

Case Report

1. Case Number :	0280-24
2. Advertiser :	BMW Group Australia
3. Product :	Automotive
4. Type of Advertisement/Media :	TV - Pay
5. Date of Decision:	20-Nov-2024
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving

DESCRIPTION OF ADVERTISEMENT

This Pay TV advertisement showcases various BMW vehicles being driven on roads includes the following:

- a car skidding at the end of a cement pier
- a car becoming airborne
- four cars driving side-by-side along a road.



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The ad shows many BMWs being driven in various locations. In one scene the rear of a yellow BMW is seen spinning its wheels and creating smoke. This is known as a burnout or wheelie. In another scene a white/silver BMW is seen being driven up a ramp and becoming airborne. There's an overlay of the driver whose eyes are popping. The advertisement is clearly in breach of Sections 2(a) and 2(c) of the FCAI code

Wheelspins, burnouts and wheelies are considered serious driving offences in all Australian jurisdictions.

Driving a vehicle so it becomes airborne is also considered a very serious driving offence in all Australian jurisdictions.

For the record, about twenty years ago we complained about a Volvo advertisement. It was entitled: "We have liftoff." and it showed a Volvo becoming airborne just like in the BMW ad.

You found that the ad did breach the Code.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

The complaint refers to the shot found at the 5 second mark of the TVC that depicts an old yellow BMW skidding and a shot found at the 6" mark of the TVC that depicts an old silver BMW airborne. In addition the complaint makes reference to BMW Australia promoting unsafe driving.

A potential breach of the requirements of FCAI Motor Vehicle Advertising Code 2(a) Unsafe driving/unsafe driving that would breach road rules.

BMW provides its substantive response below.

Section 2(a) of the FCAI Motor Vehicle Advertising Code: Unsafe driving

The notice sets out under the heading "advertising codes and issues" that the relevant complaint related to a potential breach of the items 2(a) of the FCAI Motor Vehicle Advertising Code (Unsafe driving).

Clause 2 of the FCAI Code requires that advertisers ensure that advertisements for motor vehicles do not portray unsafe driving, including speeding or other practices which would contravene road safety regulations if they were to take place on a road or a road-related area.

BMW Australia submits that the depicted behaviour should not offend the code.

The shot of the yellow vehicle does not overtly display unsafe driving. Contrary to the wording of the complaint, BMW Australia denies that the vision depicts a "burn out" but rather a controlled skid. This is not illegal or unsafe behaviour.

The second ground for the complaint is the inclusion of a scene where a BMW vehicle is seen airborne. This shot is from an action film directed by Guy Ritchie and makes use of fantasy (the driver is a well known and recognisable actor, Clive Owen) which the FCAI code acknowledges is acceptable for advertisers.

While it is not an express feature of the FCAI Code, BMW submits that the composition of the commercial is such that the first half of the vision would be understood by a reasonable viewer as having been drawn from a range of historical BMW vision sources - as evidenced by the grainy motorsport vision transitioning to the controlled skid referred to above and then to the Guy Ritchie footage and a bonnet being "unzipped" (another example of clear fantasy rather than realism). The commercial then flips to current day models driving on public roads - all of which are complying with road rules including the use of indicators when transferring lanes.

Accordingly, BMW Australia submits that there is no depicted practice or other action which would breach a law of a commonwealth or State or Territory.

In response, BMW Australia submits that:

- a) The driving depicted in the advertisement conforms to relevant road safety regulations.*
- b) All vehicles portrayed in the advertisement were driven within legal speed limits at all times.*

With regard to the motion picture footage which is the basis for the second ground of the complaint, if the Ad Standards review board was minded towards making it more overt and obvious to viewers as having been drawn from a fictional picture, BMW would be open to including a subtitle referring to the source that would be visible at the same time as the relevant vision.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concern that the advertisement depicts unsafe driving behaviours.

The Panel viewed the advertisement and noted the advertiser's response.

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 Panel considered whether the 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 Panel determined that the various BMW vehicles depicted were Motor Vehicles as defined in the FCAI Code. The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

Clause 2(a) - Advertisements for motor vehicles do not portray unsafe driving, including reckless or menacing driving that 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, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.

The Panel noted the Guidance Note for the FCAI Code states:

"Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. Advertisers need to be mindful that excessive speed is a major cause of death and injury in road crashes and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.

The FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the FCAI Code.

In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the FCAI Code."

The Panel noted the advertiser's response the first half of vision would be understood by a reasonable viewer as having been drawn from a range of historical BMW vision sources and not as an example of realistic driving behaviour. The Panel considered that the message of the advertisement was that the current BMW electric cars can perform in the same way as previous models, and considered whether this messaging

in combination with the vision of the controlled skid and vehicle becoming airborne in any way contradicted, circumvented or undermined the provisions of the FCAI Code
Controlled skid

The Panel first considered the scene in the advertisement which depicted a vehicle skidding with its wheels near the edge of a platform.

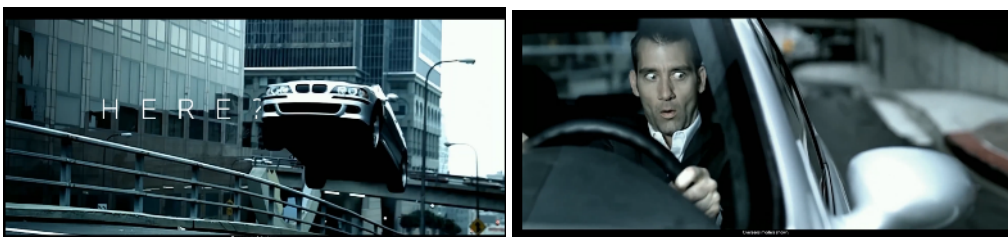


The Panel noted the advertiser's response that the vehicle is executing a controlled skid which was not illegal driving behaviour.

The Panel considered that the controlled skid occurred near the edge of a platform over water and if a non-professional driver attempted to drive in the same manner it could lead to an accident resulting in significant injury to the vehicle's occupants. The Panel considered that this scene in the advertisement portrayed unsafe driving.

Airborne vehicle

The Panel then considered the scene which depicted footage of a vehicle becoming airborne.



The Panel noted the advertiser's response that this shot is from an action film directed by Guy Ritchie and makes use of fantasy (the driver is a well-known and recognisable actor, Clive Owen) which the FCAI code acknowledges is acceptable for advertisers.

The Panel considered that not everyone viewing the advertisement would recognise Clive Owen or that the scene was part of a movie. The Panel considered that the superimposed word "here?" over the footage incorporated the scene into an answer for the question: where would you find the soul of a BMW?

The Panel considered that many of the other scenes in the advertisement depicted realistic driving behaviours, and there was nothing in the advertisement which differentiated this scene from the rest of advertisement. The Panel considered that depicting a vehicle becoming airborne was unsafe and illegal behaviour and considered that the use of fantasy in this instance was not enough to mitigate unsafe driving behaviour promoted by the scene.

Clause 2(a) conclusion

The Panel considered that the advertisement did breach Clause 2(a) of the FCAI Code.

Conclusion

Finding that the advertisement breached Clause 2a of the FCAI Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

In line with the Community Panel's decision, BMW Australia will discontinue the advertisement effective week commencing 9 December 2024.