



## **CASE REPORT**

1. Complaint reference number	319/03
2. Advertiser	Mazda Australia Pty Ltd (RX8)
3. Product	Vehicles
4. Type of advertisement	TV
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 opens with a close up of a man in his late 20's staring straight ahead. The camera then cuts to a front view of a red Mazda RX8 sitting in a garage. The side profile of the Mazda RX8 is then shown with the young man standing in front of the vehicle.

The advertisement then cuts to a shot of the vehicle being driven down a wet country road with grass and trees on either side. The vehicle is shown to change lanes onto the wrong side of the road and accelerate past the camera. A series of split second shots of the vehicle are then shown. It seems as though these driving sequences were intended to appear as dream sequences.

The advertisement then returns to the garage. A three-quarter front-side profile shot of the vehicle is then shown with the man in his late 20's standing to the left hand side of the vehicle. The ad then shows a series of short scenes of the vehicle being driven down a country road. During the drive sequences, the engine is heard as the vehicle accelerates and fast paced music is played in the background. During the scenes in the garage, there is silence apart from light, slow music.

The camera then cuts to an animated image of the rotary engine. A voiceover then says "The rotary powered four door RX8" as the young man opens the driver's side door and the passenger door behind the driver. He is shown to lean into the vehicle and stare at the dashboard. The advertisement then cuts to the inside of the vehicle showing the dashboard of the vehicle before cutting back to the very short sharp sequences of the vehicle travelling down a road and the instrument panel of the vehicle (which shows the vehicle travelling at 75km per hour at 4000 rpm and a gear change). The camera then pans back and passes over the cabin of the vehicle showing the interior before cutting back to the outside view of the vehicle showing the front side three quarter profile of the vehicle travelling down the road.

The ad then returns to the garage scene. A close up of the man's face is shown before the camera angle pans back to show him outstretching his arms and placing his hands over the vehicle as if to hug it. The doors of the vehicle then close around him as if to hug him back. A close up of the man's face is shown with his face resting on the hood of the vehicle. He is shown to be smiling. A woman's voice is heard to call his name. The camera then cuts to the image of a woman standing at the entrance of the garage with her arms folded. A voice over said "A sports car like no other". The Mazda theme song "Zoom Zoom Zoom" is played in the background as the Mazda logo appears in the lower right hand corner of the screen.

## **THE COMPLAINT**

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

*"A very attractive advertisement featuring speed and the power of the Mazda RX8 was shown and repeated".*

*"We have the ridiculous situation of all levels of government spending millions on slowing us*

*down on the roads, while we have some members of the motoring industry spending millions in opposition by featuring speed in advertising, leading unfortunately for many people, death and injury. The Mazda car is shown to be driven in a reckless manner in public streets..... It depicts the car crossing over a number of lanes in a reckless manner without indicating and also driving around corners at a dangerous speed which causes the car to slide. The footage is clearly designed to depict driving around corners at fast speeds....”.*

*“The vehicle also violates New South Wales law in relation to the display of number plates. It is clear in the advertisement that the most the vehicle is on a public road but do not have the front number plates. The Road Transport (Vehicle Registration) Regulation 1998 Clause 24 states that one number plate is required to be fixed at the front of a vehicle and one to the back”.*

## **THE ADVERTISER’S RESPONSE**

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

*“The car is shown in a number of highway driving situations all of which take place in a lawful manner with no multiple lane changes and in fact show the car driving at 75km per hour well below the predominant highway speed of 100km per hour. There is one driving sequence where the car does move to the opposite side of the road but this is clearly done across a broken line as permitted by law”.*

*“ We acknowledge that the RX8 does not display number plates, but we find it difficult to believe that the television commercial could in anyway be interpreted as advocating such action on the part of owners”.*

## **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 broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Mazda RX-8 “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 a Mazda RX-8 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), 2(b) and 2 (c) were 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 considered the visuals and decided that the vehicle, when seen crossing lanes, was legally crossing a broken line.

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

The Board formed the view that the surface depicted in the advertisement is a “Road”.

The Board first considered whether the driving practices shown in the commercial depicted speeding in breach of clause 2(b).

Clause 2(b) states that an advertisement for motor vehicles will not portray:

*“people driving...at speeds in excess of speed limits...”*

The Board accepted the advertiser’s submission that the vehicle was in fact travelling within the highway speed limit and therefore, not speeding.

The Board then considered whether the driving practices depicted in the advertisement breached any law dealing with road safety or traffic regulation. The Board was mindful of the fact that the Road Transport (Vehicle Registration) Regulation 1998 requires that a number plate be permanently affixed to a registered vehicle.

Clause 2(c) of the FCAI Code provides that advertisers should not portray driving practices which:

*“...clearly take place on a road ... and which breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation”.*

Examples of breaches of clause 2(c) are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board considered that examples that accompany clause 2(c) give a clear indication of the types of breaches that are considered to be an infringement of clause 2(c). Applying the sui generis rule, and reading it in conjunction with the Explanatory Notes which state that:

*“Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community...”*

The Board considered that failure to display a number-plate is unlikely to be the type of breach contemplated by section 2(c) because absence of a number plate is not directly related to occupant protection or road safety. The Board determined that an occupant of a vehicle is unlikely to suffer harm from not having a number plate on his or her vehicle in the same way that he or she may suffer harm if driving while holding a mobile phone or not wearing a seat belt.

The Board considered that members of the public viewing the advertisement were unlikely to see the advertisement as being an endorsement for removing number plates, but would rather be likely to view this as an omission during filming of the advertisement due to the newness of the vehicle or because the vehicle used for filming was not yet registered and therefore not fitted with a number plate. Further, the Board considered that the vehicle might have traders plates displayed on the inside of the vehicle.

The Board further had regard to submissions from advertisers that motor vehicle dealers are required to fit number plates before delivering vehicles to new owners and therefore it is unlikely that vehicle

owners will misinterpret the advertisement as discouraging the need for number-plates.

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 clauses 2(a), 2(b) or 2(c) of the FCAI Code. The Board dismissed the complaint.

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 dismissed the complaint.