

Case Report

1. Case Number :	0014-23
2. Advertiser :	Toyota Motor Corporation Australia Limited
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Feb-2023
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving

DESCRIPTION OF ADVERTISEMENT

This television advertisement depicts a number of scenes of people with their Toyota vehicles, including:

- A woman picking up a friend who has had a fake tan, putting a towel down to protect the passenger seat
- A man driving at 40km an hour down a road being overtaken by other cars, then parking and removing a small speck of dirt from the front of the vehicle
- A man being stopped by a neighbour enquiring about his new car.



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The marketing seems to glorify driving at extremely slow speeds on public television. Driving at slow speeds on public roads can be very dangerous.

The ad shows a vehicle driving at 40kph on a rural road and another vehicle overtaking it, implying that the vehicle is driving significantly below the speed limit. This appears

to be promoting unsafe driving (significantly below the speed limit) in order to save a vehicle's resale value.

6 second into the video here:

https://www.youtube.com/watch?v=XHNvluI3BtI&ab_channel=MLME-MediaAnalytics

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We refer to your letter dated 25 January 2023 in relation to case reference number 0014-23 (Notification of Complaint).

Your letter refers to a televised retail advertisement by Toyota Motor Corporation Australia Limited (Toyota) featuring a vehicle driven at less than the speed limit (the Advertisement).

Toyota takes any complaints relating to its Advertisements and its commitments to comply with the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and AANA Code of Ethics (AANA Code) seriously. Accordingly, all advertising, including the Advertisement, is carefully reviewed to ensure legal compliance and that community standards are respected.

The part of the Advertisement that has attracted the complaints is the second situation with the farmer driving his vehicle just over 40km/h on a country road (Scene). The Scene shows the farmer's vehicle being safely overtaken by another driver, to whom the farmer waves. Then the audience sees that the farmer has parked the vehicle between two other more worn vehicles (splattered with mud). The farmer is seen delicately cleaning a spot on the bonnet with a hanky, indicating that the farmer is as fastidious in his care for this new second-hand vehicle as if it was a brand new car.

THE COMPLAINTS

In the Notification of Complaint, you advise that the two complaints in relation to the Advertisement were received on the following dates:

- *6 January 2023*
"AD DESCRIPTION: The ad depicts people driving Toyota vehicles at extremely slow speed on public roads

REASON FOR CONCERN: The marketing seems to glorify driving at extremely slow speeds on public television. Driving at slow speeds on public roads can be very dangerous."

- *9 January 2023*
"AD DESCRIPTION: Advertising pre-owned Toyota vehicles in a range of scenarios.
REASON FOR CONCERN: The ad shows a vehicle driving at 40kph on a rural road and another vehicle overtaking it, implying that the vehicle is driving significantly below

the speed limit. This appears to be promoting unsafe driving (significantly below the speed limit) in order to save a vehicle's resale value.

(the Complaints)

You have advised that issues raised in the Complaints fall under sections 2, 3 and 4 of the FCAI Code and section 2 of the AANA Code of Ethics. Toyota responds to each of the subsections in each Code below.

TOYOTA'S RESPONSE TO COMPLAINTS

1. First ground noted in Notification of Complaint: FCAI Code Section 2 (a) - GENERAL PROVISIONS

"Advertisers should ensure that Advertisements for motor vehicles do not portray any of the following:

(a) 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 Complaints raise concerns that the Advertisement 'glorifies' or 'promotes' unsafe driving by depicting a driver driving just over 40km/h on a two lane country road: not a highway, but wide enough for another driver to pass, where the speed limit may be 60 or 80 km/h.

Toyota believes that the Advertisement does not show unsafe driving. Rather, the Advertisement is depicting drivers going to great lengths to be safe and cautious, as if the drivers 'feel' as though they are driving brand new second-hand vehicles. The Scene deliberately emphasises the slowness of the driver's speed by showing another car overtaking (not at great speed) – as a filmic way to depict utmost caution in unusual circumstances, akin to taking a new car home for the first time. The slow driving depicted in the Advertisement is portrayed as unusual and only associated with the 'new car feel'. The farmer's usual driver behaviour could be assumed to be closer to the speed limit due to the presence of mud stains on the other vehicles.

The Australian Road Rules state that a driver must not 'unreasonably obstruct' the path of other road users. The exact speed that is considered to comprise 'obstruction' is uncertain, except that the model Australian Road Rules state that a speed of 20km/h in a zone with a speed limit of 80km/h could be considered 'abnormally slow' unless that driver has no reason to drive at that speed on that length of road. It is possible that having a new car (or feeling that one has a new car) may be considered by some to be a reasonable reason to drive slower on a country road. We note that the farmer in Scene 2 does not seem to obstruct another driver, nor is he driving in an unsafe way. The other road user easily and safely overtakes the farmer.

2. *FCAI Code Sections 3 and 4 – USE OF MOTOR SPORT IN ADVERTISING and DEPICTION OF OFF ROAD VEHICLES*

Motorsports and off road driving are not depicted in the Advertisement. Where the vehicle is depicted as parked off-road, it is stationary. Therefore, these sections of the Code do not apply.

3. *Section 2 of the AANA Code of Ethics*

Toyota is of the view that the following sections in Section 2 of the AANA Code are not relevant to the Advertisement, as the concepts covered by these sections do not arise in the Complaints or in the Advertisement:

- *2.1 - Discrimination or vilification*
- *2.2 - Exploitative or degrading*
- *2.3 – Violence*
- *2.4 - Sex, sexuality and nudity*
- *2.5 – Language*
- *2.7 - Identifiable Advertising*

Section 2.6 states that “Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.” For the reasons set out above, Toyota is of the view that the material does not contravene community attitudes to health and safety. To summarise, the driving that was depicted was cautious but not unsafe and would not have contravened an Australian law.

In its driver training resources, the NRMA (NSW motorists association) states that “An example of driving 'abnormally slowly' would be if you were travelling at a speed of 20 kilometres per hour on a road with a speed limit of 80 kilometres per hour.” We believe that if this assessment reflects community standards, the speed depicted in the Advertisement is not abnormally slow.

CONCLUSION

Given the above, we do not consider that the Advertisement contravenes the FCAI Code or AANA Code of Ethics, having regard to the specific sections of either Code or otherwise. Consequently, Toyota respectfully requests that the Complaint be dismissed.

THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the AANA Code of Ethics or the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concern that the advertisement depicts a vehicle driving in a manner which is unsafe.

The Panel viewed the advertisement and noted the advertiser's response.

Is this advertisement for a motor vehicle?

The Panel considered whether the advertisement was for a motor vehicle. Motor vehicle is defined in the FCAI Code as meaning: "passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle". The Panel determined that the Toyota second hand vehicles are a Motor Vehicle as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

Clause 2(a): 'Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or 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 Panel noted the complainants' concern that the advertisement depicts a vehicle driving at a slow speed which is unsafe.

The Panel noted that one vehicle was seen to be travelling at just over 40km/h on a wide country road, and is overtaken by another vehicle. The Panel considered that it is not possible to tell what the speed limit is on the road, however given that it appears to be in a rural area it would likely be at least 60km/h.

The Panel considered that the broken line markings on the road indicate that there is good visibility around the vehicle, and that it is a safe place to overtake. The Panel noted that only one other car can be seen on the road, and the vehicle doesn't seem to be slowing down other traffic.

Overall, the Panel considered that the driver appears to be in control of the vehicle, and is not driving so slowly that he is being unsafe or putting other drivers at risk.

Clause 2(a) conclusion

The Panel considered that the advertisement did not depict the vehicle engaging in unsafe driving or menacing driving which would be likely to breach relevant Commonwealth Law were it to occur on a road or road related area. The Panel considered that the advertisement did not breach Clause 2(a) of the FCAI Code.

Conclusion

Finding that the advertisement did not breach any other section of the AANA Code of Ethics or the FCAI Code, the Panel dismissed the complaint.