



Case Report

1	Case Number	0475/10
2	Advertiser	Ford Motor Co of Aust Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	24/11/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles - Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

A woman is driving a red Ford Fiesta over a bridge. She uses a touch screen on the dashboard to select music, which starts playing.

We see large bubbles containing people floating around the outside of the car, then the driver says, "Lucas" and on the touch screen the following words are shown: "Phone Dialling Lucas". We then see a bubble with a man in it who has just answered his phone.

The car stops and one of the bubbles lands on the ground with a pop. It disappears, leaving three women standing on the pavement who walk over and join the driver of the car.

A female voice over says, "Life's better connected with the new Ford Fiesta" and we see the Ford logo on the screen.

THE COMPLAINT

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

The ad depicts a woman driving a car and operating a mobile phone at the same time. This is now illegal in the state of Victoria.

THE ADVERTISER'S RESPONSE

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

At the outset, I would like to emphasise that Ford Australia takes seriously its commitment to the AANA Code of Ethics and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and we are very aware of the potential impact that our advertising may have on members of the public.

All of our advertising, including the Fiesta TVC, is carefully reviewed in that context. In this case, we do not believe that the scenario depicted in the Fiesta TVC is in breach of the AANA Code of Ethics or the FCAI Code.

The complaint referred to in your letter dated 5 November 2010 raises an issue under section 2 of the AANA Code of Ethics. Given that the Fiesta TVC is an advertisement for a motor vehicle, the FCAI Code applies. We note that the complaint alleges that the Fiesta TVC depicts a driving practice which would breach the law and although not stated in such terms, the complaint infers that the Fiesta TVC depicts a driving practice which would be in breach of provision 2(c) of the FCAI Code. A breach of provision 2(c) will occur if the advertisement in question portrays "Driving practices or other action 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". Specifically, the complaint relates to the use of a mobile phone whilst driving.

We strongly disagree with the allegation that the Fiesta TVC depicts a driving practice which would breach the law and therefore breaches provision 2(c) of the FCAI Code. The Fiesta TVC does not portray a vehicle engaging in any driving practices or other actions which would breach a law relating to road safety or traffic regulation and we therefore contend that the Fiesta TVC complies with all relevant provisions of the FCAI Code and is consistent with the objectives and guidelines of the FCAI Code as expressed in the Explanatory Notes. We consider that it is important to highlight the following points:

- The complaint states that the Fiesta TVC depicts a "woman driving a car and operating a mobile phone at the same time" and further states that "This is now illegal in the state of Victoria." The Fiesta TVC shows an abbreviated portrayal of the Voice Control and Bluetooth® features that new Fiesta contains. These features enable drivers to dial another individual through the use of Voice Control and Bluetooth® technology without having to physically touch or handle their phone handset. At no point does the driver in the Fiesta TVC handle a mobile phone. The relevant Victorian road rule is Rule 300 of the Road Safety Rules 2009. Rule 300 governs the use of mobile phones and provides (in part) that a driver of a vehicle (who is not a learner driver or the holder of a P1 probationary licence) must not use a mobile phone while the vehicle is moving unless the phone is being used to make or receive a phone call and the body of the phone is not being held by the driver and the use of the phone does not require the driver, at any stage while using it, to press anything on the body of the phone or to otherwise manipulate any part of the body of the phone.*
- The use of the Voice Control and Bluetooth® technology promoted in the Fiesta TVC removes the need for the driver to handle or touch their phone handset in order to place or receive a phone call. As depicted in the Fiesta TVC, the young woman is able to make a call to her friend "Lucas" without having to handle or touch her mobile phone. This technology allows a driver to use their mobile phone without breaching the Australian road rules, including Rule 300 of the Victorian Road Safety Road Rules. In our view, this technology*

promotes safer driving practices and as portrayed in the Fiesta TVC, assists the driver to maintain her focus on the road ahead.

- *We have attached correspondence between our advertising agency and Commercials Advice Pty Ltd (CAD), including the CAD reference numbers. At no point did CAD advise of any concerns regarding the depiction of the woman using the Voice Control and Bluetooth® technology to call her friend.*

- *The TV script, pre-production storyboard and final edit were also approved by legal counsel.*

We strongly believe that the Fiesta TVC does not breach the FCAI Code or the AANA Code of Ethics.

I trust that this correspondence adequately addresses the concerns raised in the complaint referenced.

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 decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Ford Fiesta in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine 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 Ford Fiesta 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 concern that the ad depicts a woman driving a car and operating a motor vehicle at the same time which is illegal in Victoria.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

The Board identified that clause 2(a) was relevant in the circumstances. The Board had to consider whether this clause of the Code had been breached.

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 depictions of driving in the advertisement and determined that the advertisement does not depict any unsafe driving or any reckless or menacing driving. The Board determined that the advertisement does not depict unsafe driving nor reckless or menacing driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement breached section 2(c) of the FCAI Code. Section 2(c) of the FCAI Code provides that advertisers should not portray driving practices which clearly take place on a road:

“... and which 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 directly with road safety or traffic regulation”.

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board considered that the examples that accompany clause 2(c) give a clear indication of the types of breaches that are considered to be an infringement of clause 2(c). The Board considered the Explanatory Notes to the FCAI Code which state:

“Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community...”

The Board considered that use of a mobile phone while driving is an issue contemplated by clause 2(c).

The Board noted that the advertisement depicts a vehicle being driven by a woman and that when she says the name “Lucas” we can see the same name appear on a screen on the dashboard, along with a picture of a phone, and then we hear a dialing tone.

The Board noted the relevant Australian Road Rule which prohibits use of a mobile phone as follows: 300 Use of mobile phones; (1) The driver of a vehicle must not use a mobile phone

while the vehicle is moving, or is stationary but not parked, unless: (a) the phone is being used to make or receive a phone call (other than a text message, video message, email or similar communication) and the body of the phone: ... (ii) is not secured in a mounting affixed to the vehicle and is not being held by the driver, and the use of the phone does not require the driver, at any time while using it, to press anything on the body of the phone ...'.

The Board considered the advertisement depicted the woman using the Bluetooth phone functionality of the car which includes voice activation. The Board considered use of this feature of a vehicle is not a breach of the Australian Road Rules. The Board also considered that the depiction of the use of the Bluetooth functionality is not behaviour which would breach any law of the Commonwealth, State or Territory in which the advertisement was broadcast.

On the above basis, the Board determined that the advertisement's depiction of a woman making a voice activated call while driving is not a breach of section 2(c) of the FCAI Code.

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