complained to the Hon Michael McCormack, Deputy Prime Minister and Minister for Roads expressing our concerns and those of the independent assessor (and one would presume AdStandards)

He replied on 24 August 2018 (quote): "Thank: you for your email of 19 June 2018 regarding the Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising (the Code).

I understand your concerns about the FCAI Code including the promotion of vehicle acceleration capabilities. The FCAI introduced the Code in 2002 in response to government and community concerns about the portrayal of unsafe driving practices such as speeding. Given the specific guidance provided to advertisers in the Explanatory Notes to the Code it is concerning to see acceleration figures are directly promoted in vehicle advertisements including the BMW advertisement which was the subject of your complaint. I have written to the FCAI and raised these issues with its Chief Executive together with a copy of your correspondence. I have also sought advice about plans to review the Code."

Clearly, nothing has changed except the date.

However, we would like to know what the FCAI and AdStandards are proposing to do



about the DPM's clearly stated concerns.

This ad (Stelvio) emulates their SUV ad, about which we complained in May last year. the caption: Overseas model shown. Professional drivers on closed course. Do not attempt., is shown again. It's all about speed and dangerous/furious driving.. However, in the Stelvio ad, they clearly breach the Code, not just the Guidelines (Explanatory Notes) and spirit of the Code.

This ad clearly and unequivocally breaches 2 (a) and (c) – at least three times.

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.]

(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.]

While the intent of Section 2 (b) of the Code is obvious, because the ad was filmed overseas, it is irrelevant and must be revised:

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

These motor vehicle companies and advertising agencies all know the tort. They know that it will take at least a month for you to review and make a finding on any complaint. They know that most car ads only run for a few weeks. They know that these overseas ads cost virtually nothing to re-badge. And they know there are no penalties or requirements to apologise for knowingly flouting the code. It's an utter disgrace. Meanwhile, impressionable drivers are either killing or seriously injuring themselves and other innocent victims, while the FCAI deliberately obfuscates and prevaricates.

As has been proven by the Royal Commission into the financial section, Self-Regulation is to Regulation as Self-Importance is to Importance.

There's a new government in the wind and we will waste no time in ensuring that this fatal farce is fixed.

As a picture is worth a thousand words, here is a screen shot of the vehicle as it enters the second turn.



*This is a left hand turn, but the front wheels are facing right.
The “professional driver” has put the vehicle into a drift.
The whole ad is about glamorising speeding, racing and dangerous driving.*

THE ADVERTISER’S RESPONSE

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

This is an advertisement for the Alfa Romeo Stelvio, a small SUV marketed in Australia. The advertisement seeks to convey that the Stelvio is an enjoyable, athletic and exciting vehicle to drive. A red Stelvio is shown driving through forest and mountainous landscapes on winding the roads - the latter including the famous Stelvio Pass, after which the vehicle is named - before finishing in an urban environment for the final scene.

The advertisement is about the general enjoyment of driving - essentially about the sound of the Stelvio – an appealing characteristic for drivers of vehicles such as the Stelvio - a characteristic of the Stelvio which is apparent in a range of driving situations. speeds and rates of acceleration due to its special exhaust 'note'.

The advertisement includes engine and exhaust sounds from the Stelvio as it drives, accompanied by a classical music soundtrack, super and voice-over which pose the question - "What does the 'S' stand for in SUV?" The question goes unanswered except for the sounds being created by the vehicle, inferring that in the case of the Stelvio, the 'S' represents 'sound'.

This advertisement was created entirely from footage filmed in Europe: FCA Australia created the 30-second TVC by editing the footage and adding a music soundtrack and local voice-over. The footage depicted is on roads which, other than the Alfa Romeo Stelvio, are otherwise deserted, with no other vehicles or pedestrian traffic.

The footage was filmed on closed roads and the vehicle was being driven by a professional driver during filming. Accordingly, the ad includes a super that appears over the driving footage: Professional drivers on closed roads. Do not attempt.

The advertisement has been screened in Queensland, NSW/ACT, Victoria, South Australia and Western Australia, as well as on the internet using a cut-down 15-second version.

FCA considers that the advertisement does not depict:

Unsafe driving, or driving activities that would breach any laws in jurisdictions in which



it as broadcast. In particular, it does not depict the vehicle travelling at excessive speed, or any sudden, extreme or unnecessary changes in direction or speed; people driving at speed or in excess of speed limits in the jurisdictions in which it was broadcast; or

Driving practices or other actions which would breach any laws in jurisdictions in which it was broadcast.

The complaint alleges that “The sound is to emulate a vehicle accelerating rapidly and being driven at high speed.” This is incorrect. The advertisement is about the general enjoyment of driving - essentially about the sound of the Stelvio – an appealing characteristic for drivers of vehicles such as the Stelvio - which is apparent in a range of driving situations, speeds and rates of acceleration within the speed limits applicable on roads such as those depicted in the ad, and not just at high speed or rapid rates of acceleration; hence the advertising tagline “What does the ‘S’ stand for in SUV?”

The car is being driven safely at all times. At no time does the advertisement make any reference to speed or acceleration

The complaint alleges that “When it reaches the first corner, the wheels are spinning and smoke is seen coming from the tyres.” This is not correct, as there is no evidence of the tyres “spinning” in a manner that suggests the vehicle has lost traction; rather, the wheels are turning in a manner consistent with the normal operation of the vehicle, and it is quite clearly dust and other road debris, such as small stones, that would be expected in a location such as this.

The complaint also alleges that “When it reaches the second corner the driver puts the car into a drift and the driver puts the car into a drift.”

This cannot be the case as, at no time:

- does the vehicle lose grip or traction;*
- does the driver – deliberately or otherwise, lose control of the vehicle;*

Finally, the complaint alleges that “in the final few frames, you can see the vehicle crossing two lanes without the use of an indicator.”

The impression that the car changes lanes in the final sequence is actually more due to the camera pan technique; it is not possible to get an accurate sense of what the vehicle does in this sequence without slowing the vision down and viewing it frame-by-frame. In any case, as previously stated, there are no other vehicles or pedestrians on the road and hence no danger or risk of collision.

The advertisement seeks to convey that the Stelvio is an enjoyable, athletic and exciting vehicle. The sounds, angles and types of roads all convey that feeling. However, FCA Australia is of the view that the ad does not convey “speed and



dangerous/furious driving” as alleged. The vehicle does not perform any dangerous maneuvers.

Accordingly, FCA Australia is of the view that the ad fully complies with the FCAI Code of Practice for Motor Vehicle Advertising.

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 Alfa Romeo Stelvio 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 the complainant’s concern that the advertisement shows the car “drifting”, driving at high speeds and changing lanes without indicating.

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

The Panel noted that the advertisement features a Alfa Romeo Stelvio driving through forest and mountainous landscape on winding roads before finishing in an urban setting.

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 examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Panel noted the complainant's concern that the advertisement depicts the vehicle "drifting".

The Panel noted that "drifting" is a driving technique where the driver intentionally oversteers, with loss of traction in the rear wheels or all tires, while maintaining control and driving the car through the entirety of a corner. The technique causes the rear slip angle to exceed the front slip angle to such an extent that often the front wheels are pointing in the opposite direction to the turn (e.g. car is turning left, wheels are pointed right or vice versa).

The Panel noted the advertisement featured the disclaimer "Overseas model shown. Professional drivers on closed course. Do not attempt". The Panel noted this disclaimer was on screen for the majority of the advertisement.

The Panel noted the guidance in the FCAI 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 Code."

Accordingly, the Panel considered that the use of a disclaimer does not justify the inclusion of any unsafe driving.

The Panel noted the advertiser's response that drifting is not depicted as the vehicle does not lose traction and the driver does not lose control of the vehicle. The Panel considered that this is not clear, as the advertisement clearly shows the front wheels of the vehicle pointing to the right as the vehicle is turning left. The Panel considered that most members of the community that are familiar with drifting would consider this scene to depict drifting.

The Panel considered that the depiction of the vehicle performing the turn by using drifting was a realistic scenario that would constitute unsafe and reckless driving.

The Panel determined that this scene in the advertisement did breach Clause 2(a) of the FCAI Code.



The Panel then considered clause 2(b) of the FCAI Code. Clause 2(b) requires 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.”

The Panel considered the complainant’s concern that the advertisement depicted the vehicle travelling at high speed.

The Panel considered that the advertisement uses a ‘fast-cutting’ style, in that the scenes change quickly and the camera angle is constantly changing. The Panel noted that this is a common camera technique used in advertisement, however it does have the effect of making the vehicle appear to be moving very quickly.

The Panel noted the complainant’s description that a scene in the advertisement shows the vehicle turning a corner and the wheels are shown to be spinning and smoke is shown to be coming from the tyres. The Panel noted the advertiser’s response that the wheels are not spinning any more than is expected for the normal operation of the vehicle, and that there is no smoke but rather dust and road debris.

The Panel accepted the advertiser’s response that the wheels are shown to be operating as expected for a vehicle. However, while the Panel accepted the advertiser’s response that the “smoke” is actually dust and road debris, the Panel considered that the quantity of dust and debris is excessive if the vehicle was travelling at a safe speed on a winding road such as is depicted.

The Panel again noted the advertisement featured the disclaimer “Overseas model shown. Professional drivers on closed course. Do not attempt”. The Panel noted this disclaimer was on screen for the majority of the advertisement.

The Panel noted the guidance in the FCAI 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 Code.”

Accordingly, the Panel considered that the use of a disclaimer does not justify the depicting of speeding.

The Panel noted the advertiser’s response that the advertisement was filmed on a closed course overseas, but considered that in Australia the speed depicted would breach the law. The Panel determined that the advertisement did depict the vehicle exceeding the speed limit and therefore did breach clause 2(b) of the FCAI Code. 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 shows the vehicle changing lanes without using an indicator.

The Panel noted that this scene is two seconds long. The Panel considered that, on several viewings, the vehicle is shown to be changing lanes, however considered that this is very difficult to determine due to the constantly changing camera angle in this scene.

The Panel considered the advertiser’s response that it is not possible to get an accurate sense of what the vehicle does in this sequence without slowing the vision down and viewing it frame by frame.

The Panel considered that a reasonable member of the community viewing this advertisement would not consider the scene to be a clear breach of the law.

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 breach Cause 2(a) and 2(b) of the FCAI Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

I refer to your emails and correspondence dated 30 April 2019, and our telephone conversation shortly thereafter, in relation to a complaint received by the Advertising Standards Community Panel regarding an Alfa Romeo Stelvio TVC.

FCA Australia would like to thank the Panel for considering our response to the complaint and for providing thorough feedback in it's determination. We emphasise that FCA Australia has and will continue to take seriously our commitment to the applicable codes and to the issue of road safety more broadly, and again reiterate that



it was not our intention to depict behaviour which might be considered unsafe driving, nor to create the overall impression of speed or speeding.

At the time of receiving the complaint and throughout the period of its determination, neither the TV advertisement nor any associated digital communications were running, however, another flighting of television and digital advertising was scheduled to commence in May, thereby necessitating an intensive re-editing process in order to satisfactorily address the Panel's findings and gain CAD approval.

In accordance with the determination and specific findings therein, the TVC has been amended as follows:

- 1) in relation to section 2(A) of the code, the scene depicting the vehicle going around the hairpin bend has been removed; and
- 2) in relation to section 2(B) of the code, the scene immediately prior to that described in point one above - in which road dust and debris are disturbed by the passage of the vehicle - has also been removed, as have a number of scenes which, while not individually problematic, in the view of the Panel were considered to have contributed to the overall impression of speed due to the number and frequency of 'cuts'.

In addition to these, whilst our understanding is that the Panel did not consider elements of sound - specifically engine and exhaust noises - to have contributed to the overall impression of speed, we have reduced the sound level and pitch in certain scenes to further mitigate against the potential impression of speed or speeding.

We believe these measures represent an appropriate response to the findings of the Panel and, accordingly, strike a suitable balance by enabling us to create a TVC that complies with the Code while still communicating the core message around the enjoyment of driving.