



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0224-19
2. Advertiser :	Global Shop Direct
3. Product :	Automotive
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	24-Jul-2019
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

The Panel noted that this infomercial advertisement is promoting the Fast Ball Magnet product which is designed to hold a phone and attach to a variety of surfaces. The advertisement begins by showing people who are driving their vehicles and who do not have their phones secured. The voice over states, "Your phone slides off the console, and falls at your feet! It drops off the dash, and gets stuck between seats!" The advertisement depicts a phone falling off a centre console in a moving car, and a person reaching after it followed by a phone falling onto the floor of a car near the driver's feet. A woman is then depicted driving, and her phone falls off the dashboard and it gets stuck in the gap between the seat and the centre console, she reaches after it and the car swerves. A phone in a holder is then shown falling off a windscreen as the voice over says, "don't let your phone take the fall". The product is then introduced with its benefits and functions highlighted.

A person in the driver's seat of a stationary car is seen attaching his phone to the dashboard of the car using the product. The phone is then shown staying in place on the dashboard then being easily removed after the car is parked.

A man is then shown giving a testimonial as to why he loves the product, and shows him using it while driving, he states that he can "enjoy music or a phone call while I'm driving". A woman provides a testimonial as to how she uses it while cooking.



The voice over describes how the product can be used in a car, including for hands free calling, streaming music or for GPS maps. A woman is shown rotating her phone and answering a call while in the car and a man is shown selecting music to play and a woman is shown rotating her phone using the product so that the map is more visible. The product is then shown being used outside of the car for watching movies and recording video on a boat.

The voice over then describes how other products are inferior, and a vent mount and a suction cup mount are shown falling to the floor of a moving vehicle. A driver is shown reaching after it and the car swerves.

The voice over describes the offer available for purchasing the product.

THE COMPLAINT

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

I don't understand how this was approved..

The holder is designed to be able to use the phone while driving.

Touching a phone is illegal while driving yet this ad boast that you can use your phone while driving.

There are multiple examples in the ad of a person using their phone while driving.

The whole premise of this product is promoted as being able to do something illegal.

This goes beyond an oversight because Foxtel does not air anything until it's been approved by a whole team in the promotions/advertising dept.

This can't get away with just a slap on the wrist!

THE ADVERTISER'S RESPONSE

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

To whom it may concern,

We have reviewed the specifics of the complaint and have specified our response below.

We are confident that the use of the product shown in vision, the disclaimers, and voice over do not represent or promote illegal usage of the product or go against road rules.

Details below:

- The product advertised is a phone and tablet cradle which can be used in a car for certain purposes as outlined in the Road Rules for each state.



Below are links to these road rules.

Example of NSW:

While driving or riding you CAN use your mobile phone:

To make or answer a call

To use the audio playing function (e.g. music)

(ONLY if the phone is either:

In a cradle fixed to the vehicle and doesn't obscure your view of the road

OR can be operated without touching any part of the phone, such as via Bluetooth or voice activation

AND:

As a driver's aid (e.g. navigation, Speed Adviser app)

(ONLY if the phone is in a cradle fixed to the vehicle and doesn't obscure your view of the road)

The ad shows the use of the product in a car with clear disclaimers to ensure we are not misleading consumers about the use of the product, and are not promoting dangerous, or illegal activity.

Below are the links to the state/territory laws.

NSW: <https://roadsafety.transport.nsw.gov.au/stayingsafe/mobilephones/know-the-rules.html>

VICTORIA: <https://www.vicroads.vic.gov.au/safety-and-road-rules/driver-safety/mobile-phones-and-driving>

QLD: <https://www.qld.gov.au/transport/safety/road-safety/mobile-phones>

WA: <https://www.rsc.wa.gov.au/Rules-Penalties/Browse/Mobile-Phones>

TAS: <https://www.transport.tas.gov.au/?a=109500>

NT: Could not find the reference

SA: <http://mylicence.sa.gov.au/safe-driving-tips/mobile-phones>

ACT: <https://police.act.gov.au/road-safety/safe-driving/driver-distraction>

To ensure clarity around usage:

- We have disclaimed on the commercial the following to ensure consumers are clear on what they should consider when purchasing the product:

'Always check and follow your state and territory Mobile Phone Road Rules before using Fast Ball'

- In accordance with the advice in RoadSafety website, we have also disclaimed on the TV commercial

'Always position Fastball where it will not obstruct road view or any of the workings of a vehicle'

ONLY if the phone is in a cradle fixed to the vehicle and doesn't obscure your view of the road



We hope this clarification resolves the matter and any confusion from the complainer regarding usage of this product.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement depicts illegal and unsafe behaviour.

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

The Panel noted that this infomercial advertisement is promoting the Fast Ball Magnet product which is designed to hold a phone and attach to a variety of surfaces. The advertisement begins by showing people who are driving their vehicles and who do not have their phones secured. It then goes on to describe the benefits of the product and demonstrates it being used.

The Panel considered whether the advertisement breached Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Panel noted Australian Road Rule Part 18, Rule 297 (1), which states: "*A driver must not drive a vehicle unless the driver has proper control of the vehicle*". (<https://www.pcc.gov.au/uniform/Australian-Road-Rules-19March2018.pdf>)

The Panel also noted that most states and territories have a provision relating to driving without due care, or careless driving. For example. In South Australia rule 45— Careless driving states that "*(1) A person must not drive a vehicle without due care or attention or without reasonable consideration for other persons using the road.*" (<https://www.legislation.sa.gov.au/LZ/C/A/ROAD%20TRAFFIC%20ACT%201961.aspx>).

The Panel first considered the scenes at the beginning of the advertisement which depict people not using the advertised product. In particular the Panel noted the scene near the beginning of the advertisement where a woman is depicted driving, and her phone falls off the dashboard and it gets stuck in the gap between the seat and the centre console, she reaches after it and the car swerves and there is a sound effect of squealing tyres.

The Panel noted that the woman's behaviour would be considered dangerous by most members of the community and that it would clearly be against the law.

A minority of the Panel considered that it was reasonable for an advertiser to promote a product through the use of demonstrations about what could happen if the product was not used. The minority of the Panel considered that although most



members of the community would understand the behaviour to be unsafe, the behaviour was not shown as desirable or correct, rather it was used as a demonstration of something you should not do.

The majority of the Panel considered that the scene was depicted in a realistic manner, and that the woman swerving was clearly unsafe behaviour. The majority of the Panel considered that the depiction of illegal, unsafe behaviour was not justifiable, even when used as an example of bad behaviour. The majority of the Panel considered that while there was a sound effect of tyres screeching, there were no negative consequences from the behaviour depicted, and there was no indication that this was extremely unsafe.

The Panel considered that the scene depicting the woman reaching for her phone and swerving is contrary to community road safety messaging and would constitute a breach of Road Rules. As such, the Panel considered that this scene does depict material contrary to Prevailing Community Standards on road safety.

The Panel considered the scene towards the end of the advertisement which depicted a man reaching for his phone after his suction cup mount falls off the windscreen, he turns the steering wheel sharply and there is a sound effect of squealing tyres.

Similar to the first scene, the Panel considered that this scene is contrary to community road safety messaging and would constitute a breach of Road Rules. As such, the Panel considered that this scene does depict material contrary to Prevailing Community Standards on road safety.

The Panel noted the complainant's concern that the advertisement depicts a person using the phone while driving which is illegal.

The Panel noted the advertiser response that the advertisement does not represent or promote illegal use of the product or go against road rules.

The Panel noted that the rules around phone use while driving differ in each State and territory, but that Part 18, Rule 300 of the Australian Road Rules includes:

"Use of mobile phones

(1) The driver of a vehicle must not use a mobile phone while the vehicle is moving, or is stationary but not parked, unless:

- (a) the phone is being used to make or receive an audio phone call and the body of the phone:
 - (i) is secured in a mounting affixed to the vehicle while being so used;*
 - or*
 - (ii) is not secured in a mounting affixed to the vehicle and is not being held by the driver, and the use of the phone does not require the driver, at any time while using it, to press any thing on the body of**



the phone or to otherwise manipulate any part of the body of the phone; or

(ab) the phone is being used as a driver's aid and:

(i) the body of the phone is secured in a mounting affixed to the vehicle while being so used; and

(ii) the use of the phone does not require the driver, at any time while using it, to press any thing on the body of the phone or otherwise to manipulate any part of the body of the phone; or

(b) the vehicle is an emergency vehicle or a police vehicle; or

(c) the driver is exempt from this rule under another law of this jurisdiction.

(2) For the purposes of this rule, a mobile phone is secured in a mounting affixed to the vehicle if, and only if:

(a) the mounting is commercially designed and manufactured for that purpose;

and

(b) the mobile phone is secured in the mounting, and the mounting is affixed to the vehicle, in the manner intended by the manufacturer.

(3) For the purposes of this rule, a driver does not use a phone to receive a text message, video message, email or similar communication if:

(a) the communication is received automatically by the phone; and

(b) on and after receipt, the communication itself (rather than any indication that the communication has been received) does not become automatically visible on the screen of the phone.

Examples of driver's aids

1: Closed-circuit television security cameras.

2: Dispatch systems.

3: Navigational or intelligent highway and vehicle system equipment.

(4) In this rule:

affixed to, in relation to a vehicle, includes forming part of the vehicle;

audio phone call does not include an email, text message, video call, video message or other similar communication;

body, in relation to a mobile phone, means the part of the phone that contains the majority of the phone's mechanisms; **held** includes held by, or resting on, any part of the driver's body, but does not include held in a pocket of the driver's clothing or in a pouch worn by the driver;

use, in relation to a mobile phone, includes any of the following actions by a driver:

(a) holding the body of the phone in her or his hand (whether or not engaged in a phone call), except while in the process of giving the body of the phone to a passenger in the vehicle;

(b) entering or placing, other than by the use of voice, anything into the phone, or sending or looking at anything that is in the phone;

(c) turning the phone on or off;



(d) operating any other function of the phone.”

(<https://www.pcc.gov.au/uniform/Australian-Road-Rules-19March2018.pdf>)

The Panel noted that using a phone in a mounting affixed to a vehicle would not in itself be contrary to the Road Rules, however the Road Rules do prohibit touching the phone to use the GPS while driving. The Panel noted that the advertiser response that this action is not prohibited in the State and Territory legislation, and the Panel also considered fact sheets on NSW:

<https://roadsafety.transport.nsw.gov.au/stayingsafe/mobilephones/know-the-rules.html> which indicated that using the GPS while in a cradle is not a breach of the law. The Panel noted the legal situation is changing rapidly, and considered the image in the context of this advertisement. The majority of the Panel considered that the depiction of the man touching the phone while using a driver's aid in this image is not a depiction of material that would be considered to be contrary to prevailing community standards on health and safety. The Panel noted that this situation could change very quickly and that it would be better for advertisers to avoid similar images in the future.

The Panel noted the scene where a man gives a testimonial as to why he loves the product, and shows him using it while driving, he states that he can “enjoy music or a phone call while I’m driving”. The Panel noted he is seen swiping his hand across the phone screen and selecting something.

The Panel noted that the phone screen can't be seen in the advertisement, but that the suggestion is that he is selecting music to play.

The Panel noted that the man takes looks directly at the screen for around five seconds. The Panel considered that while use of a phone in a mount may not be against the law in all states and territories, looking away from the road for five seconds while driving would be considered unsafe by most members of the community.

The Panel considered that there had been many road safety campaigns relating to the dangers of using a phone while driving and becoming distracted while driving. The Panel considered that the driver may not be in complete control of the vehicle when looking at a phone for five seconds and could be in breach of Australian Road Rule Part 18, Rule 297 (1), which states: “A driver must not drive a vehicle unless the driver has proper control of the vehicle”. The Panel also noted that most states and territories have a provision relating to driving without due care, or careless driving. For example. In South Australia rule 45—Careless driving states that “(1) A person must not drive a vehicle without due care or attention or without reasonable consideration for other persons using the road.”

(<https://www.legislation.sa.gov.au/LZ/C/A/ROAD%20TRAFFIC%20ACT%201961.aspx>)

The Panel considered that the scene depicting the man looking at his phone for five seconds, although in a mount, is contrary to community road safety messaging and



could constitute a breach of Road Rules. As such, the Panel considered that this scene does depict material contrary to Prevailing Community Standards on road safety.

The Panel noted the scene where a woman is driving when her phone starts ringing, she rotates the phone and swipes to answer the call.

The Panel considered that the woman is only depicted looking at her phone for a second, and that once the call is answered she places both hands back on the wheel and looks ahead at the road. The Panel considered that this behaviour would be consistent with Australian Road Rules and would not be considered unsafe by most members of the community.

The Panel considered a scene where a man is seen to select a song to play by tapping the screen of his phone which is in the mount. The Panel considered that the man is depicted as glancing away from the road for just a second, before returning his eyes to the road. The Panel considered that this is similar behaviour to interacting with a car radio or CD player, and that most members of the community would not consider this to be unsafe.

The Panel considered a scene where a woman is seen to rotate her phone in the mount so that a GPS map could be seen more clearly. The Panel considered that the woman is shown from behind and it is not clear if she has taken her eyes off the road. The Panel considered that she is seen to touch the outside of her phone case for only a second and that the use of GPS on a phone in a mount is consistent with Australian Road Rules and would not be considered unsafe by most members of the community.

The Panel considered that these three scenes, and the remainder of the advertisement, did not depict material contrary to Prevailing Community Standards on road safety.

In the Panel's view the two scenes depicting people reaching for their phone and swerving and the depiction of the man looking at his phone for five seconds depicts material contrary to Prevailing Community Standards on road safety and that do breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We have ceased running this on TV and will cut the scenes advised at the end of the documentation.