



Case Report

1	Case Number	0312/13
2	Advertiser	Hyundai Motor Company Australia Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	11/09/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
2.1 - Discrimination or Vilification Other

DESCRIPTION OF THE ADVERTISEMENT

Various vehicles are shown driving in an erratic manner whilst the Hyundai i40 avoids them. There is a van driven by a chimp, a motorbike driven by a hyena and we see pallets falling off the back of a truck in to the path of the Hyundai. The final tag line says, "They're out there".

THE COMPLAINT

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

Firstly...it is ludicrous. I am not sure what the point is. But it insinuates the other driver is always " the other" something " less than human" in another era they would probably offer a black person, a female an older person or perhaps a disabled person in its place. There is no evidence to prove that the animals depicted have a propensity for any of the activities shown, let alone, in themselves are less caring or disrespectful to either their fellow species or any others. It objectifies animals. It encourages use of metaphorical language to describe offensive behaviour utilising animals....such ad " what an ape" " crazy like a wolf" it is insulting to animals... And although may not be offensive to many people I find it discriminatory in nature and in attitude toward animals and people alike. Not to mention the fact that most animals do not have the ability to drive, and I would not hesitate to say that absolutely no non-human animal has a licence to drive, thus it is showing illegal activity

during the course of an advertisement. Please advise me of the outcome, and if found to not be relevant, your explanations as to why it is not offensive and should not be removed are requested.

THE ADVERTISER'S RESPONSE

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

The i40 TVC has the objective to relate to Medium Segment sedan buyers, who rate 'safety' even higher than the average driver, by acknowledging their mindsets that the roads have the potential for other dangerous drivers (hence, 'They're out there'), and the Hyundai i40 having therefore the necessary safety design and inclusions the target audience would want in a car. With this in mind our agency developed an ad to portray the safety aspects of i40 in a way that also deliberately ensured compliance with national road regulations and rules and within the AANA Code of Ethics ("AANA Code").

We have considered the complaint and the advertisement in question in light of the provisions of the 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 unsafe and 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 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. We note that at all times the driver of the featured i40 vehicle is driving very carefully, in full control of the vehicle, observing the road and obeying the road rules. Indeed,

he is remaining watchful of any potential hazards at all times, as per the tone and overall message of the advertisement. At no stage does the driver appear to be driving aggressively or incompetently, taking unnecessary risks, or driving at an unsafe speed. There is one scene where the driver is forced to undertake a drastic manoeuvre in order to avoid a collision with an on-road hazard (i.e. the falling palette load), however his response in that scene is appropriate and is still undertaken with extreme caution and within the road rules.

Regarding the depiction of non-human drivers, they may appear to be driving slightly erratically at times, however, these instances are very brief and each scene concludes with the vehicle being driven by the non-human in a safe manner. Further, the depiction of non-humans driving somewhat erratically is not intended to endorse such driving, but in fact the opposite. The advertisement uses this fantasy device to point out an important reality, namely, that erratic driving should not be encouraged but nevertheless unpredictable drivers exist on our roads. The advertisement is intended as a reminder to everyone to be always cautious. It should also be noted that none of this erratic driving is occurring using the featured i40 vehicle.

Regarding provision (b), we note that 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. We note in particular the motorcycle scene, which takes place on a dual lane highway. Although the motorcycle overtakes the featured i40 vehicle, it does so safely and without any indication that it is travelling in excess of the speed limit.

Regarding provision (c), and also having regard to the complainant's specific concern that the advertisement depicts a vehicle crossing double lines to avoid a hazard, we note that in this scene the vehicle is clearly depicted as not crossing the lines, but rather, skillfully maneuvering around the hazard (due to the vehicle's superior design and safety features) whilst still maintaining control of the vehicle and staying on the correct side of the road. We note that there are no other scenes in the advertisement involving any of the other vehicles that depict any driving practices that would be illegal on Australian roads.

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 all characters (human and non-human alike) are depicted as wearing seat belts, as well as other appropriate safety equipment where necessary, including a safety helmet in the case of the motorcycle-riding hyena and a high visibility safety vest in the case of the truck-driving ox. Again, we note the scene where the featured i40 driver is forced to take action to avoid an on-road hazard, however, the driver's reaction is completely appropriate in the circumstances, and the scene serves to highlight the importance of being alert for hazards at all times, and the benefits of driving a vehicle with advanced safety features and dynamic handling such as the featured i40 vehicle. Further, we note the driver of the featured i40 vehicle is shown to remain calm and in full control of the vehicle at all times. Regarding the non-human drivers, again as discussed above, there are brief instances of erratic driving, but these are very brief, and serve to highlight the significance of staying alert and aware for unpredictable drivers, which is in itself an important safety message that is consistent with community standards.

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 decided that the material in question was available in Australia or in a substantial section of Australia for payment or valuable consideration.

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 depicted animals driving vehicles in a manner which was unsafe and discriminatory towards both animals and humans.

The Board noted that the advertisement features footage of the Hyundai i40 driving in different scenarios where it comes in contact with other road users driving erratically and 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 that we see a chimp driving a vehicle with one hand and swerving. The Board noted that the chimp does not appear to lose control of the vehicle and considered the depiction of a chimp driving a vehicle is clearly fantasy and is shown as a negative attribute (driving badly) and therefore does not undermine the safe driving message of the Code.

The Board noted that in one scene we see the Hyundai quickly move in to the right hand lane so as to avoid some pallets which have fallen from the back of a truck in front. The Board noted that it had previously considered this scene in a different version of the advertisement (case reference 0294/13) where it noted that "whilst the Hyundai does move in to the outside lane quickly so as to avoid hitting the pallets the driver appears in full control of the vehicle. The Board also noted that the Hyundai does not cross over to the wrong side of the road and that the line dividing the two lanes of the dual carriageway is broken therefore the vehicle is permitted to change lanes and there is no depiction of illegal driving. The Board noted that there is no other traffic on the road and so the Hyundai is clear to undertake the avoidance manoeuvre safely. The Board noted that purpose of the scene is to demonstrate the safe driving capabilities of the Hyundai i40 and considered that as the vehicle is depicted as being driven in a controlled manner and no road rules are being broken, in the Board's view the advertisement does not depict unsafe driving."

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

The Board considered whether the advertisement was in breach of Section 2.1 of the Code. Section 2.1 of the Code states: "Advertising or Marketing Communications shall not portray people 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 it is discriminatory to depict animals driving badly and considered that the use of the animals is not suggestive of those actual animals driving or that if those animals could drive then they would drive in a reckless manner but rather that you never know who (or what) is sharing the road with you at any given time.

The Board noted the complainant's concerns that the use of a chimp could be interpreted as representative of a black person and considered that this is a very unlikely interpretation and the use of a chimp is not of itself a suggestion of a particular race or ethnicity.

Based on the above the Board considered that the advertisement did not discriminate against animals or humans and determined that the advertisement did 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.

