



CASE REPORT

1. Complaint reference number	111/05
2. Advertiser	Ford Motor Co (Aust) Pty Ltd (Falcon MkII)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 10 May 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The first scene in this television advertisement depicts a man leaving his house to get into a silver Ford Falcon XR6 Turbo. As he leaves the house a number of strange coincidences take place. The number “9” on the door of his house becomes loose and spins around to show the number “6”. The man’s watch is heard to chime as it hits 6 o’clock and the CD player in the car is shown to play track number 6. The car is then shown to leave the driveway and drive along a highway and a winding country road. The advertiser has used various editing techniques to enhance the sensation of speed in the advertisement. The voiceover states: “With up to 260kW of high-tech power, the most advanced suspension system on any Australian built sedan and an all new six-speed transmission on all XR8 and XR6 Turbos, nothing drives like the Falcon Mk II.”

THE COMPLAINT

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

“[the advertisement depicted] unsafe, reckless and menacing driving” .

THE ADVERTISER’S RESPONSE

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

“We are of the strong view that the Falcon MkII advertisement complies with the Voluntary Code of Practice for Motor Vehicle Advertising.”

“We absolutely refute any suggestion that the vehicle shown in this advertisement is speeding or engaged in any other unsafe or reckless activities. The vehicle is shown being driven along a sweeping road by a driver who is clearly enjoying the experience. Very explicit instructions were provided to and followed by Ford’s advertising agency: J Walter Thompson, that not only should the vehicle be filmed complying with all road rules, including speed limits, but that the advertisement should clearly give that impression to the viewing audience. We believe that the advertisement properly reflects those instructions.”

“We note that at no time is the vehicle shown speeding, crossing the centre of the line of the road, skidding, cornering aggressively or any other behaviour which may reasonably be construed as inciting unsafe or reckless behaviour.”

The reference to the power output of the engine is a factual reference and does not infer or promote unsafe, reckless or menacing driving.

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 Ford Falcon MkII "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 Ford Falcon MkII 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 was of the view that there were no overt indications in the advertisement that the motor vehicle was involved in any unsafe driving, including reckless or menacing driving that would breach any relevant law. The Board noted and accepted the advertiser's comments that at no time is the vehicle shown speeding, crossing the centre line of the road, skidding, cornering aggressively or involved in other behaviour that may be construed as inciting unsafe or reckless behaviour.

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 there was no overt indication in the advertisement that the vehicle was speeding. The Board noted and accepted the advertiser's comment that the vehicle in the advertisement was not speeding when filmed.

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 there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

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.