



Case Report

1	Case Number	0151/15
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	13/05/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts driving shots and close ups of a Volkswagen Jetta with a voice over that describes how perfectly well-crafted a German-engineered car is. We then see the Volkswagen Jetta in the driveway of a suburban house and a man gets out of the car. He is wearing thongs on his feet and is drinking a smoothie. His neighbour admires the car and the final tagline reads, "Engineered for drivers. Priced for everyone".

THE COMPLAINT

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

I feel it's both inappropriate and irresponsible for a car manufacturer to repeatedly transmit an advertisement that promotes bad, potentially dangerous and possibly illegal driving habits. More specifically the advertisement shows a Volkswagen Jetta being driven into the driveway of a house. The driver opens the door and exits the car with a drink in his hand and wearing a pair of thongs (flip flops). Both practices can be illegal in some circumstances i.e. If they cause the driver not to be in full control of the vehicle; and are certainly not consistent with safe driving messages consistently promoted by Police and State Governments.

THE ADVERTISER'S RESPONSE

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

The advertisement was approved by CAD with a rating of 'G'. The advertisement was published/broadcast in all states/territories across Australia and made available online via Volkswagen's social channels including Facebook and YouTube.

We have reviewed the FCAI Code of Practice for Motor Vehicle Advertising, together with the AANA Code of Ethics and comment as follows:

FCAI Code

The driving depicted in the advertisement conforms to all relevant Australian road safety regulations. In particular, there are no specific Road and Maritime regulations that prohibit a driver of a car from wearing thongs (flip-flops) while driving. In addition Volkswagen Jettas have a number of standard accessories fitted including cup holders.

There is also no footage of the driver in control or physically driving the vehicle and again, the inference arrived by the complainant that the driver was not in control of the vehicle and was drinking and/or holding a drink while driving is incorrect. The FCAI Code specifically relates to unsafe driving, motor sports, off-road vehicles and driving practices. The Volkswagen Jetta advertisement is not in breach or contrary to the FCAI Code and does not contradict any road safety messages whatsoever. In addition, when considering the explicit and implicit messages conveyed by the advertisement, the underlying message in the advertisement and in the final tag line is "Engineered for drivers. Priced for everyone."

There was no use of motor sport in the advertisement. There was no use of or depiction of off-road vehicles in the advertising.

AANA Code of Ethics

In relation to section 2 of the AANA Code of Ethics, the advertisement does not portray people or depict material in a discriminatory manner. There is no sexual appeal which is exploitative and degrading of any individual or group of people. There is no portrayal of violence in anyway whatsoever. There is no sexuality or nudity in the advertisement. There is no inappropriate language used in the advertisement. There is no material promoted contrary to prevailing community standards on health and safety as detailed above.

Finally, Volkswagen Group Australia is committed to co-operating with the Advertising Standards Bureau and that any issues raised by the Advertising Standards Bureau will be addressed promptly and diligently.

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 Volkswagen Jetta in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board 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 Board determined that the Volkswagen Jetta 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 advertisement depicts a vehicle being driven in a manner that would breach the law as the driver is wearing inappropriate footwear and with a drink in his hand.

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

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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.'

The Board noted the complainant's concerns that the driver exits the vehicle and is seen wearing thongs and holding a drink cup (suggesting he was drinking from it while driving).

The Board noted the advertisement features the vehicle being driven along various roads but the driver is not seen while the car is moving. The voiceover describes the features of the vehicle and the car is viewed from the inside and the outside.

The Board noted that the car eventually comes to a stop on the driveway of a home and a young man gets out of the car (wearing thongs and drinking from a takeaway cup) and is approached by his neighbour about the new car.

The Board noted that the man is not seen driving the vehicle but it is assumed he does so as he is the one to exit the vehicle.

The Board noted the Australian road rules - 2012 and in particular the following relating to control of a vehicle:

297 Driver to have proper control of a vehicle etc

(1) A driver must not drive a vehicle unless the driver has proper control of the vehicle.

The Board noted that the above clause does not prescribe the type of footwear to be worn while driving and does not explicitly prohibit the wearing of thongs in relation to how this will affect the control the driver has of the vehicle.

The Board noted the road rules above do not prohibit the consumption of beverages while driving (other than alcohol) and there is no evidence to suggest that the man was drinking as he was driving and the vehicle is not seen been driven in an uncontrolled manner due to reasons that could be linked to drinking a beverage while driving.

The Board considered that overall the advertisement does not portray any driving which is unsafe or which is reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did not breach Clause 2(c) of the FCAI Code. Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.