



CASE REPORT

1. Complaint reference number	288/08
2. Advertiser	Hyundai
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	Violence Other – section 2.2
6. Date of determination	Wednesday, 13 August 2008
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features the boxer Kostya Tszyu and his family doing everyday things while each wearing red boxing gloves. As he wakes up in the morning, Kostya smashes his alarm clock with the boxing gloves he constantly wears, puts on his World Champion Welterweight boxing gold belt, and spars with himself in front of a mirror, accidentally ripping the back of his shirt. Calling to his sons that it's time to go, the boys playing in the lounge room break a dolls' house when touched, smash a TV screen when switching it off, and Kostya himself breaks a control panel when it's touched. When Kostya opens the garage door, the door falls to the ground. It's as if none of the family knows its own strength. Kostya drives over the broken garage door, then in his rear mirror sees one of his boys trying to hit down the neck rest of the car seat with his gloves. Throughout the drive, Kostya is manoeuvring the car while wearing his boxing gloves. Caught behind a traffic jam, Kostya exits his car from the queue and take an alternative route off-road, to arrive at a boxing gym. As the arrive and open a car door, the door knocks down a telephone pole, crashing into a telephone box. A male voice-over announces "Hyundai Santa Fe. Built family tough." A modified version for screening prior to 7pm eliminates the the scene with the children in the lounge and instead shows Kostya's wife arriving home and breaking the door handle as she tries to open it wearing boxing gloves.

THE COMPLAINT

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

I think this advertisement promotes the idea that wilful damage or destruction of property is acceptable, when it is not. The ad also shows damage to other peoples property, and in an age where property damage is all too commonplace, I think this ad is in very poor taste.

This advertisement was on during children's viewing hours. It displayed violence and disregard for property. Serious health and safety issues are inherent in the actions. There was promotion of unsafe or dangerous behaviour/activity. A clear disregard for social values. Demonstrating behaviour which could undermining the authority of parents or carers. This advertisement shows inappropriate behaviour with no indication of consequences which are too difficult for young children to understand the implications and dangers.

Because it is just senseless and one more step towards the breakdown of decent family values , where violence is deemed to be the answer to everything. What the Ad company behind this car company is saying to it's audience (or potential customers) is beyond me .It just begs the question of where is society heading ??

The particular bit is when the television screen is smashed.In reality if a child sees this advertisement and hits a LCD TV screen as such it will either smash or destroy the screen causing either major damage or major injury.I don't believe teaching children this sort of behavior is making a vehicle tough,in my opinion it makes the advertiser pretty weak.

Unnecessary violent destruction of household items by actor and children plus reckless driving of the vehicle. Driving while using boxing gloves (dangerous). Bad behavior of children in vehicle while moving, so distracting the driver. Very bad behavior of an adult example for impressionable young children.

To advertise a car as being for a "tough family" through wilful destruction of all kinds of things is plainly wrong. Does "touch" equal vandalism and disrespect for other people's property?

Driving a motor vehicle is a full time experience and must not, under any circumstances be trivialised. Wearing boxing gloves whilst driving is totally unacceptable. Road safety is of major concern in Australia. The same advertisement also portrays the former world champion boxer demonstrating violent attitudes in a house immediately prior to driving the advertised vehicle. In my view, none of these scenes should be put to air.

THE ADVERTISER'S RESPONSE

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

We have considered the complaints and the advertisements in question in light of the provisions of the AANA Code of Ethics ("AANA Code"). We note that the nature of the complaints relate generally to "violence" and specifically to the concern that the ad in question contains unnecessary violence on the part of parents and children. We have also considered the complaints and the advertisements in question in light of the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries ("FCAI Code") and the Australian Road Rules ("Road Rules").

We have carefully considered the AANA Code, the FCAI Code and the Road Rules and have assessed each of the provisions against the content of these advertisements. We firmly believe that the advertisement does not breach the AANA Code, the FCAI Code or the Road Rules on any of the grounds set out in the same.

AANA CODE – CONCEPT OF "VIOLENCE"

Looking firstly at the AANA Code, Provision 1.1 provides that advertisements shall comply with the laws of the Commonwealth and relevant State and Territories. However this relates to the advertisement itself and would cover laws such as the Trade Practices Act, and does not relate to the behaviour or themes depicted in the advertisement.

Provision 2.2 provides that advertisements shall not present or portray violence unless it is justifiable in the context of the product or service advertised. In our view, the actions depicted in the ads are not inherently violent. We note that there is no violence directed at any person, and note that no one was depicted as injured, harmed or threatened in any way in the advertisement.

However, even if the notion of "violence" was to be interpreted in a more general sense to extend to property damage, then we would submit that the behaviour is not to a level that would be considered unjustifiable if you take into account the manner in which the behaviour is depicted, the overall messages, themes and feel of the commercial, and the particular context of the products being advertised.

Additionally, we note that there are some scenes in the commercial, such as the scene with the falling garage door, the scene with the children breaking their toys, and the scene in which the children are playfully misbehaving in the back seat, which are not inherently violent in any way, and are innocent depictions of harmless events in which no one was depicted as injured, harmed or threatened in any way.

Further, we note that an alternative version of this advertisement has been specially produced, with some scenes edited for classification purposes to ensure it is suitable for broadcasting times when children may be watching. The alternative version sees the scene of the children breaking their toys and TV replaced with a scene in which the mother opens the door, accidentally breaking off the handle. She too is wearing boxing gloves, to further add to the fantasy-like element. We note that this commercial has thus far not received any complaints.

We note that different considerations might apply if it was an ordinary person being depicted in

the advertisement, but as it is Kostya Tszu, 4 time World Champion Welterweight Boxer, we submit that a small amount of accidental and harmless damage should hardly be considered unjustifiable in the context of the advertisement.

TONE OF ADVERTISEMENT – FANTASY AND FAMILY ORIENTED

The product in question is the Hyundai Santa Fe, which is being promoted as a “tough family car”. We note that the central character of the advertisement is Kostya Tszu, who is both nationally and internationally recognised as a boxing world champion. Kostya Tszu is also widely recognised as, and is often portrayed by the media as, a softly spoken family oriented person of great integrity who is very committed to his family. In our view, the actions portrayed in the ad are clearly an exaggerated fantasy situation of Kostya Tszu’s family life that are meant to be seen as over-the-top and humourous. The humourous fantasy aspect is clear as many of the opening shots of the ad are not indicative of real life, such as Kostya Tszu breaking his alarm clock, his children (all of whom are wearing boxing gloves in a further extension of the fantasy) breaking toys and a TV by merely touching them (we note that the child does not actually hit the TV with any force, but merely lightly taps it), and in our view, any reasonable person would regard this as not being a realistic portrayal of family life, particularly Kostya Tszu’s family life.

We also draw to your attention in particular to the fact that all of the potentially violent scenes are portrayed in a way that suggests that none of the actions undertaken by Kostya Tszu or his family are deliberate or intentional in their causing of damage or uses of undue force. We note that none of the actors are shown to have expressions of concentration or aggression, which we would consider to be inherent in the carrying out of violent actions. Rather, the expressions used are surprise, astonishment, or annoyance at an underestimation of one’s strength.

We note that the people in the advertisement are depicted as being in a loving family environment and overall, the ambiance and tone of the commercial is playful and fantasy-like, and the actions slapstick in nature. The idea is that Kostya Tszu and his family do not know their own strength, and present a very exaggerated and unrealistic challenge to the durability of the family vehicle. The main intention of the advertisement was to show that, since both Kostya Tszu and his children could not break any part of the vehicle, that it can obviously stand up to the toughest family treatment.

POST PRODUCTION

We note that the final scene depicting a telephone pole being accidentally bumped over by a car door was created entirely in post production. The scene in which the car door bumps the pole was on location, but the subsequent movement of the pole was a special effect added later. We also note that there was no phone box on the location, as this was also added later. At all times great care was taken to ensure that no one was injured either on screen or behind the scenes during the filming of the advertisement. Additionally, again, the damage depicted in this scene is clearly unintentional and humourous.

PREVAILING COMMUNITY STANDARDS

Provision 2.6 states that advertisements shall not depict material contrary to Prevailing Community Standards on health and safety. In our view, the advertisement does not depict any material contrary to prevailing community standards of health and safety.

Further, we note that Provision 2.7 states that advertisements for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies. We note that Provision 2.7 was recently enforced in the Board’s consideration of a recent complaint against Nissan’s “Red Means Go” advertisement (Complaint 194/08). We note that as this advertisement is for a motor vehicle, the FCAI Code does apply, and therefore Provision 2.6 should not be considered.

FCAI CODE – QUESTIONS OF “RECKLESS OR UNSAFE DRIVING”

With regards to the FCAI Code and Road Rules, we note that Provision 2(a) states: “Advertisers should ensure that advertisements for motor vehicles do not portray any ... 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. “

We confirm that great care was taken at all times to ensure that the vehicle was driven safely and in a controlled manner and setting. Additionally, we note that there are no specific provisions of the Road Rules which state that boxing gloves must not be worn whilst driving a vehicle.

We note that the most relevant provision of the Road Rules is Rule 297, which states that a driver must have proper control of a vehicle at all times. We note that in the advertisement, Kostya Tszuyu is depicted as having complete control of the vehicle at all times. Additionally, we note that no unsafe driving practices are portrayed in any scene.

BEHAVIOUR OF “SQUABBLING CHILDREN”

With regards to the behaviour of the children in the back of the vehicle, we considered that this common reality is something that consumers would be able to tap into and relate to, as many who are parents would have experienced this in some way or another. This is an insight that we played with in this scene in a humorous way, taking great care to ensure this did not impact on the control of the vehicle in any way. We note that there were no serious or extreme movements or disruptions, especially concerning the driver. We also note that this scene is not dissimilar to a previous “squabbling kids” sequence in a previous Santa Fe ad, which did not draw any complaints.

Additionally, the advertisement uses this situation to highlight how one of the vehicle’s many safety features, the “conversation mirror”, which Kostya Tszuyu demonstrates in the advertisement, can be used to keep an eye on back seat passengers without having to turn around. We note that even in this scene, Kostya Tszuyu does not appear distracted in any way, but rather, uses the safety features of the car to exercise control of the vehicle and his children.

SUBSTANTIVE ISSUE IN FCAI AND ROAD RULES

In our view, when you are considering whether there has been a breach of the Road Rules or the FCAI Code in this regard, given there is no express provision outlawing the use of boxing gloves, the issue that is most determinative and important to ensure is whether a driver is in control of their vehicle at all times.

We note that the Board has previously dismissed two complaints on this basis, namely, a complaint against Kia for a Sportage ad in February 2008 (Complaint 37/08), and a complaint against National Foods Ltd for a Big M flavoured milk advertisement in April 2008 (Complaint 108/08). In these cases, you will recall that, whilst in both ads there was a depiction of behaviour that could be seen as disruptive to the driver, such as speaking on a mobile phone that is being held up to the driver (Kia) or having a passenger spill a drink on the dashboard (National Foods), the overriding concern was that the driver had appropriate control of the vehicle at all times. We hope that the Board will apply similar logical reasoning here.

ENVIRONMENTAL SAFETY

Finally, we note provision 2(e) of the FCAI Code states that advertisements for motor vehicles must not depict deliberate or significant environmental damage when advertising off-road vehicles. We note that the advertisements contain a scene in which the vehicle drives off-road, however, in our view, no significant damage to the environment is depicted, and further, no unsafe or reckless driving practices were portrayed. We emphasise that great care was taken in this regard, and we ensured that a member of the National Trust was on site to observe the filming of this sequence to ensure that no damage was inflicted on the environment.

CONCLUSIONS

Therefore, in relation to these advertisements specifically, we took care to ensure that the commercial was within the boundaries established by the AANA Code and the FCAI Code and to ensure that we respect and comply with the self regulatory system in place.

Obviously the intention was not to condone or encourage violence, or reckless and unsafe driving in any sense. The advertisements were a creative play on the idea of a “tough family car” and utilised a well known sports star and family man to highlight its features. We made use of

advertising hyperbole to show these features in this manner, and were not intended as a serious or straight representation. In our view, the advertisements do not stray beyond the boundaries of the AANA Code or the FCAI Code.

For the above reasons we submit that the advertisement is not in breach of the AANA Code, nor of the FCAI Code or Australian Road Rules. If you require any further assistance or information please do not hesitate to contact me.

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 went on to consider the substantive provisions of the FCAI Code. The Board determined that the advertisement did not breach any of the clauses of the FCAI Code and accordingly dismissed the complaints.

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”). In particular the Board considered whether the advertisement presented or portrayed violence justifiable in the context of the product of service advertised.

The Board noted the use of Kostya Tszuyu and his family. The Board considered that the scene depicted was that of a loving family environment.

The Board further considered that the overall tone of the commercial was playful and unrealistic, a theme that was further supported by the portrayal of all family members wearing boxing gloves.

The Board noted that while some property was damaged the actions were slapstick in nature and no one was harmed in any way.

The Board agreed with the advertiser's statement that *the main intention of the advertisement was to show that, since both Kostya Tszuyu and his children could not break any part of the vehicle, that it can obviously stand up to the toughest family treatment.*

The Board did not consider that the advertisement was violent or encouraging violent behaviour and therefore was not in breach of section 2.2 of the Code.

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