



**ADVERTISING  
STANDARDS  
BUREAU**

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

## **CASE REPORT**

1.	Complaint reference number	0215/10
2.	Advertiser	Lexus Australia
3.	Product	Vehicles
4.	Type of advertisement	TV
5.	Date of determination	Wednesday, 26 May 2010
6.	DETERMINATION	DISMISSED
6.	IR Recommendation	Reconfirm original decision

### **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. Voiceover 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:

*In the FCAI Code it states:*

*"GUIDANCE TO ADVERTISERS*

*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. ...*

*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.*

*Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example "0-100 km/h in 6.5 seconds"). 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."*

*Under 2. GENERAL PROVISIONS it states:*

*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.]*

*AND*

*(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.*

*[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]*

*This advertisement is not only in direct breach of the Guidance to Advertisers it's in breach of both Sections 2 (a) and 2 (c) of the General Provisions of the Code. The advertisement clearly sets out to advertise speed.*

*The maximum speed limit on any road in NSW (where the advertisement was broadcast) is 110 km/h. This advertisement boasts that the vehicle can reach speeds of 325 km/h.*

*We request an URGENT review of this advertisement and request it be withdrawn from broadcast immediately.*

## **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 items 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. This is a supercar.*

*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.*

## **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.

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

A review has been sought of this decision on one ground only: that the Board's decision is in error having regard to the provisions of the Code, or was clearly made against the weight of evidence, in particular that the Board erroneously decided that the advertisement for the Lexus supercar falls within clause 3 of the relevant Code.

This code is the Voluntary Code of Practice for Motor Vehicle Advertising. Clause 3 allows advertisers "to make use of scenes of motor sport; simulated motor sport and vehicle testing or proving in advertising" where they have clearly identified themselves as part of a "testing or proving" activity for which a permit would normally be available in Australia.

The complainant says that the Board considered the advertisement to be covered by Clause 3 simply because it takes place on an identified racetrack and then submitted that this is not an adequate reason to bring the matter within the Clause. I agree with that submission. To comply with Clause 3 one must identify more than the road (i.e. the racetrack): one must look for evidence of "testing" or "proving" in the advertisement. This would be established by considering the kind of driving and who is undertaking the driving to establish purpose. I consider that in its determination the Board weighed all of these matters. There is a closed racetrack, a professional driver and no evidence of unsafe driving practice except speed (which is to be expected on a racetrack). It is this situation that Clause 3 was intended to cover.

The problem with this advertisement is its script. As the Board pointed out very clearly in its determination, advertisers creating advertisements of this kind are exhorted by the "Guidance to Advertisers" in the Explanatory Notes to the Code, not to refer to the speed capability of the vehicle being tested or proved. This advertisement ignores that guidance and makes a clear breach of the spirit and intent of the Code.

Not surprisingly, ALL complainants refer to this, but fail to acknowledge that this spirit and intent is not included in the Code but appears in the Explanatory Notes to the Code.

The consequence of this, is that ignoring this advice does not amount to a breach of the Code.

I note that, not unexpectedly, this has been brought to the attention of the relevant industry body. The Board made no legal error in its determination but has, in my view, highlighted a possible weakness in this Code. If the advertisement had been within the ambit of the General Clause 2, it would be clearly in breach because of the excessive speed shown.

I recommend that the Board's original decision be confirmed.