



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	<b>Case Number</b>	<b>0388/18</b>
2	<b>Advertiser</b>	<b>Volkswagen Group Australia Pty Limited</b>
3	<b>Product</b>	<b>Vehicle</b>
4	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
5	<b>Date of Determination</b>	<b>12/09/2018</b>
6	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a woman picking up her boyfriend from a party at night. She appears to be angry at him. He uses his phone to send a text over the car's voice system to apologise, and she smiles.

## THE COMPLAINT

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

*The young woman turns to look at his mobile device while he is texting, therefore she is distracted from the business of driving. This distraction of a young driver is normalising illegal behaviour, which is a driving offence in most states, a contributor to road trauma and at odds with community values.*

## THE ADVERTISER'S RESPONSE

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





*Volkswagen takes its legal responsibilities under Competition and Consumer Act, AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) very seriously. Further, Volkswagen adheres to the Commercial Advice Division (CAD) pre-approval process to ensure approval classification before the commercial is aired. This reflects Volkswagen's robust commitment to complying with advertising and motor vehicle safety regulations.*

#### *The Advertisement*

*The Complaint relates to Volkswagen's TV Commercial (TVC), which portrays a young couple, Hannah and Nick, well into their relationship. The TVC commences with Hannah picking up Nick from a mate's gathering in her pyjamas at 2am in her Volkswagen Golf. She is not impressed with the late pick up and gives the boyfriend the silent treatment. The boyfriend seated in the passenger seat, then picks up his phone and sends his girlfriend a 'sorry' message, which is transmitted through the vehicle's infotainment console. The boyfriend activates the 'read messages' button and the text is read via the voice activation. The feature highlighted in this execution is Volkswagen's App-Connect that allows seamless smartphone integration within the vehicle's infotainment system (the "advertisement").*

*The advertisement was approved by CAD with Key Number G5ZE4MVA (30 second version) and G5ZE5MVA (15 second version); both with a CAD rating of "G". The advertisement was published and broadcast in all States/Territories across Australia and made available online via Volkswagen's social channels including YouTube, which commenced on 25 March 2018 and will continue until 31 December 2018.*

#### *Relevant Legislation and Regulations*

*The relevant laws and standards relating to the complaints are as follows:*

- 1. The AANA Advertiser Code of Ethics (Code);*
- 2. The AANA Advertiser Code of Ethics (Practice Notes); and*
- 3. FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code)*

#### *Volkswagen's Response to the Complaint*

*In relation to section 2 of the AANA Code of Ethics, the advertisement does not portray people or depict material in a discriminatory manner. There is no sexual appeal whatsoever. There is no portrayal of violence in any way whatsoever. The Advertisement does not portray any acts that are in reference to sex, sexuality or any nudity. There is no inappropriate language used in the Advertisement. The relevant laws and standards relating to the complaints include the FCAI Code.*

*The Complaint raises concerns that the driver is distracted whilst driving the vehicle as she glances at her partner's actions whilst driving. The driver does not engage or touch the mobile phone device at any time; both hands remain firmly on the steering wheel at all times.*



*While Volkswagen respects the personal opinion of the complainant, Volkswagen rejects the complainant's view. Momentarily, Hannah glances at Nick's activity as he types her a 'sorry' text message, however Hannah is not distracted and remains in complete control of the vehicle, at all times. The TVC is in full compliance with the FCAI Code. The TVC aims to highlight the vehicle's safety and technology features. We encourage all our customers to enjoy the technology provided in our cars including the infotainment touch screen systems. The product has been designed to facilitate driving within the acceptable legal limitations.*

*In response to the specific queries in your letter, Volkswagen responds as follows:*

*1) What assurances can the advertiser provide that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?*

*The advertisement is not in breach or contrary to the FCAI Code and does not contradict any road safety regulations.*

*2) Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?*

*The vehicle shown in the advertisement does not exceed any speed limit and is driven sedately through the environment with no sense of speed or dangerous driving.*

*3) Was it necessary for the advertiser to obtain any special permission/permits to undertake filming of any driving sequences depicted in the advertisement?*

*No permissions or permits were required, however the advertisement was filmed under controlled traffic conditions on a closed road.*

*4) Has the advertisement being published/broadcast in all of Australia? Are there any States/Territories where the advertisement has not been published/broadcast?*

*The advertisement was published and broadcast in all States/Territories across Australia and made available online via Volkswagen's social channels including YouTube, which commenced on 25 March 2018 and will continue until 31 December 2018.*

*5) Has the advertisement been made available on the internet?*

*The advertisement has been available on the internet via Volkswagen's social channels including YouTube*

*There was no use of motorsport in the advertisement. There was no use of or depiction of off-road vehicles in the advertising.*

*Finally, the Advertisement was reviewed by our internal Legal team as well as by the Commercial Advice Pty Ltd (CAD) prior to airing, Volkswagen maintains that the*



*advertisement is within the FCAI Code, and that a reasonable person would not have grounds for a complaint as it does not display any depicting or condoning behaviour, or depicting material that is in any other way contrary to prevailing community standards with respect to health and safety.*

## **THE DETERMINATION**

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (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 Panel 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 Panel determined that the Land Rover Discovery was a Motor vehicle as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Panel noted the complainant's concern that the advertisement depicts the driver being distracted by her passenger's phone which is illegal in Australia.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

The Panel 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 Panel noted that this television advertisement features a woman picking her boyfriend up from a party late at night. He uses his phone to send a text over the car's voice system to apologise.



The Panel noted the complainant's concern that the advertisement is encouraging driver distraction.

The Panel acknowledged there is significant public concern around the use of mobile phones while driving, however considers in this instance it was not the driver using the phone.

The Panel considered the advertiser's response that the driver is not distracted and stays in control of the vehicle at all times.

The Panel considered that the driver does not take her hands off the wheel and while her glance flicks sideways, her attention remains on the road and she is seen to drive in a careful manner.

The Panel considered that overall the advertisement does not portray any driving which is unsafe, or that would breach any Commonwealth law or the law of any State or Territory.

The Panel considered clause 2(c) of the FCAI Code. Clause 2(c) requires that '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.'

The Panel considered that the woman in the advertisement does not use the phone while driving and determined that the advertisement did not breach Clause 2(c) of the FCAI Code.

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

