



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph: (02) 6262 9822 | Fax: (02) 6262 9833
www.adstandards.com.au

Case Report

1	Case Number	0165/12
2	Advertiser	BMW Group Australia Ltd
3	Product	Vehicles
4	Type of Advertisement / media	Print
5	Date of Determination	09/05/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Motor vehicles 2c Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

Image of a BMW driving on a road and the male seated in the front right hand seat has his elbow resting on the window so it sticks outside the car. The image appears in an international brochure for the BMW X1.

THE COMPLAINT

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

The reason for my objection is that the brochure depicts an action which is both illegal and dangerous in contradiction of the FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES - VOLUNTARY CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING which states "Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving."

THE ADVERTISER'S RESPONSE

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

We have found the brochure and reviewed. It is in fact page 12 of the brochure (7 in PDF). However the photography shown is in fact the German models which are left hand drive. In the disputed picture, this is in fact the passenger who has their arm outside the car, not the driver. It is not illegal in Australia for a passenger to have their hand outside the car and is not in breach of the FCAI guidelines. In the picture the person is resting their arm on the side of the window and the car is not driving recklessly.

Please note that we do not consider the international brochure to be “advertising”. It is a customer information guide on the specification of the cars. This brochure is not using as a traditional marketing tool, but rather only given by customer request.

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 X1 in a manner calculated to promote that product. The Board also noted that the brochure from BMW is matter which is published and available to all BMW customers and, in line with previous decisions around the scope of the FCAI Code, determined that the advertisement 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 X1 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 the complainants' concerns that the advertisement depicts an action which is both illegal and dangerous. The Board then analysed specific sections of the FCAI Code and the AANA Code of Ethics and their application to the advertisement.

The Board 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.

The Board noted that the advertisement shows a still image of a BMW being driven along a road with numerous passengers. The Board noted that the image depicts a person in the front of the vehicle with his arm resting out of the window on the upper exterior part of the door.

The Board noted that clause 268(3) of the Australian Road Rules refers to how persons must travel in or on a motor vehicle. This clause states that "...A person must not travel in or on a motor vehicle with any

part of the person's body outside a window or door of the vehicle...."

The Board noted that the road rules do not distinguish between whether or not the person is the driver or a passenger. The Board noted that the advertisement depicts a person from the vehicle with his arm on the outside of the vehicle and considered that the advertisement did breach the clause.

On the above basis, the Board determined that the advertisement does depict an action which would breach a Commonwealth law and does breach clause 2(c) of the FCAI Code.

The Board then considered whether the advertisement was in breach of Section 2.6 of the Code of Ethics. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to prevailing community standards on health and safety".

The Board noted that community concern around vehicle safety and unsafe behavior in vehicles is paramount in the minds of the broader community and that the behavior of having an arm outside of the vehicle as in this advertisement is contrary to prevailing community standards on health and safety and therefore the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach the FCAI Code, and the Code of Ethics the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

We have confirmed with Germany that we are not producing any more of this brochure and all we have left is what dealers have in stock currently. In September we will receive a new model and new brochure and this picture is not in the brochure.

