



## **CASE REPORT**

1. Complaint reference number	317/03
2. Advertiser	Ateco Automotive Pty Ltd (Alfa 147GTA)
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 presents a photograph of the three-quarter profile of a red Alfa 147 GTA on a curved road set against a blurred background. Underneath the image of the vehicle appears the following text in hand written font: "Race bred in Italy". Beneath the image appears the following text "With a racing heritage as long and glorious as Alfa Romeo, its no surprise that we are the reigning European Touring Car Champions. What's more, It's no wonder the breathtaking new Alfa 147 GTA is the most powerful vehicle in its class. Its race bred 184KW, 3.2 litre, 24 valve V6 accompanied by Alfa's unique sonorous soundtrack, propels you to 100 km/h in a mere 6.3 seconds. So the only thing that would be racing faster is your heart".

## **THE COMPLAINT**

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

*"The caption "Race bred in Italy" and reference to heart racing is simply advertising speed as a feature!"*

## **THE ADVERTISER'S RESPONSE**

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

*"All advertising developed by Alpha Romeo Australia is done with reference to the FCAI Code of Practice for motor vehicle advertising..."*

*"The reference to "race bred" in our advertising, refers to the reputation of the vehicle's manufacturer which has been borne out of a 90 year history of building performance automobiles. As such it refers to the vehicle's manufacturing heritage, as opposed to the vehicle itself".*

## **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 the Good Weekend magazine in the Sydney Morning Herald.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being an Alfa Romeo 147GTA “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 Alfa Romeo 147GTA 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(b) were the only sections of the Code that might be relevant in the circumstances.

In order for clause 2(b) of the FCAI Code to be breached, the advertisement must portray:

*“people driving on a road or road-related area at speeds in excess of speed limits...”*

In relation to clause 2(b) of the FCAI Code, the Board first considered whether the driving depicted took place on a “Road” as defined by the FCAI Code. The definition provides as follows:

*“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”*

The Board then proceeded to consider whether the images of the surface on which the vehicle travelled depicted in the advertisement constituted a “Road” for the purposes of the Code, or not. The Board found that there was no reason to assume that the tarmac surface on which the vehicle was photographed was not a “Road” or “Road-related area”.

The Board then proceeded to consider whether the image of the vehicle suggested someone driving the vehicle in excess of the speed limit. The Board considered that it is very difficult to convey a degree of speed through a still photograph and that, in spite of what appears to be a blurred cliff side running along side the road, there was no clear indication of excessive speeding portrayed in the advertisement.

The Board then proceeded to consider the content of the advertisement and came to the conclusion that nothing in the advertisement represented speeding or obviously unsafe driving practices. The tag line for the advertisement reads “Race bred in Italy”. The Board found this, read in conjunction with the body of the text, which includes a reference to the fact that the vehicle has “a racing heritage” indicates to the reader that the vehicle’s manufacturer has a history in building racing vehicles and that this in itself does not make the vehicle a racing car, or promote the vehicle for racing or speeding purposes, but simply alludes to the history of the manufacturer.

The Board then went on to consider the claim “The only thing left racing faster is your heart”. In verifying its prima facie conclusions, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

*“The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”*

The Board found further that the driving practices depicted in the advertisement were demonstrated in a responsible way without showing negligent, dangerous or reckless driving conduct. The Board found that an element of self evident exaggeration was present in the play on the words in the expressions “race bred” and “racing heart”.

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