



Case Report

1	Case Number	0333/14
2	Advertiser	Xoticar
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/09/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

Scenes of exotic highly powered vehicles being driven around the streets and in one scene an Aston Martin is being driven on grass. This car appears to be drifting.

THE COMPLAINT

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

There is one part of the advert where an Aston Martin is being driven on grass. This car appears to be drifting. This follows an example of hoon behaviour in a Park in Woodvale, Perth where grass was ripped up on an oval. This advert is clearly encouraging others to drive similarly. Removal of this part of the advert would address this issue.

THE ADVERTISER'S RESPONSE

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

The advertiser advised that the advertisement was no longer being aired and would not be used again.

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 sports cars 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 sports cars were 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 concern that the advertisement shows an Aston Martin being driven on the grass in a manner which suggests it is drifting.

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

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 the examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Board noted the advertisement is promoting pre-owned top of the range cars such as Ferraris, Maseratis and Aston Martins and that we see some of these vehicles being driven on various terrains including grass.

The Board noted the scenes where the vehicles are being driven on roads. The Board noted that we do not see what speeds the vehicles are being driven at and considered that the vehicles do not appear to be travelling at excessive speed for the environment and conditions portrayed. The Board noted that the engine noise can be heard but considered that this was consistent with a vehicle accelerating after changing gear and in the Board's view the vehicles are being driven in a safe and controlled manner on the roads.

The Board noted the scene where an Aston Martin is driven on grass. A minority of the Board considered that this depiction was suggestive of the apparent and deliberate loss of

control of a moving motor vehicle as the Aston Martin does appear to lose traction on the grass.

The majority of the Board however noted that the scene on the grass is very fleeting and considered that the driver does not appear to purposely lose control of the vehicle. The Board noted that it is not clear where this grass is or whether the driver would ordinarily be permitted to drive on this land and considered that the issue is whether or not the advertisement does depict unsafe driving or would encourage other drivers to drive in an unsafe manner. The majority of the Board considered that overall the advertisement is promoting prestige motor vehicles in a manner which does not depict, encourage or condone driving in an unsafe manner.

The Board considered that the advertisement did not depict unsafe driving and did not breach clause 2 (a) of the Code.

Finding that the advertisement did not breach the FCAI Code on any grounds, the Board dismissed the complaint.