



Case Report

1	Case Number	0286/10
2	Advertiser	Mazda Australia Pty Limited
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	14/07/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

A man and a woman are shown driving a red mazda through a cafe: the woman passenger leans out and grabs two drinks as they pass the counter, but the car does not stop.

The next scene shows 2 women driving in a white mazda: the passenger is reading a party invitation for an hour's time and the car is shown to apparently drive through a clothes shop. When it emerges, the two women are wearing party clothes.

Then a blue mazda is shown driving through a surf shop. There are two men seated in the front and a female seated in the middle back seat. The woman is shown leaning forwards to talk and laugh with the men, and when they drive out of the surf shop they are wearing scuba diving equipment.

The female voiceover states "When a car's this much fun to drive, and enhances your enjoyment with bluetooth, satnav and dynamic stability control, it almost seems a shame to stop. Mazda 3. Loves driving.

THE COMPLAINT

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

Either the young woman in the back seat (leaning forward to be level with the two guys in the front seats) wasn't wearing a seatbelt or the one she had on was incredibly loose/ineffective. By showing this sort of behaviour it provides a number of examples/makes claims that are dangerous/impossibly flawed.

1. That leaning forward into the front driver's area is a safe thing to do while driving.

2. *That distracting the driver while they are driving is safe.*

3. *That young people are going to have so much more fun driving this car because it doesn't even need seatbelts or they are so effective that it's like you won't miss out at all. I find it pretty ridiculous that this sort of concealment (I mean do their seat belts really allow for that? Do the Road Safety Authorities really allow those sorts of seat belts? Is it safe to have such poorly tensioned seat belts? It is safe enough - so safe in fact you'll be laughing all the way through the windscreen - to be showing this sort of activity being undertaken?) is possible.*

Seat belts are there for a reason and yes sometimes we don't use them but they are there for a reason and that reason is they save lives. For the young people depicted in the ad (between 18 - 30), making up a huge demographic of road accident victims, this advertisement is irresponsible.

THE ADVERTISER'S RESPONSE

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

1. *The notification of complaint from the ASB states that the complaint raises issues under Section 2 of the AANA Advertiser Code of Ethics (the AANA Code). In relation to advertisements for motor vehicles, the AANA Code requires that such advertisements must comply with the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code). While neither the complaint nor the ASB notification identifies the particular provisions of the FCAI Code which the Advertisement is said to contravene, it seems that the following provisions of the FCAI Code may be most relevant.*

The relevant provisions prohibit advertisements for motor vehicles that portray:

2(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.

2(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.

2. *We submit that the Advertisement does not contravene the FCAI Code or the AANA Code for the following reasons:*

(a) Seat belt on rear passenger: We confirm that all drivers and passengers appearing in the Advertisement are wearing seat belts at all times during the Advertisement (including the passenger in the rear of the vehicle in the 'scuba segment' of the Advertisement). In the 'scuba segment' (which appears to be the subject of the complainant's concern), the rear passenger appears on screen on four occasions. On the first occasion, the passenger is leaning forward and the seat belt is obscured by her shoulder. On the second occasion, the seat belt is obscured by her hair. On the final two occasions the rear passenger's seat belt is clearly visible. On this basis, the advertisement does not depict driving practices that would breach any law. We submit that at all times in the Advertisement appropriate seat belt use was either clearly visible or not capable of being seen due to the camera angle.

Furthermore, we note that the Board has in a previous decision (511/09) determined that there should not be an assumption that the person is NOT wearing a seat belt where it is unclear if a seat belt is being worn.

We also confirm that the seat belts fitted to the Mazda3 complies with all applicable Australian Standards.

(b) *Leaning forward into the front of the vehicle:* The theme of the advertisement is 'Mazda3 Loves Driving'. The creative intention of the Advertisement is to depict a cheerful, fun loving fantasy world where the car occupants love driving the Mazda3 so much that it would be a shame to stop and get out of the car. The Advertisement depicts scenes in a drive-through fantasy world where the occupants visit a drive-thru cafe, drive-thru boutique and drive-thru diving and scuba gear outlet. Clearly, the Advertisement includes a significant element of fantasy, humour and self-evident exaggeration - the passengers collect coffees while driving their car through a cafe, they also appear dressed in new clothes after having driven through the boutique and kitted out in scuba gear without even leaving their cars.

In the 'scuba segment' the occupants are seen smiling and laughing together and exhibiting a cheerful and fun loving attitude. At one brief moment during the advertisement, the rear passenger is seen to be leaning forward in an attempt to emphasise the general cheerful atmosphere of the advertisement and to illustrate that she is part of the fun moment being shared between the group. Importantly, all three occupants are at all times wearing seat belts, the driver is concentrating on driving at all times, with his hands on the steering wheel and at no time does the rear passenger touch or distract the driver or obstruct his vision. For these reasons, we submit that the fact that the rear passenger is leaning forward at one point in the advertisement does not amount to a portrayal of unsafe or reckless driving, nor is this conduct unlawful.

(c) *Distracting the driver:* The focus of the Advertisement is on the enjoyment derived by the driver and passengers from driving the Mazda3. In relation to the 'scuba segment' even though the driver and passengers are shown talking and laughing, this conduct is not unlawful, nor is it necessarily unsafe. At all times the driver is in control of the vehicle, is concentrating on driving and has both hands on the steering wheel.

Furthermore, past Board decisions have found that the most important consideration in relation to these types of complaints is whether the driver is in control of their vehicle at all times. The Board has previously dismissed two complaints on this basis, namely, a complaint against Kia in February 2008 (Complaint 37/08), and a complaint against National Foods Ltd in April 2008 (Complaint 108/08). In these cases, whilst in both advertisements there was a depiction of behaviour that might arguably be disruptive to the driver (i.e. speaking on a mobile phone that is being held up to the driver (Kia) or having a passenger spill a drink on the dashboard (National Foods)). The Board's overriding concern was that the driver had appropriate control of the vehicle at all times. Mazda submits that the Board ought to apply similar reasoning here.

3. The Board's notification of the complaint directs us to consider the entirety of the Advertisement against section 2 of the AANA Code, not only the specific issues raised by the individual complaint. We confirm that it has reviewed the balance of the Advertisement and has not identified any parts of the Advertisement that might contravene this section of the AANA Code, but would be happy to respond to the Board on any other specific issues it identifies.

4. Finally, the FCAI Code is, as stated in the Explanatory Notes to the FCAI Code, directed at ensuring that advertisers take 'a responsible approach to advertising for motor vehicles' and 'ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia'. We note that it is

committed to compliance with the FCAI Code (and the AANA Code) and to ensuring the responsible advertising of its vehicles consistent with road safety messages.

5. In light of the above, we submit that the Advertisement does not contravene sections 2(a) or 2(c) of the FCAI Code or any other provision of the FCAI Code (and are not inconsistent with the objectives and guidelines of the FCAI Code). Nor does the Advertisement contravene any provisions of the AANA Code of Ethics. Accordingly, we submit that the complaint ought to be dismissed.

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 Mazda 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 Mazda 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(a) and (c) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached.

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 that the advertisement depicts a vehicle being driven through drive through stores. The Board considered that these scenes were clearly fantasy and in any case did not depict unsafe driving.

The Board then had to consider whether the advertisement breached clause 2(c) of the FCAI Code.

Clause 2(c) applies to driving practices or other actions that would, "if they were to take place on a road or road related area, breach any Commonwealth Law"

The Board noted the complainant's concern that the woman in the backseat of the car is leaning forward into the front of the car and does not appear to be wearing a seatbelt. The Board noted the advertiser's response that the actor is wearing a seatbelt. The Board viewed the advertisement and noted a number of images where the woman is clearly wearing a seatbelt. The Board noted that the first image of the woman in the 'scuba' scene, showed the woman leaning well into the front of the vehicle. In the Board's view this was not desirable position for driving but the context of the woman's seating does depict her in all other images in the advertisement wearing a seatbelt.

Although the Board has considered that there should not be an assumption that the person is NOT wearing a seatbelt, it is appropriate that advertisements for motor vehicles depict appropriate passenger behavior where a seat belt is not obvious. Although some members of the Board considered that the woman is leaning too far forward in this advertisement, the majority of the Board determined that as the woman's seat belt is clear in all other scenes of the advertisement, it is likely that she was wearing the seatbelt in this particular scene. In the Board's view this part of the advertisement does not depict a driving practice or other activity that would breach Australian legislation.

On the above basis, the Board determined that the advertisement does not breach clause 2(c) of the FCAI Code. Finding that the advertisement did not breach the Code, the Board dismissed the complaint.

