



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0452/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Lexus Australia</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/11/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles      Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

A man driving in various on-road situations in a black Lexus IS 350. Throughout his journey the man has to be patient as he experiences various traffic-jam situations (peak hour traffic; railway crossing hold-up; sheep surrounding the vehicle on a country road; pedestrian crossings etc). The vehicle is stationary throughout the commercial until the very end. It finishes with the IS 350 using the overtaking lane to pass a 40km/h caravan. The voice over states "Isn't it funny how the more power you have the more patience you require? Introducing the incredibly powerful Lexus IS 350. Your moment will come."

### THE COMPLAINT

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

*Driver (smiling) accelerates and overtakes the caravan on a bend at what seems an amazing speed oblivious to the fact that there may be oncoming traffic. Surely there are enough deaths on our roads without encouraging people to take such outrageous risks. Irresponsible advertising.*

*Specifically the fact that when the car finally gets to overtake the caravan it does so when it would be dangerous with a corner up ahead. If a car travelling at the speed limit (let alone speeding) came around the corner ahead and the Lexus was travelling at the speed limit and accident would be inevitable and there is no room to swerve to avoid it.*

*More generally the idea that a driver should be irritated by minor inconveniences so they would want to really put the foot down the next chance they have seems to just encourage dangerous driving.*

*The end of the ad showing the driver overtaking the caravan is a very poor ad for driver safety as he appears to pass on a double white line and near a bend.*

## **THE ADVERTISER'S RESPONSE**

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

*At no point was the vehicle overtaking on a double white line. We ensured that the driver overtook the slow-moving caravan (40km/h), in an overtaking lane as provided. Once the overtaking lane became available, the driver indicated then took the opportunity to move past the caravan, all the while abiding by the speed limit. The top-speed reached during filming was 60km/h.*

*The attached response outlines two still frames from the commercial depicting the IS 350 about to overtake the caravan on the broken white line, which you can see from the driver's point-of-view is actually an overtaking lane.*

*Lexus Australia takes our voluntary compliance to the FCAI Code seriously and we, along with our Agency partners take every step to ensure we abide by the rules and regulations of the Automotive and ASB Codes.*

## **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 Lexus 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 Lexus 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clause 2(a) was relevant in the circumstances. The Board had to consider whether this clause of the Code had been breached.

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 complainants' concerns that the advertisement shows a car speeding and overtaking on a double white line and near a bend.

The Board noted that the advertisement depicts a vehicle being driven in various on-road situations. In most of these situations, the vehicle's progress is impeded in some way (traffic jam, pedestrian crossing, railway crossing) and the vehicle is stationary. The Board noted that at the end of the advertisement the vehicle is shown overtaking a caravan. The Board noted the advertiser's response that the vehicle was being driven at a maximum of 60kph and that the vehicle uses an overtaking lane. The Board considered that it is clear the vehicle is using an overtaking lane to overtake and is overtaking in a manner that appears legal and safe. The Board considered that the vehicle does not appear to be driving at excessive speed.

On the above basis, the Board determined that the advertisement does not depict unsafe driving nor reckless or menacing driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board noted the advertisement refers to the power of the vehicle and that the moment will come where the driver can employ the power of the vehicle. The board agreed that the advertisement does suggest that the vehicle is a powerful vehicle and noted the Explanatory Notes to the code which require that 'advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle...Other factual references to the capabilities of the motor vehicle...are acceptable, provided that they are represented in a manner that is consistent with the provisions of the Code.'

The Board noted that the reference to 'power', although not quantified, is a reference that should be made in a manner that is consistent with the provisions of the Code. The Board

considered that the references to power could be interpreted to suggest that the vehicle is powerful and can be driven at excessive speed or in an unsafe manner. However the Board considered that the depiction of the vehicle being slowed down or stopped in typical situations, and the reference to having to be patient to be able to use the power of the vehicle is, in this particular case, depicted simply as being able to drive on the open road without impediments. The Board considered that there was not a suggestion that the vehicle travels at excessive speed or in an unsafe or illegal manner and determined that the advertisement does not breach the FCAI Code.

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