



Case Report

1	Case Number	0386/11
2	Advertiser	Ford Motor Co of Aust Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	12/10/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Driving practice that would breach the law
Motor vehicles Speeding

DESCRIPTION OF THE ADVERTISEMENT

The FPV TVC depicts 4-time Bathurst Winner and all Australian touring car champion, Mr Allan Moffat driving the new V8 Supercharged 335kW GT-P {red car} on the Ford Proving Ground test track. Another FPV model, the 315kW GS {blue car} drives alongside. The GS is driven by Mr Paul Batten, an engineer from Prodrive Automotive Australia (51% owner of FPV). The voiceover on the FPV TVC highlights the new feature of the vehicles, being the supercharged engines, in addition to their relevant power outputs. The exhaust note from the new bi-model exhaust feature on these vehicles is audible throughout the TVC.

THE COMPLAINT

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

I object to the ad because I believe it shows the car being operated in a fashion that would not be permitted by the general public. Specifically he aggressively revs the engine, appears to be speeding, changes lanes without indicating (in front of a blue car), accelerates briskly from a standing start (as if he is racing or drag racing) and generally operates the vehicle in a manner I think is hooning. I think the company is setting a poor example for driver behaviour and the company should not be allowed to get away with it.

THE ADVERTISER'S RESPONSE

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

At the outset, I would like to emphasise that Ford Performance Vehicles takes seriously its commitment to the AANA Code of Ethics and the FCAI Voluntary Code of Practice for Motor Vehicles Advertising {FCAI Code} and we are very aware of the potential impact that our advertising may have on members of the public.

All our advertising, including the FPV TVC, is carefully reviewed in that context. In this case, we do not believe that the scenario depicted in the FPV TVC is in breach of the AANA Code of Ethics or the FCAI Code.

The complaint referred to in your letter dated 23rd September 2011 raises an issue under section 2 of the AANA Code of Ethics. Given that the FPV TVC is an advertisement for a motor vehicle, the FCAI Code applies. We note that the complaint alleges that the FPV TVC depicts a driving practice which would breach the law and although not stated in such terms, the complaint infers that the FPV TVC depicts a driving practice which would be in breach of provisions 2(b) and 2(c) of the FCAI Code.

A breach of provision 2(b) will occur if the advertisement in question portrays ""People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.""

A breach of provision 2(c) will occur if the advertisement in question portrays "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 FPV TVC depicts 4-time Bathurst Winner and all Australian touring car champion, Mr Allan Moffat driving the new V8 Supercharged 335kW GT-P {red car} on the Ford Proving Ground test track. The GT-P Mr Moffat is driving is the only vehicle in the TVC until approximately 21 seconds into the TVC, when another FPV model, the 315kW GS {blue car} drives alongside. The GS is driven by Mr Paul Batten, an engineer from Prodrive Automotive Australia (51% owner of FPV). The voiceover on the FPV TVC highlights the new feature of the vehicles, being the supercharged engines, in addition to their relevant power outputs. The exhaust note from the new bi-model exhaust feature on these vehicles is audible throughout the TVC.

We strongly disagree with the allegation that the FPV TVC depicts speeding or any driving practices which would breach the law. The FPV TVC does not portray a vehicle engaging in any driving practices or other actions which would breach a law relating to road safety or traffic regulation and we therefore contend that the FPV TVC complies with all relevant provisions of the FCAI code and is consistent with the objectives and guidelines of the FCAI Code as expressed in the Explanatory Notes.

We consider that it is important to highlight the following points:

- 1. The FPV TVC was carefully developed with the provisions of the FCAI Code in mind. Particular attention was devoted to ensuring that we promoted the power capabilities of the vehicle in a way that was in keeping with the FCAI Code and which did not focus on the acceleration or speed capabilities.*
- 2. The complaint alleges that in the FPV TVC the driver "aggressively revs the engine". The FPV TVC depicts Mr Moffat applying slight pressure to the accelerator which opens up the vehicle's throttle and allows an audible engine note. The new bi-model exhaust feature of*

the new V8 supercharged GT-P is an important feature of the new V8 supercharged range of engines and, in order to demonstrate this feature, slight pressure was applied to achieve the engine note. We entirely reject the assertion that Mr Moffat is shown aggressively revving the engine.

3. *The complaint alleges that in the FPV TVC the driver “appears to be speeding.” The filming of the FPV TVC was conducted at the Ford Proving Ground at You Yangs which was a closed test circuit at the time of filming and was supervised by the accredited Ford Proving Ground engineers and traffic management staff. A disclaimer stating that the TVC was “Filmed on FPV test track under controlled conditions” was shown during all driving footage to clearly indicate that the driving was taking place on a closed circuit and it was considered that the closed test circuit was comparable to a public freeway and as such, the relevant speed limit to be applied was assessed to be 100kph. Neither vehicle in the FPV TVC exceeded 100kph at any time during filming and accordingly, the FPV TVC does not show either vehicle travelling at a speed in excess of 100kph. As stated above, the focus of the FPV TVC was the power capabilities of the vehicles, not the speed or acceleration capabilities.*

4. *The complaint alleges that in the FPV TVC the driver “changes lanes without indicating (in front of the blue car)”. The red vehicle depicted is the only vehicle visible in the shot and for most of the duration of the FPV TVC. At approximately 21 seconds into the FPV TVC, the blue car enters the shot and drives alongside the red vehicle. This occurred on the banked section of the test track, which is a wide section of the track. It is correct that the red vehicle changes lanes to the right, however, from the filming angle, the red vehicle's right-hand side indicator is not visible and a viewer therefore is not aware of whether the red vehicle has used its indicator prior to changing lanes. Further, the red vehicle does not change lanes into the blue vehicle's lane (as suggested by the complaint) but rather, changes lanes into the outside lane so that the blue vehicle may drive into a position where the vehicles are virtually side by side, separated by the lane markings.*

5. *The complaint alleges that the driver “accelerates briskly from a standing start (as if he is racing or drag racing) and generally operates the vehicle in a manner I think is hooning.” We entirely reject the assertion that the FPV TVC shows “hoon-like” driving. The driver commences from a stationary position highlighting the car's power and engine note, which is an inherent feature of vehicles with a V8 engine, particularly those fitted with a bi-modal exhaust. As this is the first time in FPV's history that a V8 supercharged engine has been produced and featured in our vehicles, the engine note needed to be heard as it is not a feature that can be seen. The intention was to allow the viewer to enjoy the noise of a true Australian built V8 supercharged vehicle and allow the viewer to have an emotional connection with our motor vehicle. At no time in the FPV TVC does the driver drive in a manner reasonably considered to be hooning for example: there are no tyre screeches upon acceleration, the speed travelled never exceeded 100kph and at times was far slower to allow proper filming of the vehicles, there were no tyre tread marks on the test track {often evident if a vehicle is driven aggressively} and at no time did either driver operate the respective vehicles in an unsafe, reckless or menacing manner or a manner that appeared to be unsafe, reckless or menacing. Mr Allan Moffat is a well known Australian Motor Racing hero, who, with his breadth of experience and at 71 years of age, understands all too well the importance of safety on the road.*

We have attached a digital copy of the FPV TVC. We have also attached the Commercial Advice Pty Ltd {CAD} reference numbers. At no point did CAD advise of any concerns. The TVC script {also attached} and final edit were also approved by legal counsel.

We strongly believe that the FPV TVC does not breach the FCAI Code or the AANA Code of Ethics.

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 a Ford Performance Vehicle 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 Ford Performance Vehicle 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 a car changing lanes without indicating, driving in a manner which is would be considered 'hooning' and speeding.

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 that the advertisement shows a Ford Performance Vehicle being driven on a test track and that there is a provision in the FCAI Code for the use of motor sport in advertising which states:

“..advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle testing or proving in advertising, subject to the following:

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

Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.”

The Board noted that the advertisement contains a disclaimer at the bottom of the screen which states, “Filmed on closed FPV test track under controlled conditions” and that the footage used in the advertisement clearly shows a test track.

The Board noted the complainant’s concern that the advertisement depicts a vehicle being driven in a ‘hooning’ manner and considered that the vehicle is shown driving in a controlled manner consistent with test track driving throughout the advertisement. The Board noted that the vehicle does change lanes in order to drive alongside another vehicle and that the lane markings consist of a broken line and that the use of an indicator is not necessary to perform this procedure on a test track. The Board considered that the advertisement does not portray or encourage reckless or menacing driving or driving practices which would breach the law.

On the above basis, the Board determined that the advertisement does not breach clause 2(a) of the FCAI Code.

The Board then considered clause 2(b) of the Code which requires that advertisements not depict ‘people driving at speeds in excess of speed limits in the relevant jurisdiction in Australian in which the advertisement is published or broadcast.’

The Board noted the Ford Performance Vehicle can be heard accelerating before driving and considered that no actual reference to speeds are made and it is unclear what speed the car is driving at. The Board noted that the vehicle is only shown driving on the test track and considered that it is consistent with test conditions to drive the vehicle at varying speeds. The Board noted that the vehicle is driven in a controlled manner throughout the advertisement and that there is no depiction or encouragement of speeding on normal public roads.

On the above basis, the Board determined that the advertisement does not breach clause 2(b) of the FCAI Code.

The Board noted that there is no depiction in the advertisement of any driving practices or other actions which would breach any law and that the advertisement did not breach the remaining clauses of the FCAI Code.

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

