

COMPLAINT NUMBER	20/369
ADVERTISER	Global Shop Direct
ADVERTISEMENT	Global Shop Direct Television
DATE OF MEETING	13 October 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a television advertisement for the Cup Call phone mount. The Board said the advertisement did not encourage or condone an illegal or unsafe practice.

Advertisement

The television advertisement for the Cup Call phone mount, which is available from Global Shop Direct, shows the phone mount being installed and used inside a car. The voiceover says: "Introducing the Cup Call phone mount, a brand-new next generation phone stand that fits right in your vehicle's cup holder, so your phone's always at your fingertips."

Summary of the Complaint

The Complainant was concerned the advertisement encouraged risk and law breaking.

Issues Raised:

- Social Responsibility
- Safety

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said: "To our knowledge there is no law or prevailing safety standard that would suggest that this phone mount is illegal or promoting risky activity or law breaking."

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(e) Safety: Advertisements must not, unless justifiable on educational or social grounds, encourage or condone dangerous, illegal or unsafe practices, or portray situations which encourage or condone a disregard for safety.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/336, which was Upheld and 19/010, which was No Grounds to Proceed.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 18/336 concerned a television advertisement for the Mighty Grip phone mount advertisement which showed 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 majority of the Complaints Board said the impression that the product was mounted in the centre of the windscreen appeared to be a dangerous practice, which encouraged a disregard for safety

Decision 19/010 concerned a television advertisement for a Cobracoil cell phone charging cable, which included shots of the Cobracoil holding a cell phone in position on the dashboard of a moving car.

The Chair referred to a previous decision, 18/336, about a similar product, the Mighty Grip. In that decision the Complaints Board referred to the Land Transport (Road User) Amendment Rule 2009 which says 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 to the vehicle.

The Chair said the phone in the advertisement is secured in a mounting fixed to the vehicle and did not appear to be mounted in a manner which impeded the driver's view.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was the Cup Call is a product you can use to mount your phone, while you're in the car.

Does the advertisement encourage or condone an illegal or unsafe practice?

The Complaints Board said the advertisement did not encourage or condone an illegal or unsafe practice.

The Complaints Board referred to a precedent decision, 19/010, and said it applied directly in this case. The Board said a driver may, while driving, briefly use a mobile phone, if the phone is secured in a mounting fixed to the vehicle.

The Board referred to Land Transport (Road User) Amendment Rule 2009, Section 7.3a which states:

(4) A driver may, while driving a vehicle, use a mobile phone to make, receive, or terminate a telephone call if the phone does not require the driver to hold or manipulate it to make, receive, or terminate the call.

The Complaints Board said in the advertisement for the Cup Call the mounting device was not installed anywhere that the driver's vision through the windscreen would be impaired.

The Complaints Board referred to the disclaimer in the advertisement, advising viewers to check the laws that apply in their own country of residence.

The Complaints Board noted that the advertisement only showed the phones mounted in the Cup Call being used in a way that that complied with New Zealand laws.

Is the advertisement socially responsible?

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1 or Rule 1(e) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required

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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT

Judge Judy 2020-08-03 1655 Complaint Details: Product advertised: "Cup Call."

To use for positioning phone in car for you to look at while driving, thus encouraging risk and law breaking.

Appendix 2

RESPONSE FROM ADVERTISER, GLOBAL SHOP DIRECT

Global Shop Direct take the safety of the community and our products very seriously. Thank you for the opportunity to respond.

Our feedback is as follows in red below:

The complaint in question challenges the safety of the product category of phone holders / mounts in cars.

To our knowledge there is no law or prevailing safety standard that would suggest that this phone mount is illegal or promoting risky activity or law breaking.

Contrary to the complaint, this is a very big product market, and hands-free products are mentioned specifically in content on road safety websites that we've researched (see some examples below). This suggests phone mounts / hands free products are the legal option to using a mobile device whilst operating a vehicle.

See links below:

<https://nzta.govt.nz/assets/resources/driving-in-nz/docs/driving-in-nz.pdf>

Call out from document:



<https://www.aa.co.nz/about/safety-on-the-roads/safer-drivers/staying-focussed-and-alert/mobile-phones/>

Call out from article:

Ban on mobile phone use while driving

From 1 November 2009 it became illegal for drivers to use a hand-held mobile phone while driving. The Road User Rule states that drivers cannot use a mobile phone:

- to make, receive, or terminate a telephone call
- to create, send, or read a text message or email
- to create, send, or view a video message
- to communicate in a similar way
- in any other way.

Breaching the ban incurs an \$80 fine and 20 demerit points.

The ban includes other telecommunications devices such as Blackberrys and Personal Digital Assistants (PDAs) but excludes two-way radios. However, a driver may, while driving a vehicle, use a mobile phone in a way described in 1 and 5 above provided the mobile phone:

- does not require the driver to hold or physically manipulate it to make, receive, or terminate the call (e.g. Blue Tooth technology)
- is secured in a mounting fixed to the vehicle and the driver manipulates the phone infrequently and briefly (e.g. hands-free kits)

This TV commercial, as you will review, also features clear disclaimers to follow and read road rules, and to ensure that the product should not be installed anywhere that it interferes with the vehicles operations.

Give the above points we do not believe we are promoting risky activities or law breaking as the complaint suggests.

Your response to the information requested below and any other information you provide will be included in the published decision. The ASA is not able to accept confidential or proprietary information.

Please contact the writer if this is an issue. If you are sending a pdf version of your response, please send a Word version as well, as it is easier to incorporate into the published decision.

2. In determining whether a Principle has been breached, the Complaints Board will have regard to all relevant matters including

- Generally prevailing community
- Pervious decisions
- The consumer takeout from the advertisement
- The context, medium and intended audience

- The product or service being advertised

3. Please provide the ASA with a digital media file(s) copy of the advertisement. If the complaint relates to on-screen graphic in a video, provide a broadcast quality version.

https://www.dropbox.com/s/pgbkeqtiifnqa7h/Cup%20Call%20NZ_Draft03.mp4?dl=0

4. Is the advertisement still accessible – where and until when?

Yes, via the website, featured in the link below. The video is in the gallery.

5. List all media where the advertisement is placed e.g. TV, Radio, Outdoor, Newspaper, Cinema, Website, Social Media, App, and Email.

This is currently only live on our New Zealand website. No other advertising is occurring in New Zealand presently.

<https://www.globalshopdirect.co.nz/products/cup-call>

6. For Broadcast advertisements, provide:

- A copy of the script

Attached

- A copy of the media schedule and spot list (please remove all financial information)

No current media schedule is planned for this product. We ran a test campaign and have not go another media plan in place for this ad.

- CAB key number and rating

- Key Number: CUCA120A1888
- CAB number: 00723048
- Rating: CLASS G

7. Who is the target audience for the product / brand / service? And what tools and/ or data were used to target this audience?

People who own cars

We ran media based on ratings and cost, and time of day, not so much target audience led.

Appendix 3

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

Complaint 20/369 Key: CUCA 120A 1911 Classification: G

We have been asked to comment on a complaint of a breach of the Advertising Code of Standards regarding the safety of using a mobile phone placed in a holder when driving. While it is illegal to hold a cellphone while driving, it is legal to use a hands-free kit and numerous companies sell similar mountings for use in vehicles where Bluetooth technology is not available. Under the NZTA fact sheet it is clear that while it is safest not to use a mobile phone when driving, a driver may use a mobile phone to make, receive or terminate a telephone call if the phone does not require the driver to hold or manipulate it. The mounting device must be installed anywhere that the driver's vision through the windscreen is not impaired, or if in the centre console, as long as no other dashboard functions are blocked by the tablet or device. Many motorists use phones mounted in this way for GPS navigation. We accept the complainant's concern, however a motorist speaking on a securely fitted hands free phone is possibly no more distracted than driving with the noise of upset infants or squabbling children in rear seats, or even changing radio channels on the dashboard. We do not believe the complaint should be upheld.

INFORMATION PROVIDED BY SECRETARIAT

Land Transport (Road User) Rule 2004

Section 7.3a Ban on Use of Mobile Phones While Driving

<http://www.legislation.govt.nz/regulation/public/2004/0427/latest/DLM2510830.html>

7.3A Ban on use of mobile phones while driving

(1) A driver must not, while driving a vehicle,—

- (a) use a mobile phone to make, receive, or terminate a telephone call; or
- (b) use a mobile phone to create, send, or read a text message; or
- (c) use a mobile phone to create, send, or read an email; or
- (d) use a mobile phone to create, send, or view a video message; or
- (e) use a mobile phone to communicate in a way similar to a way described in any of paragraphs (b) to (d); or
- (f) use a mobile phone in a way other than a way described in any of paragraphs (a) to (e).

(1A) Subclause (1) is overridden by subclauses (2) to (7).

(2) An enforcement officer may, while driving a vehicle, use a mobile phone to make, receive, or terminate a telephone call if the officer is making, receiving, or terminating the call in the execution of the officer's duty.

(3) A driver may, while driving a vehicle, use a mobile phone if—

- (a) the driver is using the phone to make a 111 or *555 call; and
- (b) it is unsafe or impracticable for the driver to stop and park the vehicle to make the call.

(4) A driver may, while driving a vehicle, use a mobile phone to make, receive, or terminate a telephone call if the phone does not require the driver to hold or manipulate it to make, receive, or terminate the call.

(5) *[Revoked]*

(6) A driver may, while driving a vehicle, use a mobile phone to make, receive, or terminate a telephone call if the vehicle has stopped for a reason other than the normal starting and stopping of vehicles in a flow of traffic.

(7) A driver may, while driving a vehicle, use a mobile phone in a way described in subclause (1)(a) or (f), if both the following apply:

- (a) the phone is secured in a mounting fixed to the vehicle; and
- (b) if the driver manipulates or looks at the phone, he or she does so infrequently and briefly.