



## **CASE REPORT**

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|-------------------------------|--|
| 1. Complaint reference number | 344/04                                       |
| 2. Advertiser                 | Lance Dixon Ferrari (Bentley Continental GT) |
| 3. Product                    | Vehicles                                     |
| 4. Type of advertisement      | Print  |
| 5. Nature of complaint        | FCAI - Other                                 |
| 6. Date of determination      | Tuesday, 7 December 2004                     |
| 7. DETERMINATION              | Dismissed                                    |

## **DESCRIPTION OF THE ADVERTISEMENT**

The advertisement is a print advertisement which features a photograph of a Bentley Continental GT Coupe and the tag line is “0 – 100 km/h 4.8 sec 411 kW. 6.0L W12 Twin Turbo. Top Speed 318 km/h. At a price that’s equally as impressive...”.

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*“... I am concerned with the impression the ad creates for potential buyers and others that read the ad. Why advertise that the car can do 318km/h when the maximum speed limit in Qld is 110km/h. I believe it promotes unsafe driving habits in our drivers. The Government and police spend a lot of time, effort and resources in promoting safe driving habits including not speeding. Then we have a car retailer promoting unsafe and dangerous driving habits. Why not promote the luxury of the car, the safety of the car, the design of the car? Why promote an aspect of the car that is illegal and unsafe?”*

## **THE ADVERTISER’S RESPONSE**

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

*“We believe that the ad purely portrays the very impressive specifications of the New Bentley Continental GT Coupe and in no way suggests that speeding is acceptable or supported by Lance Dixon Bentley, the National Bentley Dealer Network or Bentley Motor Cars Australasia. There is no malicious or offensive intent behind the advertisement and one would have to question at what point does negating the freedom to advertise a highly regarded selling point (e.g.: the specifications) become inequitable?”*

## **THE DETERMINATION**

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 which came into effect on 1 July 2004 (the “FCAI Code”).

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines “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 a 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 other valuable consideration given that it was published in Australian print media.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Bentley Continental GT Coupe “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 Bentley Continental GT Coupe depicted 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. The Board had to consider whether those clauses of the Code had been breached.

The Board firstly noted that the complaint in this matter was not made under any of the formal provisions of the FCAI Code. The complainant alleged a breach of the FCAI Code on the basis that the advertiser had made use of a reference specifically cautioned against by the FCAI in the Explanatory Notes to the FCAI Code, that is, a reference to the speed or acceleration capabilities of a motor vehicle (for example, “0-100 km/h in 6.5 seconds”). The Board noted that it was not able to uphold a complaint unless there has been a breach of the formal provisions of the FCAI Code. The Board noted that the relevant part of the Explanatory Notes is included in the FCAI Code as guidance to advertisers and this part of the Explanatory Notes could not be used by the Board to uphold a complaint where the formal provisions of the FCAI Code had been complied with. The Board did note, however, its desire for the FCAI to contact the advertiser to reiterate the recommendations given to the advertiser in the Explanatory Notes and caution against non-compliance with such guidance again in the future.

Although the complaint was not made under the formal provisions of the FCAI Code, the Board considered the clauses of the FCAI Code relevant to this advertisement for the sake of completeness.

The Board first considered whether clause 2(a) of the FCAI Code had been breached.

In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

*“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law....if such driving were to occur on a road or road related area...”*

The Board formed the view that clause 2(a) had not been breached. The Board was of the view that there were no overt indications that the motor vehicle was undertaking any unsafe, reckless or menacing driving practices that would be in breach of any relevant law.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

*“people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”*

The Board formed the view that clause 2(b) had not been breached. The Board noted that there was no overt indication that the car was being driven at excess speeds.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must:

*“...if they were to take place on a road or road related area, breach any Commonwealth law....”*

The Board formed the view that clause 2(c) had not been breached. Similarly to clause 2(a), the

Board formed the view that there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

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