



## CASE REPORT

1. Complaint reference number	229/05
2. Advertiser	Honda Australia
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 13 September 2005
7. DETERMINATION	Dismissed

## DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of race engineers preparing a BAR Honda Formula 1 car for a testing session. The engineers place tyres on the car and fill the car with fuel. The car is shown to leave the garage and race around an empty race track. The superscript reads: "Our greatest victory is bringing F1 technology to every Honda". The closing scenes in the advertisement display the logos for the various Honda road cars against a dark blue background. The final scene depicts the Honda logo as two Formula 1 cars are shown to race across the screen.

## THE COMPLAINT

Comments which the complainant/s made included the following:

*"... the purpose of the ad is to associate F1 with the cars Honda is trying to sell. This is clear, isn't it – why else use "exciting" F1 cars?"*

*"We know that excess speed is a major cause of road accidents. So why are "family" cars associated with the race track – and excessive speed?..."*

## THE ADVERTISER'S RESPONSE

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

*"... it is our position that the F1 themed Honda brand advertisement represents a clear example of a motor vehicle advertisement which makes legitimate use of motor sport and vehicle testing and complies with both the spirit and letter of clause 3."*

*"In the case of the advertisement concerned, all of the footage comprising the advertisement is originally taken from various footage of Honda controlled testing and time-trials. In this respect, it is very clear from the opening pit crew scenes and the driving scenes throughout the advertisement that what is being depicted is a lawfully organised, controlled testing or time-trial exercise involving a Formula 1 race car being driven on an official race or test track."*

*"In particular, the vehicle is unmistakably a Formula 1 race car, the driver is obviously a professional race-driver who is wearing all of the required safety gear (namely the fire retardant suit, safety helmet and gloves), and the driving scenes clearly depict the Honda F1 vehicle being driven around a closed track with the easily recognisable curves and bends, safety barriers and sponsorship signage of an official race or testing track. In our view, there is no room for any confusion that the advertisement depicts anything other than a lawfully organised Formula 1 testing or time-trial activity (in so far as no other F1 vehicles are shown to be competing with the Honda F1 vehicle in any scene) which is being conducted strictly in accordance with all applicable safety requirements."*

*"... we refute the complainant's allegation that the advertisement seeks to associate high-speed*

*race driving and the driving of everyday Honda on-road vehicles... the intention was to try and convey the general idea that Honda employs and draws on its extensive experience in Formula 1 motor racing in the design and production of its on-road vehicles, hence the line "Our greatest victory... is bringing F1 technology... to every Honda".*"

*"... we were certainly concerned to ensure that there was no suggestion that the depiction of the F1 vehicle footage was being in any way associated or linked with normal on-road driving of motor vehicles. We therefore deliberately avoided the actual depiction of any of Honda road vehicles in the advertisement, whether being driven or in the form of still images, and instead simply included the logos of each Honda on-road vehicle... In our view, this technique enabled us to successfully create a clear distinction between the F1 testing scenes depicted, and the everyday use of Honda road vehicles."*

*"... whilst the 'feel' of the advertisement attempts to capture the adrenalin and excitement associated with Formula 1 generally, there can be no suggestion... that Honda is encouraging or condoning driving at excessive speeds on a road or road related area, on the basis that the context is so strictly and clearly confined to an organised Formula 1 testing/time-trial activity."*

## **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 Honda road cars "in a manner calculated to promote.... [those products]". 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 logos displayed at the end of the advertisement were the logos for "Motor vehicles" as defined in the FCAI Code.

The Board determined that the material before it was an "advertisement for motor vehicles" 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), 2(c) and 3 were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

Before looking at whether clauses 2(a), 2(b) and 2(c) of the FCAI Code had been breached, the Board first considered whether clause 3 of the FCAI Code had been complied with. The Board determined that clause 3 of the FCAI Code was not a saving provision. Neither the express language of the clause nor the intention behind the FCAI Code allow clause 3 to operate as an exemption to a breach of any part of clause 2. The express language of clause 3 of the FCAI Code indicates that advertisers may make use of the scenes permitted under that clause "Without limiting the general application of clause 2". As a result, clause 3 is intended to ensure advertisers can legitimately make use of the types of scenes permitted under clause 3 provided that the provisos in clause 3 are satisfied and the use of such material is consistent with the general application of clause 2 in the context of the activities permitted.

The Board noted that pursuant to clause 3 of the FCAI Code, advertisers are permitted to:

*“make use of scenes of motor sport; simulated motor sport; and vehicle testing or proving in advertising, subject to the following:*

*Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity of a type for which a permit would normally be available in Australia.*

*Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.”*

The Board first gave consideration to whether the advertisement in question made use of scenes of “motor sport” in accordance with clause 3 of the FCAI Code. “Motor Sport” is defined in the FCAI Code as meaning:

*“racing, rallying, or other competitive activities involving motor vehicles of a type for which a permit would normally be available under the National Competition Rules of the Confederation of Australian Motor Sport, or other recognised organising body.”*

The Board noted that the depictions complained about were of a BAR Honda Formula 1 racing car testing on a race track. The Board determined that the car shown is specifically designed for racing and cannot be used for any other purpose. As such, it can only be driven in a racing, rallying or competitive activity of a type for which a permit would normally be given under the relevant rules.

The Board therefore formed the view that the driving practices depicted in the advertisement did involve racing activities of a type for which a permit would normally be available under the CAMS rules and therefore the advertisement had made use of “motor sport” scenes as defined under the FCAI Code.

The Board was then required to consider whether the provisos in clauses 3(a) and (b) had been satisfied.

Clause 3(a) of the FCAI Code requires the use of the “motor sport” scene to be:

*“clearly identifiable as part of an organised motor sport activity....of a type for which a permit would normally be available in Australia.”*

The Board was of the view that the depictions involving racing activity were clearly identifiable as such an activity as required under clause 3(a) of the FCAI Code, for the following reasons:

As previously noted, the vehicle was a Formula 1 racing car that is specifically designed for racing and cannot be used for any other purpose. As such, it can only be driven in a racing, rallying or competitive activity of a type for which a permit would normally be given under the relevant rules; and

The footage shown depicted the race car in the pit lane and racing on a test track with no other vehicles on the track at the same time.

Clause 3(b) of the FCAI Code requires that in any use of a “motor sport” scene:

*“any racing or competing vehicle depicted... should be in clearly identifiable racing livery.”*

The Board noted that the advertisement depicted the Formula 1 racing car to be in full BAR Honda Racing Team livery.

For the above reasons, the Board formed the view that it would have been clear to the ordinary viewer that the activity being depicted was “clearly identifiable” as a racing activity and therefore the advertisement did satisfy clause 3 of the FCAI Code.

The Board then had to consider the general application of clause 2. Having already determined that clauses 2(a), 2(b) and 2(c) were relevant in the circumstances, the Board first considered whether clause 2(a) of the FCAI Code had been breached. Having determined that the driving depicted was a legitimate use of “motor sport” under clause 3 of the FCAI Code, the Board was required to consider whether the driving and driving practices depicted in the advertisement were in breach of clauses 2

(a), 2(b) and/or 2(c) in the context of such activities. The Board was not required to determine whether clauses 2(a), 2(b) and/or 2(c) had been breached in the context of whether the driving or driving practices depicted would be illegal were they to occur on a road or road related area.

The Board formed the view that clause 2(a) had not been breached. Given that the driving depicted involved a Formula 1 racing car and that such vehicles are only driven in circumstances where permits have been obtained, the Board was of the opinion that the driving depicted would not be illegal under Commonwealth, State and/or Territory law in the context of the racing activities.

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

*“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 formed the view that clause 2(b) had not been breached. Given that the driving depicted, including the speed of the vehicle, for the reasons stated above could only have involved driving that forms part of a permit authorised racing event, the Board was of the opinion that the speed limits in the relevant jurisdiction in Australia would not apply in the context of such racing activities.

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 determined that such driving practices would not be in breach of clause 2(c) of the FCAI Code.

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 clauses 2(a), 2(b), 2(c) or 3 of the FCAI Code. The Board therefore dismissed the complaint.