



Case Report

1	Case Number	0278/14
2	Advertiser	KIA Automotive Australia
3	Product	Vehicle
4	Type of Advertisement / media	Pay TV
5	Date of Determination	13/08/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A mum is in her Kia Sportage with her small daughter in the back seat, she is heading out of the drive way. Once she pulls out, she pushes play on the audio system to hear the song "Push it" by Salt n' Pepa coming out of the speakers.

Salt n Pepa appear in the car with her and all three begin singing to "Push it" as they drive down the streets and pass bemused onlookers.

THE COMPLAINT

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

If young people see this advert they will think that this is the way to behave while driving the car ridiculous behaviour,

Shows the driver and the other passengers, including a little girl in the back seat, singing and dancing - hand and upper body movements only - including the driver.

The driver has one hand on the steering wheel and is distracted.

I think this is the same as using a mobile phone - one hand on the wheel and distraction.

THE ADVERTISER'S RESPONSE

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

*RE: KIA AUTOMOTIVE AUSTRALIA
KIA SPORTAGE TV ADVERTISEMENT
COMPLAINT REFERENCE 0278/14*

We refer to the letter received in relation to the above.

We have considered the complaints and the advertisement in question in light of the provisions of the AANA Code of Ethics (“AANA Code”) and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries (“FCAI Code”). We note that the nature of the complaints relate generally to the FCAI Code and specifically to the concern that the advertisement portrays unsafe driving practices.

We have carefully considered the AANA Code and FCAI Code, and have assessed the provisions of each against the content of this 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.

Looking at the AANA Code, Provision 2.6 provides that advertisements “shall not depict material contrary to Prevailing Community Standards on health and safety.”

The advertisement depicts a woman leaving her house with her daughter in the back seat, presumably to undertake grocery shopping, when she starts listening to radio. The advertisement then depicts the actual members of the band “Salt N Pepa” inside the car, singing and enjoying the song along with the driver.

We note that at no time in the advertisement is the driver depicted as not in control of the vehicle, nor driving in an erratic, menacing or dangerous manner. Further, at no time are the members of the band depicted as interfering with or distracting the driver in any way, nor does the driver appear distracted by their presence.

We note that singing whilst driving is a common way in which drivers enjoy music whilst driving and that most reasonable viewers would recognise this as an acceptable and commonplace driving practice.

Accordingly, we submit that the advertisement does not breach Provision 2.6, or any other provision of the AANA Code.

Looking at the FCAI Code, we note that at no time is there any scene in the advertisement that depicts any vehicle being driven in a manner that can be described as unsafe, menacing or reckless. At all times the driver of the featured vehicle is driving very carefully, in full control of the vehicle, observing the road and obeying the road rules.

Further, all scenes depict vehicles traveling at a speed that is appropriate for the depicted driving environment and there is no indication that any vehicle is travelling in excess of any legal speed limit. The vehicle in fact does not exceed 40 km/h for the duration of the advertisement and this is evident by the external shots of the vehicle itself, particularly the shot in which the vehicle passes by a group of cyclists, which establish it is travelling at a safe and low speed.

As noted above, the driver does not appear to be in any way distracted by the presence of the members of the band nor is her ability to drive safely impeded in any way. There are no

scenes in the advertisement that depict any driving practices that would be illegal on Australian roads. We note the driver intermittently takes one hand off the steering wheel at certain times however this is not illegal and the driver still maintains full control of the vehicle at all times as above. Accordingly, we submit that the advertisement is not in breach of any provision of the FCAI Code.

Finally, we note that this advertisement is a sequel to an advertisement from 2011 that depicted the male character (who in the present version stays home) driving a vehicle whilst listening and singing along to a song, and again, the singer is in the car with the man. We note complaints of a near identical nature were made against this advertisement in 2011 (case no. 330/11) and were dismissed by the Board. We submit that there is scope for the same considerations that the Board made in 2011 in respect of the previous advertisement to be applied to the present advertisement, as they are very similar in terms of tone and content.

In conclusion, we submit that the advertisement is completely compliant with the AANA Code and the FCAI Code, and therefore, submit that these complaints should be 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 Kia Sportage in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine 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 Kia Sportage 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 the driver driving unsafely, specifically by singing and dancing whilst driving and only having one hand on the steering wheel.

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 it had previously dismissed a different version of the advertisement which featured the husband driving the car in case 330/11 where:

“The Board considered that the vehicle is, at all times, depicted driving in a safe and controlled manner and that the advertisement did not depict unsafe driving. The Board determined that these images did not breach clause 2(a) of the Code.”

In this instance the Board noted that the woman appears in full control of the vehicle at all times and considered that she is depicted as driving in a safe and controlled manner.

The Board considered that the advertisement did not depict unsafe driving and did not breach clause 2 (a) of the Code.

The Board then considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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 that it had recently dismissed complaints about the same advertisement when it was aired on Free to Air TV (0231/14) where:

“... the Board noted that the woman is singing and performing dance-style movements with her body. The Board noted that in some scenes the woman has only one hand on the steering wheel. The Board noted the Australian Road Rules (February 2012) provide that “A driver

must not drive a vehicle unless the driver has proper control of the vehicle”. The Board noted that the driver in the advertisement appears to be in full control of the vehicle at all times and considered that although the woman is singing and performing some dance movements with her body there is no suggestion that she is not aware of her surroundings and in the Board’s view her driving appears safe and controlled.”

Consistent with its previous determination the Board considered in this instance the advertisement did not depict driving practices or other actions which would breach any Commonwealth law and 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 any grounds, the Board dismissed the complaints.