



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0503/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Lexus Australia</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Print</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/12/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles      Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

Two identical images of a railway crossing with a red light showing and the barriers down, with an empty road stretching off in to the horizon between fields of grass on the other side of the crossing.

In the top image, the barrier is clear but the fields and road are blurred and the text reads, "Don't think of the hold up".

In the bottom image the barrier is blurred and the fields and road are clear and the text reads, "Think of the playing field awaiting you".

At the bottom is an image of a Lexus and text describing the car.

### THE COMPLAINT

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

*This advertisement is completely unacceptable. The blurring of the boom gate and warning lights and the text encouraging the responder to ignore the rail level crossing is sending a wrong and very dangerous message. These mechanisms are in place to ensure the safety of motorists pedestrians and cyclists and should always be actively observed and obeyed they are absolutely vital in decreasing casualties and fatalities at railway level crossings. We continue our efforts to educate the public in railway level crossings safety yet this advertisement sends the message that rail level crossings should be disregarded The Voluntary Code of Practice for Motor Vehicle Advertising that has been instituted by the Federal Chamber of Automotive Industries (FCAI) asks 'advertisers to be mindful of the*

*importance of road safety and to ensure that advertising for motor vehicles does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia' Railway Level Crossings are a road and rail intersection and therefore it is essential that both road and rail organisations are committed to the promotion and enforcement of safety practices. We believe that this advertisement is in direct conflict with this Code.*

*On average 100 incidents occur at Australian railway level crossings causing the unnecessary death of 37 people annually. The Rail Industry is committed to improving safety around railway level crossings to reduce this number and strongly believes that zero deaths at rail crossings is a realistic and achievable goal. The Rail Industry raises safety awareness and works to reduce fatalities through its Action Plan strategies and initiatives. It is regrettable that Lexus has commissioned an advertisement discouraging safe railway crossing practices and simultaneously encouraging negligent driving. The Australian Rail Industry strongly urges the Advertising Standards Bureau to investigate this issue further and put an end to this advertisement.*

## **THE ADVERTISER'S RESPONSE**

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

*At the time of the Board meeting, the advertiser had not responded.*

## **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 or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Lexus IS350 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 the Lexus IS350 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 showing the blurred railway crossing and stating that the driver shouldn't think of the hold-up is encouraging people to ignore railway crossings.

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 that the advertisement shows two images of a railway crossing with an open road and fields on the other side of the crossing. In one image the crossing is blurred out and the accompanying text reads, "Don't think of the hold up. Think of the playing field awaiting you."

The Board acknowledged the importance of stopping at railway crossings. The Board considered that this advertisement was not suggesting that drivers should ignore railway crossings, and considered that most members of the community would interpret the advertisement as encouraging drivers not to be frustrated at having to wait at a railway crossing, but rather to think of the driving experience once the barrier had lifted.

The Board considered that although the advertisement did not depict unsafe driving, the use of a railway crossing and a suggestion of boredom was unfortunate.

On the above basis, the Board determined that the advertisement does not depict unsafe driving nor reckless or menacing driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement breached clause 2(b) of the Code. Clause 2 (b) provides that advertisements should not depict "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 considered that the reference to the ‘playing field’ beyond the railway crossing is a reference to the overall uninterrupted driving experience that follows – not a reference to driving over the speed limits once past the railway crossing. The Board determined that the advertisement did not breach clause 2(b) of the Code.

The Board then considered whether the advertisement breached clause 2(c) of the Code. Clause 2(c) of the FCAI Code provides that advertisers should 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 dealing directly with road safety or traffic regulation’.

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles. The Board considered that the examples that accompany clause 2(c) give a clear indication of the types of breaches that are considered to be an infringement of clause 2(c). The Board considered the Explanatory Notes to the FCAI Code which state: “Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community...”

The Board noted that there is no depiction in the advertisement of any driving practices or other actions which would breach any law and that the advertisement did not breach clause 2(c) of the FCAI Code.

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