



Case Report

1	Case Number	0493/16
2	Advertiser	BMW Group Australia
3	Product	Vehicle
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	23/11/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This Facebook advertisement includes a video which depicts two cars racing around a track. The cars are shown driving at speed with driving practices including crossing lines, fishtailing and fast acceleration. The caption above the video on Facebook says "With looks that set hearts racing, the BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds."

THE COMPLAINT

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

I believe that the "With looks that set hearts racing, the BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds." is a breach of the voluntary advertising code for the automotive industry. I have previously made a complaint about "Skoda" advertising in exactly the same manner.

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 0493/16 for the BMW M4 GTS piece of content that appeared on Facebook and the following issues raised under the Code of practice for motor vehicle advertising:

FCAI Motor Vehicles 2(a) Unsafe driving

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

Attached is a copy of the 15sec edit to assist in the review process. This content was specifically placed on facebook only during the time of the Australian MotoGP because of BMW's capacity as the official Safety Car partner. I can confirm that it is no longer running on facebook, however the video does reside on youtube.

The specific complaint made is 'I believe that the "With looks that set hearts racing, the BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds." is a breach of the voluntary advertising code for the automotive industry.'

The content was filmed at a race track and demonstrates two BMW vehicles competing against each other and being driven by professional drivers who are also wearing helmets for their safety, given the racing environment. The purpose of the videos is to demonstrate the handling capability of the BMW M4 GTS by showing how it drives on a racetrack. The filming was done under controlled conditions, using professional drivers, on a closed circuit with no spectators.

The post copy itself is the only reference to the speed time. Please note that there was an error in the post copy and that it did originally go live with 'With looks that set hearts racing, The BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds.' This was quickly updated to simply read 'The BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds.', whilst this is an actual feature of the BMW M4 GTS at no time does the footage depict a standing vehicle reaching 100km/per hour in 3.8 seconds, nor does it encourage drivers to trial this. The video does not at any stage suggest to the viewer that these vehicles should be driven in this manner in normal road conditions.

As this piece of content was only ever shown on Social media there was no CAD classification obtained, as this isn't a requirement for online content.

At BMW we take vehicle and occupancy safety as a key area of focus with our vehicles having some of the highest safety standards in the world with leading technology to assist driver control and hazard aversion.

In the context of the footage and contextual environment, we feel that the video of the BMW

M4 GTS is appropriate for the racetrack environment it is in and showcases the dynamic ability of the vehicle.

We greatly appreciate you taking the time to review our response.

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 M4 GTS 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 features text regarding the acceleration of a vehicle in a manner which breaches the FCAI Code.

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 that this Facebook advertisement features the text, "With looks that set hearts racing, the BMW M4 GTS boasts a 0 to 100 time of just 3.8 seconds". The Board noted that underneath this text is a video advertisement which features footage of the BMW

M4 GTS being driven.

The Board noted that it had recently dismissed a similar complaint about the use of a claim around a vehicle's 0 to 100 acceleration speed in case 0437/16 where:

“The Board noted it had also dismissed a complaint about references to speed in case 0215/10 which went to an Independent Review and where the Independent Reviewer recommended:

“As the Board pointed out very clearly in its determination, advertisers creating advertisements of this kind are exhorted by the “Guidance to Advertisers” in the Explanatory Notes to the Code, not to refer to the speed capability of the vehicle being tested or proved. This advertisement ignores that guidance and makes a clear breach of the spirit and intent of the Code.

Not surprisingly, ALL complainants refer to this, but fail to acknowledge that this spirit and intent is not included in the Code but appears in the Explanatory Notes to the Code.

The consequence of this is that ignoring this advice does not amount to a breach of the Code...”

The Board noted that the FCAI Code has not been updated since the Independent Reviewer advised in 2010 that the guidance provided in the Explanatory Notes to the FCAI Code is advisory not binding.

The Board noted the intent of the FCAI Code and considered that while a clear reference to the acceleration capability of a motor vehicle is contrary to the guidelines outlined in the FCAI's Explanatory Not, ignoring this advice does not amount to a breach of the FCAI Code. The Board noted that the advertiser had voluntarily removed the reference to the vehicle's acceleration capability prior to the Board's consideration of the complaint and considered that the advertiser's cooperation was to be commended. “

In the current advertisement the Board noted that while the text makes reference to the acceleration ability of the BMW, the accompanying video footage clearly shows vehicles being driven under controlled race conditions and considered that consistent with its previous determinations the reference to the acceleration capabilities of a vehicle in the context of the images and footage used did not amount to a breach of the FCAI Code and in the Board's view the video footage does not feature any driving which is unsafe, reckless or menacing.

The Board noted the complainant's concern over the reference to “looks that set hearts racing” and considered that it is not uncommon for cars to invoke such a reaction in enthusiasts and in the Board's view this comment is not intended to be a reference to racing a car but to appreciating a car's beauty.

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.

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

dismissed the complaint.