



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0219-21
2. Advertiser :	Volkswagen Group Australia Pty Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	11-Aug-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a promotion for an online game that can be played during the ad break.

THE COMPLAINT

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

Promotes unsafe driving or illegal racing on our roads.

THE ADVERTISER'S RESPONSE

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

Volkswagen takes compliance with the AANA Code, the FCAI Code and the self-regulation of advertising in Australia very seriously and has obtained legal advice in respect of the Advertisement, and this advice was taken into account in developing the creative content and producing the Advertisement.

We note the requirements under the FCAI Code (in particular clause 2) and the AANA Code to depict safe behaviour in motor vehicle advertising and we actively take this



into account and strive to ensure our advertised content is consistent with prevailing community standards. We regret if any members of the public were offended by any content in the Advertisement.

Volkswagen respectfully submits that the Advertisement is not in breach of the FCAI Code or the AANA Code. Our reasons are set out in further detail below.

General Provisions of the FCAI Code

The Advertisement relates to an online game against other players, accessible by QR code for the chance to win a Volkswagen Golf GTI. At no point does the Advertisement demonstrate unsafe driving or exceeding legal speed limits nor does the Advertisement show or encourage racing on actual roads. Whilst the driving scene in the Advertisement represents an online game, Volkswagen confirms that the vehicle portrayed in the Advertisement does not portray any vehicle exceeding legal speed limits. Volkswagen submits that the Advertisement does not indicate or suggest that the vehicle is being driven at excessive speed. No special permission/permits to undertake filming of any driving sequences depicted as the Advertisement is an online game.

The advertisement has been published and broadcast on free to air and paid television in major metro cities, New South Wales, Queensland, Victoria, South Australia and Western Australia only. The Advertisement first commenced on 19 July and scheduled to conclude on 21 August 2021. In addition, the Advertisement has been promoted on Volkswagen's website and social media Channels.

The Advertisement does not depict scenes of motor sport, simulated motor sport, or vehicle-testing or proving. We submit that clause 3 of the FCAI Code does not apply to the Advertisement.

The Advertisement does not portray the vehicle being driven in an off road setting. We submit that clause 4 of the FCAI Code does not apply to the Advertisement.

In relation to section 2 of the AANA Code, the Advertisement does not portray people or depict material in a discriminatory manner. There is no sexual appeal whatsoever. There is no portrayal of violence in any way whatsoever. The Advertisement does not portray any acts that are in reference to sex, sexuality or any nudity. There is no inappropriate language used in the Advertisement. In relation to section 2.6 of the AANA Code (Health and Safety), the practice note for the AANA Code provides that advertisements for motor vehicles which raise issues or complaints concerning safety are to be determined according to the FCAI Code rather the AANA Code. Accordingly, we direct the Ad Standards Panel to our comments above in relation to the FCAI Code.

Volkswagen submits that the broad majority of people would, when considering the Advertisement as a whole clearly promotes an online game where people can race an animated Golf GTI on their mobile phone and that the Advertisement does not depict unsafe driving.



Volkswagen maintains that the Advertisement complies with the FCAI Code, and that a reasonable person would not have grounds for a complaint, as it does not display any depicting or condoning behaviour, or depicting material that is in any other way contrary to FCAI Code and the AANA Code. Based on the above, we respectfully submit that the Advertisement falls within acceptable community standards and complies with the FCAI Code and the AANA Code.

We appreciate the opportunity to respond to the Complaints and look forward to hearing from you following a decision by the Ad Standards Board.

THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concern that the advertisement promotes unsafe and illegal driving.

The Panel viewed the advertisement and noted the advertiser's response.

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 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 Panel determined that the Volkswagen vehicle depicted was a Motor Vehicles 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 then analysed specific sections of the FCAI Code and their application to the advertisement.

Clause 2(a) - 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 Panel noted that the advertisement promoted a game which can be played on a mobile device during a commercial break. The Panel noted that playing the game gave the user a chance to win a vehicle, and the advertiser's vehicle featured in the game.

The Panel noted that the advertisement contained scenes of the game being played, and that these included the animated vehicle being driven on a virtual road at apparently high speeds. The Panel noted that the scenes showed the vehicle crossing lines without indicating and driving in a manner which would be considered unsafe if it were real.

The Panel considered that the depiction of the vehicle in the advertisement was clearly fantasy and not a real depiction of driving behaviour.

The Panel noted the Guidance to advertisers in the FCAI Code states:

"FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code."

The Panel noted that it had previously considered fantasy images in vehicle advertising in case 0204-19 , in which:

"The Panel considered that the advertisement was clearly in the context of a fantasy sci-fi movie. The Panel considered that the Men in Black franchise is well known and that most people viewing the advertisement would recognise the fantasy nature of the movie franchise and the depiction of the motor vehicle within the advertisement...The Panel considered that the advertisement clearly took place in a fantasy universe where the drivers of the vehicle were part of a secret organisation devoted to fighting 'alien scum'. The Panel considered that the depiction of a vehicle failing to slow down when entering a road and having all four wheels leave the ground was consistent with the fantasy and urgent nature of the alien fighting characters in the advertisement and that the car starting to fly at the end of the advertisement highlighted that these actions were taking place in a fantasy world. The Panel considered that the advertisement did not portray unsafe and did not depict reckless or menacing driving that would breach the law as it is clearly a fantasy."

Consistent with the determination in case 0204-19, the Panel considered that the footage in the ad was clearly a video game fantasy and was not intended to depict realistic driving behaviour. The Panel considered that the use of the game footage was not intended to contradict, circumvent or undermine the Code, and that overall the advertisement did not portray realistic driving which could reasonably be measured against Australian Road Rules.



Clause 2(a) conclusion

The Panel considered that the advertisement did not breach Clause 2(a) of the FCAI Code.

Conclusion

Finding that the advertisement did not breach any other section of the FCAI Code, the Panel dismissed the complaint.