



CASE REPORT

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| 1. Complaint reference number | 370/03 |
| 2. Advertiser | Lexus Australia (IS200) |
| 3. Product | Vehicles |
| 4. Type of advertisement | Print |
| 5. Nature of complaint | FCAI - Other |
| 6. Date of determination | Tuesday, 11 November 2003 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board features a picture of a Lexus with a bird flying behind it and a caption in very small print at the base of the advertisement which reads “It’s not very often you see a Hummingbird’s wings in focus. It’s not very often you see a 2 litre, 6 cylinder IS 200 in focus either. For a clear view, contact your nearest Lexus dealer. The remarkably quick Lexus IS200.”

THE COMPLAINT

Comments which the complainant/s made included the following:

“The clear intention of this advertisement is to depict the extreme absolute speed (as opposed to acceleration capability) at which the Lexus can travel and portray travelling at high speeds as desirable and a feature that would attract a buyer to purchase a Lexus.”

THE ADVERTISER’S RESPONSE

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

“The creative idea is in fact designed to showcase the agile road handling of the IS200 – because it’s a small yet sporty car, the drive of an IS200 is very responsive. This responsive handling of the IS200 is one of its key selling points, particularly for our female customers”

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”).

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 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 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 Lexus “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 Lexus 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(b) was relevant in the circumstances.

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

In relation to clause 2(b) 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 considered that, since the vehicle is presented against a plain bluish-white background, without there being any indication of tarmac or road markings, it cannot possibly be viewed as being depicted on a “road or road-related area”.

In verifying its prima facie conclusions, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

“The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

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.

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(b) of the FCAI Code. The Board dismissed the complaint.