



Case Report

1	Case Number	0375/17
2	Advertiser	BMW Group Australia
3	Product	Vehicle
4	Type of Advertisement / media	Internet
5	Date of Determination	13/09/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a boy being picked up from school by his dad in the featured vehicle. The Dad moves away from the boy each time he tries to get into the car. Eventually the boy gets in and the words "too immature" appear on screen. The vehicle is then seen being driven in a race environment.

THE COMPLAINT

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

There are instances of unsafe driving in this series of ads which I believe violate the FCAI code.

In addition to the burnouts and drifting footage, one particular advertisement (titled "BMW M3 Sedan. Too Immature.") features unsafe driving of another kind.

In the advertisement, a person driving a BMW M3 sedan is picking his child up from school. As his child attempts to grab the door handle, the driver jerks his car forward and backward to prevent his son from grabbing the door handle, visibly causing the tyres to lose traction and spin at one point. This seems highly inappropriate. The scene is set directly outside of a school, and the driver deliberately manoeuvres his car forwards and backwards for the sake of a bit of 'immature' fun.

I believe the driving behaviour depicted in the scenario is highly unsafe, as the child depicted in the advertisement is put at risk due to their close proximity to the vehicle when the driver jerks the car forward and backwards unnecessarily.

In the real world, if this driving behaviour were repeated in a similar area within close proximity of a school, other children who may be crossing the road would also be put at risk of being seriously injured by the unnecessary and abrupt reversing of the car. With the driver's concentration appearing to be fixated on his own child, it does not seem beyond the realm of possibility that he would not notice other children walking near his car.

THE ADVERTISER'S RESPONSE

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

Thank you for your correspondence regarding complaint received for the BMW M 'Too Much' campaign that appears on YouTube and the following issues raised under the Code of practice for motor vehicle advertising: FCAI Motor Vehicles 2(a) Unsafe driving.

In preparing our response below we have also been conscious of Section 2 of the AANA Advertiser Code of Ethics, in particular section 2.6 'Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety', but not limited to the following sections:

- 2.1 Discrimination or vilification*
- 2.2 Exploitative and degrading*
- 2.3 Violence*
- 2.4 Sex, sexuality and nudity*
- 2.5 Language*
- 2.6 Health and Safety*

The specific complaint made is 'There are instances of unsafe driving in this series of ads which I believe violate the FCAI code. In addition to the burnouts and drifting footage, one particular advertisement (titled "BMW M3 Sedan. Too Immature.") features unsafe driving of another kind. In the advertisement, a person driving a BMW M3 sedan is picking his child up from school. As his child attempts to grab the door handle, the driver jerks his car forward and backward to prevent his son from grabbing the door handle, visibly causing the tyres to lose traction and spin at one point. This seems highly inappropriate. The scene is set directly outside of a school, and the driver deliberately manoeuvres his car forwards and backwards for the sake of a bit of 'immature' fun. I believe the driving behaviour depicted in the scenario is highly unsafe, as the child depicted in the advertisement is put at risk due to their close proximity to the vehicle when the driver jerks the car forward and backwards unnecessarily. In the real world, if this driving behaviour were repeated in a similar area within close proximity of a school, other children who may be crossing the road would also be put at risk of being seriously injured by the unnecessary and abrupt reversing of the car. With the driver's concentration appearing to be fixated on his own child, it does not seem beyond the realm of possibility that he would not notice other children walking near his car.'

This TVC utilises exaggeration and humour to dramatise the situation between the father and

the son. Our view is that the movement of the vehicle forward and backward is done at a very low speed as per the footage, rather than an abrupt or sudden movement done at high speed. The reversing of the vehicle does not actually move the car away from the son but aligns the vehicle for him to enter, as shown in the footage at the 10sec mark.

The TVC is a fictional situation where the car is actually located in the forecourt of the school rather than an actual road, which further adds to the fictional and exaggerated scenario, thus is not meant to be a depiction of the real world.

As part of the TVC production and controlled conditions, there are no pedestrians in the path of the vehicle or anywhere in foreground as it moves forwards twice and once back backwards.

As with all TVCs utilising our vehicles, they are all filmed under controlled and stage managed conditions by professionals, so as to make sure the safety of cast and crew are of the highest priority.

In summary, our view is that the overall scenario, is a highly exaggerated comedic dramatization, which is not unsafe for the occupants or pedestrians, as the vehicle was operated at very low speeds and under full control at all times.

The content was filmed at a race track and demonstrates a range of BMW M vehicles being driven by professional drivers. The purpose of the videos is to demonstrate the handling capability of a range of BMW M vehicles by showing how it drives on a racetrack. The filming was done under controlled conditions, using professional drivers, on a closed circuit with no spectators.

As this piece of content was only ever shown on Social media and YouTube pre-roll, there was no CAD classification obtained, as this isn't a requirement for online content.

At BMW we take vehicle, occupancy and pedestrian safety as a key area of focus with our vehicles having some of the highest safety standards in the world with leading technology to assist driver control and hazard aversion.

In the context of the footage and contextual environment, we feel that the video of the BMW M Range vehicles is appropriate for the racetrack environment it is in and showcases the dynamic ability of the vehicle.

Further to our initial correspondence, we have included some further commentary about the video in question. In relation to section 2(a), we feel the depiction of the vehicle in this creative execution does not showcase menacing or reckless driving because of the following reasons:

- The vehicle is primarily stationary and when moving it is at very low speeds*
- The vehicle is not being moved in an extreme manner as evidenced by the low speed of the vehicle and short distanced travelled*
- The vehicle is not being placed or set on a collision course with another vehicle*

- *The vehicle is in full control of the driver at all times*
- *The driver is restrained and wearing a seatbelt*

In relation to section 2(a), the depiction of the vehicles in the closing credits of the video showcase the enhanced performance and handling capabilities of our BMW M vehicles, which we feel is intrinsic to our product and delivery of the Ultimate Driving Machine message. The various pieces of footage shown is extremely short and we feel does not depict unsafe driving as it is done within a proving ground environment with professional driver. As it relates to section 2(a), we have made use of scenes, which are proving ground based pieces footage shot under closed circuit conditions and feel meet the scope allowed for within Section 3 of the code.

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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 Voluntary Code of Practice for Motor Vehicle Advertising (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 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 BMW M3 Sedan 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 complainant's concerns that the advertisement depicts vehicles engaging in spirited driving, drifting, and performing burnouts and that the depiction of a man moving his car back and forward as his son tries to get in is unsafe.

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 that this YouTube advertisement depicts a dad collecting his son from school and driving the car back and forwards small distances to prevent the child from opening the door.

The Board noted that school drop off and pick up zones can be hazardous places. A minority of the Board acknowledged the humorous intent of the advertisement but considered that the dad driving the car is looking at his son, not the road, when he drives his car back and forwards which in the Board's view is dangerous and amounts to unsafe driving.

Following considerable discussion however, the majority of the Board noted that although other children can be seen in the background there are no children, or other vehicles, in the immediate vicinity of the BMW in the advertisement and considered that the vehicle is not moving very far, it's speed is very low, and the overall focus is on the man trying to annoy his son. The majority of the Board considered that although the man's behaviour should not be encouraged in the Board's view the advertisement is light-hearted and is unlikely to encourage people to drive in an unsafe manner around school drop off and pick up zones and is not of itself unsafe driving or driving that would breach the law.

The Board noted the complainant's concerns that the driving depicted is spirited and includes drifting and burnouts. The Board noted Section 3 of the FCAI Code which provides:

"...advertisers may make use of scenes of motor sport...subject to the following:

(a) Such scenes should be clearly identifiable as part of an organised sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia."

The Board also noted the Guidance Note to Section 3 of the FCAI Code which provides:

"FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking any forms of competitive driving are in any way associated with normal on-road use of motor vehicles."

The Board noted it had previously dismissed a complaint about the same issue in a different version of the advertisement in case 0374/17 where:

"The Board noted that the driving in the advertisement takes place on a racetrack and considered that although the vehicles appear to be traveling at speed, and scenes include drifting and burnouts, in the Board's view these driving practices are clearly in the context of

vehicles being driven in a controlled environment in order to demonstrate the handling capabilities of the BMW M series. The Board acknowledged that the driving depicted in the advertisement would not be appropriate on a public highway but considered that in the context of a vehicle which generally costs over \$100K and whose target audience would include day racers who buy the vehicle in order to drive on race tracks such as that depicted in the advertisement, the actual content of the advertisement does not depict unsafe driving.”

Consistent with its previous determination the Board considered that the driving depicted in the current advertisement is clearly in the context of a vehicle being driven in a controlled environment on a racetrack. The Board considered that there is no suggestion in the advertisement that the driving depicted, including drifting and burnouts, would be appropriate with normal on-road driving and in the Board’s view the advertisement does not portray any driving which is unsafe, or that would breach any Commonwealth law or the law of any State or Territory.

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

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