



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
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Case Report

1	Case Number	0148/18
2	Advertiser	Hyundai Motor Company Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/04/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens with a close-up of a car window, which frames a woman who appears to be driving in a newly purchased car. The woman has her seatbelt on and is smiling. The vehicle is moving. A voiceover then comes on to say "Can't wait? Don't wait.", before proceeding to explain the offer on the respective models. The camera then pulls back to show that the car is not actually being driven but is sitting on a motor vehicle delivery transporter.

THE COMPLAINT

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

It shows a person sitting in a vehicle whilst being towed on the trailer of the truck on a road which is illegal on an Australian road.

THE ADVERTISER'S RESPONSE





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

Hyundai notes that it is currently running two advertisements which are in largely the same form but which advertise different car models – the Hyundai i30 and the Hyundai Tucson (Advertisements). Given that it is unclear which of the two Advertisements the complainant is referring to, both are dealt with in this response.

The complainant alleges that the Advertisements raise issues under section 2(c) of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (Code) which provides that advertisements for motor vehicles must 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.

Hyundai takes compliance with the Code very seriously.

For the reasons set out below, Hyundai denies that the Advertisements infringe section 2(c) of the Code or any other section of the Code.

Background to the Advertisement

The Advertisements were created to promote two models of Hyundai vehicle, being the i30 and the Tucson, and are targeted at male and female adults of all ages who are interested in purchasing a new car.

The Advertisements have been broadcast in all States and Territories of Australia since 1st March 2018. The Advertisements have been published online since 1st March 2018.

The Advertisement

The overall tone of the Advertisements is light-hearted and humorous. The Advertisements are intended to emphasise the excitement that people experience when buying a new car.

The Advertisements are not intended to be taken literally and a reasonable viewer will understand that the Advertisements are dealing with the emotion of quickly wanting to buy a new car to take advantage of an attractive offer. Importantly, the Advertisements do not and could not be considered by a reasonable consumer to encourage the copying of the behaviour of riding in a car on a moving motor vehicle



transporter, even if it were possible to do so (which it is not).

The Advertisements open with a close-up of a car window, which frames a woman who appears to be driving in a newly purchased car. The women featured in the respective Advertisements have their seatbelts on, are smiling and, combined with the upbeat music, are clearly immensely enjoying being in the car.

A voiceover then comes on to say “Can’t wait? Don’t wait.”, before proceeding to explain the offer on the respective models.

The camera then pulls back to show that the car is not actually being driven but is sitting on a motor vehicle delivery transporter. The car appears to be secure and its driver does not appear in any way unsafe.

The Advertisements were shot under controlled and professional circumstances in an enclosed course environment, and a professional driver was used to drive the motor vehicle transporter featured in the Advertisements.

The Advertisements were the subject of extensive internal and external approval processes, including CAD approval, prior to being broadcast. CAD granted the Advertisements a G-rating and the Advertisement was scheduled in accordance with that G-rating.

The complaint

1. *The Advertisements do not depict driving practices in breach of the law*

As set out above, a reasonable viewer will not take the Advertisements literally.

It is particularly relevant to note that in the Explanatory Notes to the Code, it is acknowledged that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways. A reasonable viewer would understand that the Advertisements clearly employ hyperbole to demonstrate that the drivers in the respective Advertisements are so excited to drive away in their new car, they felt the need to be in the car as it is being transported to the showroom – they simply “can’t wait”.

In any event, the Advertisements do not portray driving practices or actions which, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any Australian State or Territory in contravention of section 2(c) of the Code.

In particular, the Advertisements do not depict driving practices or actions which are in contravention of the Australian Road Rules (Rules), or any equivalent road rule in any



State or Territory.

Rule 268 of the Rules relevantly provides that:

A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods. [Emphasis added]

Hyundai notes that a motor vehicle transporter (which is a motor vehicle under the Rules) is designed primarily for the carriage of goods and, accordingly, the Advertisements do not depict driving practices which breach that rule.

Further, rule 268(2) provides that a person can travel on a part of a motor vehicle, if:

- (a) the part is enclosed; and*
- (b) he or she occupies a suitable seating position and is fitted with a seatbelt.*

For the purpose of rule 268(2), “enclosed” means enclosed by:

- (a) the structure of the vehicle; or*
- (b) a canopy, cage or other device fitted to the vehicle that is approved for the Australian Road Rules.*

The respective characters in the Advertisements are clearly enclosed as contemplated by rule 268(2) and, as mentioned above, the respective cars appear to be firmly secured on the motor vehicle transporter. The seatbelt is visible for the duration of the Advertisements and great care was taken while editing the Advertisements to ensure that this was the case.

2. The Advertisements do not depict unsafe, reckless or menacing driving in breach of the law

Hyundai notes that in addition to considering specific issues raised by the individual complainant, the ASB will also review the Advertisement in its entirety against the Code.

For completeness, Hyundai has also considered section 2(a) of the Code below.

Section 2(a) of the Code provides that advertisements for motor vehicles must 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.



The Advertisement does not depict unsafe driving, including reckless or menacing driving that would breach any law.

The examples given in the Code for unsafe driving include: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of motor vehicle ... or the apparent deliberate loss of control of a moving motor vehicle.

The motor vehicle transporter, which is the motor vehicle shown to be driving in the Advertisements, is clearly not driving above the speed limits for public roads in Australia, nor is any dangerous, reckless or otherwise illegal manoeuvring featured. Overall, the driving featured in the Advertisements appears clearly safe and controlled.

AANA Code of Ethics not relevant for consideration

Hyundai notes that, under the Motor Vehicle Advertising Code Practice Note, advertisements for motor vehicles which raise issues or complaints concerning safety are to be determined according to the Code as opposed to the AANA Code of Ethics. Accordingly, Hyundai has not dealt with the AANA Code of Ethics in its response.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) 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) or the AANA Code of Ethics.

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 then considered 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 Panel determined that the Hyundai Tucson and Hyundai i30 was a Motor vehicle 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.



The Panel noted that this advertisement features a close up of a woman in a moving vehicle. The frame then zooms out and you see she is sitting in the vehicle whilst it is on the back of a car carrier trailer.

The Panel noted that there are two versions of this advertisement, one featuring the Hyundai Tucson and one featuring the Hyundai i30. The Panel noted that the vehicle and the actress in each version is different, but all other aspects of the advertisements remain the same.

The Panel considered clause 2(c) of the FCAI Code. Clause 2(c) requires that:

Advertisements for motor vehicles do 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 seat belts in a moving motor vehicle]."

The Panel noted the complainant's concern that the advertisement features a person sitting in a vehicle whilst being towed on the trailer of a truck, which is illegal on Australian roads.

The Panel considered the advertiser's response that a reasonable consumer would not consider the advertisement to encourage the copying of the behaviour. The Panel also noted the advertiser's response that it would not be possible to copy the behaviour of riding in a car on a moving motor vehicle transporter (car carrier trailer). The Panel considered that whilst copying the behaviour may be difficult in relation to a car carrying trailer, it would be possible for a normal citizen to attempt such an action in a normal car trailer or tow truck.

The Panel noted that the vehicle is secure on the trailer and the driver does not appear in any way unsafe, but did not consider that such attributes made the behaviour acceptable.

The Panel did not agree with the advertiser's view that the driver being enclosed within the vehicle, occupying a suitable seating position and wearing a seatbelt therefore made the practice lawful.

The Panel noted that under the Australian Road Rules (March 2018), regulation 298 states that:

"A driver must not drive a motor vehicle towing a trailer with a person in or on the trailer, unless the trailer is exempt from this rule under another law of this



jurisdiction. “

The Panel considered that towing a vehicle with someone in that vehicle in a clear breach of regulation 298 of the Australian Road Rules.

The Panel considered that the advertisement was not clearly humour or fantasy, as the behaviour would be possible. The Panel considered that overall the advertisement does portray driving practices which are unsafe and that would breach any Commonwealth law or the law of any State or Territory.

The Panel determined that the advertisement did breach Clause 2(c) of the FCAI Code.

Finding that the advertisement did breach the FCAI Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We have reviewed the Ad Standards response from 13/04/18 and decided to remove the advertisement, which we actioned earlier this week (w/c 15/04/18)

We replaced the advertisement with another retail advertisement in its place.