



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	Case Number	0457/18
2	Advertiser	Volkswagen Group Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/10/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement has a 60second version and a 30second version. The advertisement contains various scenes of the vehicle travelling across various landscapes including grassland, rocky hills, and roads . This is interspersed with a director demonstrating scenes he would like to film using miniature models, CGI rendering and storyboards. A particular scene in the advertisement shows the Amarok beginning to overtake two trucks live, the scene then changes to a miniature model and storyboard showing the Amarok overtaking the trucks, before the scene picks back live with the Amarok entering the road again. The advertisement ends with a scene showing two explosions, before a static scene of the Amarok parked.

THE COMPLAINT

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





included the following:

It could encourage road users to attempt dangerous overtaking actions, and in my opinion is a stupid and thoughtless advertisement.

Isn't there enough deaths of innocent people on our road from people trying to pass vehicles. This is irresponsible advertising on television by volkswagon

It clearly encourages dangerous over taking!

They show a depiction of the cars ability to overtake a truck at the same time as the first truck is already being overtaken by another truck... it makes out that this is a "good" feature and an exiting thing to enjoy...This practice would be extremely Dangerous as well as Totally illegal under the current motoring laws in Australia.

They state a car will be able to overtake TWO triple trailer trucks on the dirt on the wrong side of the road promoting very dangerous driving. Someone from the city who no idea that a terrible trailer truck you almost need 1km to over take 1. And they think you can do it on the dirt. So much dangerous driving.

THE ADVERTISER'S RESPONSE

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

Compliant Reference Number 0457/18

Dear Sir/Madam,

We refer to your letters dated 10 October, 12 October, 15 October and 16 October 2018 enclosing complaints (Complaints) received in relation to Volkswagen Group Australia's (Volkswagen) brand advertisement.

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 the Volkswagen Amarok TV Commercial (Advertisement),



which tells the story of a fictitious advertising director who has an unrealistic and imaginative vision for the world's most impressive car advertisement. The director wants to create an advertisement in the style of a blockbuster Hollywood studio movie, including larger than life action sequences and visual effects, demonstrating fantasy and self-evident exaggeration.

The Advertisement refers to the director's absurd dreams for what he wants to include in the Advertisement, which are featured in comedic devices, techniques and visual effects (such as miniature models, CGI rendering and storyboards). This is contrasted against the real live action footage depicted in the Advertisement.

The line "too powerful for TV" is deployed in this context. Every time the director concocts a live action sequence which is "too powerful", the Advertisement cuts away from the real world to what are clearly imaginary scenarios. The Advertisement is self-aware, humorously choreographed, and fanciful, while at the same time respectful of the industry codes, which regulate advertising content.

The Advertisement was approved by CAD with a CAD rating of "G". A "G" classification (General) from CAD means it may be broadcast at any time of day, except during P and C (Children's) programs or adjacent to P or C periods, and the media has accordingly been bought in accordance with these guidelines.

The Advertisement was published and broadcast in all States/Territories across Australia and made available online at toopowerfulfortv.com and on Volkswagen's social channels including Facebook and YouTube. The Advertisement commenced on 4 October 2018 and scheduled to conclude on 1 December 2018.

Relevant Legislation and Regulations

The Complaints referred to in your letters raise issues under the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code) and/or the Australian Association of National Advertisers Code of Ethics (AANA Code). Volkswagen has considered the specific matters noted in your letter, which relate to the FCAI Code and the AANA Code.

Volkswagen's Response to the Complaint

Volkswagen takes compliance with the AANA Code, the FCAI Code and the self-regulation of advertising in Australia very seriously and has obtained legal advice in respect of the Advertisement, and this advice was taken into account in developing the creative content and producing the Advertisement.

We are aware of the requirements under the FCAI Code and the AANA Code to depict safe behaviour in motor vehicle advertising and we actively take this into account and strive to ensure our advertised content is consistent with prevailing community standards.



We regret if any members of the public were offended by any content in the Advertisement and take this opportunity to assure the Ad Standards Community Panel and the public that this was not our intention.

The Advertisement refers to certain action sequences, which are intended to be humorous, obviously exaggerated and fantastical. Volkswagen submits that the majority of people would, when considering the Advertisement as a whole, understand that those action sequences are not realistic and do not, in any way encourage people to copy those action sequences.

Volkswagen respectfully submits that the Advertisement is not in breach of the FCAI Code or the AANA Code. Our reasons are set out in further detail below.

General Provisions of the FCAI Code

The Advertisement was filmed on a closed, private road under supervised conditions with permission from the property owner. Use of onscreen supers in the Advertisement, “filmed under controlled conditions” and “filmed on a closed road under controlled conditions”, confirm this.

While the Advertisement was not shot on a “road” or “road related area” for the purposes of the FCAI Code, Volkswagen takes the view that the actual driving depicted in the Advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area.

In this regard, we note that much of the content referred to in the Advertisement is not shown in live action. Instead, the Advertisement deploys devices and techniques such as storyboards, miniature models and CGI renders to refer to unrealistic, movie-like, exaggerated and clearly humorous, fanciful events (for example, the vehicle jumping over a ravine of horses, evading boulders and overtaking trucks).

Volkswagen submits that those scenes or sequences in the Advertisement (or parts of scenes or sequences) which use devices or techniques to create unrealistic events should not be assessed against road safety regulations. This is because most people would understand that these are not realistic scenes or sequences and most people would understand that the Advertisement does not suggest that these scenes or sequences would be appropriate for normal on-road driving.

Volkswagen submits that those scenes or sequences in the Advertisement (or parts of scenes or sequences) which do depict live action conform to relevant road safety regulations in the sense that they are clearly fantasy and exaggerated.

FCAI Code 2(a) – Unsafe Driving

The majority of complaints received about the Advertisement are about the scene,



which refers to the vehicle overtaking two trucks. Volkswagen respectfully submits that the scene should not be assessed against road safety regulations for the reasons set out above. The scene is not intended to be a realistic scene, which could be performed on a normal road. In addition, the actual overtaking action is not shown, but rather by way of animated storyboards and the live action footage is minimal and does not show any content which is unsafe or contrary to road safety laws (for example, the driver uses the vehicle's indicator light to commence the overtaking movement in a safe and controlled manner over broken lines).

The intention of this scene, when considered against the context of the Advertisement as a whole, is to provide an example of an absurd and unrealistic event, which has been imagined by the fictitious advertising director to create a larger than life action sequence in the style of a Hollywood blockbuster movie. In this respect, we note that scene has been filmed to give a movie-like impression and feel, including:

- a common movie trope of a car scene where there are multiple potential hazards which the protagonist must overcome to arrive safely at the other end (for example, having two trucks instead of one is "unplanned" and the driver is unaware of the second truck when the driver commences overtaking; and the use of imagery in the storyboards showing that the driver must re-engage onto the road before it ends; and showing the vehicle reemerging in a gap between a canyon);*
- the exaggerated dialogue such as "mega truck" and the exaggerated tone of the voice of the director;*
- the use of humorous and over-the-top explosions directly after the scene for visual effect to emphasise the unrealistic and absurd nature of the action scene. No vehicle was damaged and or exploded in the creation of this Advertisement.*

In this respect, we note that the AD Standards Panel has previously dismissed complaints (under the AANA Code, as applicable) where an advertisement: had a distinct movie-like and fantastical appearance, and thus was not realistic (0327/14 – Valvoline); depicted driving behaviours that were not the kind carried out on regular roads and streets and were filmed to give the impression of a movie-like feel (0440/15 – Super Cheap Auto); depicted highly fantastical and stylised and clearly unrealistic and exaggerated scenes (0029/17 Super Cheap Auto).

In relation to the live action, the Advertisement does include an onscreen disclaimer at this scene "filmed on a closed road under controlled conditions", to indicate that the filming was done in a controlled manner and under supervised conditions.

We also note that there is no live footage in the Advertisement of the vehicle actually performing the overtaking of both of the trucks. The live action commencing the overtaking and completing the overtaking is used for visual effect only, and that same



production technique is used for the scene, which shows the vehicle jumping over the imaginary ravine and horses. We submit that the actual footage of the vehicle in the Advertisement does not appear unsafe or depict any illegal or inappropriate driving practices.

For the reasons above, we respectfully submit that the scene does not depict unsafe driving and does not encourage the public to try to copy the behaviour either depicted or referred to in the scene.

We also submit that the technique of cutting scenes or sequences, which are “too powerful”, does not, in of itself, suggest or encourage unsafe driving. The references to “power” are general in nature and we submit do not suggest that the vehicle can be driven at excessive speed or in an unsafe manner. In this respect, we note that in a previous determination the Ad Standards Panel held that various references to “naughty” in an advertisement, while being designed to suggest that a vehicle can be more exciting to drive than is depicted in the advertisement, does not amount to a suggestion of unsafe driving or unsafe driving practices (0030/11 – Volvo).

The devices, techniques and visual effects deployed in the Advertisement are not used to contradict, circumvent or undermine the provisions of the FCAI Code or the AANA Code. While the Advertisement refers to and promotes the “power” of the vehicle as a legitimate capability and feature relevant to consumers, these references are consistent with the provisions of the FCAI Code and the AANA Code at all times.

FCAI Code 2(b) – Breaking the Speed Limit

Volkswagen confirms that the vehicle portrayed in the Advertisement was driven within legal speed limits at all times. Volkswagen submits that the Advertisement does not indicate or suggest that the vehicle is being driven at excessive speed. In this regard we note that in a previous determination the Ad Standards Panel dismissed a complaint where there was no accurate sense of the speed the vehicle was travelling (0206/17 – Chrysler).

FCAI Code 2(c) – Driving practice that would breach the law

Please see our comments above in relation to FCAI Code 2(a).

FCAI Code 2(e) – Environmental damage

Volkswagen notes that one complaint about the Advertisement refers to the footage of the vehicle driving through natural bush. The terrain featured in the Advertisement is a grassland/farmland which was filmed on a small section of a privately owned property with full permissions of the property owners. No damage was caused and in the unlikely event that that was to occur, this would be minimal and temporary. Volkswagen further submits that as the Amarok is a 4x4 vehicle it is reasonable to depict the vehicle in this type of terrain to demonstrate the capabilities of the vehicle. The Ad Standards Panel has noted in previous determinations driving vehicles with off



road capabilities over off-road terrains is not uncommon and does not necessarily contribute to environmental damage (0408/14 – Isuzu; 0296/16 – Mazda); 0144/14 – Nissan; 0125/15 – Isuzu).

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 truck overtaking sequence was filmed on a council road; a permit was obtained (attached). The remainder of the scenes took place on private property. The safety officer/stunt coordinator would not allow any stunts to be done that they deemed to be unsafe, and we had traffic control management on the day to keep it safe to the general public.

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

Please refer to our response above.

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

The truck overtaking sequence was filmed on a council road; a permit was obtained (copy attached) and was filmed with the assistance of traffic control management on the day to keep it safe to the public. The remainder of the scenes took place on private property.

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 has been published and broadcast in all States/Territories across Australia.

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

The advertisement has been available on the internet at toopowerfulfortv.com and via Volkswagen's social channels including Facebook and YouTube.

Use of Motor Sport in Advertising

The Advertisement does not depict scenes of motor sport, simulated motor sport, or vehicle-testing or proving. We submit that clause 3 of the FCAI Code does not apply to the Advertisement.



Depiction of Off-Road Vehicles

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

1) *Do any/all vehicles portrayed being driven in an off road setting in the advertisement conform to the requirements of the definition an off road vehicle as provided in the Australian Design Rules (MC category)? If so, please outline the key criteria which are met?*

The Volkswagen Amarok V6 is a category NA light goods vehicle, which meets the requirements of an MC category vehicle and complies with the Australian Design Rules.

2) *What is the maximum number of seating positions in the vehicle/s?*

Five.

3) *Does the vehicle/s have four-wheel drive/all-wheel drive?*

Yes the vehicle has a permanent 4 wheel drive system.

Section 2 of AANA Code

In relation to section 2 of the AANA Code, 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.

In relation to section 2.6 of the AANA Code (Health and Safety), the practice note for the AANA Code provides that advertisements for motor vehicles which raise issues or complaints concerning safety are to be determined according to the FCAI Code rather the AANA Code. Accordingly, we direct the Ad Standards Panel to our comments above in relation to the FCAI Code.

One of the complaints refers to the explosions depicted in the Advertisement. As noted above, the explosions are used as a device to highlight the movie-like and over-the-top themes of the Advertisement. In that regard, in a previous panel determination in relation to a Sportsbet advertisement (0305/18 Sportsbet), the use of an explosion was not found to be in breach of the AANA Code because it was considered to be a use of a common movie trope and movie-like behaviour.

Final Comments

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



Volkswagen submits that the broad majority of people would, when considering the Advertisement as a whole, understand that the Advertisement does not depict unsafe driving, nor encourage people to imitate the unrealistic actions referred to in the Advertisement.

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 FCAI Code and the AANA Code.

We appreciate the opportunity to respond to the Complaints and look forward to hearing from you following a decision by the Ad Standards Panel.

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 Volkswagen Amarock 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 complainants' concern that the advertisement shows the car driving in a dangerous and illegal manner.

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 the advertisement features scenes of the vehicle travelling across various landscapes including grassland, rocky hills, and roads. This is interspersed with a director demonstrating scenes he would like to film using miniature models, CGI rendering and storyboards. A particular scene in the advertisement shows video footage of the Amarok beginning to overtake two trucks, the scene then changes to a miniature model and storyboard showing the Amarok overtaking the trucks, before the scene picks back live with the Amarok entering the road again. The advertisement ends with a scene showing two explosions, before a static scene of the Amarok parked.

The Panel noted the complainants' concern that the advertisement depicts dangerous driving, in particular the suggestion that the vehicle overtook two roadtrains by going off the side of the road.

The Panel noted the advertiser's response that the advertisement was designed to refer to certain action scenes in a humorous, obviously exaggerated and fantastical manner and that most people when viewing the advertisement would not be encouraged to copy those actions. The Panel also noted the advertiser's response that the actual driving depicted in the Advertisement would conform to relevant road safety regulations and that other content referred to in the advertisement was not shown in live action.

The Panel noted the advertisement featured the disclaimers "'filmed under controlled conditions'" and "'filmed on a closed road under controlled conditions'".

The Panel noted the guidance in the FCAI Code which states "In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of



material which otherwise does not comply with the provisions of the Code.”

Accordingly, the Panel considered that the use of a disclaimer does not justify the inclusion of any unsafe driving.

The Panel noted the scene in the advertisement which depicts the vehicle pulling out to overtake two roadtrains on a section of road, when one of the roadtrains also pulls out to overtake and the vehicle drives onto the shoulder of the road. A model of the car is then shown driving past two model roadtrains then a storyboard shows an illustrated sequence of the vehicle completing the overtake and pulling in front of the vehicles narrowly missing cliffs/rocks on the side of the road. The actual vehicle is seen driving on the road presumably having just completed overtaking the roadtrains.

The Panel noted the guidance in the FCAI Code states: “that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.”

The Panel noted the advertiser’s response that this scene was intended to humorously reflect a car scene in an action movie, however, the Panel considered that this depiction was a realistic image of a vehicle in a regional area overtaking a roadtrain overtaking another roadtrain, and that this is a realistic scenario which is unsafe.

The Panel considered that while the advertisement does attempt to use humour and avoid breaching the FCAI Code by cutting away from the footage of the vehicle, the vehicle is still depicted as starting to overtake the trains. The Panel considered that although the advertisement had fantastical elements, the depiction of the vehicle starting to overtake the roadtrains was a realistic scenario that would constitute unsafe and reckless driving. Further, the depiction of the driver choosing to leave the road and overtake both trucks on the shoulder of the road depicts driving which is reckless and would breach road rules.

The Panel considered that there is significant community concern around road safety in relation to unsafe overtaking. The Panel considered that even the suggestion of the vehicle overtaking and narrowly pulling in front of the roadtrains as they entered the canyon, through the use of models and storyboards, is a depiction that would be against road safety standards.

The Panel noted that the actual vehicle was not depicted overtaking the roadtrains, however considered that the overall impression of the driver pulling out to overtake and moving onto the shoulder of the road was unsafe, and reckless driving. The Panel considered that the use of fantasy elements and exaggeration did not mitigate the depiction of unsafe driving. The Panel determined that this scene in the



advertisement did breach Clause 2(a) of the FCAI Code.

The Panel considered the complainants' concerns that the advertisement depicted speeding and other unsafe driving.

The Panel noted the advertiser's response that the vehicle was driven within legal speed limits at all times.

The Panel noted the opening shot of the advertisement featured the vehicle driving across paddocks and crossing a road. The Panel considered that the vehicle in this shot did appear to be travelling fast, however considered that the scene was fleeting and the speed of the vehicle was hard to determine.

The Panel also considered the scenes where the vehicle was seen to be travelling up a hill with CGI boulders rolling past and where there was a suggestion that the vehicle was jumping over a ravine of horses. The Panel considered that these scenes were clearly fantasy and exaggeration and the cut-away depictions of toy vehicles were humorous and unlikely to be taken seriously by most members of the community.

The Panel determined that, through the suggested depiction of unsafe overtaking, the advertisement did portray driving which is unsafe and did 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 complainants' concerns that the advertisement depicted the vehicle speeding.

The Panel considered that there was no depiction of the speedometer in the advertisement and no context to clearly indicate how fast the vehicle was travelling.

The Panel noted the advertiser's response that the vehicle was driven within legal speed limits at all times and determined that the advertisement did not people driving at speeds in excess of speed limits and therefore did not breach Clause 2(b) of the FCAI Code.

The Panel considered Clause 2(e) of the FCAI Code which requires that advertisements for motor vehicles do not portray "deliberate and significant environmental damage, particularly in advertising for off-road vehicles."

The Panel noted the complainants' concerns that the advertisement depicted the



vehicle coursing through natural bush with no regard to environmental damage.

The Panel note the advertisers' response that the vehicle was filmed on privately owned farmland and that it was unlikely to have caused damage to the environment.

The Panel considered that the advertisement did not depict environmental damage and considered that, even if some damage did occur, the advertisement does not depict deliberate and significant damage in this context.

The Panel determined that the advertisement did not breach Clause 2 (e) of the FCAI Code.

Finding that the advertisement did breach Cause 2(a) of the FCAI Code the Panel upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We regret if any members of the public were offended by any content in the Advertisement and take this opportunity to assure the Ad Standards Community Panel and the public that this was not our intention. Volkswagen has considered the specific matters noted in the Case Report and accepts the Community Panel's decision and are taking the following steps:

- 60 second advertisement has been discontinued immediately.
- 30 second advertisement will be modified with CAD approval to comply with the Community Panel's findings, the modified advertisement will commence airing week commencing 5 November, 2018.
- All digital content will be modified to comply with the Community Panel's findings within a reasonable timeframe

