



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0420/18
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	26/09/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement shows a father and son at several points during the son's life. He is generally shown to be a bad driver, even as a child. The advertisement ends with a woman stepping into the road and the vehicle's safety features are engaged.

THE COMPLAINT

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

The driver is speeding in a narrow street and nearly runs over a passenger crossing the road. The Australian version shows then traveling close to 60kmh when the speed limit is likely to be 40kmh in Sydney whilst the European advert shows than travelling at 32kmh. Its simply dangerous!

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 Polo TV Commercial (TVC), which tells the story of the relationship between a father and his son and portrays stages from the sons early days of being a toddler, right the way through to him being a young adult and his various adventures as being a bit of a dare devil. The son is always looking for the next challenge and will give anything a go whilst his loving father keeping a watchful eye over him. The TVC then cuts to the son driving the Volkswagen Polo with his father, which highlights key safety features of the vehicle including Blind Spot Monitoring and Front Assist with City Emergency Brake. The father breathes a sigh of relief and gently taps the vehicles dashboard, acknowledging that he is in a Volkswagen Polo, which is packed with impressive safety systems.

The advertisement was approved by CAD. The advertisement was published and broadcast in all States/Territories across Australia and made available online via Volkswagen's social channels including Facebook, Instagram and YouTube, which commenced on 4 March 2018 and will continue until 22 September 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).*

The Complaint raises concerns that the driver is speeding in a narrow street reaching speeds of close to 60km/h. Volkswagen respectfully disagrees with this comment as the speedometer reflects 50km/h, which is consistent with speed limit for urban built up areas:

The complainant also raises concerns that the TVC demonstrates dangerous driving



with the vehicle almost colliding with a pedestrian crossing the road. Volkswagen rejects this comment. The pedestrian in the TVC is not crossing the road; instead, the pedestrian has run out onto the road to pick up her oranges with no regard for her own safety for on-coming traffic. The vehicles safety feature 'Front Assist with City Emergency Brake and Pedestrian Monitoring' is activated bringing the vehicle to an immediate stop and avoiding the collusion.

Volkswagen's Front Assist with City Emergency Brake and Pedestrian Monitoring feature is a technology designed to mitigate and, in certain circumstances, avoid low speed collisions with vehicles, which are stationary, or travelling in the same direction. The system uses a radar sensor in the radiator grille to monitor the area in front of the vehicle and within the limits of the system, register certain situations, for example a pedestrian stepping onto the road suddenly. The system then gives an immediate acoustic and visual signal to warn the driver. If the driver does not brake, the system initiates a jolt of the brake as a warning about the critical situation, while at the same time preparing for hard braking. If the driver fails to react, the system automatically performs emergency braking, within system limits. Ideally, this will prevent a collision, or at least reduce its severity.

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

1) What assurances can the advertiser provide than 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 50km/h and is driven sedately through the environment. The driver is in complete control of the vehicle at all times.

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 Facebook, Instagram and YouTube, which commenced on 4 March 2018 and will continue until 22 September 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 a car speeding down a narrow street and nearly running a pedestrian over.



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 the examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Panel noted that this television advertisement depicts a father having flashback of a series of accidents as his son grows up. The father is then shown as his son starts to drive a Volkswagen Polo which contains a number of safety features to prevent the son from being in an accident.

The Panel noted the complainant's concern that the advertisement depicts the vehicle being driven in excess of the speed limit and nearly runs over a pedestrian.

The Panel noted the advertiser response that speedometer reflects that the car is travelling at 50km an hour which is consistent with the speed limit for urban built up areas, and that the pedestrian in the advertisement is seen stepping out into traffic and an accident is avoided because of the cars safety features.

The Panel considered that when that in the scene where a woman runs out onto the road to chase her oranges, the frame shows the cars speedometer clearly identifying that the car is travelling under 50km per hour.

The Panel considered that the default speed limit on most urban streets in NSW, and across Australia, is generally 50km per hour and that it is unlikely the vehicle was speeding (<http://www.rms.nsw.gov.au/roads/safety-rules/road-rules/speed.html>) .

The Panel considered that the pedestrian steps out onto the road in front of the car which was outside of the control of the driver, and that the quick stop of the car was highlighting the safety features of the car.

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 determined that the advertisement did not breach Clause 2(a) of the FCAI Code.

The Panel then considered clause 2(b) of the FCAI Code. Clause 2(b) requires that “Advertisements for motor vehicles do not portray: people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”

The Panel noted the complainant’s concern that the advertisement also depicts a vehicle speeding.

The Panel considered the scenes in which the car is shown being driven and determined that the vehicle did not appear to be travelling at excessive speeds at any time.

The Panel considered that when that in the scene where a woman runs out onto the road to chase her oranges, the car is shown travelling at less than 50km per hour.

The Panel considered that the default speed limit on most urban streets in NSW, and across Australia, is generally 50km per hour and that the clear depiction from the advertisement is that the vehicle was not being driven at speeds in excess of the speed limit (<http://www.rms.nsw.gov.au/roads/safety-rules/road-rules/speed.html>).

The Panel determined that the advertisement did not depict excessive speeding and therefore did not breach Clause 2(b) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code on any grounds, the Panel dismissed the complaint.

