



Case Report

1	Case Number	0510/17
2	Advertiser	KIA Automotive Australia
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	22/11/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit
FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a car (the Kia Rio) being driven in a sparse open landscape and features no other cars. The car drives past large letters featuring the words "SHARP EXTERIOR". As the Rio passes the letters, it turns and stops in front of the letters, with the reflection of the red car highlighting the three letters RIO within the word 'ExteRIOr'.

THE COMPLAINT

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

The FCAI notes state:

"Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Moreover, advertisers need to be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle."

The FCAI Code of Practice states (excerpt):

"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.]*

(b) *People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.*

(c) *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 directly dealing with road safety or traffic regulation."*

The advertisement is therefore clearly in breach of the Code.

THE ADVERTISER'S RESPONSE

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

We have considered the complaints and the advertisement in question in light of the provisions of the AANA Code of Ethics ("AANA Code") and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries ("FCAI Code"). We note that the nature of the complaints relate generally to the FCAI Code and specifically to the concern that the advertisement portrays unsafe driving practices.

We have carefully considered the AANA Code and FCAI Code, and have assessed the provisions of each against the content of this advertisement. We submit that the advertisement does not breach the AANA Code or the FCAI Code on any of the grounds set out in the same. Looking at the AANA Code, Provision 2.6 provides that advertisements "shall not depict material contrary to Prevailing Community Standards on health and safety."

The advertisement depicts a car (the Kia Rio) being driven in a sparse open landscape that is not represented as a road and features no other cars, traffic, pedestrians, or for that matter, people at all.

The car drives past large metallic letters featuring the words "SHARP EXTERIOR". As the Rio passes the letters, it turns and stops in front of the letters, with the reflection of the red car highlighting the three letters RIO within the word 'ExteRIOr'.

In relation to point 1 within your response criteria, the limited driving aspects of the vehicle show the car driving in a straight line from both the front and the rear of the vehicle, with the purpose of showcasing the new exterior design of the of the car. These are normal driving conditions that could be presented in a road-related area. The car then slows and stops quickly with a turn to park in front of the large metallic letters. We feel this is a demonstration of the safety and handling aspects of the car, which are inherently important qualities for any consumer considering a new vehicle purchase. The car is not drifting.

Drifting is a continuous wheel spin whilst still creating forward momentum. Our car was not doing this. The Rio is depicted a sudden stop, which our car is entitled to do.

In relation to point 2 within your response criteria, the car was driven within the legal speed

limit at all times during the filming of this commercial. There was in fact, three techniques used to convey the vehicle travelling within the legal limit. With each of these techniques, the vehicle was travelling within legal speed limits at all times. There was no speeding, but simply dynamic effects to create a sense of movement.

a) The first technique was to have the car drive over some dust to create a small dust cloud. b) The second technique was to have the car drive towards the camera, whilst the camera was travelling slowly in the opposite direction.

c) The third technique was a simple 'heat haze' effect over the footage.

In relation to point 3 within your response criteria, there were no special permits required to undertake the filming of this advertisement, but, as always, Kia Motors Australia acts proactively with regards to occupational health and safety and in this case, the car was shot in a closed environment, with the car being driven by a professional driver, with safety officers and a registered nurse in attendance.

In relation to point 4 within your response criteria, this TV commercial has been broadcast in all capital cities and most regional locations within Australia, since January 2017, without so much as one complaint.

In relation to point 5 within your response criteria, the advertisement has been published online periodically since January 2017.

Accordingly, we submit that the advertisement does not breach Provision 2.6, or any other provision of the AANA Code.

Looking at the FCAI Code, we note that at no time is there any scene in the advertisement that depicts any vehicle being driven in a manner that can be described as unsafe, menacing or reckless.

Your response criteria also requests that we have thoroughly considered and addressed the guidelines present within Section 2 of the AANA Code of Ethics. We note the following responses;

2.1 Discrimination or vilification – There is no breach of this section of the code as there is no representation of people within the execution at all.

2.2 Exploitative and degrading - There is no breach of this section of the code as there is no representation of people within the execution, nor does the tonality or theme of this execution have any relevance to this clause of the Code.

2.3 Violence – There is no breach of this section of the code as there is no representation of people or any type of violence within this execution.

2.4 Sex, sexuality and nudity - There is no breach of this section of the code as there is no representation of people within this execution.

2.5 Language – There is no breach of this section of the code.

2.6 Health and Safety – This point has been addressed earlier within our response, but again we reiterate that Kia takes Health and Safety very seriously.

In conclusion, we submit that the advertisement is compliant with the AANA Code and the FCAI Code. Whilst each complaint should be taken seriously, the fact that there was only one complaint in almost a year, shows that broad society views are not consistent with the complaint received. Kia sees itself as a responsible advertiser and one that takes road practises seriously. The fact that this is not depicted on a public road is itself enough reason for this complaint to be dismissed.

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 KIA Rio 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 advertisement features a male voiceover talking about the features of the vehicle and the images are of the exterior of the car. The car is being driven on an open space and as the words "sharp exterior" appear on screen, the car turns and stops. The voiceover mentions the price while an image of a different colour car appear on screen.

The Board noted the complainant's concerns that the advertisement shows the car speeding across a wide open space and then does a sudden turn (drift) and comes to a stop.

The Board noted that the FCAI Explanatory notes provides examples to clause 2(a) that states 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 the vehicle is seen travelling in a straight line and across a wide open space without any other vehicles or people around. The Board noted that the vehicle does come to a sudden stop as it turns and faces the camera. 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.

In the Board's view the music and visuals create an impression that the vehicle was travelling

at speed which then makes the sudden turn appear aggressive however, there was nothing to suggest the vehicle was speeding and it was not seen driving recklessly or in a menacing way. The Board considered that the quick turn itself was not an action that would break the law if it was to occur on a road.

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.

The Board then 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 that the advertisement features the exterior of the vehicle and the dash and speedometer are not visible. The Board noted that there is no way of knowing how fast the vehicle is travelling and noted the advertiser's response that the vehicle was "travelling with the legal speed limit at all time during the filming of this commercial."

The Board noted there was nothing to suggest the vehicle was driving in excess of any applicable speed limits and did not breach clause 2(b) of the Code.

The Board then considered clause 2 (c) of the Code which states that 'Advertisements for motor vehicles do 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 directly dealing with road safety or traffic regulation.'

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

The Board noted that the vehicle appears to be driven in a controlled manner throughout the advertisement and the voiceover describes the deal on offer. The Board noted that there are no driving practices which would breach the law such as those mentioned in the examples above and that the advertisement did not breach this section of the Code.

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

