



Case Report

1	Case Number	0230/16
2	Advertiser	Bentley Motors Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Internet
5	Date of Determination	08/06/2016
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit
FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

The advertisement for the Bentley Continental GT Speed is preceded with information advising that the vehicle is driven by John Bowe, former racing driver and it is driven in controlled conditions on a section of the Stuart Highway with an unrestricted speed limit. The focus is on the speed able to be achieved by the car and as the car drives along we see shots of the speedometer which by the final scene has reached 206 miles an hour.

THE COMPLAINT

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

*The ad breaches sections 2 (a), (b) and (c) of the FCAI Code.
The maximum speed limit in all other jurisdictions, other than the NT is 110 km/h. This advertisement promotes the Bentley reaching speeds of 330 km/h.
Significantly, the announcer, John Bowe, unaware of his error, uses a most significant oxymoron (quote): "It's only one of three highways in the world, with an unrestricted speed limit." In fact, there is no speed limit on this highway. And that's the very point. This behaviour is incredibly dangerous, not only to the driver and passenger, but to other road users. It glorifies speed. It's advertising and proving that this Bentley can do 330 km/h. Yet this speed is 3 times the maximum speed limit in all other jurisdictions.*

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.]

4

- 5 -

5 (b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

(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.

THE ADVERTISER'S RESPONSE

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

Prior to the activity, we applied with the local authorities and the Northern Territory has granted permission to Bentley Motors Ltd to undertake the activity at the derestricted section of the Stuart Highway.

A section of the Stuart Highway was closed with the assistance of the Northern Territory Government and observed by helicopter at all times.

The video is found on YouTube at <https://www.youtube.com/watch?v=OPUm9-6YtME>, published on November 4th, 2015 on the Bentley Motors YouTube channel.

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 broadcast 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 Bentley Continental GT Speed (Bentley) in a manner calculated to promote that product. The Board considered that the footage depicts the vehicle that is available for purchase and there is frequent mention of the Bentley and the Bentley logo in the footage. 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 determined that the material before it was an advertisement.

The Board then considered whether that 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 Bentley 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 complainant's concerns that the advertisement depicts the vehicle reaching speeds of 330km per hour on a stretch of highway with an unrestricted speed limit in the Northern Territory (NT), which is 3 times the maximum speed in all other jurisdictions.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement, noting that the Explanatory Notes to the Code state that 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."

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 the frequent focus on the speedometer throughout the advertisement and the accompanying commentary that regularly indicated the increasing speeds reached by the car. The Board considered that this was not within the spirit of the Code as it explicitly drew attention to the speed capability of the vehicle.

The Board considered the application of the FCAI Code to the advertisement, identifying clauses 2(a), 2(b) and 2(c) and 3 as relevant in the circumstances. Consistent with a previous determination, Case 0229/05, the Board considered that clause 3 does not operate as an exemption to a breach of clause 2 but rather operates to ensure that advertisers can legitimately make use of the types of scenes permitted under clause 3 provided that the provisos in clause 3 are satisfied and that the use of such material is consistent with the general application of clause 2 in the context of the activities permitted.

The Board noted that clause 3 provides:

"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 gave consideration to whether the advertisement in question made use of scenes of “motor sport” in accordance with clause 3 of the FCAI Code. “Motor Sport” is defined in the FCAI Code as meaning:

“racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.”

The Board noted that the term “vehicle testing and proving” is not defined in the Code. However, the Board understood this in the context of clause 3 and the Explanatory Notes to the Code to take place in a similar context to simulated motor sport and to generally take place within dedicated test facilities for this purpose. The Board considered that the disclaimers provided in the advertisement did not amount to a testing or proving environment.

The Board noted that whilst the advertisement uses John Bowe, described as a ‘legend of Australian motor sport’, to drive the Bentley, he states ‘this is not a customised race car’ and the driving takes place on a public highway, not a race track or dedicated testing facility, to show how fast the ‘road car’ can go. The Board considered that the activity was not “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” and therefore the conditions of clause 3 were deemed not to apply in this advertisement.

The Board 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 provided with clause 2(a) 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 features the Bentley being driven by a racing car driver along a closed section of the Stuart Highway in the NT. The Board noted that the advertisement makes it clear at the outset that the vehicle is being driven under controlled conditions with a straight section of the highway having been closed for the filming and noted that no other vehicles are depicted in the advertisement. The Board considered there was no indication of recklessness, or a lack of safety portrayed in the advertisement and that

the advertisement identified the conditions in place to ensure safety.

The Board did consider that the advertisement showed excessive speed, with the text at the commencement of the advertisement stating the car would be driven at maximum speed and the driver commenting that he was going to see just how fast it could go. The Board noted the advertisement is available on the internet, and considered that this means that people in other jurisdictions may view it.

The Board noted that the conditions under which the driving took place and the advertisement filmed are made clear at the outset, including the location, where there is no maximum speed limit in place. However the Board considered that this is not the case in other jurisdictions where the advertisement is published, where the speed reached by the Bentley in the advertisement of 206 miles per hour (331 km per hour) “would breach 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.”

The Board determined that the advertisement did breach clause 2(a) of the FCAI Code.

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 the complainant’s concern that the vehicle reached a speed of 330km/h.

The Board noted the advertiser’s response that the activity was undertaken at the derestricted section of the Stuart Highway but considered that in all other parts of Australia the speed depicted would breach the law.

The Board determined that the advertisement did depict the Bentley exceeding the speed limit and therefore did breach clause 2(b) of the FCAI Code.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that “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 did not consider there had been a breach of Clause 2(c) of the FCAI Code as no driving practices covered by this section were in evidence.

Finding that the advertisement breached clause 2(a) and 2(b) of the FCAI Code, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Please be informed that we will take down the film from Bentley Motors YouTube channel.

