



## **CASE REPORT**

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|-------------------------------|---------------------------------------|
| 1. Complaint reference number | 85/04                                 |
| 2. Advertiser                 | Ateco Automotive Pty Ltd (Alfa Romeo) |
| 3. Product                    | Vehicles                              |
| 4. Type of advertisement      | TV                                    |
| 5. Nature of complaint        | FCAI - Other                          |
| 6. Date of determination      | Tuesday, 11 May 2004                  |
| 7. DETERMINATION              | Dismissed                             |

## **DESCRIPTION OF THE ADVERTISEMENT**

The advertisement features an Alfa Romeo vehicle driving along a hillside road. The vehicle is filmed driving from various angles and at some points the filming cuts to slow motion. The tagline for the advertisement is “Sometimes to get what you really want out of life, you have to put your foot down. Introducing the new high performance Alfa Romeo 156 JTS.”

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*“The ad promoted reckless and high speed driving, in breach of the code: People driving on a road at speeds in excess of the speed limit. This is both visually and with sound effects. The car is being sold as a “performance” speed machine and encourages people to drive too fast.”*

## **THE ADVERTISER’S RESPONSE**

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

*“The car is shown to be proceeding along a road with care and responsibility, with differing camera angles being used to show it’s handling on the straights as well as corners. At no times is the car being driven menacingly, or in order to break any road rules.”*

*“The footage at no time suggests that the car is speeding. The car is being driven at between 60-80km per hour, and at some instances the footage is slightly slowed down for effect.”*

*“The sound effects used are the normal sounds of an engine of an Alfa Romeo being driven within the speed limit.....”*

*“The voice over “introducing the new, high performance, Alfa Romeo 156 JTS” is not in any way encouraging people to “drive too fast”, rather stating that the new engine enjoys greater performance by nature of its technical advancements.”*

## **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 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 an Alfa Romeo “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 Alfa Romeo 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), 2(b) and 2(c) were relevant in the circumstances.

In order for clause 2(a) to be breached, the driving practices described in that clause are a breach of the Code to the extent that they would breach any law of the Commonwealth or State dealing with road and safety or traffic regulation, were they to occur “on a road or road related area.”

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

In relation to clauses 2(b) and 2(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 considered that, given the tarmac surface and the fact that the surface was set into rocky hills being the only surface accessible for passage along that terrain, there was no doubt that the driving practices took place on a public road, within the meaning of a “road or road related area.”

The Board therefore had to consider whether clauses 2(a), 2(b) and 2(c) of the Code had been breached.

In order to breach clause 2(a), the driving practices depicted must be:

*“Obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any commonwealth law ....”*

The Board formed the view that the car was depicted driving directly along the road in one direction remaining at all times on the road. There were no overt indications that the car was out of control in any way or making sudden or extreme changes in direction.

Accordingly, the Board considered that the driving practices were depicted in a responsible way and the material did not give the impression of there being any unsafe, reckless or menacing driving practices depicted.

In order to breach clause 2(b), the driving practices depicted must be:

*“At speeds in excess of speed limits .....”*

The Board considered that the sound effects of the Alfa Romeo’s engine were a realistic depiction of the sound of the vehicles’ engine whilst in motion and not an overt indication that the vehicle was

driving at speeds in excess of the speed limit. The Board considered that there were no other overt indications in the advertisement that the vehicle was driving in excess of the speed limits.

In order to breach 2(c), the driving practices depicted must:

*“Breach any Commonwealth law or the law of any State or Territory .... directly dealing with road safety or traffic regulation.”*

The Board considered that there was nothing in the material that represented driving practices which breached any law in Australia dealing with road safety, traffic regulation or otherwise.

The Board, therefore, held that the material before it did not constitute an advertisement for a motor vehicle in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code. The Board, therefore, dismissed the complaint.