CASE REPORT

1.	Complaint reference number	308/04
2.	Advertiser	Mazda Australia Pty Ltd
3.	Product	Vehicles
4.	Type of advertisement	TV
5.	Nature of complaint	FCAI - Other
6.	Date of determination	Tuesday, 9 November 2004
7.	DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features several scenes of Mazda vehicles driving along different stretches of road. Each Mazda pulls over and stops so that the driver and passenger can swap seats. The voiceover states not to be surprised if everyone wants to drive.

THE COMPLAINT

Comments which the complainant/s made included the following:

"The legal requirement in all states and territories is to pull over to the side of the road when exiting a vehicle. To leave the vehicle in the middle of the road, with the doors wide open is an offence in all states and territories. It is also an offence to tail-gate in all states and territories."

THE ADVERTISER'S RESPONSE

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

"Just one viewing of the TVC will make it quite clear that on each occasion the cars stop, they definitely move to the side of the road and off the tarmac portion onto the dirt shoulder."

"... we specifically instructed the Advertising Agency and the production house to make it clear that the cars were not only off the road, but also well away from the traffic area to avoid any dangerous or reckless activity."

"... the three models used in the ad, are seen travelling together but with adequate distance between them. I am not sure why the reference is there, but we believe the cars are travelling at a safe distance apart as they move along the road."

"I can assure you that all tracking footage in this TVC production was done within road rules with respect to speed, driving, and stopping at the side of the road."

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 which came into effect on 1 July 2004 (the "FCAI Code").

To come within the FCAI Code, the material being considered must be an "advertisement". The FCAI Code defines "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 a 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 other 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 Mazda "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 Mazda depicted 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(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board first considered whether clause 2(a) of the FCAI Code had been breached.

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

"unsafe driving, including reckless and menacing driving that would breach any Commonwealth law….if such driving were to occur on a road or road related area…"

The Board formed the view that clause 2(a) had not been breached.

The Board noted that each time a Mazda vehicle pulled over in the advertisement, it was made clear that the vehicle had pulled over off the road before the passengers opened the doors and swapped seats. Contrary to the complainants' allegations, at no time were doors opened in the middle of the road.

The Board did not consider that there were any depictions of illegal tailgating in the advertisement. The Australian Road Rules do make it an offence not to leave a sufficient distance behind a vehicle travelling in front of a driver, however, the Board did not form the view that the driving practices depicted in the advertisement breached such a rule. There was sufficient distance between the vehicles during this advertisement.

The Board noted that there were no other overt indications that the motor vehicles were undertaking any unsafe, reckless or menacing driving practices that would be in breach of any relevant law.

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 formed the view that clause 2(c) had also not been breached. Given that the Board had found that the advertisement did not breach clause 2(a), the Board made a similar determination in relation to the driving practices depicted for the purposes of analysing clause 2(c).

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) and or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.