



## **CASE REPORT**

1. Complaint reference number	391/07
2. Advertiser	BMW Group Australia Ltd (M3)
3. Product	Vehicles
4. Type of advertisement	Internet
5. Nature of complaint	FCAI - Speeding
6. Date of determination	Tuesday, 13 November 2007
7. DETERMINATION	Upheld – discontinued or modified

## **DESCRIPTION OF THE ADVERTISEMENT**

This internet advertisement features a photograph of a BMW M3. The vehicle appears, from the image of the tyres, to be moving and there is a driver in the car. Alongside the image is text which reads "It's not just how fast you go, it's how you go fast. Fast isn't fast. It isn't just top speeds or straight line speeds. It isn't just about horsepower, but how powerful your horses are. It's how the hair stands up on your neck, how your eyes forget to blink for a bit longer than usual, how the corner of your lip unintentionally curls up, and the voice inside you says 'Oh'. You see, going fast isn't for fast's sake. You don't measure it in seconds. You measure it in feel. You lower the centre of gravity, and raise heart rates. You put in carbon fibre roofs. You flirt with RPM thresholds. You trim fifteen kilograms from the engine while adding two more cylinders. You leave fast on drawing boards, and go faster. We are M. The heart of BMW."

## **THE COMPLAINT**

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

*At a time when there is overwhelming evidence about the role of speed in the continuing road toll, it is grossly irresponsible to promote cars can fast driving in this way.*

## **THE ADVERTISER'S RESPONSE**

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

*We have always been mindful of the FCAI Code of Practice for Motor Vehicle Advertising and we do not believe that we have violated any sections. In fact, given that the M3 is a powerful car, in this instance we were particularly careful to focus on elements other than speed.*

*With the line "It's not just how fast you go..." we intended to draw attention away from pure speed and focus attention on the other characteristics of the car such as handling, and the feeling evoked when driving it. Our intention was to show that when buying a powerful car, acceleration should not be the only consideration.*

*Our intention can be further proven by looking at the print execution of this campaign. Using the same headline as the outdoor, the ad goes on to explain, "Fast isn't fast. It isn't just top speeds or straight line speeds."*

*In neither the outdoor advertising nor the print ad do we show the car driving at excessive or unsafe speed. Nor do we reference 0-100km/h capabilities. The same also applies to the website reference.*

*Safety is at the heart of BMW, and we would never knowingly create a piece of communication that encouraged behaviour that put people's lives at risk. We have no intention of violating the Code now, or in the future.*

*One further point to note in reference to the website complaint (391/07 Internet), whilst being a BMW brand, the website actually sits within the domain of the relevant Dealer. The Dealer is responsible for all content within their site. To the extent that any concerns are limited to the wording on the website we suggest that they be addressed to the relevant party.*

## **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 explanatory provisions of the FCAI Code noting the specific statements that 'Advertisers should be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle...In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory notes which accompany the Code.'

The Board considered that the overall message of the advertisement is that the vehicle advertised is a luxury vehicle which goes fast and is a nice car to go fast in. The Board noted the advertiser's response that the text under the main text makes it clear that the focus is that the car is nice to drive - fast or not. The Board noted the text and still considered that the overall impression of the advertisement and of the detailed text is that the advertised vehicle goes fast. The Board was strongly of the view that this advertisement contravenes the spirit and intent of the FCAI Code by making the speed of the vehicle the focus of the advertisement.

The Board then went on to consider 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 noted that the internet advertisement is a still image of the vehicle but that the vehicle is depicted as being in motion. The Board noted that its interpretation of the FCAI Code is that 'portray' includes implied images not just actual depictions.

The Board noted that the image of the car is still and does not obviously depict the vehicle being driven in a manner that would be reckless or menacing and amount to a breach of a law. However the Board was of the view that the image of the car being driven with the accompanying text amounted to a depiction of a car being driven fast.

The Board considered the primary heading and text of the advertisement and its numerous references to the word 'fast' and to 'go fast'. The Board noted that 'fast' is defined in relation to cars as 'capable of high speed (a fast car).'

The Board agreed that it is possible and indeed legal for cars to go fast in the appropriate places and in accordance with the appropriate speed limits. However the Board considered that the advertisement's exhortation to potential drivers to 'go fast' was done so without reference to any of the factors which would make high speed safe: ie: going high speed provided that driving conditions make it safe to do so, going at high speed provided that it is within the speed limit etc. In the absence of any limiting factors around 'going fast' the Board considered that the advertisement did implicitly depict and suggest unsafe driving.

The Board determined that there was a strong suggestion of unsafe driving and that the advertisement breached clause 2(a).

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.' Although suggestive of unsafe driving, the Board considered that the advertisement could not be said to implicitly depict driving in excess of speed limits.

The Board considered that clauses 2(c), (d), (e), 3 and 4 of the FCAI Code were not relevant to the present advertisement.

The Board determined that the advertisement breached clause 2(a) of the FCAI Code and upheld the complaints.

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.

### **ADVERTISER'S RESPONSE TO DETERMINATION**

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

*Thank you for your recent letter notifying us that the complaint regarding the website (advertisement) was upheld.*

*I would like to reiterate that BMW have always been mindful of the FCAI Code of Practice for Motor Vehicle Advertising and we would never intentionally contravene this Code.*

*As outlined in your notification and in accordance with both complaints being upheld we will action the following: Complaint reference 391/07 Internet – Advertising Discontinued.*

*Please note in reference to the website complaint (391/07 Internet), whilst being a BMW brand, the website in relation to this complaint actually sits within the domain of the relevant Dealer. We have notified our dealer network of the determination and have requested that they also comply with the determination.*