



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0186/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Volvo Car Aust Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>17/05/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Motor vehicles          2c Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

A black Volvo V60 being driven in a warehouse style environment. The vehicle is driven while music plays in the background and the text appears on screen, "Designed to turn heads. Engineered to perform. Plenty of room for pets. The Dynamic Volvo V60." It also shows a panther jumping into the back of the car.

### THE COMPLAINT

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

*This ad unambiguously depicts behaviours which would be both illegal and dangerous on a public road. It shows excessive speeds for the conditions and drifts which clearly indicate loss of appropriate control of the vehicle. This is clearly deliberate risk taking for which any responsible police office would charge the driver. Numerous offences could be brought-including driving in a manner dangerous to the public, excessive speed failure to maintain proper control of the vehicle. Thus according to the code it should not be allowed.*

*The fact that this ad could go to air at all in Australia reflects a deep and continuing failure with the process of vetting ads. Why are they not vetted before going to air rather than after (usually many weeks of air time)?*

*These ads are deeply damaging to the road safety message that speed and this type of risky driving should not occur should not be tolerated and represent serious risk to those around the absurd driver performing these manoeuvres. This ad promotes these behaviours as fun*

*and thrilling. The risk taking this promotes is killing and seriously injuring many people on Australian roads each year.  
I hope you are able to act quickly on this.*

## **THE ADVERTISER'S RESPONSE**

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

*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.*

*Volvo Car Australia has built its reputation in the Australian market by promoting its world leading safety features. As a brand we are committed to delivering the world's safest vehicles. 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.*

*We have considered the complaint and the Advertisement 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 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.*

*The Advertisement*

*It is noted that the FCAI Code clearly acknowledges "that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles",*

*Further, the FCAI Code clearly provides at section 3 that "advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:*

*(a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity. of a type for which a permit would normally be available in Australia.*

*(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery".*

*The Advertisement clearly is not suggesting to the viewer that a motor vehicle ought to be driven in violation of road rules/flaws. The Advertisement is filmed in controlled conditions, which is clearly and prominently disclaimed.*

*Further, the car is being driven by a professional driver with a visual of the driver wearing full driver safety gear. In accordance with section 3, the scenes shown of the vehicle are*

*clearly identifiable as part of an organised motor sport activity and in our view the viewer would immediately understand this.*

*The V60 motor vehicle is indeed a vehicle we at Volvo Car Australia consider to be unique in terms of its engineering and performance. Accordingly, the Advertisement employs hyperbole to project that this is not a "normal" car. This is re-enforced when at the end of the Advertisement the words "and plenty of room for "pets" are accompanied by the image of a black panther jumping into the vehicle. Just as a panther is no "normal" pet, so too is the V60 not a "normal" car.*

*We consider the Advertisement uses hyperbole within controlled conditions to elicit a sense of excitement and exhilaration in the viewer and that the reasonable viewer would understand that the Advertisement's objective is not to in any way portray or glorify illegal driving practices.*

*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) and the Advertiser Code of Ethics (the 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 available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Volvo V60 in a manner calculated to promote that product and determined that the advertisement is an advertisement as defined by the FCAI Code. The Board also considered whether the 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 V60 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 complainants' concerns that the advertisement depicts an action which is both illegal and dangerous. The Board then analysed specific sections of the FCAI Code and the AANA Code of Ethics and their application to the advertisement.

The Board considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or 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 Board noted that the examples given in the FCAI 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 and deliberate loss of control of a moving motor vehicle."

The Board noted that the advertisement shows the Volvo being driven around a warehouse or wharf style area and that the footage has been sped up in some scenes and slowed down in others to exaggerate both the speed and the handling of the vehicle. It gives the impression that the car is moving very quickly.

The Board noted that throughout the advertisement the car appears to be driven quickly around corners and drifting or sliding around these corners to be able to turn the vehicle due to the speed it is moving.

The Board noted that whilst there is no independent verification of the actual speed of the vehicle, in the Board's view the combination of the drifting and the sped up footage gives an overall impression of reckless speed which the Board considers to be a depiction of unsafe driving.

The Board determined that the image of the vehicle doing a sudden 180 degree turn is a depiction of driving that, if it occurred on a road, would be considered to be driving in an unsafe or reckless manner that would breach the law anywhere in Australia.

The Board noted the on screen disclaimer "filmed under controlled conditions" does not excuse the behavior depicted and that the addition of the panther as the pet was consistent with a fantasy situation however, the overall scenario and driving environment were not dissimilar to those found near the water and were not sufficiently portrayed as a 'test like' environment and did not diminish the impact of the advertisement depicting unsafe driving.

On the above basis, the Board determined that the advertisement does depict unsafe driving and does breach clause 2(a) of the FCAI Code. "

The Board then considered clause 3 of the FCAI Code. Clause 3 requires that: "Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

(a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.

(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery”.

The Board noted that the advertisement shows a person driving the vehicle in full race clothing and helmet and the sound of squealing tyres on acceleration, leading the viewer to believe that the vehicle can be driven as a ‘race car’ driver would drive on a track. The Board considered however, that the overall scenario and driving environment were not dissimilar to those found on a wharf and were not sufficiently portrayed as a ‘test like’ environment or identifiable as an organized motor sport activity.

On the above basis, the Board determined that the advertisement does breach clause 3 of the FCAI Code.

Finding that the advertisement breached clause 2(a) and clause 3 of the FCAI Code, the Board upheld the complaint.

## **ADVERTISER RESPONSE TO DETERMINATION**

We refer to your letter dated 17 May 2012 which advised us of the Board’s determination that the advertisement the subject of the above complaint (the Advertisement) breached the FCAI Code.

On a no admissions basis, we have decided to undertake the following actions in light of the Board’s determination:

1. To modify the Advertisement so that material showing the car “being driven quickly around corners and drifting or sliding around these corners” has been eliminated. The ”combination of drifting and sped up” footage has been eliminated, and the 180 degree has been amended such that the turning of the car is no longer a 180 degree turn and does not portray a driving activity that would be considered unsafe or reckless.
2. To immediately remove the Advertisement from all forms of television, such that it will not be shown after 21 May 2012.
3. To cause to be shown on all forms of television as of 22 May 2012 to the modified advertisement (amended as per paragraph 1).

We trust that the above actions are satisfactory.

