



Case Report

1	Case Number	0466/16
2	Advertiser	BMW Group Australia
3	Product	Vehicle
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	09/11/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features the BMW 3 Series Sedan and 3 Series Touring models, the BMW 3 Series Gran Turismo, and the new BMW 4 Series Gran Coupe. We see these vehicles driving through long plains, straight desert roads, and through industrial areas. The on-screen text includes, 'Ultimate Power', 'Ultimate Action', 'Ultimate Control', 'Ultimate Thrills', 'Ultimate Style', 'Ultimate Design', 'Ultimate Luxury', and 'Ultimate Driving Experience'.

THE COMPLAINT

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

The car is showing driving illegally (hoon driving) and speeding and is encouraging this behaviour to entice people to buy their vehicles.

THE ADVERTISER'S RESPONSE

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

Thank you for your correspondence regarding complaint reference number 0466/16 for the BMW 3 and 4 Series Core TVC and the following issues raised under the Code of Practice for motor vehicle advertising:

*FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit*

In preparing our response below we have also been conscious of Section 2 of the AANA Advertiser Code of Ethics, in particular section 2.6 'Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety', but not limited to the following sections:

- 2.1 Discrimination or vilification*
- 2.2 Exploitative and degrading*
- 2.3 Violence*
- 2.4 Sex, sexuality and nudity*
- 2.5 Language*
- 2.6 Health and Safety*

As per advertising regulations, the agency and ourselves have followed the appropriate protocol in applying to CAD for a classification before going live to air. With this classification the agency submitted to CAD a copy of the script, story board, substantiation and final TVC in order for them to view the material before going live. The TVC subsequently received a G classification.

The specific complaint made is 'BMW vehicle shown speeding and loss of control of the vehicle in opening part of the ad, there is an excessive amount of smoke coming from the tyres and it isn't a dirt road.'

As demonstrated in the attached 30sec TVC commercial, the vehicle is driving through an artificial smoke cloud. Hence the remnants from this cloud is what is streaming from the tyres in the opening shot of the ad. It is not smoke from burning tyres. The closing shot is the same vehicle having moved through the cloud, however filmed from a different angle.

At the 7 second mark, there is slight dust and haze raised from the side of the road, caused by the natural motion of the vehicle rounding a corner, but it is certainly not excessive. At no time are the vehicles speeding nor does the driver lose control of the vehicle.

As depicted at the 17 second mark the driver is wearing a seatbelt. The vehicles also have their headlights turned on during the scenes depicted at night-time.

In some scenes there are two vehicles that are driving side by side, however one never accelerates more than the other, nor do they overtake each other or cross lanes at any given point in time. The shots where by you view the single vehicles are from footage shot of each vehicle moving in isolation.

It is also worth noting that the commercial utilises motion lighting effects, fast forward and static jump cut edits that add energy to the overall commercial. The vehicles are never speeding and given the open road environment, the commercial was filmed under controlled conditions, as stated in the opening disclaimer, which also denotes the overseas production

of the commercial. The music track is also up tempo, which adds a layer of dynamism to the commercial.

We greatly appreciate you taking the time to review our response. Please do not hesitate to get in touch if you require any further details.

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 BMW 3 Series and 4 Series 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 speeding and the loss of control of a vehicle, as well as smoke coming from the tyres.

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 the advertisement features BMW 3 Series and 4 Series vehicles driving in various environments while on-screen text describes attributes of the vehicles as ultimate: power, action, control, thrills etc.

The Board noted the complainant's concern that the advertisement depicts loss of control of a moving motor vehicle during the opening scenes where we see excessive smoke despite the road being tarmac and not dirt. The Board noted the advertiser's response that the opening scenes show a vehicle driving through an artificial smoke cloud and that no smoke is generated from the tyres. The Board that there is an excessive amount of smoke shown in the advertisement but considered that you can clearly see the vehicle driving through the cloud and exiting it trailing more smoke. The Board noted that the vehicle is driving in a straight line and considered that there is no suggestion that the driver has lost control of the vehicle or that the smoke is a result of a burn out.

The Board noted the complainant's concerns that the advertisement depicts hoon driving and encourages this behaviour. The Board noted that in some scenes we see vehicles driving alongside one another and on different sides of the road. The Board noted that the advertisement was produced overseas and considered that the Practice Note for the FCAI Code provides that driving on the right hand side in overseas-made advertisements is not of itself a breach of the Code. The Board noted the scenes where vehicles drive alongside one another and considered that the vehicles do not appear to be racing or trying to overtake one another but rather are driving parallel in order to showcase their features.

The Board acknowledged that there is a level of community concern around hoon behaviour and vehicles but considered that the advertisement does not depict, condone or encourage dangerous driving.

The Board considered that overall the advertisement does not portray any driving which is unsafe, or reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did not breach Clause 2(a) of the FCAI Code.

The Board considered clause 2(b) of the FCAI Code. Clause 2(b) requires that "Advertisements for motor vehicles do not portray: people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast."

The Board noted the Explanatory Notes to the FCAI which state, "Advertisers should ensure that advertisements...avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle."

The Board noted the complainant's concern that the advertisement depicts vehicles speeding.

The Board noted the advertiser's response that the advertisement was filmed under controlled conditions and the vehicles were not breaking the posted speed limits.

The Board noted that there is no indication of the speed the vehicles are driving at in the advertisement or of the speed limits of the roads the vehicles are driving on and considered that it is the editing of the advertisement which gives the illusion of speed. The Board considered that there is no accurate sense of the speed the vehicles are being driven at, therefore the vehicles are not shown being driven in excess of applicable legal speed limits in the footage, nor are there any close up shots of a speedometer reading and reference to any speed limits being exceeded.

The Board determined that the advertisement did not depict excessive speeding and therefore did not breach Clause 2(b) of the FCAI Code.

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