



CASE REPORT

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| 1. Complaint reference number | 483/08 |
| 2. Advertiser | Mazda Australia Pty Limited |
| 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, 17 December 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement from Mazda for its BT-50 ute is split into three scenarios. The first is a young man driving a ute and stopping outside a building and honking the horn to attract the attention of a young woman who appears on a balcony to see the word sorry written in flowers in the tray of the ute. The second scenario shows a young man reversing his ute up to a barbecue, slamming the tray gate onto the meat that is cooking to make them into hamburgers. The third scenario shows a young couple wheeling a shopping trolley to the rear of the ute and the young man pouring all of the items into the back of the ute. The voice over lists some of the features of vehicle, including the words "No job's too tough...too easy". The advertisement ends on a shot of the vehicle.

THE COMPLAINT

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

This advertisement should be withdrawn, or modified to remove the honking sound, because it is unlawful use of a car horn, violating Australian Road Rule 224. It promotes the idea that using a car horn as a substitute for a doorbell is lawful, harmless and acceptable behaviour - when it is really none of those. It contributes to a culture of careless honking, which harms the peace, health, productivity and social cohesion of roadside areas. An escalation of careless honking also desensitises people to the sound of car horns and diminishes its function as a warning device.

Australian Road Rule 224, as stated by the NSW Roads and Traffic Authority says:

"224 USING HORNS AND SIMILAR WARNING DEVICES

A driver must not use, or allow to be used, a horn, or similar warning device, fitted to or in the driver's vehicle unless:

(a) it is necessary to use the horn, or warning device, to warn other road users or animals of the approach or position of the vehicle; or

(b) the horn, or warning device, is being used as part of an anti-theft device fitted to the vehicle."

(www.rta.nsw.gov.au/trafficinformation/downloads/p133.pdf)

Violation of this rule attracts a \$225 fine:

"HORNS/WARNING DEVICES Rule 224. Use/allow use of horn/warning device unnecessarily.. \$231"

(http://www.kmc.nsw.gov.au/resources/documents/0507_demerits_general.pdf)

According to section 1.1 of the AANA Advertiser Code of Ethics: "Advertisements shall comply with Commonwealth law and the law of the relevant State or Territory". This is a clear breach of ethics. Careless honking is already a source of annoyance to neighbourhoods, a trend that will increase with ads such as this. Firing of noise into surrounding areas without regard to whom it hurts is a rude and disruptive invasion into homes, workplaces, schools, hospitals, etc. Encouraging such abusive behaviour is not justified to sell cars. A car horn is a warning device for times of danger or emergency. A child can tell you the results of abusing warning signals: the boy who cried wolf. This ad will encourage horns to be abused and thus diminish to horn's effectiveness as a safety device. As stated by the NSW Department of Environment: "Horns should be used as traffic warning devices only and not as a means of relieving driver stress or frustration. (<http://www.environment.nsw.gov.au/noise/vehiclenuise.htm>) Noise pollution is harmful to health and contributes to mental and physical problems. Noise is particularly harmful to sections of the community who have reduced tolerance for noise, for example, the elderly, those weakened with health problems, the mentally ill, a young mother trying to calm a baby, a war veteran with post traumatic stress disorder for whom noise triggers shock reactions, those suffering from hyperacusis (increased sensitivity to noise), those with sleep-disorders, or those simply experiencing stress from some life event. Careless honking can be detrimental to the lives of vulnerable people. Noise is proven to reduce productivity in places of work and study. Noise is proven to promote aggressive and anti-social behaviour in it's victims. This ad encourages illegal behaviour. It should be removed on legal, health, safety, productivity, and social cohesion grounds.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following: Mazda requests that the following matters be taken into account by the ASB in its determination of this complaint.

Mazda requests that the following matters be taken into account by the ASB in its determination of this complaint.

1. The sound of the horn in the advertisement is not the actual sound of the horn of the vehicle in the advertisement. It is an artificial sound effect added to the advertisement after the filming of the advertisement. The sound effect was added to the advertisement for dramatic and humorous effect and for the purpose of the narrative of the scene depicted in the advertisement - to explain why the female in the advertisement appears at the window of her apartment when the driver arrives at the apartment. As such Australian Road Rule 224 (as referred to in the complaint) was not breached in the production of this advertisement.

2. The complaint is under section 2.6 of the AANA Advertiser Code of Ethics, which prohibits the depiction of material which is contrary to prevailing community standards on health and safety. The material depicted is not contrary to prevailing community standards for the following reasons.

(a) It is common practice for drivers to use their vehicle horn to obtain the attention of persons outside of the vehicle (notwithstanding the fact that this use may, in some States, be unlawful). Members of the community are very familiar with car horns being used in such a manner. Provided that the horn is used in such circumstances in a discreet manner (as it is in the Mazda advertisement) there is no risk to the health and safety of other drivers and users of roadside areas.

(b) The sound of the horn featured in the Mazda advertisement is discreet and somewhat playful. It is not aggressive or alarming or disturbing and accordingly such use of a horn would not create any noise pollution or health and safety or social cohesion risks for other drivers or users of roadside areas. Importantly, the sound effect of the horn was not used as means of relieving driver stress or frustration.

(c) The scene depicted in the Mazda advertisement includes an element of fantasy or exaggeration. While the vehicle is driving on a public road, there are no other drivers on the road or pedestrians on the footpaths - apart from parked cars, the road and surrounding roadside area is deserted. The tray full of flowers spelling 'sorry' establishing the 'fantastic' and 'exaggerated' tone of the advertisement and is clearly a make-believe scenario.

(d) In the Mazda advertisement, there are no other vehicles, pedestrians or residents in the vicinity of the vehicle when the sound effect of the horn is used. In keeping with the 'make-believe'

tone of the advertisement, the vicinity appears to be deserted, apart from the driver and his girlfriend. There is then no risk of the use of a horn in such circumstances disturbing or alarming other people.

(e) The vehicle depicted in the Mazda advertisement is not otherwise being driven in a unlawful, negligent or unsafe manner.

3. Reference is also made in the complaint to section 1.1 of the AANA Advertiser Code of Ethics, which requires that advertisements comply with Commonwealth law and the law of the relevant State or Territory. This section has no application to the Mazda advertisement as the Mazda advertisement itself complies with all applicable laws.

In light of the above, Mazda submits that the advertisement does not contravene the cited sections of the AANA Advertiser Code of Ethics and ought to be dismissed.

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 that this is an advertisement for a motor vehicle and therefore the FCAI Code applies.

The Board noted the complainant's concern that the use of a car horn in this advertisement was in breach of Rule 224 of the Australian Road Rules, which is also replicated in the NSW Road Rules. Rule 224 provides:

"A driver must not use, or allow to be used, a horn, or similar warning device, fitted to or in the driver's vehicle unless:

- (a) it is necessary to use the horn, or warning device, to warn other road users or animals of the approach or position of the vehicle; or
- (b) the horn, or warning device, is being used as part of an anti-theft device, or an alcohol interlock device, fitted to the vehicle."

The Board noted the complainant also made reference to information provided by the Department of Environment & Climate Change NSW in its brochure, "Managing Vehicle Noise", regarding noise from motor vehicle horns, indicating that "Horns should be used as traffic warning devices only and not as a means of relieving driver stress or frustration".

The Board considered the application of Section 2(c) of the FCAI Code, relating to "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 use of the horn in the advertisement is very brief and discrete and unlikely to be noticed or considered intrusive by most viewers of the advertisement. The Board also noted that the FCAI Code has been developed to apply to advertisements that raise issues concerning road safety and vehicle occupant protection. The Board recognised that Rule 224 makes use of a horn an offence other than in certain circumstances. However, the Board considered that a short sounding of the horn to notify a person of one's arrival, particularly on stopping the vehicle and with no other traffic in the vicinity, was not a matter that most reasonable people would regard as one of "road safety". It was noted that it is in traffic situations where inappropriate horn use may give rise to road safety issues and the Board considered that the explanatory material provided by the NSW Department of Environment and Climate Change on this issue (as quoted above) supported that view.

The Board therefore determined that the advertisement was not in breach of Section 2(c) of the FCAI Code. The Board also found no breach of any other Section of the FCAI Code.

A minority of the Board considered the horn use depicted in the advertisement was in breach of Section 2(c), when taking a strict interpretation of the provision. The minority raised concerns that such a strict reading of the FCAI Code was very restrictive on what could be portrayed in motor

vehicle advertising and that this did not readily accord with the obvious intent of the FCAI Code, as expressed in the accompanying Explanatory Notes.

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