



## CASE REPORT

1. Complaint reference number	30/05
2. Advertiser	Volkswagon Group Australia Pty Ltd (Golf 1.6 Trendline)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 8 March 2005
7. DETERMINATION	Dismissed

**DESCRIPTION OF THE ADVERTISEMENT** The advertisement features photographic images of Volkswagen vehicles filled with as many people as could fit into each vehicle. Some of the peoples' body parts, including legs, heads and arms are coming out of the windows as they cannot fit their entire bodies in the car. The tagline is "Now everyone can get into a Volkswagen." **THE COMPLAINT** Comments which the complainant/s made included the following:

*"The advertisement shows 10 people in a Volkswagen Golf with one of them apparently behind the steering wheel. It conveys the impression that the vehicle is being driven or about to be driven with 9 passengers who are obviously not all wearing seat belts."*

*"I think the advertisement demonstrates a reckless disregard for road safety principles and encourages behaviour that is both dangerous and illegal."* **THE ADVERTISER'S RESPONSE** Comments which the advertiser made in response to the complaint/s included the following:

*"The communication was developed with the intention of re-creating a famous popular-culture image – that of a group of people cramming into a stationary car in an attempt to break a record. The image is designed to sit in context with the headline as a way of dramatizing the fact that the vehicles are now more affordable."*

*"We were mindful to clearly indicate that the vehicles were not being driven. With this in mind, we shot the cars in a studio on a white background, rather than placing them in any kind of driving environment. The wheels of the vehicle are clearly stationary."*

*"No one in the vehicles has their hands on the steering wheel of the vehicle."* **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 broadcast 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 “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 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), 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

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 noted that there were no depictions of actual driving in the advertisement and so the depictions could not be portrayals in breach of clause 2 (a). The Board noted that the vehicles were stationary and were static photographic images against a white studio background. The Board was of the view that there were no overt indications that the vehicles were in motion. The Board noted that the wheels were not moving and no passengers’ hands were on the steering wheels and therefore the vehicles could not be said to have been portraying unsafe, reckless or menacing driving in breach of clause 2(a).

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. Similarly to clause 2(a), the Board noted that there were no depictions of actual driving in the advertisement and so the depictions could not be portrayals in breach of clause 2 (b). The Board noted that the vehicles were stationary and were static photographic images against a white studio background. The Board was of the view that there were no overt indications that the vehicles were in motion. The Board noted that the wheels were not moving and no passengers’ hands were on the steering wheels and therefore the vehicles could not be said to have been driving at excessive speeds in breach of clause 2(b).

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. The Board noted the passengers were not wearing seatbelts and that some of the passengers’ limbs were outside of the vehicle’s windows. However, the Board noted that the examples of driving practices or other actions given in the Code that would be in breach of clause 2(c) were all only said to be in breach if they occurred whilst the vehicle was moving. For the same reasons given by the Board in considering clauses 2(a) and 2(b), the Board formed the view that the vehicles in the advertisement were all stationary and therefore the driving practices and other actions depicted in the advertisement could not be said to be in breach of clause 2(c).

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