



## **CASE REPORT**

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|-------------------------------|--|
| 1. Complaint reference number | 363/09   |
| 2. Advertiser                 | Alfa Romeo MiTo                                      |
| 3. Product                    | Vehicles   |
| 4. Type of advertisement      | Print  |
| 5. Nature of complaint        | FCAI - Speeding<br>Other - Causes alarm and distress |
| 6. Date of determination      | Wednesday, 12 August 2009                            |
| 7. DETERMINATION              | Dismissed  |

## **DESCRIPTION OF THE ADVERTISEMENT**

This print advertisement features a new Alfa Romeo on a road with the background blurred. The caption: "You were born screaming. What happened?" In smaller writing on the bottom right hand corner the statement: The all new Alfa Romeo MiTo. Up to 155HP DMA driving system. Killer Styling. 7 Airbags. 5 star NCAP rating. Make a statement. Demand a test drive at [AlfaRomeo.com.au](http://AlfaRomeo.com.au) today. New MiTo. Know you're alive.

## **THE COMPLAINT**

A sample of comments which the complainant/s made regarding this advertisement included the following:

*My 18 year old stepson David might have been born screaming, but I don't know if he was screaming as he died when the car in which he was a passenger hit a power pole at 4.20 a.m. on 20 May 2006. The post mortem detailed his injuries that he suffered as the passenger seat took the full impact. The car was driven by a young man, at excessive speed. The driver was jailed for six months (three months suspended) for Negligent Driving Causing Death.*

*At a personal level, the text of the advertisement is deeply offensive.*

*At a societal level, it continues the push by car manufacturers to glorify speed: there is no other possible interpretation of the phrase 'You were born screaming'.*

*In terms of the FCAI code, I claim the depiction of speed in conjunction with the text encourages unsafe driving, including menacing or reckless driving.*

## **THE ADVERTISER'S RESPONSE**

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

*We refer to the email received on 27 July 2009 in relation to the above complaint.*

*We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics ("the Code") and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries ("FCAI Code"). We note that the nature of the complaint relates generally to the FCAI Code and specifically to the concern that the ad in question contains language and imagery that is alleged to depict unsafe driving practices.*

*We have carefully considered the Code and FCAI Code, and have assessed the provisions against the content of this advertisement. We find that the advertisement does not breach the Code or the FCAI Code on any of the grounds set out in the same.*

*Looking at the Code, Provision 2.7 provides that advertisements for motor vehicles must comply with the FCAI Code. We note that the advertisement does not contain any material relevant to any other section of the Code.*

*Looking at the FCAI Code, Provision 2(a) provides that advertisements for motor vehicles shall not portray “unsafe driving, including reckless and menacing driving that would 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 with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.” Further, Provision 2(b) provides that advertisements for motor vehicles shall not portray “people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”*

*We note the image of the area surrounding the vehicle is blurred, as are the wheels of the vehicle. This blurring is due to the vehicle being photographed whilst in motion. Whilst the blurring effect suggests movement, it does not, in our view, suggest that the vehicle is travelling in excess of any speed limit. We note that the image of the vehicle is static and there is no other material depicted in the advertisement to suggest that the vehicle is travelling beyond any speed limit.*

*We note that the vehicle itself is portrayed as travelling in a straightforward manner, and is placed in between the lines marked on the road. We note that the vehicle does not appear to be out of control, or driving in a menacing or threatening manner. We note that there are no other vehicles or people present in the ad.*

*With regards to the complainant’s specific concerns regarding the tag line “You Were Born Screaming. What Happened?”, we note that this line is intended to illicit an emotional response from the consumer, causing them to recall the last time they were excited about something. The intended message is that many people have now lost the excitement in their lives, and should rekindle their excitement by purchasing an Alfa Romeo Mito. In our view this line does not suggest that the vehicle is being driven unsafely or in excess of any speed limit. We have sympathy for the complainant’s personal circumstances, and understand that some people who have experienced a driving-related loss may be sensitive towards motor vehicle advertising generally, however, in our view, the reasonable objective person is not likely to take offense at the line “You Were Born Screaming. What Happened?”.*

*We further note the complainant’s concern regarding the line “Killer Styling.” We note that word “killer” in this advertisement is clearly intended to be interpreted in a colloquial sense, meaning that the styling of the car is fashionable and superior to others. This relates to the aesthetic design of the car and not to the performance or any driving practices. We note that, in our view, the use of the expression is commonly recognized and accepted in Australia and a reasonable objective person would not associate its use with an implication that the vehicle is being driven in an unsafe manner.*

*Further, we note the Board has recently considered similar issues to what the complainant is raising in its recent decision in Case No. 243/09. The complaint regarded a Mercedes Benz advertisement which used words such as “wicked beast” and “aggressive” to describe the vehicle and its features. We note that the Board took the view that those words were not likely to be interpreted negatively.*

*In our view, there is scope for similar considerations to apply here, as, in our view, the wording of the advertisement is not likely to be attributed to speeding by a reasonable person.*

*In summary, in our view, the advertisement does not depict unsafe driving practices nor does it depict material suggesting the car is being driven in excess of any speed limit.*

*For the above reasons we submit that the advertisement is not in breach of the Code or the FCAI Code.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”) and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (“the FCAI Code”)

The Board noted the complainant's personal experience and the feelings of distress that could be triggered, from the portrayal of an image of a car speeding.

Having regard to sections 2.2 and 2.6 of the Code, the Board reviewed the advertisement and considered the caption: "You were born screaming. What happened?" including a reference to 'killer styling' which appears in smaller print in the right hand corner of the advertisement.

Some members of the Board agreed that the caption "You were born screaming" was ambiguous and could be perceived as incongruous with the product being advertised and therefore some members of the community could be upset, confused or distressed by the advertisement.

In considering the overall impression that a consumer would take from this advertisement, the Board observed the visual imagery and scale of the red vehicle, within the context of the background scenery and the language used.

The Board expressed a sentiment of sympathy with the complainant's experience. However, in the Board's view, the reference to the word "killer" in the advertisement was a reference to the sharpness of the vehicles styling.'

Having regard to the response provided by the advertiser, the Board agreed that the language used in the advertisement was to prompt the viewer to consider the last time that they had been excited. Members of the Board felt that although the advertisement's use of language was rather strong and could be misconstrued, the advertisement did not intend or depict violence.

The Board also considered whether the advertisement was in breach of section 2(a) of the FCAI Code. Section 2(a) of the FCAI Code refers to the portrayal of unsafe driving, including reckless and menacing driving, that would breach any Commonwealth law or the law of any State or Territory.

The Board agreed that it was not immediately discernible from the image or wording that the vehicle was speeding or driving in a reckless manner. The Board considered the reference to the caption: "born screaming" in this printed context and agreed that the advertisement did not suggest excessive speed or unsafe driving and therefore, was not in breach of section 2(a) of the FCAI Code.

Finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.