



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0330/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Peugeot Automobiles Australia</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Pay TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/08/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Motor vehicles	2a Unsafe driving
Motor vehicles	2c Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

We see a business man on the phone at work and staring out his office window. He sees a Peugeot 4008 parked in the street and begins to fantasise that's he's driving the car on an open road. Cut back to reality, and our businessman is back in his office and back to the responsibilities of his job.

We then see a young couple in a cafe having coffee. The man becomes distracted by a Peugeot 4008 parked outside in the street, and begins to fantasise that he and his date are instead on a weekend getaway, driving along the coast and acting like teenagers in love. The man's fantasy comes to an abrupt end and we see the couple seated back at the cafe.

The line 'New Peugeot 4008. Escape in Style' comes up on screen, and we see the Peugeot 4008 drive off into the city.

### THE COMPLAINT

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

*The advertisement breaches the Code twice:*

#### **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.*

*Complaint 1:*

*In the central section of the ad the female passenger is seen waving her arm out of the window of the vehicle. She is then seen again with her arm out the window holding the roof-rack.*

*Australian Road Rules - February 2012 version - Rules for persons travelling in or on vehicles Part 16 (Page 244)*

*268 How persons must travel in or on a motor vehicle*

*(3) A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle unless the person is the driver of the vehicle and is giving a hand signal:*

*The advertisement clearly breaches 2 (a) and 2 (c) of the FCAI/ASB Code*

*Complaint 2:*

*In the last section of the ad the vehicle is seen to make a sudden left hand turn at traffic light. Yet the Pedestrian Lights through which the vehicle travels are green. And the Traffic Lights on the road into which the vehicle turns are green. It follows that the vehicle is being driven at speed through a red traffic light.*

*Even if it were to be argued that there was a 'left turn on red after stopping sign' at the traffic lights at this intersection*

*Australian Road Rules – February 2012 version - Page 38 - Part 6 Traffic lights traffic arrows and twin red lights Division 1 Obeying traffic lights and traffic arrows*

*56 Stopping for a red traffic light or arrow*

*(1A) However if the traffic lights are at an intersection with a left turn on red after stopping sign and the driver is turning left at the intersection the driver may turn left after stopping. Note Rule 62 deals with the give way rules applying to a driver turning left at an intersection after stopping at a left turn on red after stopping sign*

*It is clear the driver drove at speed when completing the left hand turn and did not appear to even slow down. He or she certainly did not stop.*

*Again the advertisement clearly breaches 2 (a) and 2 (c) of the FCAI/ASB Code.*

*As such we ask that the advertisement be banned from being broadcast without delay.*

*Comment: While it is impossible to prove the driver was speeding in the scene just after the man in the white shirts screams out 'yeah' (because there are no posted Speed Limit signs) the vehicle is seen being driven dangerously into a sharp corner where there are double white lines. The vehicle can be seen sloping sideways at about 20 degrees. At this speed it could easily slide off the road into the path of oncoming vehicles or roll over. The intention is clearly and unambiguously to portray speed and risky and/or dangerous driving. But based*

*on your past 'determinations' I'm sure you will find that this is fantasy and invoke your universal justification: the 'fantasy-clause'.*

## **THE ADVERTISER'S RESPONSE**

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

*We do not believe the TVC depicts unlawful, unsafe driving. Legitimate use of fantasy, humour and self-evident exaggeration has been made in creative ways for the advertising of the Peugeot 4008.*

*Please note that the TVC states 'European Model shown' (i.e. left hand drive), which should negate the complaint that the advertisement clearly breaches 2 (a) and 2 (c) of the FCAI/ASB Code.*

*We believe that the TVC complies with the Voluntary Code of Practice for Motor Vehicle Advertising instituted by the Federal Chamber of Automotive Industries.*

*Before airing the TVC, we also consulted our lawyers who advised us in writing that they did not believe the TVC depicted reckless driving.*

## **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) and the Advertiser Code of Ethics (the 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 available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Peugeot 4800 in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, determined that the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Board determined that the Peugeot 4008 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 noted the complainants' concerns that the advertisement depicts driving actions which are both illegal and dangerous, as well as traffic practices that could be considered risky or dangerous and that in the final section of the advertisement the vehicle is seen to make an apparent illegal turn at traffic lights.

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

The Board firstly 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 examples given in the FCAI Code for unsafe driving include "Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle."

The Board noted that the advertisement shows a Peugeot 4008 being driven along seaside, mountain roads by a man on his own and also by a young man who is with a female passenger.

The Board noted that the vehicle is seemingly driven quickly along the road and the actions of the male drivers are of joy and invigoration at the thrill of driving this vehicle. The Board noted that there is no verification of the speed the car is moving and that the footage is sped up to give the impression of speed.

The Board viewed these sections of the advertisement and agreed that the vehicle is not being driven in a manner that could be considered uncontrolled or in a way that would be considered menacing or reckless. The Board determined that the car executes a safe and informed turn at the lights that under normal television viewing speeds could not reasonably be considered as an illegal action or breach of any road rules.

The Board determined that the advertisement did not depict an unsafe driving practice that would breach the law and did not breach clause 2(a) of the FCAI Code.

The Board then considered clause 2(c) of the FCAI Code. Clause 2(c) requires that: Advertisements for motor vehicles do not portray ...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 the advertisement shows a scene where the Peugeot is being driven along a seaside road with a female passenger. The Board noted that at one point there is footage of the passenger in the front of the vehicle with her arms waving above her head and her right arm is temporarily outside of the vehicle. The male driver is laughing loudly and seemingly unaware of the actions of the passenger.

The Board noted that clause 268(3) of the Australian Road Rules refers to how persons must travel in or on a motor vehicle. This clause states that "...A person must not travel in or on a motor vehicle with any

part of the person's body outside a window or door of the vehicle...."

The Board noted that the road rules do not distinguish between whether or not the person is the driver or a passenger. The Board noted that the advertisement depicts a person from the vehicle with her arm extended outside of the vehicle and considered that the advertisement did breach the clause.

On the above basis, the Board determined that the advertisement does depict an action which would breach a Commonwealth law and does breach clause 2(c) of the FCAI Code.

The Board then considered whether the advertisement was in breach of Section 2.6 of the Code of Ethics. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to prevailing community standards on health and safety".

The Board noted that community concern around vehicle safety and unsafe behavior in vehicles is paramount in the minds of the broader community and that the behavior of having an arm outside of the vehicle as in this advertisement is contrary to prevailing community standards on health and safety and therefore the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach the FCAI Code, and the Code of Ethics the Board upheld the complaint.

## **ADVERTISER RESPONSE TO DETERMINATION**

I refer to the above case and the Advertising Standards Board's findings that the Peugeot 4008 advertisement breached clause 2c of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice and Section 2.6 of the Advertiser Code of Ethics.

Please be advised we are currently revising the Peugeot 4008 advertisement so that it complies with the FCAI Code and the Code of Ethics. In particular, we are removing the "footage of the passenger in the front of the vehicle with her arms waving above her head and her right arm is temporarily outside of the vehicle".

The revised advertisement will be finalised on Friday 17 August 2012, and replacement material will be sent to all stations same day. Pending CAD approval, the replacement TVC should air from Sunday 19 August 2012.