



## **CASE REPORT**

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|-------------------------------|----------------------------|
| 1. Complaint reference number | 110/05                     |
| 2. Advertiser                 | Lexus Australia (V8 GS430) |
| 3. Product                    | Vehicles                   |
| 4. Type of advertisement      | Outdoor                    |
| 5. Nature of complaint        | FCAI - Other               |
| 6. Date of determination      | Tuesday, 10 May 2005       |
| 7. DETERMINATION              | Dismissed                  |

## **DESCRIPTION OF THE ADVERTISEMENT**

This print advertisement features a studio photograph of the Lexus GS430. The car is shown to be standing still against a black background. Large metal chains are attached to wheels and side mirrors of the Lexus and are shown to extend the length of the car. The concept is to present the car as an animal that needs to be restrained. The following words appear in red and white font: "It's Alive. The New V8 GS 430".

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*"In the current media atmosphere of multiple road deaths caused by speeding (particularly by younger drivers) I think this advertisement is both irresponsible and unnecessary."*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*"The core thought behind the Lexus GS Campaign 'It's Alive' is to promote the technological and intuitive features of the new model. Features such as Adaptive Headlights, Smart Key, Vehicle Dynamics Integrated Management all work seamlessly to deliver a car that is in effect 'Alive'."*

*"This creative execution makes legitimate use of fantasy as allowed under the provisions of the Code. Particular attention was given not to explicitly or implicitly draw attention to the acceleration or speed capabilities of the Lexus GS."*

*"The visual of the car was shot in a studio in a completely static position. In developing the creative, no additional movement or excessive straining of the car against the chains was added to ensure that the creative idea did not break the Code of Conduct. As the car is shot motionless there is no suggestion of unsafe driving, excessive speed or sudden and extreme changes in direction as outlined in section 2(a) of the Code."*

## **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 which came into effect on 1 July 2004 (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 published in print media 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 GS430 “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 GS430 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 identified that clauses 2(a), 2(b) and 2(c) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached. The Board first considered whether clause 2(a) of the FCAI Code had been breached. In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

*“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law... if such driving were to occur on a road or road related area...”*

The Board formed the view clause 2(a) had not been breached. The Board noted and accepted the advertiser’s comments that the visual of the car was shot in a studio in a completely static position and as such, did not depict any driving. The Board also took into consideration and accepted the advertiser’s comments that no additional movement or excessive straining of the car against the chains was added to the creative.

The Board then considered whether the advertisement breached clause 2(b) of the FCAI Code. In order for clause 2(b) to be breached, the driving must depict:

*“... people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast ... ”*

The Board noted that although the creative hinted at the car’s power, the image presented was a static image that depicted a stationary vehicle. The vehicle was not speeding. The Board concluded that the advertisement did not breach clause 2(b) of the FCAI Code.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must:

*“... if they were to take place on a road or road related area, breach any Commonwealth Law ...”*

The Board formed the view that clause 2(c) had not been breached. Similar to clause 2(a), the Board formed the view that no driving practices were being depicted and as such, there was no breach of this clause of the FCAI Code.

On the above basis, the Board confirmed its view and held that the material before it did not constitute an advertisement in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.