



Case Report

1	Case Number	0413/14
2	Advertiser	Mazda Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/10/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

The Mazda CX-9 Television commercial showcases the safety features of blind spot monitoring as a key selling feature of the product.

A ‘soccer mum’ is picking up kids at the end of a school game. Four are already seated in the car as the last two climb in along with the mother. We get a good look at the exterior as this is happening, then cut inside as she starts the car. The rear view camera bursts into life.

V.O. When you’re carrying kids, you need eyes in the back of your head.

We dissolve to see the CX-9 on a dual carriageway as the driver indicates a lane change. We see a close up shot of the BSM mirror

V.O. And how about - eyes in the side of your head too.

With Blind Spot Monitoring, Lane Departure Warning and Forward Obstruction Warning... you’re not going to miss a thing.

Without taking her eyes off the road the driver says sternly “I saw that James” to one of the children in the rear seats.

THE COMPLAINT

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

The driver only uses the wing mirror and blind spot monitor to change lanes, and does not check over her shoulder. Rather, she relies on technology, which in the manual it explicitly says not to, and goes against principals of safe driving.

THE ADVERTISER'S RESPONSE

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

5.1 Statement of complaint:

The driver only uses the wing mirror and blind spot monitoring to change lanes, and does not check over her shoulder. Rather, she relies on technology, which in the manual it explicitly says not to, and goes against the principles of safe driving.

5.2 Response to complaint by Advertiser:

The basis of the claim by the plaintiff is grounded in an assumption that the talent (driver) didn't conduct an over the shoulder head check. There is nothing in the edit to suggest that the driver did not prior to moving within the lane. Mazda Australia is of the view that the initiation of the safety checks, noted below in the sequence of activity within the edit, suggests to the audience that the principles of safe driving are being adhered to within the commercial.

The sequence of shots demonstrates that the driver initiated the process of safe driving principles, including mirror checks, in line with the General Provisions of the FCAI to avoid demonstrating any unsafe or potentially infringing acts against local and state legislation relating to safe driving practices. The edit transitions from in car footage, to the features of the product with the light sensors being activated in the mirror (alerting that a vehicle may be present in the driver's blind spot of the car), to the additional mirror check of the talent using the rear view mirror to then see the car from an outside perspective. Given the transition of the shots and the sequence of the activity that appears in the commercial there is nothing to suggest the driver did not conduct an additional check over her shoulder prior to making a commitment to change lanes. It is simply the fact that the outside shot did not show what was happening inside the vehicle.

Taking into account the specifics of the complaint the plaintiff rightly notes that the owner's manual states a warning with regards to the use and assistance of Blind Spot Monitoring in the vehicle.

The owner's manual states:

Do not rely completely on the Blind Spot Monitoring (BSM) system. Always look over your shoulder before changing lanes or reversing the vehicle from a parking garage: The Blind Spot Monitoring (BSM) system can assist the driver in confirming the safety of the surroundings but is not a complete substitute. The driver is responsible for assuring lane changes and other manoeuvres. Always pay attention to the direction in which the vehicle is travelling and the vehicle's surrounds.

In line with the above statement from the CX-9 Owner's manual Mazda Australia believe that the principles of safe driving have been adhered to through the actions shown in the edit with

the initiation of the safety check being actioned in the sequence of shots. The driver appears to be in full control of the vehicle at all times of the edit and is aware of her surroundings through both safety checks and the technology features of the car.

Mazda Australia wishes to note that the commercial has been on air nationally since November 2012 with no other challenges made against the content of the advert.

Finally, the production of the advertisement involved the use of a low loader vehicle with the camera equipment rigged to shoot the interior shots of the car. All of this filming, including the exterior tracking shots, were filmed with front and rear police escort on Canterbury Road in Albert Park, Victoria with all relevant permits and permissions in place with the Council.

Mazda Australia is open to discussing the above response if there are any additional queries or if additional information and reference material is required to assist in the review process.

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.

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 material draws the attention of the public or a segment of it to a product being a Mazda CX-9 in a manner calculated to promote that product. The Board determined that the Mazda CX-9 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 Mazda motor vehicle being driven in everyday situation including performing a reverse park to fit between two other vehicles.

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

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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 the complainant's concern that the driver using only the wing mirror and blind spot mirror to change lanes and does not look over her shoulder which is unsafe.

The Board noted that the advertisement featured a mother driving with several children in the car. In one scene another vehicle passes the main car and the blind spot alert is triggered to notify the driver that there is another car in the adjacent lane.

The Board noted that it is unclear as to whether the driver intended to change lanes however she did check the side mirrors at the sound of the alert. The Board considered that there is no suggestion that the driver would rely only on the mirrors to conduct a change of lanes. The Board considered that most members of the community would understand that the addition of the extra features within the vehicle are there as driver aids and are not the sole mechanism to be used when carrying out regular driving practices.

The Board considered that the depiction of safety features of the motor vehicle do not represent the promotion of unsafe driving practices.

The Board considered that throughout the advertisement, the vehicle is being driven slowly and in a controlled manner and considered that the advertisement did not depict unsafe driving and did not suggest that drivers should not use other mechanisms such as assessing their surroundings by looking over their shoulder in addition to using the vehicles mirrors etc. The Board determined that the advertisement did not breach Clause 2 (c) of the FCAI Code. Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaints.