



ADVERTISING
STANDARDS
BUREAU

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Case Report

1	Case Number	0127/14
2	Advertiser	BMW Group Australia Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Cinema
5	Date of Determination	23/04/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit

DESCRIPTION OF THE ADVERTISEMENT

This cinema 45 second advertisement introduces the all new BMW 2 Series Coupé which shows the car driven on public highways in the US as well as public and private unsealed roads in a dusty desert environment.

THE COMPLAINT

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

The advertisement commenced with the vehicle being accelerated such that it lost traction of its driving wheels, then accelerating at speed and preceded to display 360s and significant loss of traction, typical of hoon activity. I consider it portrays an unfavourable message, contrary to safe and sensible driving.

THE ADVERTISER'S RESPONSE

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

This cinema ad was created using international stock footage of a much longer duration (approximately 2 minutes). The car is not shown being driven in excess of applicable legal speed limits in the footage, specifically no image of the speedometer was shown. Instead any

sensation of 'speed' was delivered by deliberate editing of a high standard (including by panning or rotating the footage) to create dramatic visual effect with alternative rock background music track sourced from local Australian band Kings of the North and sped up in pace from the original stock footage to match the musical beat and also shortened in duration for commercial (cost) reasons.

We understand that footage of the vehicle on unsealed dusty desert roads was shot on private property, with deliberate camera angles, possible weather and lighting effects (including clever use of a low angle sun) employed to add visual impact. We would also add that these creative measures are likely to have been exaggerated from the viewer's perspective in a cinema environment with Dolby surround sound and high definition, super size cinema screens.

Val Morgan had no issue with the footage being played in the cinema specified as we had submitted the footage for their prior review to ensure that we were compliant with all their guidelines. BMW is a subscriber of the Advertising Standards Board and also takes into consideration the guidance from the FCAI Code of Practice for Motor Vehicle Advertising and its obligations under it.

BMW further notes that the cinema campaign will cease being aired after W/C 17th April, 2014. It is unfortunate that this complaint has come about at the conclusion of a long and otherwise successful campaign. BMW does not consider this complaint or its allegations to be substantiated in any way and accordingly BMW submits that this application be dismissed summarily as a frivolous complaint given the cinematic environment.

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 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 available in Australia or in a substantial section of Australia for payment or valuable consideration. The Board determined that the material draws the attention of the public or a segment of it to a product being a BMW 2 Series Coupe in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Board determined that the BMW 2 Series Coupe shown in the advertisement was a 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 the complainant's concerns that the advertisement depicts a vehicle accelerating and speeding so that there is a loss of traction and that overall the vehicle is being driven in a manner which is unsafe. The Board 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 Code provides the following as examples, "Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle..." The Board noted that this cinema advertisement features a BMW being driven on a sealed road and on unsealed desert roads and that there is an on-screen disclaimer which states that the vehicle is an overseas model. The Board noted that when the vehicle pulls away we can hear the engine being revved and we can see tyre marks in the bitumen. The Board noted the Explanatory Notes to the FCAI which state, "Advertisers should ensure that advertisements...avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle." The Board also noted that the Australian Road Rules (February 2012, Page 258) state that, "A person must not start a vehicle, or drive a vehicle, in a way that makes unnecessary noise or smoke." The Board noted it had previously upheld a complaint about an advertisement featuring a driver pulling away at speed in case 0093/12 where: "The Board noted that at the start of the advertisement we see the driver pressing his foot on the accelerator pedal followed by a view of the tachometer showing rapidly increasing engine revolutions. The Board noted that whilst there is no independent verification of the actual speed of the vehicle, in the Board's view the combination of the firm depression of the accelerator pedal, the increase in engine revs and the sped up footage combine to give an overall impression of reckless speed which the Board considers to be a depiction of unsafe driving." The Board noted that the current advertisement also depicts a tachometer showing high engine revolutions and considered that this depiction along with the sound of the engine and the tyre tread left on the road when the vehicle pulls away amounts to a depiction of unsafe driving. The Board noted that the advertisement also depicts the vehicle swerving and changing direction suddenly and considered that the overall suggestion is of a vehicle being driven in a reckless manner which is unsafe. Based on the above, the Board determined that overall the advertisement does depict unsafe driving and does breach clause 2(a) of the FCAI Code. The Board 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. The Board noted the advertiser's response that some of the advertisement was filmed on private land. The Board noted that there are no speed limit signs visible in the advertisement and considered that whilst the start of the advertisement suggests that the vehicle is pulling away at speed in the Board's view it is not possible to gauge the speed of the vehicle or to assess whether the vehicle would be traveling at speeds in excess of the relevant speed limits. The Board determined that the advertisement did not breach Clause 2(b) of the FCAI Code. Finding that the advertisement did breach Clause 2(a) of the FCAI Code, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The campaign has finished so no further action is required by us.

