



Case Report

1	Case Number	0328/11
2	Advertiser	Volvo Car Aust Pty Ltd
3	Product	Vehicles
4	Type of Advertisement / media	Pay TV
5	Date of Determination	14/09/2011
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Motor vehicles	Driving practice that would breach the law
Motor vehicles	Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

A red Volvo S60 is shown driving on an empty road in a desert. The male voice over describes its features and price, and the final shot is of the Volvo coming to a halt in a controlled 180 degree turn.

THE COMPLAINT

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

A Volvo S60 is seen being driven along lane road. At one point it appears to be straddling a lane without an indicator being used. At the end of the ad the vehicle is seen doing what is called a one eighty where the brakes are applied suddenly and the vehicle is manoeuvred one hundred and eighty degrees to end up facing the opposite direction.

This advertisement is categorically incontrovertibly irrefutably unambiguously unequivocally indisputably indubitably undeniably unassailably and impregnably in breach of 2 (a) and (c) of the FCAI Code:

(i) Unsafe driving

(ii) Reckless driving

(iii) Sudden extreme and unnecessary change in direction

2. GENERAL PROVISIONS

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

(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.

[Examples: Vehicles travelling at excessive speed; sudden extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

(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.

We would also like the Board to answer how this ad was ever permitted by FreeTV to be broadcast when it is so unequivocally and unambiguously in breach of the Code and how it obtained a CAD approval.

As usual we expect the ASB to take at least one month to "determine" this complaint by which time the advertisement will have probably run the full length of its planned schedule. As it appears to have been made overseas (at very little cost to the local advertiser) and because there are no penalties for breaching the Code advertisers appear to be free to flout the Code with impunity.

And the Board remains ever silent.

What a farce.

THE ADVERTISER'S RESPONSE

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

Firstly, it should be known that Volvo Car Australia Pty Ltd ("Volvo Car Australia") takes its responsibility as an advertiser very seriously and makes extensive efforts to understand and respond appropriately to community concerns and issues, including by having in place our own stringent internal review and approval process, including legal advice.

Volvo Car Australia does not encourage anyone to drive in a reckless and unsafe manner. Accordingly, we respectfully disagree with the complainant's characterisation of the Advertisement.

We have considered the complaint and the Advertisement in question in light of the provisions of the AANA Code of Ethics ("the AANA Code") and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries ("the FCAI Code").

It is noted that the nature of the complaint relates in our view to the FCAI Code.

We have carefully considered the AANA Code and the FCAI Code, and assessed their provisions against the content of the 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. Provision 2.7 of the AANA Code provides that advertisements for motor vehicles must comply with the FCAI Code. We note that the Advertisement does not contain any material relevant to any other section of the AANA Code.

Provision 2(a) of the FCAI Code provides that advertisements for motor vehicles shall not portray: "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. [Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]"

Provision 2(c) provides that advertisements for motor vehicles shall not portray: "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. [Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]"

Firstly, there is nothing in the Advertisement that portrays that the vehicle is being driven in excess of any speed limit. Further, the Advertisement does not portray that the vehicle is being driven unsafely, recklessly, menacingly or that a deliberate loss of control occurs, noting that the Advertisement is clearly filmed in controlled conditions on an isolated and closed road in the Arizona desert.

The overall tone of the Advertisement is in no way aggressive. The Advertisement generally is intended to elicit an emotional response in the viewer, causing them to feel excitement at the release of an exciting new Volvo model and the scope of a commercial offer we consider to be extremely attractive to consumers.

For the above reasons we submit that the Advertisement is not in breach of the AANA Code or the FCAI Code.

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 Volvo 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 Volvo 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 features a car straddling a line and conducting a sudden 180degree turn.

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 the depictions of the vehicle crossing lines a number of times in the advertisement. In the Board's view these images were a minor part of the depictions of the vehicle driving. The Board considered that straddling a line for a short time on a road may or may not amount to a breach of road safety laws depending on circumstances. The Board considered that this depiction did not amount to unsafe or reckless or menacing driving that would breach a law. The Board determined that these images did not breach clause 2(a) of the Code.

The Board then considered the image of the car performing a sudden turn and stop and noted that the FCAI code provides a number of examples of material that would come within clause 2(a) including 'sudden extreme and unnecessary changes in direction and speed of a motor vehicle.'

The Board noted the advertiser's response that the advertisement is 'filmed in controlled conditions on an isolated and closed road in the Arizona desert.'

The Board noted that clause 2(a) clearly provides that the Board must consider whether the driving depicted would be unsafe 'if such driving were to occur on a road...regardless of

where the driving is depicted in the advertisement.’ The Board determined that the image of the vehicle doing a sudden 180 degree turn is a depiction of a vehicle that, if it occurred on a road, would be considered to be driving in an unsafe or reckless manner that would breach the law anywhere in Australia. The Board determined therefore that the advertisement breached clause 2(a) of the FCAI Code.

The Board considered clause 2(b) of the Code which requires that advertisements not depict ‘people driving at speeds in excess of speed limits in the relevant jurisdiction in Australian in which the advertisement is published or broadcast.’

The Board noted the complainant’s concerns that the cars are speeding but noted that the cars are clearly not being driven on actual roads so it is not possible to gauge the legal speed limit. The Board considered the footage of the car’s speed and noted that in some instances the footage appears to have been speeded up. The Board considered that most viewers would recognise that it is the footage and not the car which is speeding up, and noted that the car is being driven in a controlled manner throughout the advertisement with no strong inference of driving in excess of any speed limit.

The Board considered that there was no depiction of the vehicle driving at a speed that would breach any law and determined that the advertisement does not breach clause 2(b) of the FCAI Code.

The Board considered that there is no depiction in the advertisement of any driving practices or other actions which would breach any law and that the advertisement did not breach clause 2(c) of the FCAI Code.

Finding that the advertisement breached clause 2(a) of the FCAI Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

On a no admissions basis, we have decided to undertake the following actions in light of the Board’s determination:

1. To modify the advertisement so that the “180 degree turn” is removed from the advertisement.
2. To immediately remove the advertisement from all forms of television (Free to Air and Pay TV).
3. To cause to be shown on all forms of television as of 23 September 2011 the modified advertisement (which has the “180 degree turn” removed).

We trust that the above actions are satisfactory.

