



Case Report

1	Case Number	0366/11
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicles
4	Type of Advertisement / media	Internet
5	Date of Determination	28/09/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

Various scenes of a family in their car travelling to and from different places.

THE COMPLAINT

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

The child in the car at the beginning is not restrained in a car seat properly. Half way through the commercial a little boy is sitting in the front seat - he should be in the back in a booster seat. At the end of the commercial a newborn baby is in a capsule forward facing. Sending a very wrong message to parents about proper car seat use.

THE ADVERTISER'S RESPONSE

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

We refer to the email received by our office on 8 September 2011 in relation to the above complaint in connection with our television advertisement of the Jetta vehicle viewed by the complainant of the internet ("the Advertisement"). We enclose the footage of the

Advertisement for your consideration. We also note for completeness that this is the same advertisement in relation to which we responded separately regarding Complaint Reference 0365/11.

Firstly, it should be known that Volkswagen Group Australia Pty Ltd (“Volkswagen”) 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.

Safety is a paramount consideration for Volkswagen both in terms of vehicle manufacture (and the safety emphasis in many features incorporated in our vehicles) and also in terms of how we project safety elements in our advertisements.

It is significant to note that given the nature of the Advertisement, the use of children in the Advertisement and the projection of the vehicle as a family vehicle, we caused to be present at the filming of the Advertisement the following persons in our endeavour to ensure that all safety related laws and regulations were complied with:

- 1. One (1) Safety Officer; and*
- 2. Two (2) Child Welfare Officers.*

The purpose of having these persons present was to ensure that all safety laws and regulations were adhered to at all times throughout the four day filming of the Advertisement, including but not limited to the way children were restrained within the vehicle.

Further, we bring to your attention that the parents of all children involved in the Advertisement were present during filming.

We have considered the complaint and the Advertisement in question in light of the provisions of the AANA Code of Ethics (“the AANA Code”).

We have carefully considered the AANA Code and assessed its provisions against the content of the Advertisement. We submit that the Advertisement does not breach the AANA 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(c) of the FCAI Code 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.]”

We note that we do not consider provisions 2(a), 2(b), 2(d) or 2(e) of the FCAI Code to be relevant to this complaint as they relate directly to driving whereas this complaint relates to “other actions” as contemplated by provision 2(c).

The Advertisement

The reason for the complainant’s concern is “The child in the car at the beginning is not restrained properly. Half way through the commercial, a little boy is sitting in the front seat- he should be in the back in a booster seat. At the end of the commercial a newborn baby is a capsule forward facing”.

Firstly, there is nothing in the Advertisement that portrays any action that breaches any Commonwealth law or the law of any Australian State or Territory.

Secondly, there is nothing in the Ad that portrays any child being incorrectly restrained or incorrectly located within the vehicle.

The Advertisement contains the following notable scenes of children restrained within a vehicle:

- (1) a mother in the process of securing her crying baby, noting there is no portrayal of any action in breach of law and noting further that the car was stationary at this point in time;*
- (2) a mother comforting her injured son, noting he is wearing a seatbelt, is in the back of the car and there is no portrayal of any action in breach of law;*
- (3) a boy with his arm in plaster, noting again he is wearing a seatbelt and there is no portrayal of any action in breach of law. The boy was actually seated in the back seat of the car and we do not understand the basis on which the complainant could conclude otherwise. We also note that the boy in question is 9 years of age and that therefore a booster seat is not required;*
- (4) an infant in the closing scene in a baby capsule, noting again there is no portrayal of an action in breach of law. We also wish to highlight that the baby was restrained behind the front passenger seat in a rear facing baby capsule. We bring to your attention in this regard that the filming of the baby was taken from the passenger's side of the vehicle from the perspective of the little girl who is invited by her grandmother to meet her little brother on the passenger side of the vehicle. You will notice at the 53 to 54 second mark of the Advertisement that the little boy is standing on the passenger side and that the grandmother is inviting her granddaughter to join him. In our view this is conclusive evidence that the capsule is rear facing.*

We went to great lengths to ensure that safety compliance was both promoted and actually adhered to in the filming of the Advertisement. All physical actions taken during the filming were actually undertaken in compliance with all safety related laws and regulations.

We noted above that we caused to be present at the four day filming of the Advertisement one (1) Safety Officer and two (2) Child Welfare Officers. The purpose of this was to ensure that all children were correctly restrained and that all "other actions" were physically performed strictly in compliance with laws and regulations.

We enclose copies of statements regarding the involvement of these Safety and Child Welfare officers for your further consideration. These statements confirm that all safety requirements were adhered to at all times. They also confirm that the "infant in the last scene" was located in a baby capsule on the passenger side of the vehicle in the rear seat facing toward the rear of the vehicle.

For the above reasons we submit that the Advertisement is not in breach of the AANA Code. If you require any further assistance or information please do not hesitate to contact me.

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 Volkswagen Jetta 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 Volkswagen Jetta 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 incorrectly restrained children in a vehicle with a child at the beginning of the advertisement not restrained properly, a boy sitting in the front seat during the advertisement and the baby capsule at the end of the advertisement facing forwards instead of backwards.

The Board considered whether the advertisement breached clause 2(c) of the Code. Clause 2(c) of the FCAI Code provides that advertisers should 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 dealing directly with road safety or traffic regulation".

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board noted the advertisement features various scenes of a Volkswagen Jetta being driven with different family members in it. The Board noted the Advertiser's response that the filming of the advertisement was overseen by a fully qualified safety supervisor who

confirms that the correct restraints were used throughout filming, all children were correctly and safely restrained and that the baby capsule shown towards the end of the advertisement was correctly fitted within the car. The Board considered that the advertisement does show children in restraints or with seatbelts at each part of the advertisement and that the baby's car seat is appropriately facing the rear.

The Board determined that the advertisement did not depict incorrectly restrained children in a motor vehicle and did not breach clause 2(c) of the FCAI Code.

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