



Case Report

1	Case Number	0464/12
2	Advertiser	Chrysler Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	12/12/2012
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement shows a Chrysler 300 pulling out of a home, followed by a close up of the headlight.

The Chrysler 300 is then seen driving past the camera – we see the back of the car, followed by a front three quarter shot of the car driving on a suburban street.

A close up of the Chrysler 300 grille is next, followed by a close up of the Chrysler 300 turning a corner.

The Chrysler 300 is next seen driving over a bridge, followed by a close up of finger tapping on the steering wheel.

A close up of gearbox is followed by a close up of the Chrysler 300 clock and then a close up of the rear tail light.

A front on shot of the Chrysler 300 driving on a suburban street follows, and then the Advertisement cuts to tracking shot of the Chrysler 300 showing all its glory.

Next there is a front three quarter shot of the Chrysler 300, followed by a shot of the Chrysler 300 turning a corner inner city.

Finally there is a front on shot of the Chrysler 300 driving inner city, followed by an end

frame of the Chrysler 300 driving over a bridge inner city.

THE COMPLAINT

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

Once again a motor vehicle advertiser is allowing vehicles to be shown operating on roads with their lighting configured in an illegal manner. In this particular advertisement, as with many car ads, the Chrysler 300C is shown at night time driving on a road with its headlights and low mounted fog lights illuminated. This is a breach of the road laws, definitely in WA where it is illegal to have your fog lights and headlights illuminated at the same time, (Section 183 of the Road Traffic Code 2000 in WA) and I'm led to believe, likewise in most other states and territories. Advertisers should not be able to show vehicles being operated in an illegal manner.

THE ADVERTISER'S RESPONSE

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

I refer to your e-mail to me dated 2 November 2012 advising Chrysler Australia Pty Ltd ("CAPL") of the Complaint.

The Complaint consists of a written complaint received on 19 November 2012.

In the Complaint, the complainant alleges that the Advertisement shows a Chrysler 300 being driven at night on a road with its headlights and low mounted fog lights illuminated, in breach of the road laws, and in particular Section 183 of the Western Australian Road Traffic Code 2000 ("the Code") which the complainant alleges provides that it is illegal for a vehicle's fog lights and headlights to be illuminated at the same time.

In fact, Section 183 of the Code (a copy of which is attached) provides that a front fog light may be operated if the driver of the vehicle is driving in fog or other hazardous weather conditions causing reduced visibility. A similar provision appears in the road rules of the other Australian States and Territories and in the Australian Road Rules.

The Advertisement was shot very early one morning (at approximately 4 am) in Melbourne when visibility was poor due to a mist/fog rolling off the Yarra river, and it was felt that it was appropriate to use the fog lights. It is only thanks to modern camera editing and lighting that the visibility in the Advertisement appears to not be an issue.

AANA Advertiser Code of Ethics (the "AANA Code")

I note that you request CAPL to respond to the Complaint with reference to Section 2 of the

AANA Code. This section deals with the AANA Code specifically and sets out CAPL's comments in relation to the specifics of the Complaint, while issues relating to the FCAI Code are dealt with in Section 5 below.

CAPL does not believe the Advertisement breaches any part of Section 2 of the AANA Code. In particular, it is our view that the Advertisement:

- (a) does not discriminate or vilify any person or section of the community (section 2.1);*
- (b) does not portray violence (section 2.2);*
- (c) treats sex, sexuality or nudity with sensitivity to the relevant audience (section 2.3);*
- (d) is not directed at children 14 years or younger and is not for goods or service facilities targeted towards children (section 2.4);*
- (e) does not contain strong or obscene language (section 2.5);*
- (f) does not depict material contrary to prevailing community standards on health and safety (section 2.6);*
- (g) does not breach the FCAI Code (section 2.7); and*
- (h) is not for food or beverage products (section 2.8).*

The FCAI Code

This section addresses the FCAI Code.

CAPL sees no basis for construing the Advertisement as being in breach of any part of clauses 2(a) to (e) of the FCAI Code as, for the reasons set out above, CAPL believes that the Advertisement does not depict:

(a) any unsafe driving that would breach any Australian law. The FCAI Code refers to examples such as excessive speed, sudden, unnecessary changes in direction, unnecessarily setting motor vehicles on a collision course.

The Advertisement does not in any way display this.

(b) people driving at speeds in excess of the limit.

The Advertisement does not in any way display this.

(c) any driving practices or other actions that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction. For example, use of hand held mobile phone, not wearing seatbelts.

There is no evidence that the Advertisement contains depiction of any practices that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction.

(d) any people driving whilst fatigued or under the influence of drugs or alcohol.

The Advertisement does not in any way display this.

(e) any environmental damage whatsoever.

There was no environmental damage depicted or caused by the creation of this Advertisement.

CAPL further confirms that:

(i) the Advertisement has been released nationally; and

(ii) the Advertisement has been made available on the internet.

CAPL takes its responsibilities as an importer and distributor of motor vehicles seriously and this extends to CAPL's obligations under the AANA Code and the FCAI Code. When preparing advertisements including the Advertisement CAPL is conscious of the provisions of the AANA Code and the FCAI Code.

CAPL believes that the Advertisement is advertising the Chrysler 300 appropriately, with no intention to undermine the provisions of the AANA Code and/or the FCAI Code. As such, CAPL does not believe that the Advertisement breaches either the AANA Code or the FCAI Code and therefore requests that the Complaint be dismissed.

CAPL will endeavour to continue to produce advertisements consistent with the standards as set down by the AANA Code and the FCAI Code.

Please do not hesitate to contact me if you have any questions or require any further information.

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) and the Advertiser Code of Ethics (the 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 available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Chrysler 300 in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, determined that the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Chrysler 300 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 complainants' concerns that the advertisement depicts driving actions which breach the law in its depiction of the use of fog lights when driving only at night.

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

The Board noted that the vehicle is depicted being driven in a safe and appropriate manner throughout the advertisement and that there are no concerns regarding unsafe driving or excessive speed.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that: Advertisements for motor vehicles do not portray ...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 that the advertisement shows scenes of the Chrysler 300 pulling out of a home, followed by a close up of the headlight. The Chrysler 300 is then seen on a suburban street.

The Board noted that clause 217(1) of the Australian Road Rules refers to the use of fog lights and states that "The driver of a vehicle fitted with front fog lights or rear fog lights must not operate the fog light unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility."

The Board noted that the Road Rules are very prescriptive in relation to the use of fog lights and considered that the conditions shown in the advertisement while the vehicle is being driven could be described as dark but not as hazardous or foggy.

The Board noted the advertiser's response that the advertisement was filmed in the early hours of the morning and that visibility was poor due to a mist/fog rolling off the Yarra river, and that editing techniques were responsible for the clear appearance. The Board considered however that as the vehicle was portrayed as driving in clear conditions, there was no need to include the use of fog lights as a feature.

On the above basis, the Board determined that the advertisement does depict an action which would breach a Commonwealth, State or Territory law and does breach clause 2(c) of the FCAI Code.

Finding that the advertisement did breach the FCAI Code, Ethics the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

In view of the Board's determination, the advertisement the subject of the Complaint will be modified as appropriate at the earliest possible time to ensure that it no longer is in breach of the FCAI Code.