



Case Report

1	Case Number	0449/17
2	Advertiser	Lexus Australia
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/10/2017
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

The Lexus LC500 is featured in a television commercial which is reviewed by best-selling author James Patterson. Vision of a driver experiencing the LC is complemented by words from the authors review. The Advertisement currently airing is a modified version of a previous advertisement.

THE COMPLAINT

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

Hi I have complained about this ad before as have others as we had our complaint upheld that it breached the rules but Lexus could appeal that which they have done and won because I just saw the ad again. Please tell me what is the point of all this? If the rules are broken they are broken if I don't stop at a stop sign and get fined by the police I can't appeal that a rule is a rule no grey area a stop sign means I must bring the car to a stop an ad brakes a rule it must stop how did it get back on the air? Thanks

THE ADVERTISER'S RESPONSE

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

Your letter refers to an advertisement by Lexus Australia (Lexus) featuring the LC 500 (the Advertisement). Lexus note that the Advertisement is a modified version of a previous advertisement.

In your letters you identify that the complaints raised issues in relation to the following:

- *Section 2(a) of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) which relates to unsafe driving practices.*

Lexus take all complaints seriously and we respond to your letter as set out below.

RESPONSE TO QUESTIONS REGARDING CLAUSE 2 OF THE FCAI CODE

1. Can Lexus provide assurances regarding road safety regulations?

The Advertisement was filmed in South Africa under controlled conditions while there were no other vehicles on the road. Further, Lexus has utilised a camera technique which moves against the direction of the vehicle. Combined with the music and the narration of James Patterson's review the speed of the vehicle is emphasised.

2. Legal speed limits

The Advertisement was filmed in South Africa by one of Lexus Australia's affiliates. Lexus Australia cannot comment on the filming conditions.

However, an example where the speed of the vehicle is depicted is at the 11" second mark in the 30 second version of the Advertisement where the speedometer depicts the vehicle travelling at 87km/h on a highway.

3. Were permits required?

The Advertisement was filmed in South Africa by one of Lexus Australia's affiliates. Lexus Australia cannot comment on the filming conditions.

4. Where has advertisement been published/broadcast?

Lexus Australia has purchased air time on television throughout Australia.

5. Has the advertisement been made available on the internet?

The Advertisement has been made available on the internet via YouTube and other social media channels.

RESPONSE TO THE COMPLAINT

The Complaint

The viewer noted that this was not their first complaint in relation to the Advertisement. It was also noted that following a previous determination of the ASB, the viewer "saw the ad again".

Our response to the Complaint

Lexus would like to note that original advertisement was modified following the previous

determination of the ASB. The following modifications were made to the previous 30 second Advertisement:

i. 0:11 seconds: This scene will be replaced

ii. 0:21 seconds & 0:25 seconds: Both these scenes will be slowed down.

Lexus feel confident that modifications made addressed the concerns raised by the ASB.

Further, Lexus notes the following:

i. the Advertisement last aired on free-to-air television on 23rd September 2017;

ii. at this point in time there is no further media scheduled for the Advertisement.

In acknowledgement of the Complaint, Lexus are prepared to make modifications to the Advertisement prior to the purchase of any further air time.

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 then considered 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 Lexus LC 500 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 encourages excessive speed.

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 it had previously upheld the same advertisement for Lexus 0341/17 and that this was a modified version of the previous ad.

The Board noted the advertisement features the vehicle – a Lexus being driven out of a vehicle shipping container and commences driving along an ocean side road.

The vehicle continues along the road and onto a road lined with trees appearing to be a country road. The vehicle drives past a woman on the side of the road. A male voiceover (author) describes the features of the vehicle. The final screen shot reads “Lexus – experience amazing.”

The Board noted the complainants concerns that the advertisement depicts driving behaviour that is unsafe as the vehicle is driven at excessive speeds.

The Board noted the advertiser’s response that the modifications were made at the following points:

- a) 0.11 seconds: the scene was removed; and
- b) 0.21 and 0.25 seconds, both scenes were slowed down.

The Board noted that at the beginning of the advertisement, the speed of the vehicle is seen and reaches 87 kms and rising. The Board noted that this is the only visual representation of how fast the car is moving.

The Board noted that that advertisement uses words such as: “clearly a beast” “adrenaline rush” and “watching the rest of life trying to keep up in the rear view mirror” The Board noted that there were scenes of the vehicle stirring up dust and dirt behind it and the progression down the country road does give the impression of speed. The Board noted the woman looks on with awe as the vehicle passes her as was the view with case 0341/17.

A minority of the Board considered that the advertisement was intended to create a new impression of the Lexus and was aiming to make it appear more ‘tough’ and was likened to a ‘beast.’

The Board compared the original advertisement and the modified version and in the Board’s view the changes to the advertisement are not evident and the impression of speed was still a major part of the feel of the advertisement.

The majority of the board felt that the overall tone of the advertisement was of power and speed and that the speed the vehicle was travelling looked to be too fast for the roads it was driving along. In the Board’s view the accumulative effect gives the impression that the vehicle can and was travelling at excessive speeds and was therefore driving unsafely.

The Board noted the advertiser’s response that the advertisement last aired on free to air television on 23 September 2017 and that there is no further media scheduled for the advertisement.

The Board acknowledged that there is a level of community concern around unsafe driving practices and speeding and that overall the accumulative effect of all of visuals and sounds

does amount to a portrayal of driving which is unsafe and would breach Commonwealth law or the law of any State or Territory.

The Board determined that the modified advertisement did breach Clause 2(a) of the FCAI Code.

Finding that the advertisement did breach the FCAI Code on the above grounds, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

In response to the complaint received and the determination of the Board we have edited the LC500 television advertisement (“Advertisement”) further to remove the overall ‘impression of speed being a major part of the feel of the advertisement’ as described by the Board in its determination.

In order to address the concerns about the overall focus being on the speed of the vehicle, the new modified version of the Advertisement has removed:

- Select voice overs, including ‘adrenaline rush’ and ‘watching the rest of life trying to keep up in the rear view mirror’;
- Scenes of the vehicle stirring up dust and dirt; and
- Scenes of the vehicles progression down country roads (including with the woman looking on with awe) and through the tunnel.

We consider that the modifications identified above have improved the overall tone of the advertisement to align with Clause 2(a) of the FCAI code and community standards.