



## **CASE REPORT**

1. Complaint reference number	294/07
2. Advertiser	BMW Group Australia (3 Series)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Speeding
6. Date of determination	Tuesday, 11 September 2007
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement opens on a BMW 3 Series driving down an outback highway. As the car travels it sheds its touring section in a manner that could be seen to be similar to a rocket jettisoning a fuel cell. The car powers forward and then sheds the rear section shell creating a BMW 3 Series Coupe. The camera moves to a front view as the car charges towards the camera and the roof of the car is then jettisoned to create a BMW 3 Series Convertible. The final shot shows the Convertible as it powers down the highway into the distance and the previously jettisoned roof flies up and into the camera causing the screen to go black.

## **THE COMPLAINT**

A sample of comments which the complainant/s made regarding this advertisement included the following:

*I find the ad offensive given the level of road trauma that is still attributed to speed. I think the ad sends the wrong message to drivers and only reinforces the speeding mentality which society is trying to eliminate.*

## **THE ADVERTISER'S RESPONSE**

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

*The commercial in question was created to show the BMW 3 Series range of vehicles. The core communication for the commercial was that regardless of which 3 Series model you choose, you will have the same driving experience. Hence the parts shedding sequences were a creative mnemonic for the "4 models - one superlative driving experience" key thought.*

*At all times during the production process we were keenly aware of the need to adhere to the FCAI Advertising Code. As an undertaking to obtain the correct permits to shoot on the roads in question we were required by law to ensure that no traffic laws would be broken in the completion of the commercial. We also made it clear to the professional drivers hired that strict speed limits had to be adhered to. We were required to obtain local council permission and permits to use the road in question as it was a public access road. Filming was required to stop whenever local traffic came into view.*

*The vehicles drive in a straight line and never depict "reckless or menacing driving". There are no "sudden, extreme or unnecessary changes in direction" and we certainly do not believe that the vehicles are depicted travelling at excessive speed.*

## **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”). 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 noted that the advertisement is a television advertisement which shows only a number of BMW vehicles driving down a long straight road that appears to be in the outback. The Board noted that the complainant's concern was that the advertisement impliedly focused on the speed of the vehicle.

The Board considered the explanatory provisions of the Car Code which state that ‘...excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.’

The Board first considered clause 2(a) of the Code and whether there was unsafe driving depicted in the advertisement. The Board noted that the cars depicted were driving on a straight road with no interference, or other cars and were depicted driving straight. The Board considered that the cars were not depicted undertaking any unsafe driving. The Board considered that the fantasy element of the advertisement ie: the boot and top of the car flying off into the air like a spent rocket fuel cell did not suggest unsafe driving.

The Board then considered whether the advertisement portrayed people driving in excess of speed limits under clause 2(b) of the Code. The Board considered that the vehicles did appear to be travelling at speed and that the sounds of the car parts flying past certainly suggested speed. The Board considered however that it was not possible to say that in this advertisement the vehicles were driving in excess of the relevant speed limit. The Board considered the advertisement did not portray or suggest that the vehicle would or should be driven at speeds in excess of speed limits.

The Board expressed its disappointment however that the advertisement's implied references to rockets and speed could be seen as a focus on speed rather than on other capabilities of the vehicle. The Board noted that this was not against the specific clauses of the Code.

Finding that the advertisement did not breach the FCAI Code on any grounds, the Board dismissed the complaint.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”). The Board noted that Section 2.6 of the Code does not apply to advertisements to which the Car Code applies. Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.