



## **CASE REPORT**

1. Complaint reference number	154/05
2. Advertiser	Volkswagon Group Australia Pty Ltd (Touareg)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 June 2005
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

This advertisement is a print advertisement for the Volkswagen Touareg. A silver Volkswagen Touareg is photographed on a steep embankment against a dark, muddy grass-land like area. The vehicle is positioned to the right of the advertisement underneath text that reads “*For the right side of the brain*”. On the left of the advertisement appears a paragraph titled “*For the left side of the brain*” containing technical information that relates to the vehicle.

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*“[the] National Parks Association of NSW believes that the advertisement portrays driving off-road, in an environmentally sensitive alpine or wetland area... in breach of section 2(e) of the Code... in that it portrays driving that is likely to cause significant environmental damage.”*

## **THE ADVERTISER’S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*“The imagery used in the Volkswagen Touareg ad does not portray any deliberate nor significant environmental damage. The vehicle is not demonstrating nor is there any evidence of any environmental damage.”*

## **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 which came into effect on 1 July 2004 (the “FCAI Code”).

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines “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 other valuable consideration given that it was being published in print media in Australia .

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Volkswagen Touareg “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 Volkswagen Touareg depicted 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(c), 2(e) and 4 were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

Before looking at whether clauses 2(c) and 2(e) of the FCAI Code had been breached, the Board first considered whether clause 4 of the FCAI Code had been complied with. The Board noted that if clause 4 of the FCAI Code was satisfied, there would be no need for the Board to consider clauses 2 (a) and 2(b) as both unsafe driving and excess speed were covered in clause 4. Clause 4 does not deal with the matters raised in clauses 2(c) - 2(e) and therefore, where relevant, they must also be considered by the Board.

The Board noted that pursuant to clause 4 of the FCAI Code, advertisers are permitted to:

*“... legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area.”*

Clause 4 further states that:

*“Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.”*

The Board first gave consideration to whether the advertisement legitimately depicted the capabilities and performance of an off-road vehicle in accordance with clause 4 of the FCAI Code. “Off-road vehicle” is defined in the FCAI Code as meaning:

*“... a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive.”*

The advertiser informed the Board in its response that the Volkswagen Touareg was an off-road vehicle as defined under the FCAI Code.

The Board was then required to consider whether the capabilities and performance of the off-road vehicle had been legitimately depicted. The print advertisement featured the Volkswagen Touareg positioned on a steep incline. It is not possible to ascertain whether the vehicle was in motion at the time of the photograph or whether the vehicle was stationary. Regardless of that fact, the Board formed the view that the driving shown (driving over uneven terrain) was a legitimate depiction of an off-road vehicle’s performance and capabilities.

The Board was then required to consider whether such depictions portrayed either unsafe driving or excessive speed in breach of clause 4 of the FCAI Code.

The Board noted that the Volkswagen Touareg was photographed on the incline without any overt indication that the vehicle was being driven recklessly or unsafely. There were no other cars in the footage and the vehicle was not shown to be out of control. There were no overt indications that the vehicle engaged in any unsafe driving or levels of speed that would contravene the laws of any State or Territory in Australia were they to occur on a road or road related area.

Having determined that the driving practice depicted was a legitimate depiction of the capabilities and performance of an “off-road vehicle” under clause 4 of the FCAI Code, the Board then had to consider the general application of the relevant sub-clauses in clause 2.

Having already determined that clauses 2(c) and 2(e) were relevant in the circumstances, the Board first considered whether clause 2(c) of the FCAI Code had been breached.

In order to breach clause 2(c), the driving practices depicted must:

*“...if they were to take place on a road or road related area, breach any Commonwealth law....”*

For the same reasons stated in relation to why the driving practices depicted did not portray unsafe driving practices under clause 4 of the FCAI Code, the Board determined that such driving practices would also not be in breach of clause 2(c) of the FCAI Code.

The Board then considered whether clause 2(e) had been breached. In order to breach clause 2(e), the advertisement must not portray:

*“deliberate and significant environmental damage.....”*

The Board was not convinced that the depiction represented “deliberate” environmental damage. In any event, the Board still had to determine whether such damage was “significant” within the meaning of clause 2(e). The Board determined that the advertisement lacked any overt indication that damage was caused to the environment in which the vehicle was photographed. The Board considered that the image displayed did not portray significant environmental damage.

On the above basis, the Board confirmed its prima facie view and held that the material before it did not constitute an advertisement in breach of clauses 2(c), 2(e) or 4 of the FCAI Code. The Board therefore dismissed the complaint.