



Case Report

1	Case Number	0205/16
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	Internet
5	Date of Determination	11/05/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This internet advertisement depicts a stripped back prototype Volkswagen Amarok in a testing environment set in open country to demonstrate its four-wheel drive and off-road capability. The 'prototype' is driven through open terrain by a 'precision driver' dressed in protective clothing and wearing a helmet, crossing open terrain, traversing a small rise, cornering and travelling through very shallow water. The purpose of the advertisement is to reveal the engineering and strength of the vehicle not normally visible when the vehicle is in its standard form. At the end of the advertisement the production model is introduced in staccato form to show the connection with the prototype highlighted in the body of the advertisement.

THE COMPLAINT

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

Vehicles should not be advertised in a way that promotes irresponsible driving.

THE ADVERTISER'S RESPONSE

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

The advertisement concerned depicts a stripped back prototype Volkswagen Amarok in a testing environment set in open country to demonstrate its four-wheel drive and off-road capability. The 'prototype' is driven through open terrain by a 'precision driver' dressed in protective clothing and wearing a helmet, crossing open terrain, traversing a small rise, cornering and travelling through very shallow water. The purpose of the advertisement is to reveal the engineering and strength of the vehicle not normally visible when the vehicle is in its standard form. At the end of the advertisement the production model is introduced in staccato form to show the connection with the prototype highlighted in the body of the advertisement (the "advertisement").

The advertisement was approved by CAD with Key Number VGACV82T230 and CAD rating of "W" (just above G). The advertisement was published and broadcast in all States/Territories across Australia and made available online via Volkswagen's social channels including Facebook and YouTube which commenced 24 January 2016 and due to conclude on 30 June 2016.

Volkswagen Group Australia's Response:

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

FCAI Code:

The FCAI Code acknowledges that advertisers may make legitimate use of fantasy and self-evident exaggeration in creative ways in advertising for motor vehicles. The advertisement is not in breach or contrary to the FCAI Code and does not contradict any road safety messages. The advertisement is clearly filmed under controlled conditions in an outback setting on a private property, using a vehicle that appears to be a prototype four-wheel drive vehicle.

Concerning the depiction of off-road vehicles, it is submitted that the off-road capabilities and performance are in outback conditions where reliability and toughness are essential requirements for a four-wheel drive vehicle.

The vehicle portrayed in the advertisement meets the standards of the description of an 'off-road vehicle' in its production form; seating 5 passengers and features four-wheel drive. As such the activity shown in the advertisement are fully within the capability and performance of the vehicle.

The advertisement was filmed in such a way to as to emphasize the Amarok vehicles four-wheel drive credentials. Using the slow motion technique in production gives an interpretive flow through the advertisement to create the impression that while the vehicle is travelling at different speeds, it is portrayed in its "naked" structural form. The effect of slowing down the image, rather than using speed per se, also ensures the safe and controlled driving for the precision driver.

Finally, the driver is clearly wearing protective clothing, including a helmet, which further supports the implication that a testing environment is being reproduced for a prototype vehicle to demonstrate the engineering that lies beneath the production model revealed at the end of the advertisement. Both the explicit and implicit messages conveyed by the

advertisement and in the final tag line are 'tough comes from within', toughness is not optional but comes from within the structure of the vehicle which is not evident by the appearance of the vehicle in its production form.

In response to the specific queries outlined in your letter, we respond as follows:

If required some rationale for addressing specific issues as outlined in the complaint:

1) What assurances can the advertiser provide than any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?

It is clear from the vehicle used in the advertisement that the vehicle is not suitable to be used on the road as it has all of its panels removed and has been stripped back to its frame to demonstrate the strength of the vehicle under tough conditions. Further, by virtue of the advertisement being filmed in a closed environment and using a vehicle that represents a prototype, both represents legitimate prototype testing theme. Furthermore, filming in this outback environment we have deliberately avoided any association with normal on-road use.

2) Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?

While there were no speed limits on the open terrain on the private property where the television commercial was filmed, the vehicle at all times was driven at an appropriate speed for the prevailing conditions.

3) Was it necessary for the advertiser to obtain any special permission/ permits to undertake filming of any driving sequences depicted in the advertisement?

No permissions or permits were required as the filming was undertaken on private property.

4) Has the advertisement being published/broadcast in all of Australia? Are there any States/Territories where the advertisement has not been published/broadcast?

The television commercial has been broadcast in all states and territories in Australia.

5) Has the advertisement been made available on the internet?

The advertisement has been available on the internet via Facebook, Youtube channels and online video content via our own website: <http://content.volkswagen-commercial.com.au/amarok>.

Use of Motor Sport in Advertising

The advertisement in no way depicts a form of motor sport in Australia, it represents prototype testing over outback terrain and conditions experienced by four-wheel vehicles in Australia. The fact that the vehicle has no body panels whatsoever, clearly demonstrates that it does not display a motorsport scene or a simulated motorsport scene as there are no body panels available on which to display motor sport livery.

Depiction of Off-Road Vehicles

In depicting the off-road driving capabilities of the Amarok within the television commercial at no time does the vehicle demonstrate excessive speed and the driver was instructed at all times to keep speed within a safe and reasonable level, in the open terrain sections of the filming. The vehicle is featured going over a small rise and driving through some shallow water to represent its off road capabilities and these instances are far from extreme manoeuvres.

6) Do any/all of the vehicles portrayed being driven in an off road setting in the advertisement conform to the requirements of the definition of an off road vehicles provide in the Australian Design Rules (MC category)? If so, please outline the key criteria which are met?

Please refer to Appendix 1 of this letter which illustrates that the vehicle under used in the advertisement is classified under the Australian Design Rule 81/02 as an NA (Light Goods) category, not MC (Passenger Vehicles). The NA category relates to Light Goods Vehicle with a Gross Vehicle Mass that does not exceed 3.5 tonnes.

7) What is the maximum number of seating position in the vehicle/s?

The vehicle seats 5.

8) Does the vehicle/s have four-wheel drive/all-wheel drive?

The vehicle has four-wheel drive capabilities.

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 advisement. There is no inappropriate language used in the advertisement.

In relation to concerns that issues that the advertisement may be contrary to health and safety, we can confirm that a professional precision driver undertook the activities depicted in the advertisement in a controlled environment using safety apparel and a helmet, with a safety office supervising all activities.

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 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 Amarok 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 recklessly and at speed.

The Board then analysed specific sections of the FCAI Code 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 the examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Board noted the advertisement features a stripped back Volkswagen Amarok being driven by in open country by a driver dressed in protective clothing and safety helmet.

The Board noted that the vehicle has been stripped back so that the skeleton of the vehicle and the various parts referred to by the voiceover are easily seen. The Board noted that the combination of the voiceover's description, the stripped back appearance of the vehicle, and the appearance of the driver, who looks like a professional, amounts to an overall impression that the material portrayed is of a car being tested. The Board noted that the vehicle is shown to make sharp turns with a suggestion of brief drifting, as well as leave the road briefly but considered that the driver is clearly depicted as in full control of the vehicle at all times and in the Board's view the driving depicted is relevant to the voiceover describing the performance of the vehicle in 'tough' conditions. The Board noted that Volkswagen Amaroks are not sold as skeletal, stripped back shells and considered that that advertisement is unlikely to encourage copy-cat behaviour as the material depicted is clearly in the context of a test scenario and environment.

The Board noted that the speedometer is not visible therefore it is hard to judge the actual

speed of the vehicle. The Board noted that the engine revolutions can be heard and considered that whilst this noise is suggestive of speed it is not possible to determine whether the speed is in excess of what would be considered an appropriate or legal speed for the driving conditions. The Board noted the Explanatory Notes to the FCAI Code that advertisers should take care not to suggest driving at dangerous or illegal speed but considered that in the absence of posted speed limits and the actual speed of the vehicle it is not possible in this instance to determine whether the vehicle is driving at excess speeds. The Board considered that as the vehicle appears to be driven in a controlled manner in the Board's view the advertisement does not depict a vehicle driving at excessive speed.

The Board considered that overall the advertisement does not portray any driving which is unsafe, or 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(a) of the FCAI Code.

The Board noted Section 4 of the FCAI Code which provides: 'An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.'

The Board noted that the environment in which the vehicle is being driven is a rural area. As already noted above, the Board considered that whilst the actual speed of the vehicle is not clear due to the absence of posted speed limits and a view of the vehicle's speedometer, in the Board's view the vehicle appears to be driven in a controlled manner designed to highlight its off-road capabilities. The Board considered that the advertisement did not portray unsafe driving in an off-road environment and did not show a vehicle traveling at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.

The Board determined that the advertisement did not breach Section 4 of the FCAI Code.

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