



CASE REPORT

1. Complaint reference number	90/05
2. Advertiser	Vehicle Distributors Aust Pty Ltd (Renault Megane Turbo 225)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Speeding
6. Date of determination	Tuesday, 12 April 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board consists of a print advertisement for the Renault Megane Turbo 225. The text of the advertisement contains the following: "With 225hp (165kw) of turbo power, 6 speed gear box, zero to 100 km/h in 6.5 seconds ...".

THE COMPLAINT

Comments which the complainant/s made included the following:

"This advertisement blatantly promotes the speed and acceleration capabilities of the vehicle. Text includes "With the 225h (165Kw) of turbo power, six-speed gearbox, zero to 100 km/h in 6.5 seconds."

"This advertisement highlights the capability of the vehicle to drive "zero to 100 km/h in 6.5 seconds". This is practically word-for-word using the exact example of what not to do used by the Code, resulting in a clear and undeniable breach."

THE ADVERTISER'S RESPONSE

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

"The vehicle is a performance car, purchased by people interested in performance vehicles and their features."

"The tone of the advertisement is one of a "factual description" of the features of the car.

o The power output of the car is a key feature for people interested in performance cars.

o The acceleration of the car is a key feature of the car for people interested in performance cars."

"The advertisement does not encourage unacceptable driving behavior. It is a simple statement of the features of the vehicle presented in a way that is relevant to the people who purchase performance vehicles."

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 published in print media in Australia. The Board determined that the material draws the attention of the public or a segment of it to a "product" being a Renault Megane Turbo 225 "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 Renault Megane Turbo 225 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 firstly noted that the complaint in this matter was not made under any of the formal provisions of the FCAI Code. The complainant alleged a breach of the FCAI Code on the basis that the advertiser had made use of a reference specifically cautioned against by the FCAI in the Explanatory Notes to the FCAI Code, that is, a reference to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds"). The Board noted that it was not able to uphold a complaint unless there has been a breach of the formal provisions of the FCAI Code. The Board noted that the relevant part of the Explanatory Notes is included in the FCAI Code as guidance to advertisers and this part of the Explanatory Notes could not be used by the Board to uphold a complaint where the formal provisions of the FCAI Code had been complied with. The Board did note, however, its desire for the FCAI to contact the advertiser to reiterate the recommendations given to the advertiser in the Explanatory Notes and caution against non-compliance with such guidance again in the future. Although the complaint was not made under the formal provisions of the FCAI Code, the Board considered the clauses of the FCAI Code relevant to this advertisement for the sake of completeness. The Board identified that clauses 2(a), 2(b) and 2(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 FCAI 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 there were no overt indicators in the advertisement that the motor vehicle was involved in any unsafe, including reckless or menacing driving that would breach any relevant law. The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b) of the FCAI Code, 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 being broadcast*". The Board formed the view that clause 2(b) had not been breached. The Board noted that there was no overt indication that the car was being driven at excess speeds. 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. Similarly to clause 2(a), the Board formed the view that there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

On the above basis, the Board 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.