



**Ad Standards** Community Panel  
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Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0320-21</b>
<b>2. Advertiser :</b>	<b>BMW Australia</b>
<b>3. Product :</b>	<b>Vehicle</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>24-Nov-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features a voice-over saying, "Dear guardians of language. It's time to take a look at the definition of performance. To evolve much-loved but simplistic notions like speed, and power. True drivers now see the world as not just fast, or slow. New performance throws you back into your seat. Squeezes every molecule and watt. And gets a thrill from giving back. Performance, redefined."

Images of a dictionary and black-and white footage are interspersed with various BMWs being driven. The words, "fast", "efficient" and "kind" appear on buildings near the vehicles.

The writing "PERFORMANCE REDEFINED. BMW i. FULLY ELECTRIC. The Ultimate Driving Machine." appears on screen.

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*Primarily because the white BMW is seen changing lanes, straddling and crossing a broken line without using an indicator.*

**2. GENERAL PROVISIONS**



*Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(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.*

*[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]*

**AND**

*(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.*

*[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]*

*Additionally the FCAI GUIDANCE TO ADVERTISERS states:*

*Clause 2(a): Unsafe driving:*

*Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. 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 not use references to the speed or acceleration capabilities of a motor vehicle*

*BMW is clearly advertising that the BMW "goes beyond simplistic notions of speed" and that a key factor of performance is that the vehicles are "fast".*

## **THE ADVERTISER'S RESPONSE**

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



*The complaint refers to the shot found at 19 second mark for the TVC that depicts a white BMW i4 seen changing lanes without using an indicator. In addition, the complaint makes reference to BMW Australia promoting 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 is depicted.*

*A potential breach of the requirements of FCAI Motor Vehicle Advertising Code\2(a) and 2(c) Unsafe driving\unsafe driving that would breach road rule.*

*BMW Australia provides its substantive response below.*

*Section 2(a) of the FCAI Motor Vehicle Advertising Code: Depiction of a motor vehicle travelling across lanes*

*The notice sets out under the heading “issues raised to date” that the relevant complaint related to a potential breach of the items 2(a) and 2(c) of the FCAI Motor Vehicle Advertising Code (Unsafe driving).*

*Items 2(a) of the Code sets out that “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.”*

*Notwithstanding this, BMW Australia submits that the depicted behaviour should not offend the code.*

*Whilst the road depicted in the advertisement has a dividing line, the shot was filmed on closed roads and under safe driving conditions at safe speeds. Depicted in the advertisement has a clear line of sight for the road ahead and is not driving towards a blind corner or over a horizon.*

*Accordingly, BMW Australia submits that there is no depicted practice or other action which would breach a law of a Commonwealth or State or Territory.*

*Section 2(a) of the FCAI Motor Vehicle Advertising Code: Use of the word “fast”*

*With regard to the allegation that BMW Australia is promoting the speed or acceleration capabilities of a motor vehicle, BMW Australia allows that it has used the word “fast” to describe the redefinition of performance motoring in an age of electrification, but denies that it breaches the Code by doing so.*

*BMW Australia notes that the Code provides guidance to advertisers that they “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)”.*



*In response, BMW Australia submits that:*

- a) The word “fast” is synonymous with concepts of immediacy and responsiveness, and not necessarily only with the concept of speed and acceleration;*
- b) BMW Australia does not at any time in the relevant advertisement make any claim about the acceleration capabilities of the vehicle in quantifiable terms such as in the time taken to reach 100km/h from a stationary position;*
- c) any allegation of depiction of unsafe driving which would offend clause 2(a) of the Code is restricted to the position of the vehicle across two lanes of a closed road, and is completely unrelated to the speed at which the vehicle is depicted to be travelling; and*
- d) there is no depiction of any vehicle travelling at unsafe speed at any point in the advertisement.*

*Issues raised to date – section 2(c) of the FCAI Motor Vehicle Advertising Code*

*Item of 2(c) of the Code sets out that “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.”*

*BMW Australia repeats its submission above relating to the driving of the vehicle across lanes on a closed road.*

## **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 BMW i4 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.



The Panel noted that the complainant had specifically referred to the Clause 2(c) of the FCAI Code however considered that the complaint was more appropriately considered under Clause 2(a).

**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.**

### Changing lanes

The Panel noted the complainant's concern that the advertisement depicts a vehicle changing lanes without indicating.

The Panel noted that the vehicle in question is depicted on screen for approximately one second and is shown to be changing lanes, from the left to the right. The Panel noted that the road depicts a broken line, indicating that changing lanes is allowed.

The Panel noted that it was possible that the scene was shown in between the flashing of an indicator, as the scene is very brief.

The Panel noted the Australian Road Rules which state:

#### *48 Giving a right change of direction signal*

*(1) Before a driver changes direction to the right, the driver must give a right change of direction signal in accordance with rule 49 for long enough to comply with subrule (2) and, if subrule (3) applies to the driver, that subrule.*

*Offence provision.*

*Note: Changes direction to the right is defined in rule 45 (3).*

*(2) The driver must give the change of direction signal for long enough to give sufficient warning to other drivers and pedestrians.*

*(3) If the driver is about to change direction by moving from a stationary position at the side of the road or in a median strip parking area, the driver must give the change of direction signal for at least 5 seconds before the driver changes direction.*

#### *49 How to give a right change of direction signal*

*(1) The driver of a vehicle must give a right change of direction signal by operating the vehicle's right direction indicator lights."*

The Panel noted that there is no rule about a driver indicating while performing an action such as changing lanes, only that they must indicate for a reasonable time before beginning the action.



The Panel considered that in the context of a one second scene in which it is unclear whether the vehicle is currently indicating or indicated for sufficient time prior to changing lanes, the advertisement did not depict unsafe driving.

### Speed

The Panel noted the complainant's concern regarding references to speed and their referral to the Guidance Note.

The Panel noted that the Guidance Note for this Section of the Code includes:

*"Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. 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 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 the advertiser's response and noted the voiceover of the advertisement.

The Panel considered that while there are broad references to speed and power, these references do not encourage or condone unsafe or reckless driving.

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

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

### **Conclusion**

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