



Case Report

1	Case Number	0425/16
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	Internet
5	Date of Determination	09/11/2016
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 internet advertisement features two members of the public, a bird watcher and a callisthenics teacher, described as ordinary drivers. These two drivers are taken to a secret training facility to be given intense driver training in Volkswagens. After they have completed their training they take their unsuspecting family members out for a drive on the race track and proceed to scare and amaze them with their new driving skills which include cornering at speed and zig-zagging between cones.

THE COMPLAINT

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

At a time when road safety boards, police, medical providers and others are pleading with us to drive responsibly, this advert shows various passengers pleading with the driver to slow down; the driver crossing double white lines while going round a corner, as well as skidding to a stop in the final scene.

I think any company that appears to promote breaking road rules, and making it look comical is flaunting the respect of Australian road rules and the people they protect.

Ad shows driver crossing double lines and driving dangerously as a display of good driving.

THE ADVERTISER'S RESPONSE

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

The advertisement concerned, titled "The Secret Performance" is a story of transformation. Our 'hero' video shows how Volkswagen's range of performance vehicles can 'bring out the driver' in anyone. This is demonstrated by taking two ordinary drivers and putting them through rigorous Defensive Driver Training with a professional instructor on a closed track. We show the trials and tribulations of the drivers as they go through their training. Once they are fully trained up, the drivers surprise a family member with their new skills (the "advertisement").

As a follow up to the hero video, some Facebook users were also served shorter (5-6 second) videos which further promoted the campaign after being exposed to (or engaging with) the longer form video.

The advertisement was not approved by CAD as it was not broadcast on television. The advertisement was only made available online via Volkswagen's social channels such as Facebook, YouTube and Tmblr.

Volkswagen Group Australia's Response:

We have reviewed the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code), together with the AANA Advertiser Code of Ethics and comment as follows:

FCAI Code:

For the longer hero video, firstly, we confirm that the small amount of driving depicted on real roads (to establish our protagonists as ordinary, unconfident drivers) was fully compliant with road safety regulations.

Secondly, all of the Driver Training was undertaken and filmed on a closed track environment (Mt Cotton Training Centre, 1753-1799 Mount Cotton Rd, Cornubia QLD 4130), which is clearly not a public road. This is established in the longer 'hero' video up front via:

Clear titles referring to the Driver Training Facility (1:45 seconds)

Aerial shot of the closed circuit track (1:45 sec)

Subtitle "Filmed under controlled conditions on a closed circuit" (1:46 seconds).

In the advertisement, it is very obvious through these scenes that the driving event does not take place on a public road, (despite the depiction of double lines) and our vehicle is the only car on the track (the track is one way traffic only). This is further reinforced with the use of orange cones on the circuit.

Thirdly, the video does not depict Motor Sport or Racing at any time – which is clearly

established in titles, voiceover and action. This is clearly Driver Training. We employed and filmed a qualified driving Instructor to train our two drivers in defensive driving techniques and showed them how to utilise many of the inbuilt features of the Volkswagen performance vehicles to improve their driving. All training and driving is conducted in a safe and controlled manner with helmets worn in addition to seat belts throughout the advertisement.

In regards to the shorter video, all of the Driver Training was undertaken and filmed on a closed track environment (Mt Cotton Training Centre, 1753-1799 Mount Cotton Rd, Cornubia QLD 4130). Again it is clear that this is not a public road given the absence of any other traffic as well as the fact that helmets have been worn by participants.

In response to the specific queries outlined in your letter, we respond as follows:

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?

All driving depicted in the advertisement is not in breach or contrary to the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code) and is not contrary to any road safety regulations. Volkswagen may legitimately make use of vehicle testing and proving activities in its advertising as approved under the FCAI Code. The advertisement was filmed on a closed circuit under the instructions of a professional driving instructor.

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

There were no speed limits on the closed circuit where the majority of advertisement was filmed. For the initial scenes depicting driving on public roads (to establish our protagonists as ordinary drivers somewhat lacking in confidence), we can confirm the vehicles were driven at an appropriate speed for the prevailing conditions and such driving was fully compliant with all road regulations.

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.

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

No, the advertisement was not broadcast on television.

Has the advertisement been made available on the internet?

The advertisement has been available on social media channels on the internet via Facebook, Youtube and Tmblr.

There was no use of motorsport in the advertisement.

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

AANA Code of Ethics:

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 which is exploitative and degrading of any individual or group of people. There is no portrayal of violence in anyway whatsoever. There is no sexuality or nudity in the advertisement. There is no inappropriate language used in the advertisement.

In relation to concerns that issues that the advertisement may be contrary to health and safety, we can confirm that a professional precision driver undertook the activities depicted in the advertisement in a controlled environment using safety apparel and a helmet, with a safety officer supervising all driving activities.

Finally, Volkswagen Group Australia is committed to co-operating with the Advertising Standards Bureau and that any issues raised by the Advertising Standards Bureau will be addressed promptly and diligently.

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 then considered 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 Volkswagens are Motor vehicles 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 complainants' concerns that the advertisement depicts a vehicle crossing white lines, skidding to a halt and generally driving dangerously and promoting the breaking of road rules.

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 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 Board noted the advertisement features two members of the public who are taught advanced driving before surprising their family with their new driving skills.

The Board noted the complainants' concerns over the style of driving depicted in the advertisement: crossing white lines, skidding to a halt, and dangerous driving. The Board noted that the advertisement makes it clear that the driving is taking place at a training facility and considered that there are no other vehicles on the driving track and the set-up of the cones makes it clear that the driving is in the context of practising skills rather than representative of how you should drive on a normal road.

The Board noted that the FCAI Code provides that the driving practices depicted in an advertisement should be assessed as though they had occurred on a road related area regardless of where the driving is depicted in the advertisement. The Board considered that while you would not normally drive in and out of cones on a normal road related area, or have the road to yourself in which to practice cornering, in the Board's view the advertisement is clearly depicting a driver training course and driver training would not normally take place on a road related area.

The Board noted that while the drivers appear to be driving at speed the Board considered that we do not see the actual speed of the vehicles and in the Board's view the editing of the advertisement and the use of obstacles is what gives the impression of speed. The Board noted that both drivers are shown being taught by an instructor at the start of the advertisement and considered that when we see the drivers with just their family members as passengers, the driving depicted is controlled and the overall impression is that both drivers are fully aware and in control of what they are doing. The Board noted the absence of a posted speed limit or the actual speed of the vehicles and considered that it is not clear if any speeding rules are being broken but the vehicles do not appear to be driving at excessive speeds.

The Board noted the drivers both negotiate cones on the road and then come to a sudden halt and considered that all manoeuvres are carried out in a controlled manner and the sudden halt has been planned and is executed in a manner which demonstrates the drivers' newfound driving abilities. The Board noted that it is not contrary to the road rules to come to a sudden stop in certain circumstances and considered that in the context of a driving training facility the depiction of a controlled, planned stop is not a breach of the FCAI Code.

The Board noted that the family members in the advertisement appear alarmed during the test drive but considered that the story arc of the advertisement gives context to this situation and while they do seem worried to begin with, by the end of the drive they appear impressed with what they have witnessed. The Board noted that drivers and passengers were wearing safety helmets and considered that while this is not normal attire for driving on a road-related area it is appropriate in the context of a driver training facility and demonstrates a level of care regarding health and safety.

Overall the Board considered that overall the advertisement does not portray any driving which is unsafe, or reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did not breach Clause 2(a) of the FCAI Code. Finding that the advertisement did not breach the FCAI Code on any grounds, the Board dismissed the complaints.