



CASE REPORT

1. Complaint reference number	289/03
2. Advertiser	Volkswagon Group Australia Pty Ltd (Bora)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 9 September 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a wide black stretch of tarmac flanked on either side by thick green grass and trees, with a white barrier stretching down the right hand side of the tarmac. The sky is overcast and there is a thick haze in the air that establishes a sense of isolation. A statement appears at the bottom of the screen for approximately three to four seconds. It is in white print which, set against the black tarmac background, is clearly visible. It says "Filmed strictly under controlled conditions". There are no additional visuals on the screen at the time the statement is displayed. A sophisticated male voice-over then states that "The sports car you are about to see will surprise you with its exhilarating performance". The camera angle then cuts to reveal a front to side view of a red Volkswagen driving swiftly along the road passing a red and white decal on its left hand side. The camera then cuts back to the opening scene of the tarmac and the voice over continues "But it's not a WRX". The red Volkswagen then appears approaching the camera along the tarmac accompanied by the audio of a strong sounding engine gathering speed and then fading out. The voiceover continues "It is built with precision engineering". The camera angle changes to show the red Volkswagen approaching swiftly down the tarmac again and then cuts back to the front angle as it gets closer to the front of the screen. The voiceover states "But it's not a Mercedes Benz". "It carries the famous blue and white labelling". The camera angle moves to show the rear of the Volkswagen as it drives away from the camera and then cuts back to the front of the Volkswagen which then draws to a halt in front of the camera, turning slightly to the right and the voiceover states "But its not a BMW. It's a Volkswagen. The Volkswagen Bora". A white caption appears in the bottom left hand side of the screen in white text "Bora V64MOTION shown". The voiceover continues "Surprisingly Quick" and as the visual of the motor vehicle fades to black the voiceover continues "And if your really quick, the V5 now comes with free leather" accompanied by the sound of a fast moving vehicle and switching to a black screen with the Volkswagen symbol and the following text: "Volkswagen Bora. Surprisingly quick. V5 now available with free leather*. *Offer on Bora V5 only. Ends September 30 2003 or while stocks last. Excludes fleet, government and rental buyers".

THE COMPLAINT

Comments which the complainant/s made included the following:

".....shows the view through the windscreen of a car that is clearly travelling at very high speed down what appears to be a country road. Although the car could be on a race track, there is nothing in the image to strongly suggest that. There is very small, practically illegible, print on the bottom of the screen for a few seconds that is presumably a disclaimer of some sort. Even if this print does say the car is on a race track or the advertisement is filmed under controlled conditions, it is of no real consequence to this complaint as the advertisement shows behaviour that appears to be on a public road and would be illegal if it were to occur on a public road".

".... the Volkswagen car is shown being driven at very high speed – clearly giving the viewer the impression of travelling at a speed beyond the NSW general speed limit of 100km/h. The language in the advertisement clearly reinforces this impression – the tag line is "surprisingly quick".

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 Volkswagen Bora “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 Volkswagen Bora 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 (b) and (c) were relevant in the circumstances. In order for clauses 2(b) or (c) to be breached, the driving practices described in these clauses must take place “on a road or road-related area”. In relation to clauses 2 (b) and 2(c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “road” as defined by the FCAI Code. The definition provides 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”

The Board then proceeded to consider the following factors as indicators of whether the images of the surface on which the vehicle travelled depicted in the advertisement constituted a “Road” for the purposes of the Code, or not: 1. At the beginning of the advertisement, the super “Filmed strictly under controlled conditions” appears on screen in clear legible print and for a time period, significant enough for all words of the super to be read (about 3 to 4 seconds) before the motor vehicle which is being advertised appears on the screen. Since nothing is added to the visuals on screen while the super is present and there are no audio sound effects or voiceovers, there are no new or changing sounds or images to distract the viewers eye from the super and in fact, in the absence of any other form of stimulation, the viewer is compelled to read the super. Accordingly, it is unlikely that a viewer would not see it or be able to read it. The super appropriately conveys to viewers that the advertisement is not intended to portray general on road driving practices. Accordingly, this suggests strongly to viewers that the surface on which the motor vehicle appears is not a public road, but a race track. 2. There are no road or traffic markings on the tarmac at all. There is no line down the centre of the track, no markings on the side of the track and no traffic signs. This gives the viewer a clear impression that the vehicle was driving on a type of race track or testing track, not a public road. 3. The overcast skies, hazy setting and vegetation all give the impression of an isolated, quiet area that is not part of mainstream public travel arena.

On the basis of these factors, the Board formed the prima facie view that the surface depicted in the advertisement is not a “Road”.

In verifying its prima facie conclusions, 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 found further that the driving practices depicted in the advertisement were demonstrated in a responsible way without showing negligent, dangerous or reckless driving conduct.

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