



CASE REPORT

1. Complaint reference number	314/03
2. Advertiser	Saab Automobile Australia Pty Ltd (9-3 Series)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 October 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This colour print advertisement features a photograph of the three-quarter profile of a Saab 9-3 sedan against a red background. At the top of the advertisement in large bold white letters appears the word: "Aerotic". Underneath that heading appears the following text: "Now the all new Saab 9-3 series is complete. The ultimate performer has just arrived – the 9-3 Aero. With an even more powerful turbo-charged engine, lowered sports chassis and precise handling, the Aero is a totally enthralling driving experience. Or as one driver commented, "Aerotic"". Underneath the photograph of the vehicle appears a photographic representation of the turbo gauge that appears on the instrument display of the Saab 9-3. The image shows the needle of the gauge to be pointing at the red end of the scale.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

"The caption of "Aerotic" conjures up in the mind "speed" or "flying through the air". Furthermore, claims "a totally enthralling driving experience".

ADVERTISER'S RESPONSE

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

"[the estimated] number of readers exposed to the advertisement was three (3) million ... we have not had one complaint"

"power to overtake, rather than the power for reckless driving".

THE DETERMINATION

The Advertising Standards Board ("the Board") considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics ("the Code").

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 published in print media in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Saab 9.5 Aero Sedan “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 Saab 9.5 Aero Sedan 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 clause 2(a) was the only section of the Code that might be relevant in the circumstances.

In order for clause 2(a) to be breached, the driving practices described in the advertisement must be:

“Obviously unsafe...including reckless and menacing driving to the extent that such practices would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published...”

The Board then proceeded to consider the content of the advertisement and came to the conclusion that nothing in the advertisement represented obviously unsafe driving practices. The Board considered that the material describes the vehicle as “Aerotic”. The Board found that this constituted a play on words between “erotic” and “aero”, being the name of the vehicle and that this is used as another way of describing “an enthralling driving experience”. The Board considered that to suggest that an enthralling driving experience necessarily involves obviously unsafe driving practices is erroneous as there are many aspects of the driving experience that one can enjoy, enhanced by a vehicle with superior performance attributes.

On the above basis, the Board held that the material before it did not constitute an advertisement for a motor vehicle in breach of clause 2(a) of the FCAI Code. The Board dismissed the complaint.