



Case Report

1	Case Number	0186/16
2	Advertiser	Jaguar Land Rover Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	27/04/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The Land Rover Discovery driven by David Pocock is seen driving in broad daylight along a scenic country road. There are roughly ten seconds of driving footage in the advertisement, during which the vehicle is briefly shown alone. After this, the Discovery is shown approaching another vehicle, then passing it on the right over broken white lines. The driver of the Discovery is clearly seen indicating before the move, with the indicator lights also clearly shown flashing on the exterior of the vehicle, as the driver completes the overtake.

THE COMPLAINT

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

There are 2 issues with this TV ad- 1. In the opening frame you can clearly see that passenger is wearing a seat belt and you can see it from the side pulling across from the top near the window, however the driver doesn't have his on at all as you can clearly see that it is not pulling across from the window pillar, especially evident in the last frame of seeing him in the ad. They are then following another Landrover and decide to "breakaway" as the words on the screen the driver hits the indicator however in the following frame when the vehicle is seen to be overtaking the advertiser has failed to show the indicator lights, as I have re-watched this multiple times and you cannot see the flashing nor the seat belt. Failing to indicate/or having lights working and not wearing a seat belt are both driving offences and is against the FCAI code.

THE ADVERTISER'S RESPONSE

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

The vehicle is shown at all times driving in a controlled and measured fashion, and Land Rover Australia can confirm that at all times the vehicle was also driven within speed limits and in full compliance with all applicable road rules at all times.

No permits were required to conduct the filming in question.

The complainant has identified two specific issues with this advertisement, one is the perceived failure of the driver to wear a seatbelt, and the second is the perceived failure to indicate.

With respect to the purported failure of the driver to wear a seatbelt, this part of the complaint is factually incorrect and Land Rover Australia can confirm that at all times the driver (and passenger) were wearing seatbelts during filming and production. Indeed, while it is not abundantly clear during the very short period of time that the driver is shown on-screen that a seatbelt is worn by the driver, it certainly is, and simply because the complainant is unable to see visual evidence of the seatbelt, this does not mean that no seatbelt was worn. There are perhaps relatively simple explanations as to why the complainant may not be able to see the belt worn by the driver, being firstly that both the driver and passenger seats have adjustable-height seat belts, and they are adjusted at very different levels to account for the comfort of the two differently proportioned men shown in the advertisement. This adjustment differential is visibly evident where you can see the top of the passenger's seatbelt but not the driver's, which is much lower, and arguably also blocked by the steering wheel in one of the shots. The complainant refers to the belt not being visible from the top part of the belt (on the 'window pillar'), but if the complainant was correct and the belt was not being worn, it would be very clear because the belt unit would be sitting up at the top of the same pillar. The fact it is not visible in this way is further evidence that the belt is indeed being worn, only it is adjusted much lower for the driver than for the passenger.

Secondly, the belts are a very similar colour to the driver's shirt, meaning it does not stand out to the naked eye on a very swift viewing.

The second element of the complaint claims that the driver does not indicate when changing lanes. This is clearly incorrect and able to be dismissed simply by watching the advertisement. The driver is clearly shown engaging the indicator, and the exterior shot of the vehicle (at around the 4 second mark) clearly shows the indicator light flashing, although the front of the car is very reflective of the direct sunlight so it is not obvious. It is true that this indicator is only shown for a short time, but it is nevertheless shown and is certainly flashing. The complainant has somehow missed this at the time the complaint was made, despite apparently re-watching the advertisement multiple times.

Again, Land Rover Australia can confirm that at no time during the production of this advertisement were any road rules broken.

For clarity, Land Rover Australia also contends strongly that the advertisement does not depict any material that infringes the provisions of the AANA Code of Ethics, or any other

provisions of the FCAI Code.

On the basis of the above, while Land Rover Australia welcomes and supports the right of individuals to raise concerns about advertising through the ASB, we look forward to the complaints in this case being dismissed.

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 Land Rover Discovery 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 Land Rover Discovery 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 the driver of a vehicle not wearing a seatbelt and not indicating when overtaking another vehicle.

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. Clause 2(c) requires that '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 concern that the driver of the Land Rover is not wearing a seatbelt. The Board noted the advertiser’s response that the driver is wearing a seatbelt but that it is difficult to see as the colour of his top camouflages the colour of the seatbelt and the positioning of the belt, using the adjustable height mechanism, means the top of the strap is not visible. The Board noted that whilst the advertisement clearly shows the passenger of the Land Rover wearing a seatbelt the Board considered that the views of the driver are too fleeting to ascertain clearly whether or not he is also wearing a seatbelt. The Board considered that given the passenger is wearing a seat belt and the car is being driven in a safe manner the overall impression is that all appropriate safety precautions, including the wearing of a seat belt by all occupants of the car, were taken and there is nothing in the advertisement to suggest that the driver would have chosen to not wear a seat belt.

The Board noted the complainant’s concern that the driver does not indicate when pulling out to overtake another vehicle. The Board noted the advertiser’s response that the driver is shown engaging the indicator. The Board noted that whilst we do see the driver’s hand moving the indicator lever the Board considered that it is not clear that the indicator light is flashing in the subsequent scene. The Board noted the advertiser’s response that the sunlight is limiting the view of the indicator lights and considered that although it is not clear if the lights are flashing or not in the Board’s view the scene showing the driver engaging the indicator is very clear and the manner in which the Land Rover overtakes the vehicle in front is controlled and not suggestive of unsafe or inappropriate driving.

Overall 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 on other grounds the Board dismissed the complaint.