



## **CASE REPORT**

1. Complaint reference number	298/04
2. Advertiser	Volkswagon Group Australia Pty Ltd (Golf)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 9 November 2004
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

The advertisement is a print advertisement that features a photograph of a Volkswagen Golf. The tagline is “The Lovely Volkswagen Golf. Here now.” Some text appears at the bottom of the advertisement and includes the sentence “Now the new 100kW 2.0FSI, with six speed manual gearbox, accelerates from 0-100kph in just 8.8 seconds.”

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*“This advertisement violates the Code by making blatant reference to the speed or acceleration capabilities of the vehicle.”*

*“This advertisement highlights the capability of the vehicle to drive “0-100kph in just 8.8 seconds”. This is a clear and undeniable breach of the Code.”*

## **THE ADVERTISER’S RESPONSE**

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

*“We have read and understand the FCAI Voluntary Code of Practice for Motor Vehicle Advertising, however we felt it was necessary on this occasion to convey the specification and acceleration of the new Golf as it is an additional benefit of it – the engine mentioned being new to the Golf range. We felt that this description was the simplest way to communicate the attributes of the engine without confusing average consumers with technical speak.”*

*“We did not need to obtain special permission/permits to undertake filming of any driving sequence as the photo was taken whilst the Golf was not moving.”*

## **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 published in Australian print media.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Volkswagen Golf “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 Golf 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(a), 2(b) and 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board firstly noted that the complaint in this matter was not made under any of the formal provisions of the FCAI Code. The complainant alleged a breach of the FCAI Code on the basis that the advertiser had made use of a reference specifically cautioned against by the FCAI in the Explanatory Notes to the FCAI Code, that is, a reference to the speed or acceleration capabilities of a motor vehicle (for example, “0-100 km/h in 6.5 seconds”). The Board noted that it was not able to uphold a complaint unless there has been a breach of the formal provisions of the FCAI Code. The Board noted that the relevant part of the Explanatory Notes is included in the FCAI Code as guidance to advertisers and this part of the Explanatory Notes could not be used by the Board to uphold a complaint where the formal provisions of the FCAI Code had been complied with. The Board did note, however, its desire for the FCAI to contact the advertiser to reiterate the recommendations given to the advertiser in the Explanatory Notes and caution against non-compliance with such guidance again in the future.

Although the complaint was not made under the formal provisions of the FCAI Code, the Board considered the clauses of the FCAI Code relevant to this advertisement for the sake of completeness.

The Board first considered whether clause 2(a) of the FCAI Code had been breached.

In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

*“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law...if such driving were to occur on a road or road related area...”*

The Board formed the view that clause 2(a) had not been breached. The Board was of the view that there were no overt indications that the motor vehicle was undertaking any unsafe, reckless or menacing driving practices that would be in breach of any relevant law.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

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

The Board formed the view that clause 2(b) had not been breached. The Board noted that there was no overt indication that the car was being driven at excess speeds and noted the advertiser’s written representation that the speed of the vehicle was driven within legal speed limits at all times during the photo shoot. The Board also noted the advertiser’s written representation that in any event, the photo in the advertisement was taken whilst the Volkswagen Golf was not moving.

The Board then 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...”*

The Board formed the view that clause 2(c) had not been breached. Similarly to clause 2(a), the Board formed the view that there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

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(a), 2(b) and/or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.