



CASE REPORT

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| 1. Complaint reference number | 455/09 |
| 2. Advertiser | Ford Motor Company (Mondeo) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Driving practice that would breach the law |
| 6. Date of determination | Wednesday, 14 October 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

A woman is depicted driving her car through the city at night with her dog in the front passenger seat wearing a seat belt designed for a human. The advertisement then shows the woman speaking out loud "temperature 22" and the voiceover explains how the new Mondeo has voice control, as the woman says "cd" her dog barks and the car chooses track 4.

THE COMPLAINT

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

The fact that the commercial shows a dog riding in the front seat of the vehicle is highly illegal and irresponsible. Not to mention the fact that the dog is not restrained with a harness or any other type of restraint which is also illegal.

I personally also feel that showing such an ad may lead to people emulating what they see on this commercial leading to the potential harm of both dogs and humans.

The consequences of the woman in the car having an accident would be catastrophic and her actions should not be encouraged in any way.

It is illegal to drive with an unrestrained dog in that manner.

I believe this to be illegal.

THE ADVERTISER'S RESPONSE

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

We refer to your email in relation to complaints received regarding the Mondeo television commercial which features a German Shepherd in the front passenger seat of a Ford Mondeo (Mondeo TVC).

At the outset, I would like to emphasise that Ford Australia takes seriously the welfare of all participants in the production of TV commercials, regardless of whether they are human or animal and adheres to all applicable laws and guidelines. We also take seriously our commitment to the AANA Code of Ethics and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and are very aware of the potential impact that our advertising may have on members of the public.

All of our advertising, including the Mondeo TVC, is carefully reviewed in that context. In this case, we do not believe that the scenario depicted in the Mondeo TVC is in breach of the AANA Code of Ethics, the FCAI Code or any Commonwealth, State or Territory laws.

You have referred to and extracted three complaints in your email dated 15 September 2009 and you have stated that the complaints raise issues under section 2 of the AANA Code of Ethics. Given that the Mondeo TVC is an advertisement for a motor vehicle, the FCAI Code applies. We note that each of the complaints allege that the Mondeo TVC depicts a driving practice which would breach provision 2(c) of the FCAI Code. A breach of provision 2(c) will occur if the advertisement in question portrays a driving practice or other action which would breach a Commonwealth, State or Territory law dealing with road safety or traffic regulation. We strongly disagree with the allegation that the Mondeo TVC depicts a driving practice which would breach provision 2(c) of the FCAI Code and we consider that it is important to highlight the following points:

1. No relevant laws pertaining to transporting a dog as depicted in the Mondeo TVC were identified

- Legal review of the Mondeo TVC script did not identify any Commonwealth, State or Territory laws dealing with road safety or traffic regulation pertaining to the transportation of an animal as depicted in the Mondeo TVC.*
- We consulted the Vic Roads media unit and they advised that no specific law prohibits travelling with a dog unrestrained in a car.*
- The Prevention of Cruelty to Animals Regulations 2008 relates solely to the transportation of animals in vehicle trays or trailers. There is no mention of the requirement to restrain animals within cars.*
- We consulted the RSPCA and were informed that they recommend that dogs be restrained whilst travelling in cars, but that they do not have a fixed policy on this issue as they acknowledge that there are arguments against restraining dogs.*

2. Advice from Commercials Advice Pty Ltd (CAD) recommended that the dog be harnessed

- Our advertising agency, JWT, sought advice from CAD on the initial script for the Mondeo TVC prior to its production. CAD advice was that due to the lack of relevant law, the dog was not legally required to be restrained but that they highly recommended we restrain the dog using a harness.*

3. The dog was restrained in a harness at all times whilst in the moving vehicle

- As mentioned above, Ford Australia takes seriously the welfare of all participants in the production of its TV commercials, including humans and animals, and after considering advice received from CAD, from the RSPCA and from the dog's animal handler, we elected to use a harness connected to the seatbelt of the vehicle to restrain the dog at all times whilst in the moving Mondeo.*
- During filming of the Mondeo TVC we worked with the TV production company to ensure that the dog was safely restrained whilst in the moving Mondeo (refer Attachment 5). For example, at the 3, 6 and 16 second intervals of the Mondeo TVC, the position of the seatbelt indicates that the seatbelt is in use and this is attached to the harness. A reference image of the dog in the restraint is contained in Attachment 6. As is depicted, the restraint falls over the chest of the dog approximately 15cm below the normal collar. In the majority of shots in the Mondeo TVC the framing of the shot does not show the harness. That is, we see the dog from just below the collar up.*
- Whilst not relevant to the determination of the complaints, for completeness, we note that one frame, lasting for approximately 1 second at the 17 second mark of the Mondeo TVC, shows the dog in the front passenger seat of the Mondeo, however, unlike the frames referred to above, the seatbelt is not in use in this frame. This footage was shot in a studio against a green screen and the dog was not filmed in the vehicle for this frame. The Mondeo was filmed whilst stationary and the footage of the dog was then subsequently inserted into the vehicle.*

4. Filming occurred in a controlled environment and a dog handler was on set at all times to monitor the welfare of the dog

- We have provided a letter from the production company confirming that filming of the Mondeo*

TVC occurred in a controlled environment which complied with all animal welfare and safety requirements and that an animal handler was on set monitoring the dog's welfare.

We strongly believe in the absence of relevant legislation, combined with the numerous actions that were undertaken to ensure the safety and appropriate treatment of the dog at all times, that the Mondeo TVC does not breach the FCAI Code or the AANA Code of Ethics.

I trust that this correspondence adequately addresses the concerns raised in the complaints referenced

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code") and section 2 of the Federal Chamber of Automotive Industries Code ("the FCAI Code").

The Board noted the complainants' concerns regarding the potential illegality of the dog sitting in the front passenger seat.

The Board viewed the advertisement and noted the advertiser's response and that in most instances the dog is depicted wearing a seatbelt or similar type of restraining contraption.

The Board considered whether the advertisement was in breach of section 2(a) of the FCAI Code. Section 2(a) of the FCAI Code states:

"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 noted that the National Road Rules as adopted by each State and Territory and amended from time to time, do not currently expressly or impliedly refer to the legality or illegality of permitting animals to travel in the passenger seat of a moving vehicle. The Board noted that in some jurisdictions, there is a rule that a driver must have 'proper control of the vehicle' at all times, and that if a dog was unrestrained in the front or back seat of a moving vehicle, such behaviour might constitute a breach of the rule. However, in this instance, the dog is appeared to be restrained and the woman driving the vehicle was in control. The Board determined that the advertisement was not in breach of section 2(a) of the FCAI Code.

The Board then noted the animal welfare legislation in each Australian state and territory and noted that there were no specific sections which dealt with animals travelling inside vehicles. The Board noted that the legislation dealt with dogs travelling on the back of Ute's or other open-aired transport modes and was silent with respect to the issue of dogs being transported inside a moving vehicle.

Having regard to the foregoing, the Board agreed that the advertisement did not breach section 2 of the Code or on any other grounds, and dismissed the complaint.