



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0289-20</b>
<b>2. Advertiser :</b>	<b>Global Shop Direct</b>
<b>3. Product :</b>	<b>Automotive</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>7-Oct-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This television advertisement is for a product called Cup Call. The advertisement features various scenes of people using the product.

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*The police, politicians and doctors are continually hounding drivers about the use of mobile telephones whilst driving a vehicle. They have even installed cameras with the sole purpose to catch people using cameras. This device virtually encourages people to use their telephone whilst driving. With the mobile in the cup call they do not have to hold the mobile only have it on speaker and use the phone handsfree. It is still using a mobile. In this day and age of people using GSP navigation the ad is encouraging people (Drivers) to use the GPS facility on their phone but with the placement of cup/drink holders in vehicles this means they have to take their eyes off the road to check the mobile for directions. GPS navigation devices can be attached to the top of the dash with the relevant attachments that come with them and people can still maintain some semblance of eye contact with the road but with the cup call this is not possible. This device creates dangerous situations.*



## THE ADVERTISER'S RESPONSE

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

*The complaint in question refers to how this product encourages phone use whilst driving,  
The complaint positions the product as dangerous because it is placed in a vehicle cup holder.*

*Global Shop Direct take the safety standards seriously, and ensure our marketing efforts do not conflict with current prevailing safety standards.*

*This ad for Cup Call, a phone mount for vehicles.  
Phone mounts/holders, which most people generally know, are a completely legal category of product, and are commonly referenced in relevant state and territory documents about Road Safety.*

*We are not aware of any specific legislation that instructs where the placement of a phone mount needs to be in a vehicle (regarding where it is attached) with the exception of that it must not affect the operations / functions of the vehicle.*

*Furthermore, there are hundreds of phone mount products that fit all different places in a vehicle. Some are placed in cup holders, some on windshields, some on air vents, dash boards, etc. This varies widely.*

*Our products are also reviewed by a compliance team before they are sold in our market and no issues about this have been raised about how this product is attached in a vehicle.*

*We understand the seriousness of the complainant's concerns, and Road Safety is a serious subject, however their opinion is rather subjective and not supported by any known prevailing safety standard.*

*The safety standard we are aware of regarding the placement location of a phone mount in a vehicle states that it should "not interfere with any operational or safety functions of your vehicle". This is clearly stated at the start of the TV commercial.*

*We also state in a super for the consumer to check and follow the state and territory road rules - given the nature of phone usage in cars.*

*Furthermore, in respect of the vision shown in the TV commercial,  
NO vision featured on the ad shows unsafe driving, and furthermore, there is extremely limited vision of a car moving at all when someone has made any contact or interaction with the Cup Call.*



*Based on the above we do not have any concerns with the content of this ad and we believe it complies with all known safety standards.*

## **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 material contrary to prevailing community standards on health and safety.

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

The Panel noted that the complainant's concerns about the product generally and its function of being placed in a cup holder is unsafe. The Panel noted that its role is to consider the content of the advertisement, not whether the product itself is unsafe.

The Panel noted that the advertisement uses close up scenes of people using the device and noted that a person using a mobile phone in a vehicle, when there is no suggestion that they are driving the vehicle, is not a breach of the Code or road safety legislation.

The Panel noted a scene showing a person driving when their dashboard phone mount fails and the mobile phone falls off the dash, and noted that the driver is not shown to touch the mobile phone.

The Panel noted two scenes in which a person is shown to touch their mobile phone and then start driving.

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". 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 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.*

*(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 the advertised product fits into a cup holder and can be adjusted to ensure a tight fit and considered this would meet the definition of “affixed to”.

The Panel noted that using a phone in a mounting affixed to a vehicle would not in itself be a breach of the Road Rules. The Panel also noted that using a phone as a driver’s aid, such as navigation, would also not be a breach of the Road Rules and that touching the phone while using a driver’s aid would not be in breach of the road rules, and would not be considered unsafe by most members of the community.

The Panel considered that the various people in the advertisement are not shown to touch or use a mobile phone while driving. The Panel noted that there is significant community concern around road safety relating to mobile phone use, but considered that the advertisement did not depict material contrary to Prevailing Community Standards on road safety and did not breach Section 2.6 of the Code.

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