



## **CASE REPORT**

1. Complaint reference number	360/03
2. Advertiser	Porshe Cars Australia Pty Ltd
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 printed advertisement shows a photographic image of the front/side three quarter profile of a Porsche Cayenne as it drives down a windy country road. The road appears to be wet. Underneath the image appears the following text in black bold letters against a white background “Have your Porsche and family too. Cayenne S from \$139,890.00”. No number plate appears on the front of the Porsche.

## **THE COMPLAINT**

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

*“The aspect of the advertisement which violates the code is that the Porsche car is shown being driven on a public road without displaying a front number plate. It is against New South Wales road transport law to drive a car without displaying a front number plate and as such this advertisement is in violation of the code. Presumably the aim of both the advertiser and the offending road users is to more effectively show off the styling of the vehicle. Some vehicle owners might be convinced by the advertisement that it is actually legal to have no front number plate on a car”.*

## **THE ADVERTISER’S RESPONSE**

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

*“...I can assure the Board that the vehicle was not photographed on Australian roads. The vehicle in this advertisement is in left hand drive. I maintain that the advertisement does not breach clauses of the Road Transport Regulation 1998...because left hand drive vehicles less than 30 years old are not capable of being registered in Australia...and therefore the breach of... regulations could not have occurred. ...I do not believe that our company’s target market is swayed by the absence of the licence plate from the vehicles depicted in our advertisement nor is such a promotion for a stylistic or other purpose...”*

## **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 Porsche Cayenne “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 Porsche Cayenne 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 (c ) was relevant in the circumstances.

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

In relation to clauses 2(c) 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 found that, given the road markings on the tarmac, the surface depicted was clearly a “Road”.

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 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 broad cat dealing directly with road safety or traffic regulation”*

An example is 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 the examples that accompany clause 2(c) give a clear example 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 states 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 clause 2(c) because absence of a number plate is not related to occupant protection

or road safety. The Board found 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.

The Board considered further that the vehicle might have had a number plate on the back of the vehicle, which was not visible in the advertisement.

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 clause 2(c) of the FCAI Code. The Board dismissed the complaint.