

CASE REPORT

1. Complaint reference number	294/03
2. Advertiser	Audi Australia Pty Ltd (A4)
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 close up shot of some bush scrub in a dusty drought affected desert-like area. An open winding road with a silver coloured Audi vehicle swiftly passes the bush scrub and the noise of a swiftly moving vehicle is heard together with the sound of the wind as the bush scrub waves as it gets caught up in the wind. The wind appears to be generated by the passing Audi. The camera cuts to the open winding road and various angles of the Audi driving swiftly along the road are filmed. The camera focuses on the exterior of the motor vehicle and its movements, though it becomes apparent that no one is present in the vehicle. The soundtrack is of a motor vehicle in swift motion causing wind turbulence as it drives along the road. The camera cuts to the side of the Audi shot from the tip of a washing line. The camera zooms out to show that the washing line is full of white squares of fabric that are uniformly pegged onto it. The camera then cuts to the whole washing line and as the Audi passes it the wind dramatically blows all of the pieces of fabric on the line up on their sides and waving in the air.

The Audi is heard driving swiftly past. A voiceover states "The Audi A4's unique multidrive transmission makes it smoother than an automatic and faster than a manual". The camera cuts to a lady raking up leaves outside an old timber shed. She looks up as she hears the Audi driving past her. The camera cuts to viewing the Audi driving along the road from the inside of the timber shed and as it passes the camera cuts to the bottom half of the lady who is raking up the leaves and the leaves are blown up into the air as a result of the Audi passing her on the road. Some loose metal sheeting from the timber shed is also flown into the air apparently as a result of the Audi passing the shed. The Audi is then filmed moving away from the camera as it continues along the road.

The camera then cuts to the Audi drawing to a halt at a stop sign on the road beside a tree and as it pulls up the tree sways dramatically and the leaves on the tree all fly into the air apparently as a result of the swift motion of the Audi passing it and pulling up beside it. The sound of the wind accompanies this scene. A voice over states "Even the wind can't keep up" and the words "multitronic performance automatic transmission" appear in white print against a black background at the bottom of the screen and in smaller print the words "3.0 V6 shown. Multitronic also available in 1.8T, 2.0, 2.4 variants" appear. The camera then cuts to a black screen with white print as follows: "The Audi A4. The Performance Sedan" with a voice over stating "Audi A4. The performance sedan". The Audi continuing swiftly down the road can be heard in the background and then the white writing on the black screen changes to "Audi Centre Sydney. Cnr Link & Epsom Roads. Rosebery. Ph: 02 9931 3400".

THE COMPLAINT

The comments which the complainant/s made included the following:

".. an Audi car that is clearly travelling at very high speed down a country road".

"There are two distinct aspects of the television advertisement that violate the code. The first is

that the Audi car is shown being driven at very high speed – clearly giving the view the impression of travelling at a speed beyond the NSW general speed limit of 100 km/h. The language in the advertisement clearly confirms this impression – the tag lines are that ‘even the wind can’t keep up’ and the ‘performance sedan’.

”.... The Audi in the advertisement violates NSW law in relation to the display of number plates. It is quite clear in the advertisement that the Audi does not have a front number plate”.

“....This is not a matter to be dismissed lightly. It is a key safety matter. It is critical that all motor vehicles driven on our roads are correctly identified to improve driver and registered operator accountability. Drivers of vehicles that are not correctly identified have greater potential to flout safety rules without being identified. This is particularly true given that camera enforcement of speed and red-light running is such an important part of managing safety on our roads”.

THE DETERMINATION

The issue to be considered by the Advertising Standards Board (“Board”) was 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 televisions in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being an Audi A4 “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 Audi A4 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.

In relation to clause 2(a), 2(b) and 2(c) of the FCAI Code, the Board held that the depiction did take place on a “road” as defined by the FCAI Code.

Having regard to whether the advertisement breached clauses 2(a), 2(b) or 2(c) of the Code, the Board then considered the context in which the motor vehicle was advertised and the surrounding imagery used in the advertisement.

The Board determined that the advertisement incorporated imagery which suggested an element of self-evident exaggeration in creative ways and therefore, prima facie, held the advertisement not to be in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code.

The Board found that, in particular there were four different images used in sequence to create the impression of the speed capabilities of the motor vehicle. These images likened the vehicle to the wind and through this comparison, conveyed fantasy and exaggeration into the advertisement. The four

images follow:

The first image used is of numerous pieces of white fabric or sheeting pegged to a washing line being blown up into the air as the motor vehicle drives past. In reality, the speed of a motor vehicle alone could not cause washing to lift off a line and further, it would never lift in the uniform and highly staged manner in which it does in the advertisement.

The second is of leaves that a woman is raking up blowing up into the wind. Given the distance the vehicle is from the scene of the raking, it is unlikely that any force generated from a motor vehicle would have such an effect on a pile of leaves.

Thirdly, the motor vehicle apparently causes parts of a timber shed to come unstuck. Again, given its proximity to the shed, this is unlikely to happen.

Finally at the end of the commercial, the motor vehicle stops near a tree and a number of dry leaves blown off the tree and scatter upward into the air. Given the uniformity of all leaves being blown off a tree and the elegant scattering motion that is depicted, it is unlikely that a viewer would see this as being possible in reality.

The Board found that it was clear from the above 4 examples, that the advertisement is trying to make an association between the motor vehicle in question and the wind. No reasonable viewer expects a motor vehicle to operate like the wind does and so accordingly, it is clearly metaphoric and not intended to be taken literally.

The Board found further that at no point in time was a driver visible in the motor vehicle. The vehicle appeared to be driving itself. This point alludes with the fact that the vehicle does not display a number plate. Since the advertisement is fanciful, it is not expected to mimic reality and incorporate all aspects of what one expects from normal day-to-day behaviour.

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 held that given this intent in the FCAI Code, the advertisement did not breach the spirit or the letter of the FCAI Code.

Finally, the Board considered whether "legitimate use" had been made of "motor sport, fantasy, humour and self evident exaggeration in creative ways" so that the advertisement would not be in breach of the FCAI Code. The Board considered that there was considerable depiction of fantasy and self-evident exaggeration in the sequence portrayed. The filming technique was such that the driving sequence appeared to be unrealistic.

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