



ADVERTISING
STANDARDS
BOARD

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Case Report

1	Case Number	0437/16
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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement portrays the ŠKODA Octavia driving through a scenic mountain route. The marketing campaign focuses on the vehicles performance rather than the “actors” performance to sell the vehicle with the final proposition “For those who buy the car and not the ad”. A super appears at the end of the advertisement that reads “ŠKODA Octavia, 0-100 in 6.9 seconds”

THE COMPLAINT

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

Contrary to the Voluntary Code the advertisement contains these words: "Capable of accelerating from 0-100km/hr in under seven seconds, we think the ŠKODA Octavia RS speaks for itself in a way that no facial expression from a leading actor can." Those words are the headline in the internet ad but not in the URL link, where they appear later.

THE ADVERTISER'S RESPONSE

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

The advertisement portrays the ŠKODA Octavia driving through a scenic mountain route. The marketing campaign focuses on the vehicles performance rather than the “actors” performance to sell the vehicle with the final proposition “For those who buy the car and not the ad”. A super appears at the end of the advertisement that reads “ŠKODA Octavia, 0-100 in 6.9 seconds” (the “advertisement”).

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

Volkswagen Group Australia’s Response:

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

FCAI Code:

The driving depicted in the advertisement conforms to all relevant Australian road safety regulations. The concerns from the complaint received relate to the statement that the vehicle has acceleration capabilities of ‘0-100km/h in 6.9 seconds’. Acceleration is but one of the vehicles impressive performance capabilities.

In light of the complaint, Volkswagen Group Australia has taken action to update the existing campaign on all relevant social media channels by removing the ‘0-100km/h in 6.9 seconds’ reference from the advertisement. A copy of the revised advertisement is attached and will be active as from the date of this letter.

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

If required some rationale for addressing specific issues as outlined in the complaint:

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?

All driving depicted in the advertisement is not in breach or contrary to the FCAI Code and does not contradict any road safety regulations.

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 the speed limit at any time during the advertisement, and is driven sedately through the mountainous environment.

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 and Youtube.

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 advisement. There is no inappropriate language used in the advertisement. There is no material promoted contrary to prevailing community standards on health and safety as detailed above.

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 Volkswagen Skoda 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 a reference to the acceleration capability of the Skoda Octavia which is contrary to the FCAI Code.

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 footage of a Skoda Octavia being driven on windy, mountainous roads before we see a still image of the car accompanied by on-screen text which reads, "0-100 in 6.9 seconds".

The Board noted the overall tone of the advertisement and considered that the woman's voice, which describes the male driver's actions in relation to how cars are normally advertised, is very calm and the combination of this, the background music and the images of the car driving in a desolate environment combines to give an overall impression of calmness. The Board noted that we do see the man accelerate but considered that his actions are controlled, there is no suggestion that he is breaking the posted speed limit, and he appears to be in full control of the vehicle at all times. The Board considered that the advertisement did not portray any driving which is unsafe.

The Board then noted the Explanatory Note to the FCAI Code which provides: "Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds"). "

The Board noted it had previously dismissed a similar complaint in case 0311/12 where:

"The Board noted that there is no verification of the actual speed of the vehicle but that the voice over is heard saying "What if you could go from 0-100 in 2.8 seconds? "

The Board noted that the without verification of the speed of the vehicle it is impossible to know exactly how fast the car is moving. The Board noted that the voiceover did advertise an acceleration rate which was promoting a performance feature . The Board considered that there are roads across Australia that permit a speed limit of 100kmh and vehicles are able to drive to those speeds when conditions allow.

The Board considered that the promotion of the acceleration capabilities of a vehicle does not of itself amount to "excessive speed or sudden extreme and unnecessary changes in direction and speed of a motor vehicle"

The Board were concerned about the inclusion of references to the acceleration capabilities of any vehicle and noted that the explanatory notes of the FCAI Code say, "Advertisers should avoid references to the speed acceleration capabilities of a motor vehicle..." but did not state that advertisers "shall not" include these statements."

The Board noted it had also dismissed a complaint about references to speed in case 0215/10 which went to an Independent Review and where the Independent Reviewer recommended:

“As the Board pointed out very clearly in its determination, advertisers creating advertisements of this kind are exhorted by the “Guidance to Advertisers” in the Explanatory Notes to the Code, not to refer to the speed capability of the vehicle being tested or proved. This advertisement ignores that guidance and makes a clear breach of the spirit and intent of the Code.

Not surprisingly, ALL complainants refer to this, but fail to acknowledge that this spirit and intent is not included in the Code but appears in the Explanatory Notes to the Code.

The consequence of this is that ignoring this advice does not amount to a breach of the Code...”

The Board noted that the FCAI Code has not been updated since the Independent Reviewer advised in 2010 that the guidance provided in the Explanatory Notes to the FCAI Code is advisory not binding.

The Board noted the intent of the FCAI Code and considered that while a clear reference to the acceleration capability of a motor vehicle is contrary to the guidelines outlined in the FCAI’s Explanatory Not, ignoring this advice does not amount to a breach of the FCAI Code. The Board noted that the advertiser had voluntarily removed the reference to the vehicle’s acceleration capability prior to the Board’s consideration of the complaint and considered that the advertiser’s cooperation was to be commended.

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 other grounds, the Board dismissed the complaint.