



CASE REPORT

1. Complaint reference number	315/03
2. Advertiser	Volvo Car Australia Pty Ltd (XC 70)
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 two three-quarter profile images of a Volvo XC70. The first image appears in the upper left hand corner of the advertisement and is set against a white background. The second image dominates the advertisement, and occupies approximately half the advertisement. The second photograph depicts a Volvo XC70 covered in mud, and more mud being thrown up from the tyres like water spray. Underneath the image appears the following text in bold: "Let the fun begin". Underneath the large text appears the following text: "... features include 2.5 litre 154kW engine, light-pressured turbo, geartronic all-wheel drive...."

THE COMPLAINT

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

"This advertisement depicts ridiculous and dangerous driving patterns".

THE ADVERTISER'S RESPONSE

No comments were received from the advertiser in respect of this advertisement.

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 including the Sydney Morning Herald in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a

“product” being a Volvo XC70 “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 Volvo XC70 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 advertisement depicts two Volvo XC70’s, one driving up an incline with mud spraying up and around it. The tag line reads “let the fun begin”. The members of the Board could not find how this advertisement could be found to represent obviously unsafe driving, including reckless or menacing driving. Accordingly, the complaint was dismissed.