



## CASE REPORT

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| 1. Complaint reference number | 37/08   |
| 2. Advertiser                 | KIA Automotive Australia (Sportage)               |
| 3. Product                    | Vehicles  |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | FCAI - Driving practice that would breach the law |
| 6. Date of determination      | Wednesday, 13 February 2008                       |
| 7. DETERMINATION              | Dismissed   |

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement portrays a young couple throwing gear into their Sportage boot and driving out of the city. When the woman's mobile phone rings, reluctant to take the call, she holds the phone towards the male who is driving, and he tells the caller "This is Anna's phone. She's with a very important client at the moment and I will get her to call you back." When the man's phone rings, the woman answers "Hello, John's phone. John's in the middle of a really big proposal at the moment - can I take a message? Not a problem - I will be sure to pass that on." A male voiceover concludes "With three models including a turbo diesel, Kia Sportage is the getaway car - whatever you're escaping. KIA - the power to surprise."

## THE COMPLAINT

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

*I object because it is an offence to talk on the mobile while driving. It attracts a fine and demerit points. In my opinion the ad is socially irresponsible and displays a disregard for the law.*

## THE ADVERTISER'S RESPONSE

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

*We have considered the complaint in relation to compliance with the FCAI Code of Practice for Motor Vehicle Advertising ("FCAI Code"). We do not consider that the television commercial contravenes the FCAI Code and make the following submissions in support of the television commercial:*

*In particular we have addressed the most relevant provisions below:*

*2. Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(a) 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.*

...

*(c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety*

or traffic regulation.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts...]

We note that the relevant provision of the current Australian Road Rules is as follows:

*300 Use of hand-held mobile phones*

*(1) The driver of a vehicle (except an emergency vehicle or police vehicle) must not use a hand-held mobile phone while the vehicle is moving, or is stationary but not parked, unless the driver is exempt from this rule under another law of this jurisdiction.*

*(2) In this rule:*

*Mobile phone does not include a CB radio or any other two-way radio.*

*The Kia Sportage television commercial in question shows two scenes involving a mobile phone, being two phone calls taking place while the man and woman are driving in the Kia Sportage on their way to the beach.*

*In the first scene the man is driving, and the female passenger picks up and holds the mobile phone in the direction of the man. The man talks in the direction of the speaker of the phone, however at all times he has both hands on the wheel. His eyes are on the road, apart from briefly glancing in the direction of the phone. The woman is not holding the mobile phone too close to him, or in a manner that could interfere with his task of driving. This is all done in a safe and controlled manner, and is consistent with having a normal everyday conversation in a vehicle.*

*In the second scene the man is still driving and the woman picks up the phone, talks into the phone and looks at the man while speaking on his behalf. He is watching the road (other than looking at her very briefly without turning his head) and he has both hands on the wheel at all times. He does not participate in the phone call at all in this scene, as the call is taken and answered by the passenger. At all times throughout the commercial the man is driving in a safe and controlled manner and the vehicle is not seen to be speeding, or doing anything dangerous, menacing, reckless or illegal. The man is not seen to be distracted from the task of driving or in any state of agitation. He is aware of the road and in full control of the vehicle at all times, with both hands on the wheel and watching the road.*

*The advertising agency was very mindful of the FCAI Code and the need to ensure that all driving practices were depicted in a lawful manner. Great care was taken in the production and development of the commercial to ensure that all road rules were complied with and that the driving practices and actions shown were safe and lawful. This included taking care with the positioning and handling of the mobile phone, the need for the driver to be shown in control and with his hands on the wheel, and not distracted from the task of driving. This also included ensuring that the vehicle was not shown to be speeding or driving in a dangerous manner. We can confirm that the vehicle was driving within legal speed limits at all times.*

*You will be aware that it is legally acceptable to carry on a conversation in a vehicle, and it is also legally acceptable for a driver of a vehicle to talk on the mobile phone by way of a hands-free device. The Australian Road Rules only prohibit using a mobile phone that is 'hand-held', as obviously there are safety concerns in not having both hands available for the purpose of driving. The activities shown in the commercial are not in breach of the Australian Road Rules, as the driver's hands do not stray away from the wheel or touch or hold the phone at any time. Therefore the commercial does not breach 2(c) of the FCAI Code, in that it does not depict any driving practices or actions which would breach any laws relating to road safety or traffic regulation.*

*For the reasons expressed above, the commercial does not contravene clause 2(a) of the FCAI Code, in that it does not show any unsafe driving that would breach any laws relating to road safety or traffic regulation.*

*As you will see the commercial is not promoting any features of the vehicle relating to mobile phone use as such, rather it is promoting the vehicle as "The Getaway Car" and showing the characters driving to the beach, and taking time off from work commitments, and so taking work-related calls for each other.*

*For the reasons set out above we ask the Advertising Standards Board to dismiss the complaint.*

## **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 (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 considered the substantive provisions of the FCAI Code. The Board first considered clause 2(a) of the FCAI Code. Clause 2(a) provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'unsafe driving, including reckless or 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.'

The Board considered that the advertisement does not depict the Kia Sportage driving in a manner that would be unsafe or would breach any law.

The Board also considered clause 2(b) which provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'People driving in speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.' The Board considered that the advertisement did not depict or suggest the vehicle travelling at excessive speed.

The Board then considered clause 2(c) which prohibits the depiction of:

*"Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation."*

The Board noted that the Australian Road Rules prohibit the driver of a vehicle using a mobile phone whilst driving (Rule 300) and that the overriding criterion is that the driver has proper control of the vehicle at all times. (Rule 297). The Board carefully viewed the advertisement and agreed that the advertisement does not depict the driver holding the mobile phone - rather, the woman passenger holds the phone towards the man so that he can speak into the phone. The Board considered that the man is depicted as being in control of the vehicle for the duration of the advertisement.

The Board determined that the advertisement did not depict any illegal driving practice and did not breach clause 2(c) of the FCAI Code.

The Board determined that clauses 2(d), and 3 of the FCAI Code were not relevant to the present advertisement.

The Board considered that the depiction of the Kia Sportage 'off road' on the beach did not depict environmental damage or unsafe driving and that the advertisement did not breach clauses 2(e) and 4 of the FCAI Code.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”). The Board noted that section 2.6 of the Code does not apply to advertisements to which the Car Code applies.

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