



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0024-20
2. Advertiser :	Toyota Motor Corporation Australia
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Jan-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man driving down a suburban street when he hears an ad for a Toyota sale. He passes a yard which has hard rubbish awaiting collection and parks his car next to the rubbish. He closes the car door and throws the keys through the open window before walking off quickly. He then walks into a Toyota dealership where a salesperson asks him, "time for an upgrade?". He responds, "yep. There's a Kluger here with my name on it." A voice over then states, "make any excuse" and provides details on the sale.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The driver in question breaks four possibly five laws:

1 He is driving on the wrong side of the road unless it's a one-way street. If it is a one-way street, then this fact must be verified by the maker of the ad.

2 He turns his head around to look at the junk on the path/strip to a point where he is so distracted that he is not concentrating nor is he in proper control of the vehicle (driver distraction is now one of the leading causes of death and injury on our roads)



3 He reverses along the path/strip. In NSW Drive along path/strip - Penalty \$337 plus 3 Demerit Points

4 He parks his vehicle on the nature strip - penalty NSW: Stop on Path/Strip: Penalty \$263

5 He leaves the car unlocked and throws the keys into the front seat. The penalty in NSW is \$114 if the driver walks further than 3 metres away from the vehicle

The advertisement clearly breaches some or all of the FCAI Code 2(a) and 2(c)

ADSTANDARDS – FCAI CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING

2. 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.

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

(c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

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 9 January 2020 in relation to Complaint Reference 0024-20 (the Complaint).

Your letter refers to a retail advertisement by Toyota Motor Corporation Australia Ltd (Toyota) featuring the Toyota Kluger (the Advertisement).

Toyota takes any complaints relating to its advertisements seriously. We would also like to emphasise that Toyota takes seriously its commitment to both the AANA Code of Ethics (AANA Code) and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and is aware of the potential impact of its advertising on the community as a whole. Accordingly, all advertising, including the Advertisement, is carefully reviewed to ensure both legal compliance and that community standards are respected.

The Advertisement



By way of general summary, the Advertisement features a man driving along a suburban street. The street is in the process of a hard waste collection program, where the local council arranges for collection of larger household items such as mattresses and fridges. There is a multitude of large household waste items on the nature strip awaiting collection.

The man hears an advertisement for Toyota Plate Clearance offers on the in-vehicle radio. As a result, he parks his vehicle amongst the hard waste items, throws the keys inside the vehicle and quickly walks into a Toyota dealer to take advantage of the Toyota Plate Clearance offer.

The intent of the Advertisement is to create a fantastical, humorous and over-exaggerated scenario where the man relegates his current vehicle to the hard waste collection so that he can take advantage of the Toyota Plate Clearance offer. The idea that a driver would actually contemplate this is so fanciful, given his current vehicle would still be worth thousands of dollars, that it places the advertisement in a pure fantasy world. We believe the average viewer would see the humour in the situation and the absurd exaggeration and not view the commercial as being based in reality.

This Advertisement is one in a series of advertisements in an overall campaign featuring fantastical, humorous and over-exaggerated scenarios where customers 'make any excuse' to take advantage of the Toyota Plate Clearance offer. Other advertisements in this campaign feature customers deciding to buy a new vehicle because there is a spider in their current vehicle or because their vehicle has been hit by a cricket ball. These advertisements are intended to present scenarios that are so over-exaggerated and humorous that no viewer would take them seriously. For example, the viewer is not meant to believe that a customer would purchase a new vehicle simply because there was a spider in their current vehicle or because their current vehicle has a minor dent from a cricket ball.

The Complaint

In your letter, you advise that the Complaint was received on 10 December 2019, and it stated:

"The driver in question breaks four possibly five laws:

1 He is driving on the wrong side of the road unless it's a one-way street. If it is a oneway street, then this fact must be verified by the maker of the ad.

2 He turns his head around to look at the junk on the path/strip to a point where he is so distracted that he is not concentrating nor is he in proper control of the vehicle (driver distraction is now one of the leading causes of death and injury on our roads)

3 He reverses along the path/strip. In NSW Drive along path/strip - Penalty \$337 plus 3 Demerit Points

4 He parks his vehicle on the nature strip - penalty NSW: Stop on Path/Strip: Penalty \$263

5 He leaves the car unlocked and throws the keys into the front seat. The penalty in NSW is \$114 if the driver walks further than 3 metres away from the vehicle

The advertisement clearly breaches some or all of the FCAI Code 2(a) and 2(c)".



You have advised that the Complaint falls under sections 2 and 3 of the FCAI Code, and section 2 of the AANA Code.

Toyota Response to Complaint under FCAI Code

The intent was for the Advertisement to be performed and produced in an over-exaggerated 'tongue-in-cheek' comic style. The use of fantasy, humour and over exaggeration in the Advertisement is in accordance with the Explanatory Notes of the FCAI Code and allows the Advertisement not to breach the Code.

Toyota strongly supports the safety of all participants in its Advertisements and produces all of its advertising material in line with this policy. It was not our intention to endorse or encourage people to drive while distracted or to illegally park their cars on a nature strip.

The Advertisement was shot on a road approved by the local Council for filming. Conditions were closely monitored on the day to ensure that cars and pedestrians were not permitted to access the portion of the road that the driver was using while filming was taking place.

The road where the filming takes place was a narrow two-way street with cars parked on the other side from the hard waste collection. The car was driving on the correct side of the road. However, the proportions of the street and the angle at which the scene was filmed makes it appear as though the car was driving on the wrong side of the road.

The driver does turn his head briefly to observe the hard waste collection. However, this head turn takes approximately one second and the drivers hands remain on the wheel at all time. Furthermore, the vehicle was travelling at very low speeds throughout the entire Advertisement.

While we respect the personal opinion of the complainant, Toyota strongly believes that the Advertisement is in full compliance with the relevant laws and regulations, including the FCAI Code as well as real world community standards.

Toyota Response to Complaint under AANA Code

While we understand that the Board will review the advertisement in its entirety against Section 2, the nature of the complaint appears to relate more specifically to Section 2.6 of the Code (Health and Safety), particularly the concern of Unsafe Behaviour whilst driving.

Toyota does not believe the Advertisement contains any images that:

- are contrary to public health and safety, or*
- promote unsafe practices, bullying or unrealistic body image.*



As noted above, Toyota is committed to the highest standards of safety and applied strict controls around the filming of the Advertisement. In doing so, we were conscious to not promote any unsafe practices within the Advertisement.

As outlined in this letter, the intention of the Advertisement is simply to use of humour and over exaggeration to demonstrate the 'make any excuse' tagline for the Toyota Plate Clearance offer.

Given the above, we do not consider that the Advertisement contravenes the Code, having regard to Section 2.6 of the Code or otherwise. Importantly, we further note that the Advertisement will be removed from air from 1 February 2020.

In light of the above, 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 Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

To come within the FCAI Code, the material being considered must be an advertisement. The FCAI Code defines an advertisement as follows: "matter which is published or broadcast in all of Australia, or in a substantial section of Australia, for payment or other valuable consideration and which draws the attention of the public, or a segment of it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

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 Kluger is a Motor Vehicles 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.

The Panel noted the complainant's concern that the driver in the advertisement breaks multiple laws:

- The man is driving on the wrong side of the road
- That he takes his eyes off the road and turns his head
- That he reverses along a path/nature strip
- He parks his vehicle on a nature strip
- He leaves his car unlocked and throws his keys on the front seat

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.



The Panel considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: '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 driver was driving on the wrong side of the road.

The Panel noted the advertiser's response that the road where the advertisement was filmed was a narrow two-way street with cars parked on the other side of the road and whilst the car was driving on the correct side of the road the angle at which the scene was filmed makes it appear otherwise.

The Panel noted that Rule 129 of the Australian Road Rules states: "(1) A driver on a road (except a multi-lane road) must drive as near as practicable to the far left side of the road."

The Panel also noted that Rule 133 of the Australian Road Rules states: "Exceptions to keeping to the left of the centre of a road
(1) This rule applies to a driver on a two-way road without a dividing line or median strip. (2) The driver may drive to the right of the centre of the road:
(a) to overtake another driver; or
(b) to enter or leave the road; or
(c) to enter a part of the road of one kind from a part of the road of another kind (for example, moving to or from a service road or emergency stopping lane).
(3) The driver may also drive to the right of the centre of the road if:
(a) because of the width or condition of the road, it is not practicable to drive to the left of the centre of the road; and
(b) the driver can do so safely."

The Panel considered that there is no wide shot of the car on the road, however noted that in some of the images the driver did look to be close to the curb on the wrong side of the road. The Panel considered that it was clear that this was a suburban street with no lines marked. The Panel considered that it is common for cars to be parked in suburban streets and that the driver may need to have moved over to pass these cars. The Panel considered that it may not have been practicable for the driver to drive to the left of the centre of the road.

The Panel considered that the overall impression of the advertisement was not that the driver was driving on the wrong side of the road in an unsafe manner which would be likely to breach Commonwealth law or the law of any State or Territory.



The Panel noted the complainant's concern that the driver turns his head around to a point where he is so distracted that he is not concentrating or in proper control of the vehicle.

The Panel noted the advertiser's response that the driver does turn his head briefly however it is only for one second and the driver's hands remain on the wheel, further the car was travelling at low speeds at all time.

The Panel noted that Rule 297 of the Australian Road Rules states:

"(1) A driver must not drive a vehicle unless the driver has proper control of the vehicle."

The Panel considered that the driver is seen to be driving in a slow and controlled manner with both hands on the wheel. The Panel considered that the driver turns his head for less than a second, and that there is no indication that he has become distracted or has lost control of the vehicle. The Panel considered that the driver was in control of the vehicle at all points during the advertisement.

The Panel noted the complainant's concern that the driver reverses along a path/strip.

The Panel noted that Rule 289 of the Australian Road Rules states:

"(1) A driver must not drive on a nature strip adjacent to a length of road in a built-up area, unless the driver is:

- (a) entering or leaving, by the shortest practicable route, an area on the nature strip indicated by information on or with a traffic control device as an area where vehicles may drive; or
- (b) driving on a part of the nature strip indicated by information on or with a traffic control device as a part where vehicles may drive; or
- (c) driving on the nature strip to enter or leave, by the shortest practicable route, a road-related area or adjacent land and there is not a part of the nature strip indicated by information on or with a traffic control device as a part where vehicles may drive; or
- (d) riding a bicycle or animal, and there is not another law of this jurisdiction prohibiting the rider from riding a bicycle or animal on the nature strip; or
- (e) driving a ride-on lawnmower that is cutting grass on the nature strip; or
- (f) driving a motorised wheelchair; or
- (g) permitted to drive on the nature strip under another law of this jurisdiction."

The Panel noted the advertiser's response that the advertisement was produced using an exaggerated tongue-in-cheek comic style in accordance with the Explanatory Notes of the FCAI Code.

The Panel noted that the Explanatory Notes of the Code provides that:

"advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices



should not be used in any way to contradict, circumvent or undermine the provisions of the Code.”

The Panel considered that the advertisement does not depict the driver driving on the nature strip, however considered that this is suggested by the advertisement as he is seen to park there. The Panel considered that the purpose of the advertisement is a suggestion that the driver is leaving his car with hard rubbish to be collected.

The Panel considered that the advertisement does not focus on the man driving on the footpath, and that the suggestion in the advertisement that he has done so is done in a humorous and exaggerated manner. The Panel considered that the advertisement’s use of the exaggerated depiction did not contradict, circumvent or undermine the provisions of the Code.

The Panel considered that the advertisement did not depict unsafe driving that would be likely to breach relevant Commonwealth Law were it to occur on a road or road related area.

The Panel then considered clause 2(c) of the FCAI Code. Clause 2(c) requires that:

“Advertisements for motor vehicles do not portray ...driving practices or other actions which would if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation. (examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle].”

The Panel noted the complainant’s concern that the driver parks his vehicle on a nature strip which is illegal.

The Panel noted Rule 197 of the Australian Road Rules states:

“(1) A driver must not stop on a bicycle path, footpath, shared path or dividing strip, or a nature strip adjacent to a length of road in a built-up area, unless:

(a) the driver stops at a place on a length of road, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under the Australian Road Rules; or

(b) the driver is permitted to stop under another law of this jurisdiction.”

The Panel noted that the car was not parked on a footpath, or across a driveway, and would not impede pedestrian access. Similar to the discussion in 2(a) above, the Panel considered that the depiction of the driver parking on the nature strip was a humorous and exaggerated depiction of the driver finding a ridiculous excuse to buy a new car, and was not a realistic depiction of driving practices. The Panel considered that the depiction of the man leaving his car to be collected by hard rubbish was not a depiction which would contradict, circumvent or undermine the provisions of the Code.

The Panel noted that the car was not parked on a footpath, or across a driveway, and would not impede pedestrian access. Similar to the discussion in 2(a) above, the Panel considered that the depiction of the driver parking on the nature strip was a humorous and exaggerated depiction of the driver finding a ridiculous excuse to buy a new car, and was not a realistic depiction of driving practices. The Panel considered that the depiction of the man leaving his car to be collected by hard rubbish was not a depiction which would contradict, circumvent or undermine the provisions of the Code.



The Panel noted the complainant's concern that the advertisement depicted the man leaving the car unlocked with the keys inside which is illegal.

The Panel noted that Rule 213(5) of the Australian Road Rules states:

"If the driver will be over 3 metres from the closest part of the vehicle and there is no one left in the vehicle, the driver must:

(a) if the windows of the vehicle can be secured—secure the windows immediately before leaving the vehicle; and

(b) if the doors of the vehicle can be locked—lock the doors immediately after leaving the vehicle."

The Panel noted that the advertisement gives the impression that the man is leaving his keys in the vehicle with the window down and is walking away from the vehicle, however the advertisement does not show him walking more than 3m away from the vehicle, nor does it show how he reaches the dealership.

A minority of the Panel considered that abandoning vehicles is a major problem in Australia and the suggestion that you should abandon your vehicle on the side of the road when you go to buy a new one was a depiction which would be in clear breach of road rules.

The majority of the Panel considered that this was a humorous and exaggerated depiction of the driver finding an absurd opportunity as an excuse to buy a new car, and was not a realistic depiction of driving practices. The majority of the Panel considered that the advertisement was not a depiction of the man dumping or abandoning his car to be someone else's problem, it was an exaggerated depiction of the man leaving his car to be collected by hard rubbish along with other items. Consistent with the Explanatory Notes of the Code, the majority of the Panel considered that this was not a depiction which would contradict, circumvent or undermine the provisions of the Code.

The Panel determined that the advertisement did not breach Clause 2(c) of the FCAI Code.

Finding that the advertisement did not breach Clause 2(a) or Clause 2(c) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.