

## Decision of the ADVERTISING REGULATORY BOARD

Complainants	Nontobeko Zungu Ncumisa Mtirara Gorata Chengeta Esihle Lupindo
Advertiser	Volkswagen of South Africa (Pty) Ltd
Consumer/Competitor	Consumer
File reference	VW – Nontobeko Zungu & others – 12-01-19
Outcome	Dismissed
Date	6 March 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by consumers against VW South Africa's twitter campaign, in conjunction with Drive Dry, against drunken driving.

## Description of the advertising

The advertisement took the form of a tweet live streaming social influencer, Moozlie, giving an inspirational talk while driving. The live feed is interrupted by what appears to be an accident.

Subsequently, it emerged that the accident was staged to raise awareness about drinking and driving.

## Complaint

The complainants, in essence, raised the following points:

- The material was violent and triggering;
- The material can be seen by children;
- The material is not marked as advertising.

## Response

Despite raising that it is not a member of the ARB, the Advertiser responded and submitted, *inter alia*, that:

- The #VWDriveDry campaign was conceived and created in order to encourage safe, responsible driving.
- The campaign was designed to ignite a critical conversation to encourage road users to carefully consider their attitudes towards irresponsible driving and discourage their loved ones from irresponsible behaviour, particularly drinking and driving.
- The campaign began in early December 2018 with Moozlie posting on social media about her new December “ride”, a VW Golf GTI, and numerous other posts which were indicative of her drinking and driving over the course of December 2018 and early January 2019.

- Ultimately, a video was shared on social media by a friend of Moozlie on the night of 10 January 2019, which showed her apparently being involved in an accident in her vehicle.
- No graphic content was shown. The occurrence of an accident was implied by a cracked windscreen being shown at the end of the video and the sudden cessation of streaming.
- This video was shared directly after Moozlie had, according to her social media feed, consumed wine at dinner with her boyfriend and while she was live streaming on her drive home.
- On 11 January 2019, VWSA and Drive Dry released a second video showing that the “staged accident” was not real and that it formed part of a campaign to raise awareness in relation to drinking, texting or streaming while driving.
- The campaign was not aimed at marketing VWSA’s products or services, but rather intended primarily as a public awareness campaign aimed at highlighting the devastation which unsafe and drunk driving wreaks.
- With this campaign, VWSA wanted to highlight the need for a behavioural change by confronting members of the public with the real possibility of a popular figure being directly impacted.
- The public policy considerations at play in respect of the topic of the campaign are, in our respectful view, relevant to the justifiability of the hard-hitting and difficult subject matter of the campaign.
- While ostensibly, it may seem that parts of the campaign were not identified immediately as an “advert”, VWSA submits that, taken as a whole, the campaign clearly identified itself as such by means of the “reveal video” which was released some 12 hours after the “staged accident” video had been made public.
- To identify the “staged accident” immediately as such would have defeated the point of the campaign entirely, diluting its impact and rendering it nugatory.
- VWSA submits that, in view of the serious public policy considerations surrounding road safety in South Africa detailed above, the campaign did not offend against good taste or decency. VWSA submits that the impact was necessary, and accordingly reasonable and justifiable.

- The evocation of fear is a well-known and accepted characteristic of road safety commercials.
- VWSA submits that the fear invoked amongst social media users was justified in order to drive home the impact of the campaign's message – and to make those who saw it and were affected by it consider carefully their own attitudes and responsibilities in relation to road safety.
- The campaign was not aimed at children, but to adults, primarily young adults. VWSA takes cognisance of the minimum age limit of thirteen (13) for Twitter users. The campaign content was, however, suitable for viewing by minors falling into this category. The campaign did not depict any violence, bloodshed or visuals of harm being suffered by any person.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Offensive advertising - Clause 1 of Section II

Fear - Clause 3.1 of Section II

Identification of advertisements - Clause 12 of Section II

Children - Clause 14 of Section II

## Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

The issues before the ARB can be divided into two parts:

- The content of the material which the Complainant's found to be violent, triggering and unsuitable for children;

- The identification of the material as advertising.

### The content of the material

Clause 3 of Section I of the Code guides how the Directorate of the ARB must apply the Code in reaching a decision. It states, *inter alia*, that the Directorate must consider:

- Surrounding circumstances (ref Clause 3.3.1); and
- Social concern (ref Clause 3.4).

The Directorate agrees with the Complainants that the content of the material is disturbing and upsetting, albeit that it is not graphic. However, the campaign is aimed at an issue of important social concern – drinking and driving. The Advertiser provides statistics and explanations as to why this is an issue of such social concern. The Directorate was particularly struck by a submission that during the course of the campaign only four comments on the much viewed material commented on the behaviour of drinking, streaming, texting and driving.

Indeed, the issue of drunk driving is of such national concern that the Marketing, Advertising and Communications Sector Charter, in explaining the need for responsible social marketing in sections 13 and 20, uses it as a specific example and states, “Driving with an alcohol level above the national limit is a statutory offence and has dire consequences that impact negatively on the national welfare. The resultant damage, grief and sorrow can never be adequately quantified. Therefore the MAC Sector is constrained to making sure that this national issue is clearly and unambiguously communicated in the interest of social cohesion.”

The Directorate finds, in so far as the material is violent, triggers fear, and is offensive, that this content is acceptable in the context of the social problem that it seeks to address. The Directorate concurs with the Advertiser’s submission that the message of such a campaign needs to be hard hitting to drive home the impact of the message.

**Given this, the campaign is not in breach of Clauses 1, 3.1 or 3.2 of Section II of the Code.**

In relation to children, the Directorate agrees that Twitter is a platform that carries a 13 age restriction, and children under 13 should therefore not be exposed to it. In addition, the Directorate agrees that the material is not unduly graphic, and that the message that it carries to minors over 13 is of critical importance.

**Given this, the campaign is not in breach of Clause 14 of Section II.**

### **Identification of advertising**

The first step of this discussion is, of course, the question of whether the material is advertising.

The definition of “advertisement” in Clause 4.1 of Section I of the Code reads:

Advertisement” means any visual or aural communication, representation, reference or notification of any kind

4.1.1 which is intended to promote the sale, leasing or use of any goods or services; or

4.1.2 which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received.

The Directorate notes the following:

- It is “any” communication;
- It appeals for the support of a cause.

The material is therefore advertising in nature, and the Advertiser does not appear to dispute this.

Clause 12 of Section II requires the “Advertisements should be clearly distinguishable as such whatever their form and whatever medium is used. When an advertisement appears in a medium which contains news, editorial or programme matter it should be so designed, produced and presented that it will be readily recognised as an advertisement.”

A strict interpretation of this clause would take the following view: it is advertising material, it appears amidst editorial and therefore needs to be clear, ergo it should be labelled as such (by means of a hashtag or other appropriate identifier).

However, the Code also, at Clause 3.1 of Section I, is clear that, “This Code is to be applied in the spirit, as well as the letter.”

In applying the spirit of the Code the Directorate considers it appropriate to take a teleological approach – to look at the rule in terms of the purpose that it sets out to achieve. In this case, the Directorate believes that the purpose of Clause 12 is to prevent consumers from being misled by advertising for products or services that appears to be editorial in nature (and therefore more compelling).

The Directorate also concurs that to have identified the live feed in question as advertising at the time that the material was broadcast would have reduced the traumatic nature of the content, but would also thereby have significantly undermined the message being conveyed.

We do not consider that the purpose of Clause 12 can have been intended to undermine the strength of a message that is in the public interest and plays an important social responsibility role. This is particularly true in relation to an issue that is of such fundamental importance.

The Directorate also takes cognisance of the fact that the material was subsequently and on the same platform identified as “staged” and as such, as advertising.

**Given this, the Directorate does not believe that the campaign is in breach of Clause 12 of Section II.**