



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0128/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Mini Australia</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Pay TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>01/05/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving  
FCAI Motor Vehicles 2(b) Breaking the speed limit  
2.5 - Language Inappropriate language

### DESCRIPTION OF THE ADVERTISEMENT

The TVC features a young man driving through the city streets stopping off and collecting a record and take away on his way home. On his way home he sees his girlfriend in another MINI PACEMAN and they both take alternate routes to get home. He arrives home first and then she pulls into the garage shortly thereafter giving him "the finger" with a big smile on her face as he made it home before her.

### THE COMPLAINT

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

*The female gives the guy the middle finger. This is an offensive gesture basically meaning 'get fu...'*

*This advertisement, with its centrepiece of cheerfully delivered obscenity, in a country which already has severe 'road-rage' issues, is deeply offensive, and represents a new low in advertising. Is this the kind of thing children should get to see when watching the national geographic channel in the middle of the day? Or any channel? Are the Australian public so thick as to resonate with this sort of thing? And, if so, why stop with mere gestures - why not have the woman actually scream some four letter obscenities at him? And then spit in his face, before throwing some faeces at him. Australia, you need to sharpen up your image - because*

*having this sort of thing on the nations televisions does nothing for it. Les Patterson himself could not possibly have designed an advertisement more completely inane.  
The female giving him the finger!*

## **THE ADVERTISER'S RESPONSE**

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

*There have been two separate complaints made in relation to this TVC - both of which will be addressed below.*

*Firstly, there has been a complaint implying that the male character in the TVC "races" his female partner/sister home.*

*In response to this claim, there is no evidence as such to suggest that the male character or his female partner are "speeding/racing". There is no reckless driving, no shots of the cars going head to head in any form of a street race, no shots of one car in pursuit of another, nor any close up shots of a speedometer reading and reference to any speed limits being exceeded.*

*Secondly, there has been a complaint implying that there is inappropriate use of the middle finger in the TVC contravening section 2 of the AANA Advertiser Code of Ethics. In response to this claim, it is clear that the female character in the TVC is giving her male partner "the finger" in a light-hearted manner and has all been done in jest, as demonstrated by her smiling and laughing whilst giving "the finger". In no way was the female character giving the finger in any negative way or in a crude or crass manner as has been suggested by the person who made the complaint. Reviewing previous cases where there has been a complaint made regarding the inappropriate use of "the finger", the MINI PACEMAN TVC falls under similar circumstances to that of case 0398/12 where this complaint was dismissed by the board. Furthermore, the contextually relevant environment and circumstances with TVC only airing with shows holding a M rating as determined by CAD in accordance with the classification criteria of the Commercial Television Code of Practice, we do not believe Section 2 of the AANA Code of Ethics has been contravened. We are aware that Pay TV stations we booked on including Ignite made the call to run this ad across all PG rated programs as well. This was a decision made by the station and not by MINI Australia.*

## **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 Mini Paceman 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 Mini Paceman shown in the advertisement was 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 Mini Paceman being driven through city streets and analysed specific sections of the FCAI Code and their application to the advertisement.

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 Board noted that there is footage of two Mini Paceman cars being driven by a man and a woman who are competing to see who gets home first. The Board noted that the explanatory notes for the FCAI Code "...urges also advertisers to avoid any suggestion that depictions of..... competitive driving are in any way associated with normal on-road use of motor vehicles" and considered that the suggestion of two cars racing each other in an urban setting is not appropriate and is a depiction of driving which is unsafe.

The Board noted that in some of the driving scenes the audio includes sounds of tyres squealing and high revs: at the beginning of the advertisement when the man pulls away from the side of the road, when the man is turning round a corner and then driving down a deserted street and when he pulls away from a junction after we see his girlfriend pass in front of him. The Board considered that these audio effects in conjunction with the visual images of the vehicles driving in a manner which suggests they are in a hurry are suggestive of driving which is not appropriate for the urban environment depicted.

On the above basis, the Board determined that the advertisement does depict unsafe driving and does breach clause 2(a) of the FCAI Code.

The Board then considered Section 2.5 of the Code of Ethics. Section 2.5 states, “Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The Board noted the complainants’ concerns that the depiction of the woman in the advertisement giving the middle finger to her boyfriend is offensive and inappropriate.

The Board noted that it had previously upheld a billboard advertisement featuring a depiction of a hand with the middle finger raised (288/12) where it found that the use of this gesture with the phrase “stuff paying text” amounted to a negative and inappropriate depiction not suitable for an outdoor advertisement which could easily be seen by children. In this instance the Board noted that the advertisement was viewed on Pay TV and that that whilst the advertisement had been rated M by CAD for airing on Free TV, Pay TV do not follow the same classification guidelines as Free TV and the advertisement could be played during PG rated content on Pay TV. The Board noted that when the woman extends her middle finger to the man she follows the gesture with a smile to show she is not being serious and considered that the combination of the limited audience and the context of a rude gesture made in fun amounted to an overall depiction of language which is not inappropriate in the circumstances.

The Board determined that the advertisement did not breach Section 2.5 of the Code.

Finding that the advertisement breached the FCAI Code, the Board upheld the complaints.

#### **ADVERTISER RESPONSE TO DETERMINATION**

We will remove the advertisement from air and will run alternative material for the bonus spots that we still have left.