



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0141/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Ford Motor Co of Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>01/05/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>
<b>7</b>	<b>Date of reviewed determination</b>	<b>19/06/2013</b>
<b>8</b>	<b>Determination on review</b>	<b>Dismissed</b>

### ISSUES RAISED

2.1 - Discrimination or Vilification Mental Illness

### DESCRIPTION OF THE ADVERTISEMENT

The EcoBoost advertising campaign is called “Believers” and depicts a series of historical examples of great inventors who led the way for many inventions that we take for granted today. The inventors are shown presenting their ideas to their peers who react in a way that demonstrates that they consider the ideas to be farfetched and unbelievable.

### THE COMPLAINT

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

*The finger waving in a circle next to the head accompanied by cuckoo noises is demeaning to anyone perceived to be suffering from a Mental disorder! The continued playing of this add will lead to the use of the aforementioned actions in society against - again those "perceived" to be suffering from a Mental disorder! REOPENING a practice long lost! Disgrace to Ford Australia for passing this style of advertising!*

*This is mean and unfunny and discriminatory to Australians living with real mental and neurological disorders and intellectual delay. I request an assessment of the AANA code of ethics, especially Section 2.1. This ad is an attack on the human rights of Australians living with real and serious health issues. It harms their dignity, humiliates and damages them and their families. I request that AANA take action to have the ad removed from all media immediately. This type of material is shameful.*

## THE ADVERTISER'S RESPONSE

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

*Two of the complaints (reference no. 0141/13) relate to the television placement of the EcoBoost advertisement and the third complaint (reference no. 0142/13) relates to the online placement of the EcoBoost advertising. Although slightly different in execution, the television placement and the online placement both contain similar content and we will therefore refer to both together in this letter as the EcoBoost TVC.*

*At the outset, I would like to emphasise that Ford Australia takes seriously its commitment to the AANA Code of Ethics (AANA Code) and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and we are aware of the potential impact that our advertising may have on members of the public.*

*All of our advertising, including the EcoBoost TVC, is carefully reviewed in that context and is approved by legal counsel. In this instance, we firmly believe that the scenario depicted in the EcoBoost TVC does not breach the AANA Code or the FCAI Code.*

*The complaints referred to in your letters dated 18 April 2013 allege that the EcoBoost TVC contravenes Section 2.1 of the AANA Code. Section 2.1 provides that "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief". The complainants express concern that the EcoBoost TVC, though showing people twirling their fingers next to their head and whistling, is discriminating against people living with mental illness.*

*You have indicated that the Board will review the EcoBoost TVC in its entirety against section 2 of the AANA Code, and accordingly, our response should address any issues within the EcoBoost TVC that fall broadly within Section 2.*

### *Description of the advertisement*

*Ford Australia's research suggests that EcoBoost suffers from a major misconception: that a powerful engine has to be big. The objective of the EcoBoost TVC was to build greater awareness of the EcoBoost engine and its ability to deliver powerful performance from a smaller engine and thus achieve improved fuel economy. The EcoBoost advertising campaign is called "Believers" and depicts a series of historical examples of great inventors who led the way for many inventions that we take for granted today. The inventors are shown presenting their ideas to their peers who react in a way that demonstrates that they consider the ideas to be farfetched and unbelievable. Fortunately for all of us, the great inventors were not deterred and the EcoBoost TVC celebrates those that believed and achieved. The TVC draws an analogy between the great historical developments and Ford's development of the EcoBoost engine, one of Ford's great innovations.*

*The first scene in the EcoBoost TVC depicts the great Leonardo Da Vinci showcasing his latest idea, a flying machine. The actions of Da Vinci's peers demonstrate that they believe his idea is much too farfetched and twirl their finger mimicking the helicopter blades and*

*Leonardo's idea.*

*The second scene depicts Thomas Edison who is demonstrating his new invention that records sound. The super "Recorded Music" comes up on the screen. The recorded sound is played, however, being in the early stages of development, it doesn't work as it should. Once again the inventor's peers demonstrate that they consider the idea to be too unbelievable to work.*

*The third scene depicts a scientist working in a lab. He demonstrates his idea of a portable telephone by cutting the cord of an ordinary phone. The super "Mobile Phone 1946" comes onto the screen. For a third time our inventor has his idea questioned as it's just too unbelievable to think a phone could ever work without a cord.*

*In the final scene of the EcoBoost TVC, we move forward to the present where two men are driving in a Mondeo EcoBoost. The driver explains how fantastic the engine is, offering both powerful performance whilst still keeping fuel consumption low. His passenger begins to twirl his finger at this incomprehensible idea that power and fuel economy can both be found in one engine, but is pleasantly surprised when the driver accelerates and demonstrates the vehicle's ability. The EcoBoost TVC ends with the super "Ford EcoBoost. Believe it."*

*Allegation that advertisement contravenes Section 2.1 of the AANA Code*

*Ford Australia strongly disagrees with any allegation that the EcoBoost TVC contravenes section 2.1 of the AANA Code by depicting material in a way which discriminates against persons suffering from any form of mental illness or intellectual disability.*

*As mentioned above, the EcoBoost TVC references great inventions throughout history that we now take for granted today. The creative idea at the heart of the campaign is the presentation of innovators with big ideas who believed that they could achieve great things, no matter how farfetched or unbelievable those ideas may have been at the time of conception. The EcoBoost TVC draws an analogy between the grand ideas and the resulting developments and Ford's development of the EcoBoost engine, one of our great innovations.*

*The twirling finger and whistling sound throughout the EcoBoost TVC is used as a creative device to demonstrate that the ideas that the great historical inventors present in the three scenes were, at the time of conception, considered too unbelievable for their peers to fathom. However, as we know, those ideas came to fruition and the great historical inventors believed in themselves and achieved great things. The EcoBoost TVC does not in any way depict persons with mental illness or any other intellectual disability, nor does it include any content that could be considered to vilify or discriminate against members of the community that suffer from such an illness or disability. It is a celebration of the achievements that can be made when big ideas are pursued by the "believers".*

*Issues arising under section 2 of the AANA Code or the FCAI Code generally*

*Ford Australia submits that no issues arise under the FCAI Code or other provisions in*

*section 2 of the AANA Code. The EcoBoost TVC:*

*(a) does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief (Section 2.1 of the AANA Code);*

*(b) does not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people (Section 2.2 of the AANA Code);*

*(c) does not present or portray violence unless it is justifiable in the context of the product or service advertised (Section 2.3 of the AANA Code);*

*(d) does not treat sex, sexuality and nudity with sensitivity to the relevant audience (Section 2.4 of the AANA Code);*

*(e) does only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium) (Section 2.5 of the AANA Code); and*

*(f) does not depict material contrary to prevailing community standards on health and safety.*

*As for the FCAI Code, the EcoBoost TVC does not raise issues under this code as it does not depict:*

*(a) 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;*

*(b) people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast;*

*(c) 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;*

*(d) people driving while being apparently fatigued, or under the influence of drugs or alcohol to the extent that such driving practices 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 directly with road safety or traffic regulation; or*

*(e) deliberate and significant environmental damage.*

*If the ASB considers that any other issues arise under either of the codes, Ford requests the opportunity to be informed of the ASB's views in that regard so that an appropriate response can be made. Ford Australia strongly believes that the EcoBoost TVC does not breach the*

*AANA Code. I trust that this correspondence adequately addresses the concerns raised in the complaints referenced.*

## **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 complainants’ concerns that the advertisement is offensive and discriminatory towards people who suffer from mental illness.

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

The Board considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: “Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of...mental illness...”

The Board noted that the advertisement depicts historical examples of inventions being presented to people who make gestures to indicate they find the inventions to be unlikely to work or be successful. The Board noted that these gestures involve twirling their fingers next to their heads and whistling and that the complainants believe this is demeaning to people who suffer from mental illness.

The Board noted that whilst twirling your finger next to your head and whistling can be interpreted as a reference to a person who suffers from mental impairment or disability the Board considered that in this instance the gesture is being used to mock the inventions and their likelihood to succeed and not to mock mental illness. The Board noted that the overall tone of the advertisement is humorous and considered that most members of the community would consider that the advertisement is not presenting material which discriminates against people who suffer from mental illness.

The Board determined that the material depicted did not discriminate against a section of the community and did not breach Section 2.1 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.

## **THE INDEPENDENT REVIEWER'S RECOMMENDATION**

This is an application for review of the decision of the Advertising Standards Board (the Board) relating to an advertisement by Ford, Case Report 0141/13. The advertisement was a television commercial called “Believers” which was produced as part of the “EcoBoost” advertising campaign. “Believers” depicts a series of historical examples of famous inventors

presenting the ideas for their now commonplace inventions to their peers, who react by using a gesture consisting of fingers twirling in a circular motion beside the head accompanied by whistling which mimics a cuckoo bird. The ad ends in present times with two men driving in a Ford, while the driver claims that Ford Eco combines powerful performance with better fuel economy, prompting the passenger to make the gesture/ sound effect referred to above.

There were two original complaints regarding this commercial. The complaints asserted that by depicting the gesture/sound effect described above, the ad was ‘demeaning to people perceived to be suffering from a mental disorder’ and ‘mean and unfunny and discriminatory to Australians living with real mental and neurological disorders and intellectual delay’. Section 2.1 of the AANA Code is cited by the complaint(s).

The Board considered whether the TV commercial constituted a breach of Section 2.1 of the AANA Code of Ethics which states: “Advertising or Marketing Communications shall not portray people or depict material in a ways which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief”.

The conclusion of the Board was:

“The Board noted that whilst twirling your finger next to your head and whistling can be interpreted as a reference to a person who suffers from mental impairment or disability the Board considered that in this instance the gesture is being used to mock the inventions and their likelihood to succeed and not to mock mental illness. The Board noted that the overall tone of the advertisement is humorous and considered that most members of the community would consider that the advertisement is not presenting material which discriminates against people who suffer from mental illness”.

Accordingly, the Board determined that Section 2.1 of the Code had not been breached and dismissed the complaint.

The grounds on which a decision of the Board may be reviewed are:

- Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
- Where there was a substantial flaw in the Board’s determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).

1. Where there was a substantial flaw in the process by which the determination was made.

The appellant cited all of the three grounds for review in the application for review, based on the same point, which is the meaning of the twirling finger gesture and accompanying whistle and whether the Board, in its decision, properly considered alternative meanings of the gesture/sound effect.

Comments on the Review application were received from the Advertiser. The appellant relied on the original review application.

In terms of ground (1), the appellant asserted that ‘new or additional evidence’ was now available rendering the Board’s decision flawed and invalid because the ‘socially accepted as well as official meaning’ of the gesture in question used by the Board was incorrect. The appellant cites quotes from Professor Patrick McGorry to support this contention.

In my view, ground (1) is not made out as the quote from Professor McGorry does not constitute new evidence as such. However, the appellant’s claim under ground (1) does point to a possible anomaly in the requirements of ground (1). This ground, to be satisfied, requires an explanation of why the new and additional evidence relied upon was not submitted previously. In a case such as this present one, it would seem logistically impossible for the appellant, when he/she made the original complaint, to have submitted what he/she claims to be the ‘new or additional evidence’, because until the appellant saw the Board’s decision, he/she could not have known that the Board would rely on a different interpretation of the gesture in question to the interpretation of the appellant.

Regarding ground (2) the appellant claims that there was a substantial flaw in the Board’s determination (clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence). The appellant’s position is based again on the view that the Board relied on an incorrect interpretation of the gesture in question and this contention is supported by a lengthy list of websites addressing the meaning of the gesture in question (not the word ‘cuckoo’ as the Advertiser states in its Response to the request for review).

In my view ground (2) is not made out, as the Board, if it follows proper process, could have come to the determination in question after properly weighing all available evidence.

The appellant asserts that there was a substantial flaw in the process by which the decision was made (ground (3)). Again the contention is made, as for earlier grounds, that the Board did not adopt the correct interpretation of the gesture in question in coming to its decision that there was no breach of Section 2.1 of the Code.

In my view ground (3) is made out. As the decision of the Board regarding a breach of the Code in this instance relies on the Board’s interpretation of the gesture in question, the Board should have demonstrated the process it engaged in to draw its conclusion on the interpretation of that gesture. However, the Board, in its determination is silent regarding such a process and whether indeed, any such process was followed. There are at least two (and perhaps more) possible interpretations of the gesture in question, as both common sense and an examination of the websites provided by the appellant indicate and as the Board itself

concedes. The decision of the Board gives no indication at all that it engaged in an investigation of possible alternative interpretations (although it may well have done so). Though it makes reference in its decision to an alternative interpretation it goes on to choose its own interpretation “in this instance” without any reasoning given as to how it comes to that interpretation rather than the alternative.

The Board also states that it “noted that the overall tone of the advertisement is humorous and considered that most members of the community would consider that the advertisement is not presenting material which discriminates against people who suffer from mental illness”. In my view, if the Board is going to rely on citing the view of ‘most members of the community’ in making its decision, it should offer some support for that contention.

Although not determinative of my recommendation, I note that the Board’s decision says that ‘the gesture is being used to mock the inventions and their likelihood to succeed and not to mock mental illness’. Section 2.1 of the Code does not refer to mocking mental illness in terms of the condition. Rather, it refers to portraying people or depicting material in a way “which discriminates against or vilifies a person or section of the community on account of ...mental illness” (my emphasis). The Code focuses on people and not on the condition *per se*.

The Board is entitled to decide which interpretation of the gesture in question it accepts and whether it considers, on the basis of that interpretation, that there has been a breach of the Code but it should demonstrate and articulate the process by which it chooses its interpretation of the gesture as well as why there is no breach of the Code. This may or may not lead the Board to a different conclusion.

I recommend that this case be reconsidered by the Board as there was a substantial flaw in the process by which the determination was made.

## **THE DETERMINATION ON REVIEW**

The Board noted it had previously considered the complaints regarding this advertisement for Ford and that the Board’s decision had been the subject of Independent Review.



The Board noted the Independent Reviewer's recommendation that the case be reconsidered by the Board as there was a substantial flaw in the process by which the determination was made. The Board noted that specifically the Independent Reviewer stated 'The decision of the Board gives no indication at all that it engaged in an investigation of possible alternative interpretations (although it may well have done so). Though it makes reference in its decision to an alternative interpretation it goes on to choose its own interpretation "in this instance" without any reasoning given as to how it comes to that interpretation rather than the alternative.'

The Board viewed the advertisement and considered the information provided by the complainant regarding a range of definitions and meanings for the gesture depicted on 4 occasions in the advertisement: ie: a person circling his finger around his ear and whistling a sound akin to 'cuckoo'. The Board noted that twirling your fingers next to your head and whistling can be interpreted as a reference to a person who suffers from a mental impairment or disability and that it can be used in conjunction with the term 'cuckoo'.

The Board noted that the complainant has considered that the range of definitions lead to a conclusion that the correct definition is that the gesture refers to 'someone who is either mentally ill, clinically mad, insane or some other cognitive impairments.'

The Board considered the range of definitions in the references provided by the complainant and also considered the Australian Macquarie Dictionary definition. The Board noted a fairly consistent range of terms used in explaining the gesture and phrase 'cuckoo', specifically: crazy person (10), goofball, foolish person (6), silly (3), simpleton, lacking in sense, slightly crackbrained person, has a screw loose (3) ie: speaking nonsense (2), mad.

The Board noted that the predominance of references define the term cuckoo in a manner that, in the Board's view, refer to a person having thoughts or behaviours that are inconsistent with mainstream beliefs or behaviour but are not linked to a recognised mental impairment or condition. The Board noted that the most used term used in the various definitions is 'crazy' and therefore gave further consideration to the definition of 'crazy'.

The Board noted the Macquarie Dictionary definition of 'crazy' as:

1. demented; mad.
2. eccentric; bizarre; unusual.

3. unrealistic; impractical: a crazy scheme.
4. intensely enthusiastic or excited.
5. likely to collapse, fall to pieces, or disintegrate.

–noun (plural crazies)

6. Colloquial someone who is considered eccentric or insane.

The Board considered that the definition of ‘crazy’ has a predominance of references to the concept of someone being eccentric and impractical rather than having a mental illness.

The Board strongly considered, having reviewed a broad range of definitions, that in the context of this particular advertisement, the cuckoo gesture is being used in a colloquial manner to refer to a person as being foolish or silly or eccentric and is not a depiction of someone with a mental illness.

The Board accepted that a possible interpretation of the gesture is a reference to a person who has a mental illness. However the Board considered that even taking this approach, in the Board’s view the person described as ‘cuckoo’ is, in every scenario in the advertisement, seen to have his ideas become successful and part of common life. The Board considered that this depiction is not demeaning or a negative portrayal and that the use of the “cuckoo” gesture is not discriminatory or vilifying in its use in this advertisement.

The Board also noted the complainant’s belief that ‘a survey of 1000 randomly sampled Australians on the meaning of the gesture would show that the majority of Australians believe the gesture is used to flippantly indicate that another person is presenting as mentally ill, clinically mad etc.’

The Board noted the Independent Reviewer’s comment that ‘If the Board is going to rely on citing the view of ‘most members of the community’ in making its decision, it should offer some support for that contention.’

The Board noted that it is composed of a group of people with diverse professional, personal, ethnic and community experiences and that it has a strong mix of ages and a gender split. The Board noted that the members of the Board are selected on the basis of their ability to bring a broad range of community views to considerations about whether, from a broad community standards perspective, advertising meets the standards set out in the various Codes. The Board also noted the research conducted from time to time by the Advertising Standards

Bureau into community standards and the Board's consistency or otherwise with those standards. In relation to issues of discrimination and vilification, the Board noted that (other than in relation to where such issues include sexualised images of people) the research consistently suggests that the Board takes a stronger position in relation to advertising which is potentially discriminating or vilifying than the community would take.

The Board strongly affirmed however, that it is completely opposed to advertising which contains or encourages discrimination or vilification.

On the basis of its experience and broadly representative composition, the Board considered that the most likely interpretation of the gesture in the advertisement is that it is a reference to a person with a foolish idea or a foolish person. The Board strongly considered that the advertisement does not depict a person with a mental illness, does not include a reference to a person with a mental illness and is in no way discriminatory or vilifying of people with a mental illness.

The Board determined that the advertisement does not depict material that discriminates against or vilifies a person or section of the community on account of mental illness and dismissed the complaint.