



CASE REPORT

1. Complaint reference number	355/03
2. Advertiser	Volkswagon Group Australia Pty Ltd (Toureg)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 October 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with white text set against a black background. It reads "What should you expect from a Volkswagen?". The advertisement shows the vehicle then driving through a body of water, driving over grassland before making a right hand turn up a steep embankment. The vehicle is then shown to drive through a dense forest like area. Each of the scenes is interrupted by white text that appears against the black background. The text reads "Handles well in the wet. 0 to 45 degrees in 0.1 seconds. Nice clean lines, sticks to the road". The Volkswagen Toureg is then shown to fly through the air over a rocky surface with green hills in the background, before it drives to a cliff edge and stops. The camera then pans round the vehicle and the Volkswagen logo appears against a black background with white text that reads "Handles on road and off road like no 4 x 4 before".

THE COMPLAINT

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

"The new Volkswagen Toureg 4WD. The vehicle becomes air borne. This is illegal in every state and territory in Australia. It is also extremely dangerous as there can be no proper control of a vehicle when it is air borne".

THE ADVERTISER'S RESPONSE

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

No comments were received from the Advertiser.

THE DETERMINATION

The Advertising Standards Board ("the Board") considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics ("the Code").

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").

To come within the FCAI Code, the material being considered must be an "advertisement". The FCAI Code defines an "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 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 valuable consideration given that it was being broadcast on television 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 4 wheel drive “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 4 wheel drive 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 clause 2 (c) was relevant in the circumstances.

In order for clause 2 (c) to be breached, the driving practices described in this clause must take place “on a “Road or Road-related area”.

In relation to clause 2 (c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “Road” as defined by the FCAI Code. The definition provides as follows:

“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”

The Board then proceeded to consider that on the basis that the vehicle is depicted driving through water, up a cliff side, through a forest and over what appear to be scrub on the top of a hill or mountain, the surface depicted in the advertisement is not a “Road”.

In verifying its prima facie conclusions, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

”The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

On the above basis, the Board confirmed its prima facie view and held that the material before it did not constitute an advertisement for a motor vehicle in breach of clause 2(c) of the FCAI Code. The Board dismissed the complaint.