



## Case Report

1	Case Number	0157/15
2	Advertiser	Jaguar Land Rover Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Billboard
5	Date of Determination	13/05/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

FCAI Motor Vehicles 2(b) Breaking the speed limit

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts the new Range Rover Sport SVR parked in a pit lane garage, with a racetrack in the background. The vehicle is depicted as stationary, on the right side of the image, while to the left is the copy "RANGE ROVER SPORT SVR; THE FASTEST LAND ROVER EVER; [landrover.com.au](http://landrover.com.au)".

### THE COMPLAINT

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

*The FCAI Advertising Code under GUIDANCE TO ADVERTISERS states: "Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Moreover, advertisers need to be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should 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")."*

*"In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code."*

*I believe the advertisement clearly breaches the Code and request that it be withdrawn.*

## THE ADVERTISER'S RESPONSE

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

*For expediency Land Rover Australia will not reproduce the relevant sections of the FCAI Code, since the ASB is more than well-versed in its content and the content of the Guidance notes, and what content falls in each respective part. However, it is important to flag at the outset, as the complainant himself indicates in the complaint, the relevant section quoted in the complaint is contained within the Guidance to Advertisers section of the FCAI Code, not the operative provisions of the Code itself.*

*Land Rover Australia does not raise this point to denigrate the complainant or to imply that the Guidance section/preamble is totally irrelevant, only that an advertisement must comply with the provisions of the Code, while the Guidance notes are just that – Guidance notes. Indeed, if the framers of the Code thought it would be reasonable for the content of the Guidance preamble to be in the Code proper, the relevant wording would have been located in the operative provisions of the Code itself.*

*However, notwithstanding the above, Land Rover Australia submits that the language of the Guidance section is not infringed upon in any event, and neither is the Code itself.*

*Land Rover Australia notes that the complainant has provided no detail whatsoever as to what exactly about the advertisement offends the Code, only that he believes the advertisement “clearly” breaches the Code. It is thus somewhat difficult to address the complaint with any certainty.*

*The only content of the advertisement in this case that could possibly be contentious is the use of the word “FASTEST” in the context of “THE FASTEST LAND ROVER EVER”, as literally every other element of this very simple billboard is without any perceivable issue whatsoever.*

*As outlined in the description above, the placement of the vehicle in the context of a racetrack pit garage is a deliberate creative juxtaposition and points to the broader nature of the launch campaign for this Range Rover Sport SVR model. Again, as detailed above, this high-performance vehicle is a marked departure from the perceived solid and reliable 4WD characteristics of Land Rover vehicles of years past, into a much more sporty sphere. This vehicle is, by definition, by specification, and by design, the sportiest, “fastest”, and most high-performance Land Rover ever. The “fastest” claim is able to be quantified and substantiated, and it is also a legitimate advertising claim.*

*It is also a performance claim, meant primarily as a comparative with past Land Rover vehicles, as part of the creative message referenced above, indicating for those that have misconceptions about the Land Rover brand that there is a sporty future for the brand that perhaps betrays misconceptions as to the Range Rover heritage. The references to this new model are deliberate references to the sporty nature of this particular vehicle, pointing to the technological and engineering advancement evidenced in this new vehicle. Again, such claims are entirely valid to make in advertising and are acceptable under the Code.*

*Merely referencing the word “fastest” in this fashion as a comparative performance claim compared with previous Land Rover models does not equate to a depiction, encouragement or condoning of dangerous, illegal, aggressive or reckless driving. Similarly, it does not treat speeding insensitively or amount to an explicit or implicit drawing of attention to the acceleration or speed capabilities of the vehicle (i.e. 0-100kmh in 6.5 seconds as outlined in*

*the Guidance notes). Again, these are guiding principles only and not part of the Code itself, but again the advertisement does not do any of these things. As the ASB is aware, the Guidance notes also go on to express that:*

*Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code.*

*It is contended that it is not a coincidence that the complainant neglected to reproduce this part of the Guidance notes in his complaint, perhaps hoping that the ASB would forget this section was in there. Of course, this section is vital to the interpretation of the Guidance notes and makes perfect sense, and is also vital to Land Rover Australia's position here. The advertisement is entirely consistent with the provisions of the Code and refers to the fact that this is the "fastest" Land Rover ever in a factual way. The advertisement portrays no speeding or unsafe driving whatsoever. It portrays a stationary vehicle parked inside a garage. There is no visual dynamism in the image whatsoever, and there is no implied speed through skid marks or any such tell tale signs.*

*The essence of the complaint here is that the word "fastest" alone breaches the Code without any reference to the context of the advertisement – accepting this position would be a dangerous precedent for the ASB to set, in the view of the advertiser.*

*It is also imperative to note that the word "fastest" alone does not mean the same as speeding in excess of speed limits. As outlined above, "fastest" is a performance claim; "fastest" or "fast" in the context of a motor vehicle can and does relate to acceleration capacities, agility, concomitant required braking and safety performance, engine performance, throttle responsiveness, etc. Simply saying "fastest" does not automatically mean excessive speed, recklessness, stupidity, burnouts, crashes, hooning. To join the dots in this way would be extremely inaccurate and again set a dangerous precedent.*

*It is contended that there is no difference between saying "THE FASTEST LAND ROVER EVER" and "THE SAFEST LAND ROVER EVER", "THE SMALLEST LAND ROVER EVER", "THE BIGGEST LAND ROVER EVER", "THE SHORTEST LAND ROVER EVER", "THE MOST EFFICIENT LAND ROVER EVER" etc. It is purely and simply a factual performance/comparative/specifications claim, one that is entirely reasonable to make, when done such as in the context of this advertisement in the sensitive manner that Land Rover Australia has treated this issue.*

*Finally, the ASB should note, without any concessions from Land Rover Australia, the advertisement no longer appears and there are no immediate plans for the advertisement to return in this form.*

*Land Rover Australia looks forward to the ASB confirming that it shares Land Rover Australia's view of the matter in dismissing this complaint, notwithstanding the fact that the advertisement no longer appears, so that this issue can be clarified for future campaigns.*

## **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).

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 Land Rover - Range Rover Sport SVR 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 Land Rover - Range Rover Sport SVR 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 and surrounding text that is suggestive of speed and encourages dangerous and possibly illegal driving practices due to excessive speeds.

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 that this billboard advertisement features an image of a Land Rover - Range Rover Sport SVR parked in the door way of a garage. Through the open doors there is a grandstand visible similar to that seen at a race track. The text to the left of the vehicle reads "Range Rover Sports SVR. The fastest Land Rover Ever." The Land Rover logo is on the right side of the vehicle.

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 that the vehicle is not seen being driven and there is no verification of the speeds that the vehicle can achieve. The Board noted that the statement "fastest Land Rover ever," is a qualifying statement by the advertiser to draw the attention of the viewer to the fact that this particular vehicle is the fastest one that Land Rover have released.

The Board noted that by stating that it is the fastest Land Rover ever is not necessarily a statement suggesting the car will be driven illegally or that owners of the vehicle would break the law by speeding.

The Board determined that as there is no context of a speed limit, the advertisement did not depict speeding and therefore did not breach Clause 2(b) of the FCAI Code.

The Board then 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 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 Board noted the advertisement is an image of a vehicle that is stationary and while the overall tone of the advertisement is to promote the power and/or speed of the vehicle, there is no depiction of the car moving at excessive speeds that could be considered unsafe or reckless.

The Board noted that the advertisement is not encouraging or condoning speeding and did not breach Clause 2(a) of the Code.

Finding that the advertisement did not breach the FCAI Code on any other grounds, the Board dismissed the complaint.