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Case Report

1	Case Number	0156/14
2	Advertiser	KIA Automotive Australia
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	14/05/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

A white Kia is driven out of an aircraft hangar and then on open roads in the countryside. There are various internal and exterior shots of the car and then it stops and we see a full shot of the car.

THE COMPLAINT

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

Even though the disclaimer at the bottom of the screen says "Filmed under controlled conditions", it depicts a manner of driving on an obviously public road which is not in the best interests of community expectations. We are all struggling to reduce the death toll from vehicle related accidents due to street racing. The loud engine revving during the ad also contributes to the poor underlying message this ad is portraying. I pointed similar issues out in my previous complaint about an ad for the new Nissan Pulsar SSS. Even though this ad is filmed away from busy city streets, away from traffic and pedestrians is not the point. Just because you have filmed it under "controlled conditions" out in a rural area doesn't make it morally responsible. Marketing departments from a lot of automotive companies continue to push the boundaries and sometimes cross the line as clearly as this one has which is extremely disappointing. If this was filmed in actual controlled conditions such as a race track then I would have had no issue because it is actual controlled conditions. Kia need to

take more responsibility in the message they are sending out into the community with their marketing material.

THE ADVERTISER'S RESPONSE

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

Thank you for relaying the information in relation to the complaint for the Kia Pro_ceed TVC that aired recently on Channel 9.

Description of TVC

Kia prides itself on delivering engaging advertising campaigns that provide information and entertainment. This TV commercial for the all new Kia Pro_ceed is a more energetic style of TV commercial which is designed to create excitement by adopting tonal treatment found in music video clips, gaming and movies. The Proceed is simply portrayed in this execution as an exciting, stylish vehicle. We have attached a digital copy of this TVC.

The TVC depicts a stylish couple entering the Pro_ceed vehicle in an airplane hangar and proceeding to drive the vehicle on a country road. The music, quick shots and the camera angles connote the feeling of excitement that the couple are experiencing by driving the attractive and sporty looking vehicle, and the feeling of freedom. This is the theme of this TVC.

You will note close ups of the dashboard, exhaust pipes and wheels to illustrate the attractiveness of these features of the vehicle.

Our submissions to the Board in response to the complaint received are as follows:

No breach of road safety or road regulation (Section 2(b) and (c))

The commercial was, as stated within the disclaimers of the ad, "filmed under controlled supervision", both at a closed airfield location and on a country road that was closed specifically for filming. Importantly, the car was at no stage driven at a speed in excess of the speed limit at either location. The speed of the vehicle can sometimes be misinterpreted by the stimulation of multiple senses via typical production techniques such as quick cuts within the edit, an energetic soundtrack and some sound effects, which create some personality and tone for the execution. There was no need to use stunt drivers or high performance drivers to execute the driving shots depicted. This TVC was filmed under controlled conditions, which is indicated by the disclaimer depicted in the TVC which reads as follows "filmed under controlled supervision".

You may believe that the vehicle has its fog lights operating in certain scenes. This is an incorrect interpretation as these lights are the daytime running lights and do not dazzle other drivers. If you look closely, the fog lights are not operating and sit below the daytime running lights.

No unsafe, reckless or menacing driving (section 2(a) and 4)

At no time is there any scene in the advertisement that depicts any vehicle being driven in a manner that can be described as unsafe, menacing or reckless. Further, all scenes depict vehicles traveling at a speed that is appropriate for the depicted driving environment and there is no impression that any vehicle is travelling in excess of any legal speed limit. As stated above, there are no scenes in the advertisement that depict any driving practices that would be illegal on Australian roads. The couple are simply enjoying a drive in the country side.

You will note also that:

(a) There are no aggressive actions depicted of the driver or passenger;

(b) The scenes do not involve in any way or any manner of street racing or attempt to race

other vehicles;

(c) The vehicle is not depicted swerving or braking in any irresponsible manner.

The complainant also makes reference to the engine revving sound, which is featured early in the TV commercial as an indication of the car starting and then briefly whilst the car is driving along the road. The balance of the ad features a very busy and energetic audio soundtrack where the engine simply cannot be heard.

This vehicle is not depicted to be driving off road or over loose or unsealed surfaces. If the shot which involved the raising of gravel is considered to be an off road surface, the shot did not convey any unsafe driving or the vehicle travelling at speeds which contravened the law. As stated above, the vehicles were always operated within the speed limits.

The Commercials Acceptance Division Approval

The Commercials Acceptance Division (CAD), has approved the Kia Pro_cee'd TVC, with a belief that it complies, based on the FCAI guidelines. The CAD reference number is KMAU2972PR30S and its rating is G.

The airing of the TVC

The TV commercial for the Kia Pro_cee'd aired nationally for a number of weeks in January during the Australian Open telecast and did not receive one single complaint. At the time, we sought legal advice to ensure that there were no possible breaches of the FCAI Code of Conduct and we had received legal advice to support that position. The TVC was again aired from 20th of April until the 3rd of May.

Accordingly, we submit that the advertisement is not in breach of any provision of the FCAI Code.

In conclusion, we submit that the advertisement is completely compliant with the AANA Code and the FCAI Code, and therefore, submit that this complaint should be dismissed.

If you require any further assistance or information please do not hesitate to contact me.

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).

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 driving in an unsafe manner and that it encourages speeding.

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 advertisement features a Kia being driven from within an aircraft hangar out into the surrounding property. The car is then driven through a gate onto the open road. The advertisement includes the text at the bottom of screen “filmed under controlled supervision on closed roads.”

The Board noted that when the vehicle pulls out of the hanger we can see the rev counter increase to about 5000 revs.

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 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.”

In contrast, in the current advertisement, the Board noted that there is a depiction of the tachometer showing high engine revolutions. However, the Board noted that it is clearly identifiable that the vehicle drives out of the hangar at speed into an abandoned property and not directly onto a road or road related area.

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 excessive speeds for the environment in which it is being driven. The Board noted that the text appears at the bottom of screen “filmed under controlled supervision on closed roads.”

The Board noted that the advertisement also depicts the vehicle driving along open roads and that the vehicle is seen driven in a controlled manner and within any obvious road rules.

The Board considered that the overall suggestion is of a vehicle being driven in a manner which is appropriate for the conditions and is not unsafe.

Based on the above, the Board determined that overall the advertisement does not depict unsafe driving and does not breach clause 2(a) of the FCAI Code.

Finding that the advertisement did not breach any other provisions of the FCAI Code or the Code of Ethics, the Board dismissed the complaint.