



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

<b>1</b>	<b>Case Number</b>	<b>0204/19</b>
<b>2</b>	<b>Advertiser</b>	<b>Lexus Australia</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/07/2019</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a scene from “Men In Black: International”. The two lead actors are looking up towards the sky. Various scenes from the film are shown as the ‘agents’ are outfitted.

The Lexus RC F that stars in the film is shown, as well as different angles of the vehicle. The actors are shown pulling a cover off the car in a garage and getting in the car.

The car starts and they pull out of the garage. One of the actors presses a button on the console, which lights up – and the car takes off into the night sky.

Logo: MIB International.  
Super: In Cinemas June 13

Logo: Lexus. Experience Amazing.

## THE COMPLAINT

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





included the following:

*Here's the latest rort. Make the ad look like it's an ad for the movie "Men in Black - MIB International". Then the standard disclaimers: "Professional on a closed course. Do not attempt. - Dramatization. Not an actual demonstration of RCF performance or capabilities. Do not attempt." This ad glamorises speed and reckless driving - "while they protect the earth from the scum of the universe". Yet the FCAI Guidance to Advertisers states: "In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code."*

#### *FCAI CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING*

##### *2. GENERAL PROVISIONS*

*Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(a) Unsafe driving, including reckless and 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.*

*[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]*

*(c) 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.*

*(e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.*

*AdStandards nearly always rejects complaints about speeding when clearly and unequivocally the advertiser is portraying a vehicle or vehicles speeding. It's part of the rort. Too difficult to prove. But it's certainly subliminal. In any event, in this ad, the vehicle is definitely doing a four wheel drift - twice. It fails to slow down or stop, when exiting a car park into a pedestrian zone, becomes airborne and bounces onto the front wheels and does another four wheel drift. These are all very serious driving offence in every jurisdiction in Australia, commonly known as "hooning". As such, the ad breaches 2(a) and 2(c) of the Code.*

*Comment:*



*As stated on numerous occasions, this is what will occur:*

*1 It will take at least four weeks to get a determination. Most motor vehicle advertising campaigns run for much shorter times – by which time all the damage will have been done.*

*2 The ASB (which is funded by the motor vehicle industry - he who pays the piper calls the tune) will generally find some sort of loop-hole to dismiss the complaint*

*3 If we appeal, which costs more time, money and resources, that will be another two to four weeks.*

*Many offending ads are now made overseas with minor changes to suit the Australian market.*

*That means that even if it is found to breach the Code, it will have cost the manufacturer/supplier virtually nothing.*

*There will be no consequences.*

*No fine/penalty.*

*No formal apology.*

*No requirement to run the same amount of ads at the same time and station informing the public of their disgraceful behaviour and how they will never do it again – and promoting safe driving.*

*Nothing.*

*Just keeping up the image and impression that driving like this is perfectly acceptable.*

*We have scores of examples.*

*It proves the aphorism: SELF-REGULATION IS TO REGULATION AS SELF-IMPORTANCE IS TO IMPORTANCE.*

*Meanwhile the Australian Road Toll is going through the roof, primarily due to speeding and dangerous driving.*

*And impressionable (mainly young) drivers will die and kill other innocent victims, trying to emulate the behaviour portrayed in these utterly irresponsible advertisements - all under your watch.*

## **THE ADVERTISER'S RESPONSE**



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

*Lexus Australia takes its obligations in complying with the FCAI Code, AANA Code and all relevant laws seriously and works to uphold the highest professional and ethical standard.*

*You have advised that the complaint falls under clause 2(a) of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code). Lexus Australia is of the view that the other clauses of the FCAI Code and the AANA Code are not relevant to the Advertisement.*

*The Advertisement is a segment of MIB International which depicts the Lexus RC F vehicle (Lexus Vehicle).*

*The Advertisement has been broadcasted in all states and Territories of Australia and is also available on the internet at [https://www.youtube.com/watch?v=wy3sSZR\\_vClh](https://www.youtube.com/watch?v=wy3sSZR_vClh)*

*Lexus Australia has been provided with the rights to use the Advertisement from Lexus International, based on the collaboration between Lexus and Sony Pictures' MIB International. The Advertisement is meant to convey Lexus Australia's excitement in having the Lexus Vehicle featured in MIB International, a global blockbuster*

*Theme of MIB International:*

*MIB International is a sequel to the number of other Men in Black movies, such as Men in Black (2007), Men in Black II (2012) A, AND Men in Black 3 (2012). The talents depicted in the Advertisement are the lead actor Chris Hemsworth, and the lead actress, Tessa Thompson.*

*MIB International is sci-fi/fantasy themed movie that does not depict reality. The movie is based on the decades-old science fiction involving extraterrestrial action. It is set in a fictional world where aliens and humans co-exist. As such, the Advertisement, does not depict reality. In the Advertisement, the Lexus Vehicle transforms into a spaceship/aircraft, namely, the Lexus QZ 618 Galactic Enforcer jet – which is not a depiction of reality.*

*Given that the Advertisement is an official trailer and is a segment in MIB International, Lexus Australia had no control of the filming of the Advertisement.*

*Clause 2 of the FCAI Code*

*Clause 2(a) of the FCAI Code requires that advertisements for motor vehicles do not*



*portray unsafe driving, including reckless and menacing driving that would breach any Commonwealth law or law of any State or Territory dealing with road safety or traffic regulation.*

*Lexus Australia is firmly committed to safe driving behavior and that we want all our performance vehicles to be driven responsibly. As to the complainant's concerns that the Advertisement glamorizes speed and reckless driving it is clear from the context of the Advertisement that the scenes are intended to depict a fantastical testing ground, and in no way is it a depiction of reality. The Advertisement shows the Lexus Vehicle being put through scenarios that are comical and exaggerated for effect.*

*We have been advised by Lexus International that all filming was done on a closed set with a professional stunt driver.*

*It is therefore our position that the Advertisement does not depict unlawful activity, and as such is not in breach of clause 2 of the FCAI Code.*

*Conclusion:*

*In light of the reasons contained in this letter, we do not believe that the Advertisement is in breach of either the FCAI Code or the AANA Code. Accordingly, Lexus Australia respectfully requests that the complaint be dismissed.*

## **THE DETERMINATION**

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (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 Panel 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 Panel determined that the Lexus RC F was a Motor Vehicle as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor



vehicle and therefore that the FCAI Code applied.

The Panel noted that the television advertisement features numerous scenes from 'Men in Black: International'. A voice over states that the Men in Black demand only the best, including suits, ties, shades, weapons and ride. Each of the items listed is shown using a scene from the film. When 'ride' is mentioned the Lexus RC F is shown in a white room. The voice over says 'while you're protecting the Earth from the scum of the universe, a little extra horsepower never hurts'. The two main characters are then seen removing a cover off the vehicle in a car park. The woman says 'I'm driving' and gets in the left hand side of the vehicle. The man gets in on the right where the steering wheel is. She makes a comment that the steering wheel should be on the left side and the man states 'not in this country'. The car then pulls out and moves through the carpark. The car is seen exiting the driveway at speed and pulling onto the road. The driver then presses a red button and the car starts to fly.

The Panel noted the complainant's concern that the advertisement glamorises speed and reckless driving, shows the car doing drifts and exits a driveway without stopping or looking for pedestrians.

The Panel noted the advertiser's response that the advertisement depicts scenes from a sci-fi fantasy movie which was filmed by a professional stunt driver on a closed set.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

The Panel 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 Panel 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 Panel noted the complainant's concern that the vehicle is seen doing a four wheel drift twice. The Panel considered that the vehicle is seen to perform two tight turns, one when turning in the carpark and one when turning onto the road, however considered that the vehicle appeared to be under control, the wheels did not spin, there was no tyre smoke. Further, the Panel considered the second turn was followed immediately by the car beginning to fly, and considered that this is highly fantastical



and unlikely to be considered realistic behaviour which would breach any Commonwealth law or the law of any State or Territory.

The Panel considered that the advertisement was clearly in the context of a fantasy sci-fi movie. The Panel considered that the Men in Black franchise is well known and that most people viewing the advertisement would recognise the fantasy nature of the movie franchise and the depiction of the motor vehicle within the advertisement.

The Panel noted the Guidance to advertisers in the FCAI Code states:

“FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code. In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code.”

The Panel considered the scene where the vehicle is seen leaving the carpark and pulling onto the road. The Panel noted the complainant’s concern that the vehicle fails to slow down or stop when exiting a carpark.

The Panel noted that NSW Road Rule Part 7 Division 3 Rule 74 provides:

“1) A driver entering a road from a road related area, or adjacent land, without traffic lights or a stop sign, stop line, give way sign or give way line must give way to:

- (a) any vehicle travelling on the road or turning into the road (except a vehicle turning right into the road from a road related area or adjacent land), and
- (b) any pedestrian on the road, and
- (c) any vehicle or pedestrian on any road related area that the driver crosses to enter the road, and
- (d) for a driver entering the road from a road related area:
  - (i) any pedestrian on the road related area, and
  - (ii) any other vehicle ahead of the driver’s vehicle or approaching from the left or right.

Maximum penalty: 20 penalty units.

Note 1. Adjacent land, give way line, stop line and traffic lights are defined in the Dictionary, and road related area is defined in rule 13.

Note 2. Adjacent land or a road related area can include a driveway, service station or shopping centre—see the definitions of adjacent land and road related area. Some shopping centres may include roads—see the definition of road in rule 12.

Note 3. Part 6 applies to the driver if there are traffic lights. Rule 68 applies to the



driver if there is a stop sign or stop line, and rule 71 applies to the driver if there is a give way sign or give way line.

Note 4. For this rule, give way means the driver must slow down and, if necessary, stop to avoid a collision—see the definition in the Dictionary.”

The Panel noted that when exiting the carpark all four wheels of the car leave the ground and the car does not slow down or stop before turning onto the road.

The Panel noted the advertisement features disclaimers including ‘Professional on closed course. Do not attempt.’ and ‘Dramatisation. Not an actual demonstration of RC F performance or capacities. Do not attempt’.

The Panel considered that in line with the guidance in the practice note, the disclaimers on their own would not be sufficient to justify material which may otherwise not comply with the Code. However, the Panel considered that the scene in the advertisement was clearly a scene from an action sci-fi movie and that most people would understand that movie scenes were not filmed on open, public streets and the nature of driving practices included in movies are not always aligned with domestic road rules.

The Panel considered that in the context of a movie about characters fighting aliens the driving practices displayed in the movie scene were in the context of a film set and the driver of the vehicle would have been aware that there were no pedestrians or other vehicles to give way to and that stopping in this context would not be necessary.

The Panel considered that the advertisement clearly took place in a fantasy universe where the drivers of the vehicle were part of a secret organisation devoted to fighting ‘alien scum’. The Panel considered that the depiction of a vehicle failing to slow down when entering a road and having all four wheels leave the ground was consistent with the fantasy and urgent nature of the alien fighting characters in the advertisement and that the car starting to fly at the end of the advertisement highlighted that these actions were taking place in a fantasy world.

The Panel considered that the advertisement did not portray unsafe and did not depict reckless or menacing driving that would breach the law as it is clearly a fantasy.

Finding that the advertisement did not breach Cause 2(a) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.



