



## **CASE REPORT**

1. Complaint reference number	411/03
2. Advertiser	Ford Motor Company of Australia Pty Ltd (Falcon RTV Ute)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 9 December 2003
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

The material reviewed by the Board depicts a man who is riding a motor cycle, racing a man who is driving a Ford Falcon Ute. They race over rough muddy terrain and through water on what appears to be a motocross track.

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*"I thought that this type of advertising, emphasising speed and dangerous manoeuvres had been prohibited."*

*"The following actions are direct breaches of your code:*

*Speeding*

*Vehicles becoming airborne*

*Wheel-spinning and losing traction*

*Racing*

*Dangerous driving*

*Environmental damage."*

## **THE ADVERTISER'S RESPONSE**

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

*"Historically, the theme has involved the creation of scenes which are highly implausible and unrealistic. Our objective with the Falcon RTV Ute television commercial was to demonstrate the vehicle's unique capability over rugged terrain in an exaggerated and entertaining manner."*

*"The Falcon RTV Ute advertisement portrays a situation which is completely 'unbelievable' and without plausibility. Given the terrain of a typical motocross track, it is totally unrealistic to think that a motor vehicle could navigate the course in a manner that a motor bike could."*

*"... steps were taken to ensure that the motor vehicle was not depicted driving in an unsafe manner."*

*"A controlled environment, in this case a motocross track was chosen/simulated."*

## 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 broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Ford Falcon Ute “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 Ford Falcon Ute 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 clauses 2(a), (b), (c) and (g) were relevant in the circumstances.

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

In relation to clauses 2 (b) and (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 then proceeded to consider the following factors as indicators of whether the images of the surface on which the vehicle travelled depicted in the advertisement constituted a “Road” for the purposes of the Code, or not:

The vehicles drive over rough, rocky, muddy terrain and through large bodies of water.

There is no tarmac and there are no road markings present whatsoever at any point during the commercial which might serve as an indication that the surface depicted is a “Road or Road related area”.

On the basis of these factors, the Board formed the prima facie view that the surface depicted in the advertisement is not a “Road”.

The Board then considered whether clause 2 (a) of the Code had been breached. Clause 2(a) provides that advertisements for motor vehicles should not portray:

*“Obviously unsafe driving, including reckless and menacing driving to the extent that such practices 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, were they to occur on a road or road-related area.”*

The Board considered that it would most likely be illegal for a motor vehicle to race a motor cycle in the manner depicted, were such conduct to take place on a Road or road related area. However, in verifying its prima facie conclusion, 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 noted further that the driving practices depicted in the advertisement were demonstrated in a responsible way as the emphasis of the commercial was on motor sport. Motor sports are legal in a controlled environment and the Board considered that it was clear from the setting in which the advertisement was filmed, that the vehicles were depicted on a proper motocross track and that the drivers of each vehicle were suitably clothed and protected for racing. The Board noted further that the advertisement utilised an element of humour that ensures that the majority of viewers would not consider the advertisement to be a realistic portrayal of the manner in which the vehicle advertised is intended to be used day to day.

In relation to clause 2(g), this clause provides that Advertisers of motor vehicles should not portray:

*“deliberate and significant environmental damage, particularly while advertising off-road motor vehicles”.*

The Board noted that the advertisement was filmed in an area that is clearly intended to be set aside as a motocross track. The Board noted further that this is made clear by the number of motorcycles around the area and the general attire of the riders. On this basis, the Board found that there was no indication of significant environmental damage.

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 clauses 2(a), 2(b), 2(c) or 2(g) of the FCAI Code. The Board dismissed the complaint.