



CASE REPORT

1. Complaint reference number	121/04
2. Advertiser	Ford Motor Co (Aust) Pty Ltd (Falcon SR)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 8 June 2004
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a new Falcon SR pulling up to the start line of a racing track next to a Falcon V8 Supercar. Both cars are being driven by male drivers in racing outfits including helmets, driving suits and gloves. The Falcon V8 Supercar has racing livery on it. Racing lights show red to both cars as the two prepare for the race the voiceover explains the features of the Falcon SR and states that with all those features it is sure to do well. The racing lights turn green and the Falcon SR disappears into nowhere leaving a puff of smoke. The Falcon V8 Supercar driver appears confused and surprised.

The tagline is “*New Falcon SR, with over \$6000 of extra value, it’ll go quick.*”

THE COMPLAINT

Comments which the complainant/s made included the following:

“I wish to lodge a complaint against the current trend in motor vehicle advertising that shows higher powered vehicles driven at high speeds including spinning of wheels, kicking up as much gravel as possible and implying that it is just ‘the boys’ thing to do.”

“The current Ford Falcon SR commercial is a prime example of this trend, where the driver is seen on a racing track with engine exhaust throbbing as the background sound to the commercial, the car disappears in a flash leaving another standing, and we are then told that with this car there are ‘no boundaries’. This commercial is clearly targeted to appeal to male drivers who are most at risk of creating an accident through speed and reckless driving.”

THE ADVERTISER’S RESPONSE

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

“Eastern Creek Raceway (NSW) was chosen as the location for the shoot, to set up the impossible scenario of a road vehicle being challenged by a V8 Supercar. Aside from the two vehicles arriving at the starting line, it is pertinent to note that at no time within the Ford Falcon SR television commercial is there any driving undertaken. The ‘race’ never eventuates, as the Falcon SR magically disappears. Such a scenario bases this commercial purely in the realm of fantasy.”

“The scene that is referred to in the letter of complaint has been deliberately engineered to give the impression that the vehicle magically vanishes.”

“It is important to emphasise that our intent with this commercial was never to promote the vehicle’s potential speed. Our objective was to demonstrate the vehicle’s value proposition in a humorous manner.”

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 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 Falcon SR “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 Falcon SR 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) and 2(b) were relevant in the circumstances.

In order for clause 2(a) to be breached, the driving practices described in that clause are a breach of the Code to the extent that they would breach any law of the Commonwealth or State dealing with road and safety or traffic regulation were they to occur on a “road or road related area”.

In order for clause 2(b) to be breached, the driving practices described in this clause must take place “on a road or road-related area”.

In relation to clause 2(b) of the FCAI Code, the Board first considered whether the driving depicted took place on a “road” or a “road related area” as defined by the FCAI Code. The definitions provide as follows:

“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”

“Road-related area: means an area that divides a road; a footpath or nature strip adjacent to a road; an area that is not a road and is open to the public and designated for use by cyclists or animals; an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles.

The Board noted that the driving practices depicted clearly took place on a racing track. There were many overt factors to indicate this fact, including, the start line, the white decals at the side of the track, the spectator seating and the racing lights.

The Board also noted the advertiser’s comment that the advertisement was shot at Eastern Creek Raceway (NSW).

On the basis of these factors, the Board formed the prima facie view that the surface depicted in the advertisement was not a “Road” or “Road-related area”.

The Board did not therefore have to consider whether clause 2(b) of the Code was breached. It was,

however, required to consider whether clause 2(a) of the Code had been breached.

In order to breach clause 2(a), the driving practices depicted must be:

“obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any Commonwealth law”

In making its decision, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

”The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

The Board noted the advertisers comment that there is no actual driving depicted in the advertisement as the Falcon SR disappears into a puff of smoke. This was not to demonstrate that the car is speedy, but rather to demonstrate that the car will be sold quickly due to its value.

The Board considered that in such circumstances, the advertiser had not depicted unsafe, reckless or menacing driving practices and in any event had made legitimate use of fantasy and motor sport in creative ways to advertise the value of their product.

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