



# Case Report

1	Case Number	0494/17
2	Advertiser	BMW Group Australia
3	Product	Vehicle
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	08/11/2017
6	DETERMINATION	Dismissed

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

## DESCRIPTION OF THE ADVERTISEMENT

This television ad depicts the BMW 1 Series driving through empty city streets during both daylight and night-time. The driving scenes are interspersed with shots of people interacting with others as well as features both in and out the vehicle.

## THE COMPLAINT

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

*The second ad is in breach of the code because it promotes dangerous driving, speed, sudden changes in direction and racing through puddles(QUOTE): 2. GENERAL PROVISIONS Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(a) Unsafe driving, including reckless and 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.*

*[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]*

## THE ADVERTISER'S RESPONSE

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

*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 script, commercial and relevant media plan outlining when and where the commercial ran. Please note this commercial ran on rotation with Future Of Mobile TVC (key number BMW18469/30).*

*The specific complaint made is 'The second ad is in breach of the code because it promotes dangerous driving, speed, sudden changes in direction and racing through puddles.'*

*Our response is that the commercial is not in breach of FCAI Motor Vehicles code; 2(a) unsafe driving based on the following:*

*In the attached 30sec TVC commercial, the vehicle is driving through open and empty city streets, observing all speed and traffic rules. At the 3sec mark, the vehicle changes lanes after indicating and following road rules.*

*At the 20 sec mark the vehicle makes a controlled left turn and at no point is speeding, nor does the driver lose control of the vehicle.*

*At the 21 sec mark the vehicle is observing a safe speed and drives through a puddle which is a common driving occurrence.*

*The vehicle also has their headlights turned on during the scenes depicted at night-time.*

*While the talent interacts with technology, at no point is this distracting to the driver or being used while the car is moving.*

*At no point throughout the commercial does the vehicle demonstrate unsafe driving or reckless and menacing driving. The vehicle does not travel at excessive speeds and does not partake in any sudden, extreme or unnecessary changes in direction causing loss of control. It is also worth noting that the commercial utilises fast forward and static jump cut edits that add energy to the overall commercial. The vehicle is never speeding and the commercial was filmed under controlled conditions. The music track is also up tempo, which adds a layer of dynamism and pace to the commercial.*

*As this commercial was run online and on Subscription TV it was not necessary to obtain CAD substantiation as this is not a requirement for those respective media channels.*

## **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 1 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 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 a female voiceover talking about "billions of zeros and ones." Young people are seen on their phones and at a desk and eventually a man is seen getting into a car and using some features on the dash. The car then drives around the corner and through a puddle. The final shot shows the car on a bridge and the logo and brand name of the vehicle.

The Board noted the complainant's concerns that the advertisement promotes unsafe driving, dangerous speed and changes of direction.

The Board noted the advertiser's response that the advertisement was filmed under controlled conditions.

The Board noted that at the beginning of the advertisement, the voiceover and the images are very slow moving and stylised.

The Board noted that the man is seen getting into the vehicle and pressing some functions on the dash and the car is immediately driven out of the lane way and around the corner. The Board noted that the engine is heard revving and the music and overall tone of the advertisement increases.

The Board noted that the vehicle appears to leave the parked position very quickly, turns quickly into the street and then through a puddle. The driver is seen changing gear quickly as well.

The Board noted the complainant's concern that the vehicle is seen "changing lanes rapidly without an indicator."

The Board viewed this section of the advertisement carefully and noted that the vehicle does change lanes quickly but noted that the indicator is used at this time. The Board considered that the scene is fleeting and was not the focus of the advertisement.

A minority of the Board considered that the advertisement did give the impression of speed and that the left turn into the street from the lane way is very fast.

The majority of the Board however felt that the overall tone of the advertisement very stylised and that the camera work and editing gave the impression that the car was travelling faster than it really was.

The Board noted that there was not any screeching of tyres or long drifting periods and that the car appeared under control by the driver at all times. The Board noted that driving through any puddle can cause the wave of water seen in the advertisement and that this was not necessarily an indication of speed.

The Board considered that overall the accumulative effect gives the impression that the vehicle was travelling at speed but there was nothing to suggest it was speeding and it was not seen driving recklessly or in a menacing way.

The Board acknowledged that there is a level of community concern around unsafe driving practices but in this case 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 the above grounds, the Board dismissed the complaint.

