



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0235/11</b>
<b>2</b>	<b>Advertiser</b>	<b>BMW Group Australia Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/07/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles	Driving practice that would breach the law
Motor vehicles	Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

A BMW X1 being driven in a variety of settings – on the road, on the beach, through the snow etc with 4 passengers on board. At the 15 second mark in the commercial the moving footage of the car is replaced with a still shot of the BMW X1 sDRIVE18i and the voice over says “The BMW X1 sDrive18i with Automatic Transmission now available from \$49,900 drive away, for a limited time. Unplanned adventures begin at your participating BMW Dealer today”.

The commercial ends with the BMW logo and picture of the car.

### THE COMPLAINT

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

*In one of the shots one of the rear seat passengers reaches forward and leaves their seat to access what appears to be the sun roof. The car is moving and he is not wearing a seatbelt. This scenario only encourages people that the wearing of seat belts is not necessary especially children.*

*The advertisement should be removed until re-cut to remove this error.*

*I appreciate this commercial has been devised and shot over seas for global markets where the wearing of seat belts may not be mandatory but in Australia this very simple LAW has proven to one of the most effective passive safety measures in motoring. I am sure BMW after spending huge amounts in the R&D of safety technologies and features and using these to*

*promote the brand and being central to their philosophy do not wish this negligent moment to tarnish their brand.*

## **THE ADVERTISER'S RESPONSE**

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

*The commercial in question is a revision to a 30 second commercial developed for the BMW X1 and first aired in April 2010. The commercial focuses on the benefits of the BMW X1, showing a variety of lifestyle settings. The commercial has recently returned to TV with the same moving images but with revisions to the price information in supers and voice over. In relation to the specific complaint that the "rear seat passenger reaches forward and leaves their seat to access what appears to be the sunroof. The car is moving and he is not wearing a seatbelt" please find attached a series of screen images from the TVC that clearly show the passenger is in fact wearing a seat belt for the entire time (the seat belt is retractable- as is standard in most cars today – allowing him to lean forward while still safely restrained). We hope this clarifies the issues raised in the complaint. Furthermore, safety is a key feature of the BMW brand and many of our advertising messages communicate the safety equipment found in our cars. With this in mind the commercial does not in any way depict or condone reckless or dangerous driving and supports the advice and spirit of the Voluntary Code of Practice for Motor Vehicle Advertising.*

## **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 published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a BMW in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed

to determine 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 BMW 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 features a passenger not wearing a seatbelt in a moving car.

The Board considered whether the advertisement breached clause 2(c) of the Code. Clause 2(c) of the FCAI Code provides that advertisers should 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 dealing directly with road safety or traffic regulation'.

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board noted that the advertisement shows a BMW being driven in different road and weather conditions. The Board noted that in one scene a passenger in the rear of the vehicle leans across to open the sunroof. The Board noted the complainant's concern that it appears that the passenger is not wearing seatbelt at this point. The Board noted the advertiser's response that the passenger is wearing a retractable seatbelt which allows him to lean forward to open the sunroof. The Board viewed the advertisement and noted that although this particular scene is brief, it can clearly be seen that the passenger is wearing a seatbelt.

The Board determined that the advertisement did not breach clause 2(c) of the FCAI Code.

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