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| COMPLAINT NUMBER | 18/336 |
| COMPLAINANT | I Loughran |
| ADVERTISER | The Warehouse |
| ADVERTISEMENT | Mighty Grip, Television |
| DATE OF MEETING | 13 November 2018 |
| OUTCOME | Upheld |

SUMMARY

The Warehouse television advertisement for the Mighty Grip phone mount says in part: “The Mighty Grip phone mount has a powerful magnetic grip and a twist lock suction base. You can have your phone right where you need it without taking your eyes off the road. Apply the magnetic plate straight onto your phone or place inside your case and you’re ready to go....” The advertisement shows the device mounted on the car dashboard and attached to the windscreen at an angle which appeared to be near the centre of the windscreen.

The Complainant’s concern is that the use of a centrally mounted windscreen phone holder is unsafe and contrary to police advice.

The Advertiser said it was not aware of this safety advice regarding central windscreen positions for phone mounts nor was it able to find this advice from its own online search. The Advertiser notes it has not received notice from the NZ Police at any time advising of this safety advice or the requirement for it to adhere to this in any communications.

The majority of the Complaints Board said the advertisement depicted a visual presentation of a dangerous practice by having the phone mounted in the critical vision area of the windscreen. The Board said the advertisement was almost entirely instructional, demonstrating how to use the device and therefore this could encourage consumers to emulate the placement of the device and potentially impair driver vision.

The majority of the Complaints Board said the scene in the advertisement which showed the Mighty Grip product appearing to be mounted in the centre of the windscreen was a visual presentation of a dangerous practice which encouraged a disregard for safety, in breach of Rule 12 of the Code of Ethics.

The minority of the Complaints Board said it was difficult to ascertain from the fleeting image exactly where on the windscreen the phone was mounted but considered it was sufficiently off centre as to not cause obstruction to the driver’s vision. The minority said the advertisement did not reach the threshold to breach Rule 12.

In accordance with the majority, the Complaints Board ruled the complaint was Upheld.

[Advertisement to be removed]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 12 of the Code of Ethics.

Basic Principle 4 required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 12 required the Complaints Board to consider whether the advertisement unless justifiable on educational or social grounds, contained any visual presentation or any description of dangerous or illegal practices or situations which encouraged a disregard for safety.

The Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant's concern is that the use of a centrally mounted windscreen phone holder is unsafe and contrary to police advice.

The Advertiser's Response

The Advertiser said the imagery used in the advertisement is sourced from an overseas product supplier.

The Advertiser said it was not aware of this safety advice regarding central windscreen positions for phone mounts nor was it able to find this advice from its own online search. The Advertiser notes it has not received notice from the NZ Police at any time advising of this safety advice or the requirement for it to adhere to this in any communications.

The Media's Response

The Commercial Approvals Bureau said under Land Transport (Road User) 2004 a driver may, while driving, briefly use a mobile phone to make, receive or terminate calls if the phone is secured in a mounting fixed in a manner which does not impede the driver's view.

The Complaint Board Discussion

The Complaints Board began by discussing the likely consumer takeout of the advertisement. It said it was an alert to a new product and provided an illustration of how the product could be used.

The majority of the Complaints Board were concerned the advertisement depicted a visual presentation of a dangerous practice by having the phone mounted in the critical vision area of the windscreen. The Board said the advertisement was almost entirely instructional, demonstrating how to use the device and therefore this could encourage consumers to emulate the placement of the device.

The Board agreed the camera angle of the shot in the advertisement in question was unhelpful, however it was ambiguous enough to lead the majority of Board members to interpret it as showing the phone being placed near the centre of the windscreen. The voiceover during the windscreen shot said "Have your phone right where you need it". The Complaints Board said this further emphasised a possible issue with placement of the product.

The majority of the Complaints Board said the scene in the advertisement which showed the Mighty Grip product mounted in the centre of the windscreen was a visual presentation of a

dangerous practice which, encouraged a disregard for safety, in breach of Rule 12 of the Code of Ethics. The majority of the Complaints Board said therefore the advertisement had not been prepared with a due sense of social responsibility required by Basic Principle 4 of the Code of Ethics.

The minority of the Complaints Board said it was difficult to ascertain from the fleeting image exactly where on the windscreen the phone was mounted but considered it was sufficiently off centre as to not cause obstruction to the driver's vision. The minority said the advertisement did not reach the threshold to breach Rule 12 of the Code of Ethics.

However, in accordance with the majority, the Complaints Board ruled the Complaint was Upheld.

DESCRIPTION OF ADVERTISEMENT

The Warehouse television advertisement for the Mighty Grip phone mount says in part: "The Mighty Grip phone mount has a powerful magnetic grip and a twist lock suction base. You can have your phone right where you need it without taking your eyes off the road. Apply the magnetic plate straight onto your phone or place inside your case and you're ready to go." The graphics of the advertisement show the device mounted onto the dashboard and a second shot attached to the windscreen at an angle would could be interpreted as being in near the centre of the windscreen.

COMPLAINT FROM I LOUGHAN

Ad for Mighty Grip phone holder - The ad shows placement of the device central windscreen which is contrary to Police safety advice and could obscure driver view if copied and be a distraction to driving. Interestingly ads for same product shown on YouTube have edited out the central windscreen placement.

CODES OF PRACTICE

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading)

Rule 12: Safety - Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

RESPONSE FROM ADVERTISER, THE WAREHOUSE

We refer to your letter of 8 October 2018 and enclosure including a copy of the complaint received from I Loughran.

We have reviewed I Loughran's complaint in regards to our television advertisement for the Mighty Grip Phone Holder, as played on air on 27 September 2018.

We advise that this advertisement is provided to us by our overseas product supplier, however there have been some minor modifications made by us, mainly to the contact details and the notification of where to purchase the product in the voice over. The imagery used in the advertisement is therefore sourced from our overseas product supplier.

Standard practice for our 'As Seen on TV' sourced products is to use the advertisement already produced and provided to us by our supplier, with minor modifications to voice overs as appropriate. Advertisements are reviewed and vetted prior to these being used by our team for appropriateness for our market.

We note I Loughran's concern regarding placement of the device in the advertisement in the central windscreen position and the advice that this is contrary to Police safety advice. We are not aware of this safety advice nor were we able to find this advice in our own online search. We have not received notice from the NZ Police at any time advising us of this safety advice or the requirement for us to adhere to this in any customer communications.

We note that this appears to be advice or a recommendation from the NZ Police and does not appear to be actual law at the present time.

I Loughran mentions a difference in an advertisement that they found on YouTube for this same product. We are unsure where this was sourced from as YouTube contains video from across the worldwide web, and therefore we cannot comment on the differences in the advert I Loughran found and the one which we have been supplied and are using.

We thank I Loughran for bringing this NZ Police safety advice to your/our attention, and will take this into consideration in future when viewing supplied advertisements of this type for our use.

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

KEY: TV 15 MG18 RATING: G

The complainant believed the use of a centrally dashboard mounted phone holder was unsafe.

Under Land Transport (Road User) Amendment Rule 2009 a driver may, while driving, briefly use a mobile phone to make, receive or terminate calls if the phone is secured in a mounting fixed in a manner which does not impede the driver's view. However, drivers must not create, send or read text messages or use the phone in any other way.

A total ban on hands-free mobile phones could impede on many tradesmen and businesses who rely on the ability to be contacted while travelling. There are also personal security and safety benefits.

CAB believes this complaint should not be upheld if the phone is used as per the regulations

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.