



## **CASE REPORT**

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| 1. Complaint reference number | 177/07   |
| 2. Advertiser                 | Volkswagen Group Australia (Golf)                                    |
| 3. Product                    | Vehicles   |
| 4. Type of advertisement      | TV   |
| 5. Nature of complaint        | FCAI - Driving practice that would breach the law<br>FCAI - Speeding |
| 6. Date of determination      | Tuesday, 12 June 2007  |
| 7. DETERMINATION              | Dismissed  |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement opens on a service station where a Golf GT is parked next to a fuel pump. They're on a road trip, and the car is loaded with luggage. The driver is waiting in his seat as the friend gets in to the passenger seat with two drinks and closes the passenger door. As the driver slowly pulls away from the petrol pump and out of the service station his mate asks "Not gonna fill it up?" to which he replies "Nah, we'll make it on one tank." On the highway as the car sits behind a slow-moving truck, the passenger continues "One of those cars, eh? Hug a tree. Save the whales. Na its good, at least you're doing your bit for the environment. [he laughs] I mean, we can't all drive fast cars." At this, the driver, flicks on his indicator, drops the GT back a gear and begins to move into the oncoming lane. As the Golf GT pulls out to overtake the growl of the TSI engine is heard as the twin-charger kicks in and the Golf GT begins to accelerate past the truck. The stunned passenger is then seen sitting in the car staring at the drink which has spilt onto his stained shirt with the car's acceleration The driver seemingly amused, comments "Oh dear..." and a voiceover concludes "The new Volkswagen TSI engine. Maximum Power. Minimum Consumption."

## **THE COMPLAINT**

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

*(The driver) pulls out from behind a truck with no view available and puts his foot flat to the floor and overtakes the truck in 1 second. It is dangerous driving and teaches our young people that this is an ok thing to do.*

*The advertisement depicts aggressive and possibly dangerous control of a motor vehicle. The driver of the vehicle accelerates from behind the truck in a very aggressive fashion with no apparent regard for any potential traffic, and no visible warning to any other drivers or any attempt to check for clear road. He passes the truck in a speed and manner that, while not completely shown, imply that the car is capable of travelling at an excessive speed in a short time. The conclusion of the advertisement showing the passenger covered in drink confirms the implication that the driving shown in the advertisement was of sufficient speed to cause such an incident. Given that other brands' commercials have been withdrawn for filming and editing in a way that portrays speed, something that also portrays not only speed, but also inattentive and potentially (sic) dangerous road habits should be taken off air.*

## **THE ADVERTISER'S RESPONSE**

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

*We confirm that the vehicle was being driven safely at all times and was not speeding.*

*The commercial was produced on a 2 lane road. The driver of the Volkswagen vehicle prior to overtaking the truck, which was travelling slowly, looked in the rear vision mirror, the side mirror and indicated his intention to overtake. At no time did the vehicle exceed the speed limit and the vehicle overtook the truck over broken white lines. The vehicle was travelling at a maximum speed of 80kph in a 100kph zone. The truck was travelling at 50kph. We reject the complaint that the advertisement depicts reckless and/or dangerous driving.*

*Prior to the overtaking scene there is a conversation between the passenger and the driver...the passenger refers to the very efficient fuel economy of the vehicle and that the vehicle is not a fast vehicle. The last scene in the advertisement where the passenger has drink spilt on his shirt, is tongue in cheek and meant to be humorous, and should in our submission, be taken that way.*

*We did seek legal advice... and that advice confirmed that the overtaking of the vehicle was carried out safely and in accordance with road regulations and that the vehicle speed was not excessive.*

## **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”). 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 noted that the advertisement employs fantasy to advertise this car and that the FCAI Code acknowledges 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 Board identified that clause 2(a), was relevant in the circumstances. Clause 2(a) prohibits

*'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.'*

The Board had to consider whether that clause of the FCAI Code had been breached. The Board viewed the advertisement several times and noted the various images of the car. The Board considered that the vehicle, in overtaking the truck, did not breach any road rules. The Board noted that the advertisement was presented in such a way that it was not clear whether or not the road in front of the car was clear, however the car was seen driving in a two lane road and overtook the truck on a section of the road that was two lanes and was therefore on the correct side of the road when overtaking the truck and also was unlikely to face oncoming traffic. The Board considered that the advertisement did not depict unsafe driving.

The Board also considered that clause 2(b) of the FCAI Code was relevant. Clause 2(b) prohibits:

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

The Board noted the complainant's concern that the car's overtaking of the truck, and the passenger spilling his drink, depicted excessive speed. The Board noted that a car that is moving to overtake a vehicle in front of it will accelerate and sometimes will accelerate hard. The power of acceleration is quite likely to cause a passenger to spill their drink. The Board considered however that such acceleration is not of itself a depiction of someone driving at unsafe speed or at a speed that is in excess of speed limits. In the context of this advertisement, the Board considered that the depictions of acceleration and overtaking were not depictions of driving at speed in excess of speed limits.

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

The Board also considered the advertisement under the AANA Code of Ethics (the Code) and determined that the advertisement did not breach that Code.