



Case Report

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| 1 | Case Number | 0377/17 |
| 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 man sitting in a car at a pedestrian crossing. He watches some women cross in front of him. He then turns to his side window which is open and there is a man sitting on a bicycle whose crutch height is inline with the driver. The words "too low" appear on screen. The next scenes show the vehicle being driven on a race track.

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.

The advertisement titled "BMW M Range. Too Much." is made up almost entirely of footage of BMW M-Series cars engaging in spirited driving, drifting and performing burnouts. The other three advertisements mentioned end with an abridged (approx 10 second) version of the "BMW M Range. Too Much." advertisement.

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 a complaint 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. The advertisement titled "BMW M Range. Too Much." is made up almost entirely of footage of BMW M-Series cars engaging in spirited driving, drifting and performing burnouts. The other three advertisements mentioned end with an abridged (approx 10 second) version of the "BMW M Range. Too Much." advertisement. 0377/17'

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 and occupancy 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.

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.

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 M4 Coupe 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.

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 waiting at a zebra crossing and smiling as two women walk in front of his car to cross the road before turning to his side to come face to face with a male cyclist's lycra-clad crotch. The Board noted the closing scenes depict a montage of vehicles being driven on a racetrack.

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.

The Board then considered the AANA Code of Ethics.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Board noted the depiction of a cyclist’s crotch in the advertisement. The Board noted that this scene is fleeting and considered the level of detail is not explicit. The Board noted that this scene is a humorous reference to a feature of the advertised car – “too low” – and so you are face to face with this type of thing and considered that this scene is not inappropriate in the context of a vehicle advertisement aired on YouTube.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and determined that the advertisement did not breach Section 2.4 of the Code.

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

