



Case Report

1	Case Number	0295/13
2	Advertiser	Hyundai Motor Company Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Print
5	Date of Determination	28/08/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

An image of a road with two other images superimposed over it: a blue Hyundai i40 and a motorbike which appears to be ridden by a hyena. The text reads, "i40. BIG on safety. Because they're out there."

THE COMPLAINT

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

The advert emphasizes the safety features of this vehicle and has the headline "because they're out there". The image of the motorcyclist shows the motorcycle to be on the incorrect side of the road over double unbroken centre lines with a dog presumably riding as a pillion passenger.

As a motorcyclist I am offended by the suggestion that a purchaser of the Hyundai i40 requires its various safety features to protect them from motorcyclists on the wrong side of the road. The implication is that motorcyclists are irresponsible road users likely to be found on the incorrect side of the road.

I agree that some irresponsible motor cycle riders may indulge in this kind of behaviour as do other irresponsible road users in cars or trucks. Why are motorcyclists being singled out? I think it's pretty clear who would come off second best in any encounter between a Hyundai i40 and a motorcycle regardless of whatever safety features this car may or may not have.

THE ADVERTISER'S RESPONSE

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

We have considered the complaint 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 complaint relates generally to the AANA Code and FCAI Code and specifically to the concern that the advertisement in question contains imagery that is alleged to display a driving practice that is in breach of the Australian Road Rules.

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 FCAI Code, we note that Section 2 of the FCAI Code outlines the general provisions, the most relevant of which to this advertisement are reproduced below:

(a) Unsafe driving, including reckless and 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.

(b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

(c) 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.

Regarding provision (a), we note that the advertisement is a static image of a motorcycle travelling on a road, and the head of the vehicle's rider is only visible in the rear view mirror, which reveals it to be that of a hyena. Although it is obviously unusual for a hyena to be driving a vehicle (as this would be physically impossible), there is nothing in the image that seriously suggests the motorcycle is being driven in a manner that can be described as unsafe, menacing or reckless. The driver appears to be in full control of the vehicle and observing the road and obeying the road rules. There is nothing in the image to suggest the driver is driving aggressively or incompetently, is taking unnecessary risks, or is driving at an unsafe speed.

Regarding provision (b), we note there is nothing in the image that suggests the vehicle is traveling at a speed that is inappropriate for the depicted driving environment. Further, there is no indication that the vehicle is travelling in excess of any legal speed limit.

Regarding provision (c), and also having regard to the complainant's specific concern that the advertisement depicts a vehicle travelling on the wrong side of the road, we note that the

image used is of an overseas road and driver, and this is clear due to the appearance of the road, in particular, the yellow double lines, which are a standard feature in the United States and Canada, but are coloured white in Australia. We note that the ASB itself has issued the following practice note with regards to its interpretation of the FCAI Code in regards to the depictions of overseas driving as follows:

The Board will not consider complaints which relate solely to:

(a) The use of images produced overseas which may depict number plates from jurisdictions outside of Australia or left-hand drive vehicles travelling on the right-hand side of the road, when the footage is provided for an Australian company by its overseas parent company.

(b) The absence of number plates on motor vehicles being advertised.

The Board has previously considered that such images do not raise an issue of road safety or vehicle occupant protection. These matters are outside the scope of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising and will not be submitted to the Board for determination.

In our view the aspect of the image that is the subject of complaint should not be considered to be in breach of the FCAI Code solely for the fact that it depicts a vehicle driving on the right hand side of the road, as this is irrelevant. A more important consideration would be that there is nothing in the advertisement that depicts any unsafe driving, speeding or driving practices that would be in breach of the Australian road rules.

Accordingly, we submit that the advertisement is not in breach of any provision of the FCAI Code.

Looking at the AANA Code, Provision 2.6 provides that advertisements “shall not depict material contrary to Prevailing Community Standards on health and safety.” In this regard we note that the driver of the motorcycle is depicted as wearing a safety helmet. Further, we note the driver is shown to be in full control of the vehicle.

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

In conclusion, we submit that the advertisement is completely compliant with the AANA Code and the FCAI Code, and therefore, submit that this complaint 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) and the Advertiser Code of Ethics (the 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 determined that the material draws the attention of the public or a segment of it to a product being a Hyundai i40 in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Board determined that the Hyundai i40 shown in the advertisement 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 motorbike being driven by a hyena on the wrong side of the road and that there is an implication that motorbike riders are irresponsible.

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 that this print advertisement features an image of a road, a car and a motorbike as well as some text promoting the safety features of the Hyundai i40. The Board noted the complainant's concerns that the placement of the motorbike suggests that it is driving on the wrong side of the road. A minority of the Board considered that the motorbike does appear to be driving on the right hand side of the road and in the absence of a disclaimer to state that the advertisement features an overseas image the Board considered that the advertisement did depict an unsafe driving practice.

The majority of the Board considered that the advertisement has an overall fantasy element to it which is reinforced by the depiction of the wing mirror of the motorbike which suggests the motorbike is being driven by a hyena. The Board considered that the image of the motorbike has been superimposed over the image of the road and that these two images are clearly separate and in the overall context are not strongly suggestive of a motorbike riding on the wrong side of the road.

On the above basis, the Board determined that the advertisement does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which

discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the complainant's concerns that the advertisement suggests motorcyclists are irresponsible road users.

The Board noted that the overall theme of the Hyundai i40 advertising campaign is that there are bad drivers of all types and considered that in this instance the advertisement is not suggesting that all motorcyclists are dangerous drivers.

The Board considered that the advertisement did not portray or depict material which discriminates against or vilifies motorcyclists and determined that the advertisement does not breach Section 2.1 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics, the Board dismissed the complaint.