



Case Report

1	Case Number	0030/11
2	Advertiser	Volvo Car Aust Pty Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	09/02/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

A voice over talks about the new Volvo S60 and states, "Thanks to industry guidelines, we're unable to show you the all-new Volvo S60 being naughty." We then see various shots of parts of the car whilst the voice over describes the features of the car.

THE COMPLAINT

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

I believe the ad is designed to mock and dodge advertising industry standards which prevent ads for cars glamourising speeding. Saying that a car is being 'uncharacteristically well behaved' clearly invites purchasers of it to drive it in a way that is not well behaved.

THE ADVERTISER'S RESPONSE

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

We refer to the email received by our office on 25 January 2011 in relation to the above complaint in connection with our television advertisement of the S60 ("the Advertisement").

Firstly, it should be known that Volvo Car Australia Pty Ltd (“Volvo Car Australia”) takes its responsibility as an advertiser very seriously and makes extensive efforts to understand and respond appropriately to community concerns and issues, including by having in place our own stringent internal review and approval process, including legal advice. Volvo Car Australia does not encourage anyone to drive in a reckless and unsafe manner. Accordingly, we respectfully disagree with the complainant’s characterisation of the Advertisement as intending to glamorise speed.

We have considered the complaint and the Advertisement in question in light of the provisions of the AANA Code of Ethics (“the AANA Code”) and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries (“the FCAI Code”). It is noted that the nature of the complaint relates in our view to the FCAI Code. We have carefully considered the AANA Code and the FCAI Code, and assessed their provisions against the content of the Advertisement. We submit that the Advertisement does not breach the AANA Code or the FCAI Code on any of the grounds set out in the same. Provision 2.7 of the AANA Code provides that advertisements for motor vehicles must comply with the FCAI Code. We note that the Advertisement does not contain any material relevant to any other section of the AANA Code.

Provision 2(a) of the FCAI Code provides that advertisements for motor vehicles shall not portray: “Unsafe driving, including reckless and 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.

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]”

Provision 2(b) provides that advertisements for motor vehicles shall not portray:

“People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”

Provision 2(c) provides that advertisements for motor vehicles shall not portray:

“Driving practices or other actions which would, if they were to take place on a 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.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]”

We note the complainant’s concern that the “ad is designed to mock and dodge advertising standards which prevent ads from glamorising speed”, however having reference to the above operative provisions of the FCAI Code we respectfully disagree that the Advertisement is in breach of the FCAI Code in any way.

There is nothing in the Advertisement that indicates that the vehicle in the Advertisement is being driven in excess of any speed limit. We also note that there is nothing in the Advertisement to suggest that the vehicle is being driven unsafely, recklessly, menacingly or in any manner in breach of any applicable laws. In fact, the Advertisement recognises the existence of industry guidelines at its very commencement and in recognition of same does not portray any driving practices activities in the Advertisement which would breach such guidelines.

With regards to the complainant's specific concern that the vehicle is being "uncharacteristically well behaved" we respond as follows:

(a) the Advertisement generally (through its "naughty" theme) is intended to elicit an emotional response in the viewer, causing them to feel excitement at the release of an exciting new Volvo model and challenge the viewer's general perception of the Volvo brand;

(b) the viewer would obviously have a preconceived conception of what is characteristic in Volvo vehicles, and the word "uncharacteristically" is merely intended to challenge this perception by leaving the viewer invigorated by the styling and handling capability of the vehicle;

(c) the Advertisement acknowledges the existence of the "Industry Guidelines" at its very commencement and in our view at no stage portrays any driving practices that are in breach of provisions 2(a), (b) and (c).

We note that the music is fast-paced; however we note it is instrumental and not aggressive in tone or lyrical content. In any case, in our view the music in the Advertisement is not material to the portrayal of driving practices themselves.

We also note that the Board has in the past considered issues related to aggressive tones generally in motor vehicle advertising in its decision in Case No. 243/09. That complaint regarded a Mercedes Benz advertisement which used words such as "wicked beast" and "aggressive" to describe the vehicle and its features. We note that the Board took the view that those words were not likely to be interpreted negatively. Therefore, we are of the view that similar considerations should apply here.

For the above reasons we submit that the Advertisement is not in breach of the AANA Code or the FCAI Code.

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 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 Volvo S60 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 Volvo S60 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 noted the complainant's concerns that the ad is designed to mock advertising industry standards, and is encouraging purchasers of the car to drive it in a way that is not appropriate.

The Board considered that references to industry codes as regulating the content of advertisements was not inappropriate.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

The Board noted the various provisions of the Code which are directed to prohibiting depictions of unsafe driving, excessive speed or unsafe driving practices. The Board considered that all of the images of the vehicle in the advertisement depicted the vehicle being driven in a safe and appropriate manner, at an appropriate speed and with no inappropriate driving practices.

The Board noted the various references to 'naughty' in the advertisement. The Board considered that the use of the term naughty was designed to suggest that the vehicle (a Volvo) can be more exciting to drive than depicted in the advertisement. However the Board considered that this suggestion did not amount to a suggestion of unsafe driving, driving at excessive speed or unsafe driving practices.

The Board noted that the Explanatory notes to the Code provide that 'factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code.'. The Board noted the reference in the advertisement to not being able to show the Volvo S60's 'naughty 224 kw of power'. The Board considered that this reference in the advertisement did not breach the Code but could be considered by some members of the community to be a reference that is not consistent with safe driving practices and therefore in the Board's view should be used with care.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.

