



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0466/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Hyundai Motor Company Australia Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>12/12/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

A Hyundai is shown driving through a tunnel, over hills, and at night whilst a voiceover describes how these different locations can be interpreted by the children in the car as something different: the tunnel becomes a magic portal, the hills become an amusement park.

The final scene shows a close up of the Hyundai emblem on the car and the voiceover says, "Hyundai makes every moment brilliant. Live brilliant. Hyundai".

### THE COMPLAINT

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

*The part of the advertisement that I object to is when the car is depicted going up a hill on a corner in the right hand lane, which would obviously be dangerous driving and against the law in all states and territories of Australia.*

*The advertisement has obviously been filmed in an alpine country, presumably in Europe where they drive on the right hand side of the road, but that is beside the point as it is being shown in Australia where it would be considered extremely dangerous.*

### THE ADVERTISER'S RESPONSE

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

*We refer to the letter received on 23 November 2012 in relation to the above complaint.*

*We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics (“AANA Code”) and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries (“FCAI Code”). We note that the nature of the complaint relates generally to the AANA Code and FCAI Code and specifically to the concern that the advertisement in question contains imagery that is alleged to display a driving practice in breach of the Australian Road Rules.*

*We have carefully considered the AANA Code and FCAI Code, and have assessed the provisions of each against the content of this advertisement. We submit that the advertisement does not breach the AANA Code or the FCAI Code on any of the grounds set out in the same.*

*Looking at the FCAI Code, we note that Section 2 of the FCAI Code outlines the general provisions, the most relevant of which to this advertisement are reproduced below:*

*(a) Unsafe driving, including reckless and 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.*

*(b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.*

*(c) 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.*

*Regarding provision (a), we note that at no time is there any scene in the advertisement that depicts any vehicle being driven in a manner that can be described as unsafe, menacing or reckless. We note that at all times each driver is driving very carefully, in full control of the vehicle, observing the road and obeying the road rules. At no stage does any driver appear to be driving aggressively, incompetently, taking unnecessary risks, or driving at an unsafe speed.*

*Regarding provision (b), we note that all scenes depict vehicles traveling at a speed that is appropriate for the depicted driving environment and there is no indication that any vehicle is travelling in excess of any legal speed limit. We further note that there are no other vehicles depicted on the road at the same time as the Hyundai vehicles, therefore there is nothing to suggest that the vehicle is driving faster than other vehicles and at an unsafe speed.*

*Regarding provision (c), and also having regard to the complainant’s specific concern that the advertisement depicts a vehicle going up a hill on a corner in the right hand lane, which he alleges is “illegal”, we note that in this scene the vehicle is within a clearly marked lane*

*at all times and does not deviate from this course as it drives into a tunnel. At no time does the vehicle undertake any maneuver which would be in breach of the Australian Road Rules in this scene, such as drifting into another lane or changing lanes without indicating. We note that there are no other scenes in the advertisement involving any of the other vehicles that depict any driving practices that would be illegal on Australian roads.*

*Further, we note that the complainant has pointed out that the advertisement was filmed overseas, made obvious by use of the disclaimer “Overseas model shown”, and that this is of some concern to them. However, we note that the ASB itself has issued the following practice note with regards to its interpretation of the FCAI Code in regards to the depictions of overseas driving as follows:*

*The Board will not consider complaints which relate solely to:*

*The use of images produced overseas which may depict number plates from jurisdictions outside of Australia or left-hand drive vehicles travelling on the right-hand side of the road, when the footage is provided for an Australian company by its overseas parent company.*

*The absence of number plates on motor vehicles being advertised,*

*The Board has previously considered that such images do not raise an issue of road safety or vehicle occupant protection. These matters are outside the scope of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising and will not be submitted to the Board for determination.*

*We confirm that the advertisement was produced overseas with scenes shot in Switzerland and was provided to us by our global parent company. Accordingly, in our view the scene that is the subject of complaint should not be considered to be in breach of the FCAI Code solely for the fact that it depicts a left hand drive vehicle driving on the right hand side of the road as this is irrelevant. A more important consideration would be that there is no scene in the advertisement that depicts any unsafe driving, speeding or driving practices that would be in breach of the Australian road rules. Accordingly, the advertisement is not in breach of any provision of the FCAI Code.*

*Looking at the AANA Code, Provision 2.6 provides that advertisements “shall not depict material contrary to Prevailing Community Standards on health and safety.” In this regard we note that all characters are depicted as wearing seat belts. We note that during various scenes the children are depicted as being happy and enjoying themselves whilst the car is driving. However we note that such scenes are intended to communicate the message of the campaign that life is full of joy and wonder. The feelings of joy and wonder are depicted as experienced by the children through their various observations of their surroundings during their drive, highlighting that with imagination and pure enjoyment as through the eyes of a child, simple experiences can be brilliant. There is nothing in the advertisement that suggests the children as passengers themselves are in any danger, or are reacting to the driving experience in a negative manner. Further the driver of the vehicle is shown to be calm and in full control of the vehicle.*

*Accordingly, we submit that the advertisement does not breach Provision 2.6, or any other provision of the AANA Code.*

*In conclusion, we submit that the advertisement is completely compliant with the AANA Code and the FCAI Code. Accordingly, we submit that this complaint should be dismissed.*

## **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) and the Advertiser Code of Ethics (the 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 decided that the material in question was available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Hyundai in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Board determined that the Hyundai shown in the advertisement 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 complainants' concerns that the advertisement depicts driving actions which are both illegal and dangerous, specifically that the vehicle is depicted being driven in the right hand land going up a hill and around a corner.

The Board then analysed specific sections of the FCAI Code and the AANA Code of Ethics 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 that the advertisement shows a Hyundai being driven along a mountain road and shows children in the back of the car as the voiceover describes the vehicle and likens the features to amusement rides etc.

The Board noted that there is footage of the vehicle driving on the right hand side of the road as it heads up the mountain and around a bend.

The Board noted that the advertisement was filmed overseas, made obvious by use of the disclaimer "Overseas model shown."

The Board considered that the context of the advertisement indicated that it was an overseas vehicle and conveyed the impression of safe driving overseas. The Board considered that the context of an overseas vehicle means that the advertisement does not depict driving that would breach the law.

The Board also considered that the advertisement depicts the vehicle being driven safely on the right hand side of the road and driving within lanes and not unsafely.

On the above basis, the Board determined that the advertisement does not depict unsafe driving and does not breach clause 2(a) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code, and the Code of Ethics the Board dismissed the complaint.