



Case Report

1	Case Number	0484/14
2	Advertiser	KTM Australia
3	Product	Vehicle
4	Type of Advertisement / media	Print
5	Date of Determination	26/11/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

Double page spread print advertisement featuring a main image of a motorcycle in motion, a static motorcycle in the bottom left, sales explanation on the right and company logo, KTM, in the bottom right.

THE COMPLAINT

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

The large LAMS logo (lower-left corner) strongly suggests that the motorbike is targeted at learner, and therefore highly inexperienced, riders who are at greater risk of accident and injury. There are three main elements within the advert which, to me, do NOT promote risk aversion and therefore it is NOT as safety conscious as could be, reducing the message of "Ride safely" to an impressionable and inexperienced target audience.

1) The rider appears to be wearing normal jeans and is definitely not wearing boots - poor leg / skin protection and no lower leg or ankle protection

2) Top-right corner: The 3rd "bullet point" text reads "Extremely sporty power-to-weight ratio" - whilst this may be accurate, it's sending the wrong message to learner riders and could encourage inappropriate more risky riding to those with the least experience and beyond their capabilities, increasing the risk of an accident

3) Text, bottom right corner, 3rd sentence contains: "...agile attitude is designed for attack.". This sends very much the WRONG message to learner riders - their riding style should be cautious and risk aware / averse. A learner rider riding with an "attack" mindset is extremely dangerous for them and other road users.

I concede that there is no apparent visual representation or text which contradicts a law (e.g. wearing a helmet), but the overall message of the advert is "Learners, here's a bike which is really sporty and racey" and, apart from the subtle mention of ABS (top-right corner) there is no apparent consideration or promotion of rider safety - which should be paramount, especially for learners.

Thank you.

THE ADVERTISER'S RESPONSE

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

I write to you in response to the letter of complaint received regarding our print advertisement, 'Style Racer'. This advertisement is for our product, the KTM RC 390 which is a learner legal motorcycle for the Australian market. Below I address the advertising conduct code issue raised and the complainants concerns directly.

Advertising code:

FCAI Motor Vehicles 2(a) Unsafe Driving

Our advertisement features a rider dressed in a full complement of safety riding gear, far in excess of what is required by law. The motorcycle has all the required components fitted to be safe on the road such as headlight, tail light, indicators and rear vision mirrors. The riders technique and body positioning is perfect, indicating a safe riding style. There is no indication that the rider is displaying unsafe driving, including reckless and menacing driving. There is no indication that any road law has been breached including speeding. The image used is a positive example of how a motorcyclist should dress and conduct themselves while riding on public roads.

Complainants concerns:

1) The rider appears to be wearing normal jeans and is definitely not wearing boots – poor leg / skin protection and no lower leg or ankle protection

a. The rider depicted is wearing comprehensive safety gear well in excess of the legal requirement. Specifically addressing the complainants concerns, the rider is wearing Kevlar reinforced riding jeans and high top riding shoes with ankle armour and foot bed support. Both of these items are specifically designed for the commuting motorcyclist and although stylish they offer excellent protection to the rider. Both products are available through our accessories catalogue. Further to this the rider is wearing a full face helmet, motorcycle jacket and gloves. The advertisement sets an excellent example of how a learner motorcycle rider should dress.

2) Top-right corner: The 3rd "bullet point" text reads "Extremely sporty power-to-weight ratio" – whilst this may be accurate, it's sending the wrong message to learner riders and could encourage inappropriate more risky riding to those with the least experience and beyond their capabilities, increasing the risk of an accident.

a. The point is in relation to the motorcycles performance and handling. A sporty power to weight ratio offers the rider increased safety via optimum manoeuvrability and braking capabilities. These features are essential for a safe motorcycle and would be of most benefit

to learner riders. A motorcycle with a poor power to weight ratio can be cumbersome and unsafe. Irrespective, the point makes no suggestion towards how the motorcycle should be ridden.

3) Text, bottom right corner, 3rd sentence contains: "...agile attitude is designed for attack.". This sends very much the WRONG message to learner riders – their riding style should be cautious and risk aware / averse. A learner rider riding with an "attack" mindset is extremely dangerous for them and other road users.

a. The KTM RC 390 is a very low powered motorcycle which qualifies it for the Learner Approved Motorcycle Scheme (LAMS). Typically motorcycles that represent this category are very boring and basic looking. KTM have designed the RC 390 to attract new people to motorcycling by giving it race inspired looks but low power and safe features such as ABS. The terminology used by KTM in this advertisement is to represent that just because a motorcycle is learner legal, doesn't mean it can't look stylish. The terminology used at no point refers to motorcyclists and the manner in which they ride on the roads. The advertisement speaks directly about the styling of the motorcycle only.

I hope I've answered these complaints to the satisfaction of the ASB. If you need any clarification please contact me.

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 in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being made available in the Official Program 2014 Australian MotoGP.

The Board determined that the material draws the attention of the public or a segment of it to a product being a motorbike 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 motorbikes were Motor vehicles as defined in the FCAI Code. Based on the above, 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 concern that the advertisement features images and wording that gives the wrong message regarding motorbike safety.

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 is promoting the KTM RC 390 which as confirmed by the advertiser is a learner legal motorbike for the Australian market.

The Board noted that the image of the rider on the bike does not indicate what speed the rider is travelling at and the bike does not appear in a position where it seems to be out of control or performing an illegal manoeuvre. The Board agreed that the bike appears to be being ridden around a bend and is therefore held on a lean in order to corner appropriately for the conditions.

The Board considered the text that is written around the image and noted statements such as: "extremely sporty power to weight ratio," and "...agile attitude is designed for attack.." The Board considered that these types of statements were not intended to suggest that the bike should be driven carelessly but noted that the statements are typical of advertising puffery designed to make the product sound appealing to the consumer.

The Board noted that gear that the rider is wearing and noted the advertiser's response that the gear depicted is comprehensive safety gear in excess of the legal requirements. The Board considered that not all safety gear needs to look bulky, and agreed that the likely audience of this type of magazine would recognise that the gear is appropriate for motorcycle riding.

The Board considered that overall the advertisement is promoting a bike that is legally able to be driven by learner riders and that the L (LAMS) symbol indicates the suitability for the Learner Approved Motorcycle Scheme and is not suggesting that inexperienced riders should purchase a bike that is too powerful for their abilities or should be ridden in a way that would be considered dangerous.

The Board considered that the advertisement does not show the bike or rider in a manner that encourages or condone driving in an unsafe way.

The Board considered that the advertisement did not depict unsafe driving and did not breach clause 2 (a) of the Code.

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