



## **CASE REPORT**

1. Complaint reference number	316/03
2. Advertiser	Volkswagon Group Australi Pty Ltd (Bora)
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 red Volkswagen Bora travelling along a straight road and set against a blurred background. The following text appears above the photographic image: "Bora V5. They'll go even faster with free leather". The following text appears to the right of the photograph "...2.3 litre, 125 kW Bora V5...in fact, the entire range, from the sporty Bora 2.0 to the powerful Bora V64 motion...is designed to impress and excite the driver in everyone...".

## **THE COMPLAINT**

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

*"subliminal advertising of speed"*

## **THE ADVERTISER'S RESPONSE**

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

*"The press ad was developed to communicate the offer that we have running until the end of September, which is free leather. We do not feel that this in any way depicts speed capability and aggressive and/or irresponsible driving. The headline is simply a clever play on words that reinforces the car's positioning. Nowhere in the ad does it promote speeding or unsafe 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 Volkswagen Bora “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 Volkswagen Bora 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(b) were 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 tag line for the advertisement, “They’ll go even faster with free leather” clearly utilised a play on the words “go even faster” to promote its offer of free leather with purchase. The Board found that since one cannot interpret this as meaning that free leather will increase the speed of the vehicle, clearly the advertising message is that these vehicles are likely to sell at great speed now that they are being offered with free leather.

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

*“people driving along a Road or Road related area at speed in excess of speed limits”*

Since the vehicle depicted is stationary and not on a Road or Road related area, this section of the Code has not been breached.

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) or 2(b) of the FCAI Code. The Board dismissed the complaint.