



CASE REPORT

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| 1. Complaint reference number | 89/05 |
| 2. Advertiser | Mazda Australia Pty Ltd (Mazda 3 SP23) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | |
| 6. Date of determination | Tuesday, 12 April 2005 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The commercial features a man standing in an outback setting. A Mazda 3 SP23 suddenly appears and the man drives away in it. As the character's monologue describes the features of the Mazda 3 SP23 he also begins to describe the car's hatchback variant. One car is then shown to emerge from another and the two vehicles travel along the road side-by-side, around a corner and along a straight. A disclaimer appears at the bottom of the screen with the words "Closed course. Professional Driver."

THE COMPLAINT

Comments which the complainant/s made included the following:

"This advertisement raises issues of speeding, drag-racing, the use of the disclaimer, and not front number plates being displayed on the vehicles."

"This advertisement breaches Clause 2(a) due to: Two vehicles travelling side-by-side across the breadth of a public road. The road depicted in the advertisement has line markings such as those on a public road. Although the disclaimer states that the road is a "Closed course" there is no indication of this. Clause 2(c) Driving Practices or other actions which would, if they were to take place on a road or 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."

"Laws relevant to Clause 2(c) include: Australian Road Rules – 42 Negligent, furious or reckless driving (2) A person must not drive a motor vehicle furiously, recklessly or at a speed or in a manner dangerous to the public, on a road or road related area."

"This advertisement: - Shows driving practices involving reckless driving (two vehicles travelling side-by-side) - Generally contradicts road safety messages of safe and legal driving."

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s included the following: *"There is certainly no road marking indicating that the cars could not overtake safely in that location, nor that the cars are speeding."* *"Using slow motion again supports the story line and in no way indicates any reckless driving, speeding or even menacing driving."*

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 which came into effect on 1 July 2004 (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 Mazda 3 SP3 “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 Mazda 3 SP3 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) and (c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board first considered whether clause 2(a) of the Code had been breached. In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be: *“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law ... if such driving were to occur on a road or road related area ...”* The Board formed the view that clause 2(a) had not been breached. The Board noted that when the cars were shown to be driving side-by-side during the overtaking manoeuvre, the car overtaking on the right was shown to use its right hand indicator. The Board also noted that the two vehicles only drove along side each other for a short period and solely for the purpose of the overtaking manoeuvre. The Board was of the view that there was no indication that the two vehicles drove alongside each other for the purpose of racing each other in a drag style or at all. The Board formed the view that the overtaking manoeuvre was not an unsafe, reckless or menacing driving practice in breach of the law. The Board considered that the advertisement did not breach clause 2(a) of the FCAI Code.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict: *“people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast”*. The Board formed the view that Clause 2(b) had not been breached. The Board noted that there were no overt indications that the cars were driven at excess speed during the advertisement.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must: *“... if they were to take place on a road or road related area, breach any Commonwealth Law ...”* The Board formed the view that clause 2(c) had not been breached. For the same reasons given by the Board in considering clause 2(a), the Board made a similar determination in relation to the driving practices depicted for the purpose of analysing clause 2(c).

On the above basis, the Board confirmed its views and held that the material before it did not constitute an advertisement in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.