



Case Report

1	Case Number	0302/15
2	Advertiser	New Pioneer Motors
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/08/2015
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(b) Breaking the speed limit
FCAI Motor Vehicles 2(c) Driving practice that would breach the law
FCAI Motor Vehicles 3 Motor sport

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a count down over the decades of different Holden Special Vehicles (HSVs) into the New Era. We see images of HSVs over the years then two vehicles racing against each other.

The final text on screen reads, "New Pioneer Motors. Sales hotline 49 694 299. www.newpionermotors.com.au".

THE COMPLAINT

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

There has been wide information concerning the effects of speed from motor vehicles including serious and fatal injuries from crashes resulting from speed.

THE ADVERTISER'S RESPONSE

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

This commercial in no way refers to dangerous driving, hence why the footage displays a controlled environment taken on a race circuit with professional racing drivers being filmed under supervision. New Pioneer Motors did not film the actual footage of the commercial as it was provided by HSV brand portal. The HSV Brand portal provides dealers with marketing and advertising material for use in TV / Radio and Print mediums. This sequence was part of an organized activity which would normally be permitted in Australia as part of the motor racing activity.

Understanding that the complainant has raised the issue of breaking the speed limit and driving in a manner that would breach the law. This was filmed on a race circuit where there are no speed limit requirements. To the best of our knowledge the vehicles are travelling at 100km/h. HSV is known and manufactured as a performance vehicle, not a product that is sold at a Holden Dealership to promote racing as such.

New Pioneer Motors would be happy to add a super on the TVC stating – “This commercial was filmed in a professional environment” “With experienced Drivers”

This TVC has only been broadcasted in the Mackay Broadcasting area.

This Advertisement is not available on the internet.

This TVC does not contain any discrimination vilification exploitative or degrading nature, violence, sex, sexuality, nudity or coarse language.

This TVC has no reference to any H & S issues.

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 New Pioneer Motors in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered whether that advertisement was for motor vehicles. 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 New Pioneer Motors was a Motor vehicle retailer promoting motor vehicles 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 cars speeding which is dangerous and can lead to accidents causing injury or death.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

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 that the advertisement shows a range of vehicles over a series of years with the vehicles stationary and the year of the model being shown at the bottom of screen. The end of the advertisement shows two vehicles seemingly racing against each other. The final visual shows the text “New Pioneer Motors. Sales hotline 4969 4299. www.newpionermotors.com.au.”

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 that the two vehicles at the end of the advertisement are depicted as racing each other. The Board noted that the speed of the vehicles is not shown and is not evident to the viewer. The Board noted that the generally the idea of racing would suggest that one vehicle tries to go faster than the other but agreed that in this case as the speed was not shown, it was not possible to determine whether or not the cars were speeding. The Board noted that the vehicles are clearly depicted as being on a race track and not on public roads and that different speed limits would apply to a race track environment compared to a road situation. The Board determined that as there is no context of a speed limit, the advertisement did not depict speeding and therefore did not breach Clause 2(b) of the FCAI Code.

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict ‘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 noted that one vehicle is shown to conduct a ‘burnout’ or maintain loss of traction to spin the wheels of the vehicle. The Board noted that it had previously upheld advertisements that show a car doing a burnout (0480/14 and 0150/14) and considered that consistent with these decisions, the depiction of a vehicle doing a burnout is behaviour that if it was to take place on a road or road-related area, would breach any Commonwealth law or the law of any State or Territory and therefore did breach clause 2(c) of the FCAI Code.

The Board then considered clause 2 of the FCAI Code which requires that: 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 noted that the depiction of the two vehicles side by side on a racing was clearly identifiable as being on a race track. The Board considered that as the depiction was on race track surroundings, the vehicles shown needed to be clearly identifiable as race vehicles in order to satisfy the requirement of the clause outlined above. The Board considered however, that the vehicles shown are two of the models available for purchase as road ready vehicles for public roads and for general use.

The Board noted that there are no scenes of the drivers preparing for racing with helmets or race gear and that the depiction is not clearly identifiable racing livery and therefore did breach clause 3 of the FCAI Code.

Finding that the advertisement did breach the FCAI Code for the reasons mentioned above, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertiser confirmed the advertisement has been discontinued.