



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0298/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Porsche Cars Australia Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Print</b>
<b>5</b>	<b>Date of Determination</b>	<b>14/07/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles      Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

Double page advert featuring a photograph of a silver Porsche 911 Turbo. The car is stationary and is surrounded by bushland.

The type underneath the car reads, "If you haven't saved yourself for this car, prepare to drink deeply from the cup of regret." There then follows a paragraph about the car's features in smaller type.

### THE COMPLAINT

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

*The advertisement states: "The new 911 Turbo with PDK. The most powerful 911 Turbo ever is here clocking 0-100 km/h in a jaw-dropping 3.4 seconds ..."*

*These are direct quotes from the FCAI Code:*

### "GUIDANCE TO ADVERTISERS

*The FCAI supports a responsible approach to advertising for motor vehicles. FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.*

*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 ...*

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

*in interpreting and applying the Code FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. 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. (END QUOTES).*

*The advertised claim that: "The new 911 Turbo with PDK. The most powerful 911 Turbo ever is here clocking 0-100 km/h in a jaw-dropping 3.4 seconds ..." explicitly contravenes the FCAI Code.*

*We ask that the advertisement be withdrawn immediately.*

## **THE ADVERTISER'S RESPONSE**

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

*The complaint made against this advertisement states that by referring to the acceleration capability of the vehicle, Porsche has explicitly contravened the FCAI Voluntary Code of Practice for Motor Vehicle Advertising.*

*We note that the Code makes no reference to stating the acceleration capability of a vehicle, but rather it is the Explanatory Notes which do so.*

*Although no breach of the Code itself has taken place, Porsche Cars Australia supports the overall intent of the Code of Practice and commits to modify the advertisement in any future use to remove all reference to acceleration capability, as per the FCAI guidance.*

*This advertisement, as placed in the June issue of Qantas magazine, has effectively already been removed from circulation by the airline updating its magazine in July.*

*Porsche Cars Australia has re-familiarised relevant staff and its advertising agency with the FCAI Code and Explanatory Notes and seeks to comply with both in all future 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 published in a magazine in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Porsche 911 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 Porsche 911 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 2(b) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached.

The Board then 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 this print image did not depict the vehicle driving and that despite the references to the acceleration capability of the vehicle the advertisement did not depict unsafe driving. The Board considered that the advertisement did not depict unsafe driving.

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

In order to breach clause 2(b) the advertisement must not depict speeding.

The Board noted the Explanatory Notes to the FCAI Code. In particular the Board noted that the Guidance to Advertisers states that: 'FCAI ...asks advertisers to be mindful of the

importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia. Advertisers...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 (for example “0 – 1000 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.

The Board noted that the advertisement refers to the vehicle as ‘clocking 0-100km in a jaw dropping 3.4 seconds.’ The Board considered that the reference to the acceleration capabilities of the vehicle is clearly contrary to the Explanatory Notes that accompany the FCAI Code but is not a breach of clause 2(b) of the FCAI Code. The Board noted that the advertiser has agreed to ensure that future advertisements do not contain reference to the acceleration capabilities of the vehicle. The Board noted that the FCAI Code has been in operation for more than five years and that advertisers should be well aware of its requirements.

The Board determined that the advertisement did not breach clauses 2(a) or 2(b) of the FCAI Code.

Finding that the advertisement did not breach any other provisions of the Code, the Board therefore dismissed the complaint.