



**ADVERTISING
STANDARDS
BUREAU**

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Case Report

1	Case Number	0028/13
2	Advertiser	Samsung Electronics Aust Pty Ltd
3	Product	Telecommunications
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	16/01/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This commercial revolves around a photo taken from the Galaxy Note II of a male celebrating his birthday with work colleagues. The commercial then demonstrates the different ways that the Galaxy Note II can allow users to transform photos in a fun and creative way. The voiceover at the end of the commercial states: "Samsung Galaxy Note II: Be creative".

THE COMPLAINT

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

The footage in the car where the passenger distracts the driver by showing the vision on the phone. It's irresponsible.

THE ADVERTISER'S RESPONSE

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

*Submission to Advertising Standards Board from Samsung Electronics Australia Pty Ltd
Complaint Reference number: 0028/13*

Background

Samsung would like to thank the Board for the opportunity to respond to the complaint made against Samsung's recent advertisement in relation to the Samsung Galaxy Note II (Galaxy Advertisement). The Galaxy Advertisement is intended to encourage people to purchase the Samsung Galaxy Note II (Smartphone) by showcasing its functionality and creative possibilities.

Samsung takes its responsibilities under the AANA Code of Ethics (the Code) seriously. Samsung believes that the Galaxy Advertisement does not depict any material that is contrary to prevailing community standards on health and safety or that infringes any other provisions of the Code.

The Complaint

The complaint relates to a discrete segment of the Galaxy Advertisement filmed in a car (the Driving Segment). The complainant alleges that the Galaxy Advertisement "encourages dangerous (and perhaps illegal) behaviour" since it "Shows them [Samsung] showing the phone to the camera which is obviously in the driver's seat of a car driving". Samsung strongly denies that the Galaxy Advertisement encourages dangerous or illegal behaviour or breaches Section 2.6 of the Code in any other way. Samsung also strongly denies that the Galaxy Advertisement breaches any other provision of Section 2 of the Code.

Section 2.6 – Health and Safety

Section 2.6 of the Code states:

Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

Samsung appreciates the importance of producing advertising and marketing communications that are in accordance with prevailing community standards on health and safety. Samsung does not consider that the Driving Segment depicts material contrary to these standards.

In relation to unsafe driving and transport issues in particular, the Determination Summary in respect of health and safety in advertising states that:

The Board generally considers it unacceptable for advertisements to depict unsafe or illegal transport issues such as speed in cars; inappropriate or illegal use of mobile phones; unsafe or dangerous driving behaviour, particularly involving young drivers; unsafe behaviour while travelling on trains; and lack or inappropriate use of safety equipment when boating, skating, or bicycling. (emphasis added)

Samsung considers that the Driving Segment does not depict inappropriate or illegal use of mobile phones or unsafe or dangerous driving behaviour.

Firstly, at no point during the Driving Segment is the driver depicted using or attempting to use the Smartphone with his/her hands. As a result, the Driving Segment can be clearly distinguished from the scenario considered by the Board in relation to an advertisement by Telstra – Sensis Pty Ltd in case number 0039/12. In that instance, the Board considered that "the depiction of the woman using a mobile phone whilst driving is a depiction of behaviour that is unsafe" and thus that "the depiction of behaviour which is contrary to such messages is contrary to prevailing community standards on safety".

Secondly, the Driving Segment does not depict the driver as looking at the front-seat passenger's Smartphone. The driver's head is out of the frame at all times during the Driving Segment and there is no suggestion that the driver turns to look at the front-seat passenger. This is similar to the facts in question in the Board's finding in relation to an advertisement by APIA in case number 0329/11. In considering whether the use of a map on the dashboard of a vehicle while it was being driven was dangerous and a distraction to the driver, the Board found that "the advertisement did not show the driver reading or attending to the map while driving".

Thirdly, the fact that the expression and eyes of the front-seat passenger when demonstrating the Smartphone are directed backwards suggests that the passenger is demonstrating the Smartphone to an additional, unseen passenger in the backseat rather than the driver. As above, even if the front-seat passenger did intend to show the Smartphone to the driver, there is no evidence depicting the driver looking at the Smartphone.

Fourthly, there is evidence to suggest that the camera angle does not even represent the vision of the driver. From the beginning of the Driving Segment, the camera is fixed on the front-seat passenger. If the camera angle represented the driver's vision it would entail a shift in camera angle from the road ahead, then sideways to address the front-seat passenger and then arguably back to the road ahead. Moreover, it is submitted that the frame is too focussed on, and close-up to, the front-seat passenger to represent the driver's perspective. Finally, even if the camera angle had shown the driver turning to look at the front-seat passenger's Smartphone, Samsung believes that the Driving Segment would still not constitute an infringement. The Board considered such a set of circumstances in relation to an advertisement by Bond Industries Ltd in case number 0074/11. The Board considered that the image of the driver turning around in her seat did not infringe section 2.6 of the Code since "this was simply a glance in to the rear seat and [that] the driver appeared to be in control of the vehicle".

Conclusion

The Galaxy Advertisement is intended to demonstrate the creative possibilities of the Smartphone and does not in any way depict or encourage inappropriate or illegal use of mobile phones or unsafe or dangerous driving behaviour. At no point during the Driving Segment is the driver shown using, attempting to use, looking at or attempting to look at the Smartphone. Furthermore, it is submitted that a reasonable construction of the Driving Segment is that the passenger in the driver's seat is not showing the Smartphone to the driver but rather an unseen passenger in the backseat. Accordingly, Samsung submits that the Galaxy Advertisement does not breach the Code in any manner and the complaint should be dismissed.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement depicts irresponsible behaviour.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the complainant's concerns that a passenger in a car is distracting the driver by showing them the screen of a Samsung phone and that this action is irresponsible.

The Board noted the advertisement shows a man's friends celebrating his birthday by using a

photo of his face to create different images of him which they then send to him via phone and that in one scene the passenger in a car is holding up the phone to show the image.

The Board noted that when the passenger in the car holds up the phone we do not see anyone else in the car and considered that even if the passenger is showing the phone to the driver and not to a back seat passenger, it is not clear whether the driver pays any attention to the phone or just ignores it. The Board noted that it is not against the law to look away from the road whilst driving and considered that as we do not see the driver or their reaction the advertisement is not depicting material which would be contrary to prevailing community standards on safe driving practices.

The Board noted the complainant's concerns that the advertisement could encourage members of the community to copy the actions of the passenger and use their phones to distract a driver and considered that the scene is a very brief part of the advertisement and that it would be unlikely to be interpreted as an encouragement to distract drivers by most reasonable members of the community.

The Board noted community concerns surrounding cyber bullying and the use of images uploaded to social media sites and considered that in this instance the advertisement is encouraging the positive use of mobile phones to share celebrations of their friend's birthday.

The Board determined that the advertisement did not depict material which would be in breach of Section 2.6 of the Code.

Further finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.