



Ad Standards Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited  
ACN 084 452 666

## Case Report

1. Case Number :	0256-21
2. Advertiser :	KIA Automotive Australia
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Sep-2021
6. DETERMINATION :	Dismissed

### ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving  
FCAI Motor Vehicle Advertising Code\3 Motor Sport

### DESCRIPTION OF ADVERTISEMENT

This television advertisement opens with members of the Kia racing team walking around and inspecting the EV6 and words appearing on screen saying, "The Kia EV6". The advertisement then shows close ups of the features of the vehicle including the headlights and nose as the vehicle exits the warehouse. The vehicle then slowly drives to a starting line on a racetrack next to performance vehicles including a McLaren, a Lamborghini, and a Ferrari. The words "How does Zero Emissions taste" and "Ask the Competition" then appear onscreen. The advertisement shows a red light and the vehicles revving up their engines. Smoke from the vehicles is clearly seen. The EV6 is shown slowly taking its place without any revving up and no smoke. The advertisement shows the red light turning green and the vehicles begin the race. The words "Electric is coming." are then shown.

### THE COMPLAINT

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

*The add featuring the electric vehicle lining it up against all sorts of specific sporty brands, suggesting that they are all about to race one another. And the add finishes with the KIA vehicle starting to beat the pack. I know it is an offence to show new vehicles racing etc. But as KIA produces more and more adds they clearly do refer to their vehicles being faster than other makes. Vehicle advertising should only refer to safety, features, etc. NOT outright power or speed.*



## THE ADVERTISER'S RESPONSE

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

*We refer to your letter of 3 September 2021 regarding a complaint received by Ad Standards concerning "All Kia ads" with particular emphasis on the "coming electric one" (Advertisement). We believe this is a reference to Kia Australia's (Kia) new electric vehicle the EV6 (EV6) which is the halo model in Kia's electric vehicle range. The complainant alleges that the Advertisement raises issues under Section 2 of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (Code).*

*Kia takes compliance with the Code very seriously.*

*For the reasons set out below, Kia disagrees the Advertisement infringes Section 2 of the Code or any other section of the Code.*

### *Background to the Advertisement*

*The Advertisement was created to promote the EV6 which is the halo model in Kia's electric vehicle range.*

*The Advertisement is intended to showcase the new design and features of the EV6. The Advertisement is intended to target a broad range of consumers across various demographics as well as demonstrate the power of electric vehicles in comparison to petrol and diesel vehicles and is presented in a way to engage the viewer through the use of excitement.*

*The Advertisement draws on the themes of excitement associated with performance as a selling point and the freedom of driving a vehicle.*

*The Advertisement has been broadcast in all States and Territories of Australia since July 2021. The Advertisement has been broadcast online on Kia's YouTube and social channels since July 2021.*

### *The Advertisement*

*The Advertisement opens with members of the Kia racing team walking around and inspecting the EV6 and words appearing on screen saying, "The Kia EV6". The advertisement then shows close ups of the features of the vehicle including the headlights and nose as the vehicle exits the warehouse. The vehicle is adorned with racing livery, indicating to the viewer that it is about to undertake a motor sport activity. The vehicle then slowly drives to a starting line on a racetrack next to performance vehicles including a McLaren, a Lamborghini, and a Ferrari. Every other vehicle on the starting line is a performance vehicle and not traditional competitors of Kia vehicles or the Kia brand. The words "How does Zero Emissions taste" and "Ask the Competition"*



*then appear onscreen. The images clearly show that the vehicles are on a racetrack. The road is very wide, similar to an airport runway, and there is a starting line where all the vehicles are at a standstill awaiting to begin. There are no pedestrians nor line markings indicating a public road anywhere. The advertisement then demonstrates the vehicles and gives a wide shot of the entire location where the vehicles are located. The screen then turns to show the entire racetrack. It is clearly demonstratable that the road is designed for motor sport racing.*

*The advertisement demonstrates a red light and the vehicles revving up their engines. Smoke from the vehicles is clearly seen. The EV6 is shown slowly taking its place without any revving up and no smoke giving the impression that it is an equal amongst other vehicles without requiring to emit CO2.*

*The advertisement demonstrates a red light turning green and the vehicles begin the race. The words "Electric is coming." is then shown.*

*The EV6 does not emit so much noise demonstrating the efficiency and performance of an electric vehicle next to other vehicles.*

*The advertisement ends with the Kia logo and our slogan "Movement that Inspires" appearing below the logo and heard through a voiceover.*

*The complaint*

*Kia takes compliance with the Code very seriously. Kia considers the Advertisement does not depict conduct which is in contravention of the Code and submits the complaint should be dismissed.*

*Depiction of unsafe driving in contravention of the Code*

*The Advertisement does not depict driving which would be in contravention of the Code.*

*The purpose of the Advertisement was to promote the EV6 in an exciting and engaging way using excitement and motor sport, to make a statement about electric vehicles arriving at Kia and to demonstrate the Kia brand next to performance vehicles which are not ordinarily associated as competitors of Kia. The use of self-evident exaggeration in the Advertisement does not contradict, circumvent, or undermine the provisions of the Code.*

*The advertisement attempts to demonstrate the superiority of an electric vehicle against performance vehicles.*

*Every vehicle was driven by a professional driver in controlled conditions as per the disclaimer on screen. The vehicle is wrapped in racing livery. The vehicle is not on a public road. The road is a closed-circuit environment. The race was conducted as an organised activity. As such any references to speed would not contravene clause 2(a) of the Code.*



*Racing is a motor sport. The Code acknowledges “that motor sport plays a critical role in brand promotion and the development and testing of critical technologies, many of which result in safer vehicles”.*

*The advertisement does not contravene Clause 3 of the Code.*

*Clause 3 of the Code provides that advertisers may make use of scenes of motor sport, simulated motor sport, or vehicle testing or proving, provided that such scenes are clearly identifiable as part of an organised activity of a type which would normally be permitted in Australia and that they also conform to general safety requirements associated with such activities.*

*There is no suggestion in the Advertisement that the driving shown is associated with normal on-road use of motor vehicles. It is inconceivable that an EV6 or any other vehicle would be allowed to be driven on a public road under the same conditions as are demonstrated in the advertisement.*

*There are no pedestrians in the Advertisement.*

*It would be clear to reasonable viewers that the Advertisement is an attempt to engage through creative and exciting means.*

*Regarding the complainants’ specific concerns*

*The complainant is incorrect in their statement that “I know it is an offence to show new vehicles racing etc.” Clause 3 of the Code clearly states motor sport plays a critical role in brand promotion.*

*The complaint also states that “advertising should only refer to safety, features, etc. NOT outright power or speed”. This is only the opinion of the complainant. The advertisement does not depict outright power or speed. The depiction of power and speed is mixed with style and elegance of the EV6 in comparison to vehicles from other brands.*

*The complaint also states that “All Kia adds have vehicles racing each other”. This is clearly incorrect as many Kia vehicles only demonstrate the vehicle’ interior and/or a solitary vehicle driving along a public road.*

*Advertisement is clearly intended to promote the EV6 in a creative and exciting way. Accordingly, reasonable viewers would consider that the Advertisement does not encourage unsafe driving.*

*Considering these factors, we respectfully submit that the Advertisement does not and could not be considered by any reasonable person to encourage or condone behaviour in breach of the Code.*

*Other considerations under the Code*



*Kia notes that in addition to considering specific issues raised by the individual complainant, the Community Panel will also review the Advertisement in its entirety against the Code.*

*Whilst Kia considers the Advertisement should be assessed in accordance with clause 3 of the Code that it is creative and engaging. It does not breach clause 2 of the Code. AANA Code of Ethics not relevant for consideration*

*Kia notes that, under the Motor Vehicle Advertising Code Practice Note, advertisements for motor vehicles which raise issues or complaints concerning safety are to be determined according to the Code as opposed to the AANA Code of Ethics. Accordingly, Kia has not dealt with the AANA Code of Ethics in its response.*

## **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).

The Panel noted the complainant's concern that the advertisement features a strong suggestion that vehicles are going to race, and in particular focuses on the speed capabilities of the vehicle.

The Panel viewed the advertisement and noted the advertiser's response.

### **Is this an advertisement for a motor vehicle?**

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 EV6 vehicle depicted as a Motor Vehicles 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.

**Clause 2(a): 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 that the Guidance Note for this Section of the Code includes:

*"Advertisers should not use references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds") on a public road where the*



*driving depicted and the reference to such capabilities would contravene clause 2(a). Depictions of such capabilities in a closed-circuit environment must comply with clause 3”*

The Panel noted that the vehicles in question were not on a road and were clearly in a closed-circuit environment. The Panel noted that for the majority of the advertisement the vehicles are stationary, and it is only in the last few seconds of the advertisement that they begin to move in.

The Panel considered that there is no indication of reckless or dangerous driving in the advertisement, and the speed of the vehicles could not be determined from the short scene at the end of the advertisement.

The Panel noted that racing vehicles is a behaviour which would breach the law if it were to occur on a road or road related area, however moved to consider the effect of Section 3 of the code noting that in this advertisement this behaviour was clearly in a closed circuit environment as part of an organized event.

#### **Clause 2(a) conclusion**

The Panel determined that the advertisement did not breach Clause 2 (a) of the FCAI Code.

**3. 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, testing or proving activity, or vehicles being driven in a high performance sports nature, provided that this activity is within an closed circuit environment (off public roads) 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 Guidance Note for this Section also provides:

*Accordingly, the FCAI 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 FCAI also urges advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving, are in any way associated with normal on-road use of motor vehicles.”*

The Panel noted the definition of motor sport:

*“means 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 Panel noted that official drag races in Australia would not feature six cars at once and therefore this would not be a motor sport activity with a permit from a recognised organising body.

Rather, indications were that this was likely an activity of a testing or proving nature organised by the advertiser to demonstrate the capabilities of the advertised vehicle. The advertisement is clearly on a closed-circuit environment and not on a public road.

As the advertisement does not include scenes of motor sport, the vehicles are not required to be in racing livery.

### **Clause 3 conclusion**

The Panel determined that the advertisement complied with Clause 3 of the FCAI Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the FCAI Code the Panel dismissed the complaint.