



Jean Shiimoto  
Director  
Department of Motor Vehicles  
Via Email

Nov. 23, 2016

**Re: Enact regulation covering advertising autonomous vehicles now**

Dear Ms. Shiimoto,

I am writing on behalf of Consumer Watchdog a nonprofit, nonpartisan public education and advocacy organization, to ask the Department of Motor Vehicles to immediately start a formal rulemaking to enact a regulation protecting consumers from misleading advertising that leaves the dangerous – and sometimes fatal – impression that a car is more capable of driving itself than is actually the case. Manufacturers must not be allowed to advertise cars as, or describe them as, “self-driving” when a human driver must actually monitor or control the vehicle.

Tesla, with its promotion of its so-called Autopilot feature, is a prime example of the deadly consequences of such unjustified hype. Chairman Elon Musk has repeatedly extolled the Tesla’s self-driving virtues to clearly leave the impression that the vehicle is autonomous. Here are examples of the promotional campaign to drill the idea into consumer consciousness that Teslas drive themselves:

- In 2014 Musk told the shareholders meeting that they would soon be able to drive “from highway on-ramp to highway exit without touching any controls.” ([https://www.youtube.com/watch?v=0ifd5KHH\\_lk#](https://www.youtube.com/watch?v=0ifd5KHH_lk#))
- There was video of Musk’s then wife, Tallulah Riley, behind the wheel of a Tesla without her hands on the steering and waving them in the air. (<https://electrek.co/2016/04/20/elon-musks-wife-talulah-riley-tesla-autopilot-video/>)
- Another video shows Musk himself in the driver’s seat of a Tesla demonstrating the vehicle with his hands off the steering wheel. (<https://www.youtube.com/watch?v=MO0vdNNzwxk>)
- A Tesla promotional video set to the music “Paint It Black” that purported to show a Tesla making its way through “urban streets” autonomously when it was in fact merely crossing the Stanford University campus. Pedestrians the Tesla vehicle encountered along the way were paid actors. (<https://www.theguardian.com/technology/2016/oct/20/tesla-releases-video-of-fully-autonomous-model-x-electric-car>)

- Musk even tweeted about the promotional video:



Two drivers who were misled by Tesla’s Autopilot hype, one in China and one in Florida, are dead after fatal crashes. Tesla’s response now, in direct contradiction to Musk’s ‘Look Mom, No Hands’ hype, has been that the drivers should have been paying attention and should have had their hands on the steering wheel. Consumer Watchdog has produced a video documenting Tesla’s overblown promotion of its flawed Autopilot technology, and the fatal consequences of those misrepresentations. It uses clips from the videos cited above, as well as video shot from the doomed Tesla in the fatal crash in China. You can view our video here:

<https://www.youtube.com/watch?v=gDv9TEExtHzw>

When the department released new draft autonomous vehicle regulations on Sept. 30, it was clear the DMV recognized the danger posed by such unjustified claims about automated technologies. The department’s statement releasing the draft regulations said:

*The department shares the concerns raised by NHTSA and other entities regarding the risk of driver complacency and misuse of lower level systems where drivers are expected to remain fully engaged in the driving task. It is therefore important that drivers of vehicles not fully capable of autonomous operation be aware of that limitation.*

*As specified in the revised draft regulations, a vehicle cannot be advertised as autonomous in California unless it meets the definition of “autonomous” specified in Vehicle Code §38750 and the autonomous vehicle regulations. The terms “self-driving”, “automated”, “autopilot”, and other statements that lead a reasonable person to believe a vehicle is autonomous constitute advertising regulated by the truth-in-advertising provisions in the Vehicle Code.*

Consumer Watchdog shares the DMV’s concerns, but we are worried about how long it will take to enact this essential and potentially life-saving regulation. This key safety provision was only a small part of a larger autonomous vehicle regulation package. Because of the complexity of the entire package, we expect the formal rulemaking to be time consuming. It is likely that the new regulations will not take effect for at least a year.

That is too long to wait to stop Tesla and its CEO from risking even more lives by falsely promoting Autopilot technology as self-driving. Currently there is nothing to stop the sort of hype spouted by Elon Musk with its potentially deadly consequences. DMV should extract the advertising regulatory language from the rest of the draft autonomous vehicle regulations and start a formal rulemaking to enact that section immediately. Here is the key provision, taken from the draft language:

*§227.90. Statements About Autonomous Technology*

*(a) No vehicle shall be advertised as an autonomous vehicle unless it meets all of the following requirements:*

*(1) The vehicle meets the definition of an autonomous vehicle specified in Vehicle Code section 38750 and section 227.02(d) of this Article.*

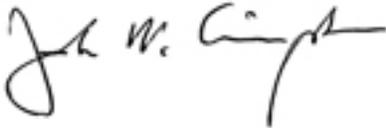
*(2) The vehicle was manufactured by a manufacturer licensed pursuant to Vehicle Code section 11701 also holding a valid autonomous vehicle manufacturer's permit issued pursuant to this Article at the time of the vehicle's manufacture.*

*(b) Terms such as "self-driving", "automated", "auto-pilot", or other statements made that are likely to induce a reasonably prudent person to believe a vehicle is autonomous, as defined, constitute an advertisement that the vehicle is autonomous for the purposes of this section and Vehicle Code section 11713.*

*NOTE: Authority cited: Sections 1651 and 38750, Vehicle Code. Reference: Sections 11701, 11713, and 38750, Vehicle Code.*

Much of the new autonomous vehicle draft regulation pertains to future developments in the technology. For the most part, the rules would not impact any vehicle now on public highways. The regulations are complex and it makes sense to take the time necessary to get them right. The situation is different with the advertising provision. The language is clear and straight forward. Car manufacturers, like Tesla, are hyping their vehicles now. People are getting killed. The DMV must move as quickly as possible to enact this life-saving provision and stop such abuses.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with a long horizontal stroke at the end.

John M. Simpson, Privacy Project Director  
CC: Brian Souble, Chief Counsel