



Case Report

1	Case Number	0214/10
2	Advertiser	Lexus Australia
3	Product	Vehicles
4	Type of Advertisement / media	Pay TV
5	Date of Determination	26/05/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Speeding

DESCRIPTION OF THE ADVERTISEMENT

This Lexus LFA supercar pulls out of a garage on the Mt. Fuji race track. A disclaimer is shown: "Vehicle driven under controlled conditions on a racetrack using a professional driver. Overseas model shown".

The camera then shows a few shots of the empty track and the mountain. The LFA drives around the closed track. A voice over tells the audience that 'Clocking speeds of 325km/h the LFA can cover 2700 meters (or 2.7kms) in the time it takes to watch this commercial.'

The ad then shows the LFA badge and the super 'Yes. It's a Lexus', finishing with the Lexus end-frame 'The Pursuit of Perfection'.

THE COMPLAINT

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

The ad runs for about 15 seconds and the only message put forward is that the vehicle is capable of travelling at 325 KM/H. There is no where in Australia where this speed can be legally used. There are many messages begin portrayed by the Traffic Authorities and police urging drivers to slow down to prevent the continuing carnage on the roads and yet this ad is only shown to extol the speed of the vehicle. This seems very irresponsible by the Lexus car company and I believe the ad should be withdrawn.

THE ADVERTISER'S RESPONSE

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

Your letter states that the complaints raise issues under Section 2 of the AANA Advertiser Code of Ethics and more specifically, under 'General Provisions'. As the LFA is filmed under controlled conditions on a closed racetrack, we do not believe that the commercial breaches these terms of the Code. At no point does the vehicle lose control, nor does it ever look like it will ever be in the way of a collision. The vehicle is shown racing at speed, however it is not unnecessary.

At this point, we would like to make reference to the specific clause (clause 3) which relates to the use of motor sport, simulated motor sport and similar vehicle testing or proving activities in advertising. It is acknowledged that motor sport plays a crucial role in brand promotion and the development of testing of crucial technologies, many of which result in safer vehicles. Accordingly the Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context.

The LFA is not yet available in Australia. Only 500 LFA vehicles will be assembled and only five of those will be sold here (two in 2011 and then three more in 2012). The LFA is unattainable to the masses as it has a retail value of three quarters of a million dollars. It is a devoted collector's item.

Finally, the complainant makes reference to a 15 second commercial. There is no 15 second commercial available for the LFA – only the 30 second commercial.

Taking this information into consideration, we acknowledge the complaint and hope you take our response very seriously.

THE DETERMINATION

The Advertising Standards Board ("Board") was required to determine whether the advertisement complied with the Federal Chamber of Automotive Industries' Advertising for Motor Vehicles Voluntary Code of Practice (the "FCAI Code").

The advertisement is an "advertisement for a motor vehicle" and therefore the FCAI Code applies.

The Board acknowledged the complainant's concern that the advertisement emphasises the speed that the vehicle can travel and that this is excessive (325km/hr).

The Board noted the advertiser's response, that the FCAI Code permits such depictions provided they are clearly in a racing scenario and that this is the case with this vehicle.

The Board noted that clause 2(a) of the FCAI Code, requires that advertisements must not portray '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.’

The Board noted however that clause 3 of the FCAI Code provides that: ‘Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising subject to the following:

(a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.

(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.’

The Board noted that the depictions of the vehicle are on a racetrack. The Board considered that the scenes of the car on the racetrack comply with clause 3(a) and that it is clear that all of the driving being undertaken by the vehicle is driving on a racetrack. The Board determined that the advertisement complied with clause 3 of the FCAI Code.

The Board considered that, apart from driving at high speed, as is expected on a race track, the vehicle was not driven in an unsafe manner and did not suggest unsafe driving that would otherwise breach clause 2(a) of the FCAI Code. The Board determined that the advertisement did not breach clause 2(a) of the FCAI Code.

The Board viewed the advertisement and noted that there are a number of references to the speed of the vehicle, specifically the comment that ‘Clocking speeds of 325km/h the LFA can cover 2700 meters (or 2.7kms) in the time it takes to watch this commercial.’ The Board noted that the Explanatory Notes to the FCAI Code states that ‘advertisers should 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...’

The Board considered that the reference to the speed capability of the vehicle is a clear breach of the spirit and intent of the Code. Regardless of the type of vehicle being advertised the intent of the Code, as articulated in the Explanatory Notes, demands that advertisers not refer to speed capabilities – particularly high speed capabilities. The Board noted that it, the Board, is not able to determine that there is a breach of the FCAI Code solely on the basis of the speed reference as mention of the speed capability is not a breach of a substantive provision of the FCAI Code. The Board asked that this issue be brought to the attention of the FCAI for discussion with the advertiser.

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