



CASE REPORT

1. Complaint reference number	318/03
2. Advertiser	Ford Motor Company of Australia (Falcon)
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

The material reviewed by the Board features a full-page newspaper print ad that presents a picture of a windy, line marked road surrounded by pine trees with high snowy mountains set in the background. In the centre of this picture appears white text that states: "100k's of windy road, Control Blade IRS, Sequential Sports Shift and 260kW under the bonnet. Enjoy."

Underneath this picture is a smaller picture of a yellow Ford Falcon vehicle in the centre of a white background. Black text appears on either side of the picture of the vehicle and states: "Nothing beats the exhilaration of driving a new Falcon. With Control Blade IRS on all sedans, you can carve up the road like never before. And just to get your heart racing even faster, the Falcon range comes with four new performance engines that offer a bandwidth of power from 182kW to a mind blowing 260kW. Add to this Sequential Sports Shift on the optional automatic transmission, and you're in for the drive of your life. So test drive WHEELS Car of the Year at your Ford dealer now." The words "Falcon. Can't get enough of this." appear in bold, black text underneath the previous text.

Underneath the smaller picture of the yellow Ford Falcon and the text described above is the Ford logo and website address against a dark blue background and the copy type: "No Boundaries" in white text along side the Ford Logo.

THE COMPLAINT

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

"[The ad depicts] subliminal advertising for speed and adventurous driving on a winding road. Why else would you need 260kw? A V6 Camry of 130 kw would handle it safely and within our speed limit just as well."

ADVERTISER'S RESPONSE

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

"the advertisement depicts a windy road in order to draw attention to the controlled handling experience that one can enjoy with the Ford Falcon".

"the power of the vehicle is important for a number of reasons including towing and safe overtaking".

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 Ford Falcon XR8 “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 Ford Falcon XR8 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 relevant in the circumstances.

In order for clause 2(b) to be breached, the driving practices described in these clauses must take place on a “Road” or “Road-related area”.

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 decided that the advertisement clearly depicted a “Road”. The stretch of black tarmac with white road markings on it made this unequivocal. However, the Board considered that there was no vehicle depicted on the road in the advertisement and therefore clause 2(b) could not apply to the advertisement.

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.

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.