



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0057-20
2. Advertiser :	Toyota Motor Corporation Australia
3. Product :	Automotive
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	12-Feb-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(b) Breaking the speed limit
FCAI Motor Vehicle Advertising Code\3 Motor Sport

DESCRIPTION OF ADVERTISEMENT

The television advertisement opens with a shot of a professional rally driver sitting in a stationary Toyota Gazoo Racing vehicle on a racing track. The driver is in full racing livery and helmet. He closes the door, lowers the visor and begins driving. The camera shot shifts to a first-person perspective of him driving around the racetrack, interspersed with Toyota vehicles driving on and off roads.

THE COMPLAINT

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

Encouraging race track speed for on road vehicles is dangerous and can lead to drivers on the road to drive at speeds for which the ordinary roads do not have the same safety capacity of the race track. This can lead to crashes, resulting in death and injury, not only for drivers and their passengers but also other road users. This advertisement is clearly in breach of many factors of the FCAI Advertising Code, it should not have to be brought to the attention of AdStandards, they should have the advertisement withdrawn, and serious penalties applied to ensure a repeat does not



occur. Such penalties should be in the order of double equivalent prime time TV advertisements for road safety advertising.

The scenes showed the vehicle driving far too fast on highway, hilly terrain, dirt roads. This type of driving doesn't make legends it makes dead people.

THE ADVERTISER'S RESPONSE

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

Toyota Response to Complaint under FCAI Code

Toyota's intention is to ensure that these Advertisements are created in accordance with the FCAI Code and the AANA Code. It is not Toyota's intention in this Advertisement or in any other advertisements to portray driving that could be characterised as unsafe or in contravention of the FCAI Code or AANA Code, or any road safety rules and regulations.

Toyota's intention is not to promote the speed capacity of a Toyota Gazoo Racing vehicle to encourage purchase of cars and for ordinary and off-road use road use. Toyota's intention is to emphasise that Toyota develops and tests its new vehicle technology on the extreme conditions of the racetrack. The words: "TIME SPENT OUT HERE MEANS YOU FEEL IT HERE" and "EVERY ROADS CONQUERED HERE MEANS YOU FEEL IT HERE", together with scene-by-scene comparisons of Toyota Gazoo Racing vehicles with regular Toyota vehicles, demonstrate that the technology developed and tested in Toyota's racing vehicles is used to make Toyota's regular vehicles better for consumers.

The Advertisement shows regular Toyota vehicles being driven safely and in compliance with all applicable road rules and regulations. Toyota confirms that the vehicles were being driven within the legal speed limit and were closely monitored at all times during filming. Toyota confirms that it obtained council approval and permits as necessary for filming on each shoot. Also, the drivers of the regular vehicles are seen driving in a calm and safe manner, noticeable by the fact that they are always in full control of the vehicle.

Under the FCAI Code, the use of motor sport in Advertisements is permissible in instances where the activity is seen as organised and normal under the general safety requirements associated with the activity. In the Advertisement, both the drivers and the Toyota Gazoo Racing vehicles appear in clearly identifiable racing livery. The drivers have also taken relevant safety precautions (such as helmets and seat belts). Likewise, the vehicles are shown driving on clearly identifiable motor vehicle racetracks.

Under the FCAI Code, Advertisers can portray the performance and abilities of their vehicles in "off road operation". The depiction of the Hilux and Land Cruiser driving off



road on uneven grass or dirt-like terrain was intended to show off road driving that is fully within the capabilities of both vehicles. The off road driving segments were filmed under controlled conditions, within appropriate speed limits and in compliance with relevant road rules and regulations. Furthermore, the off road driving did not cause deliberate or significant environmental damage. The two vehicles featured are passenger vehicles that do not exceed 9 seating positions, and the off road driving depicted would not endanger any occupants if attempted by consumers.

Toyota takes the opinion of the complainant very seriously. However, it is our strong belief that the Advertisement does not contravene the FCAI Code or the applicable laws and regulations that govern community roads and driving standards. Toyota maintains that the advertisement does not portray unsafe or dangerous driving under section 2 of the FCAI Code, and likewise, depicts motor sport activity in accordance with section 3 of the FCAI Code and off-road driving in a controlled manner under the appropriate safety requirements in accordance with section 4 of the FCAI Code.

Toyota Response to Complaint under AANA Code

It is understood that the Board will review the advertisement and ensure that it complies with the entirety of Section 2 of the AANA Code. However, the complaint seems to relate more closely to Section 2.6 of the AANA Code, concerning Health and Safety. This would suggest that the complainant believes our Advertisement to depict material that is in contravention of prevalent community standards on health and safety. Toyota maintains that this Advertisement does not breach any section of the AANA Code of Ethics, especially concerning Section 2 (specifically Section 2.6) of the AANA Code.

Toyota does not believe that any scene or image from the Advertisement violates Section 2.6 of the AANA Code. In particular, the Advertisement does not promote any unsafe behaviour whilst driving, nor is it contrary to the governing road rules and regulations.

As stated above, it is clear that the Toyota Gazoo Racing driver is engaging in motor sport activities. Accordingly, he takes the necessary safety precautions such as wearing a helmet and seatbelt, and at all times is in full control of the motor vehicle. The drivers of the regular Toyota vehicles are all depicted driving safely and in compliance with all applicable road rules and regulations. Toyota confirms that the vehicles were being driven within the legal speed limit and were closely monitored at all times during filming. As such, we believe Toyota has not infringed any aspect of Section 2 of AANA Code, especially Section 2.6.

It is maintained that the drivers of all vehicles featured in the Advertisement, including the drivers of both Toyota Gazoo Racing vehicles and regular Toyota vehicles, are always in full control of their vehicles. This is exhibited in their driving manners and style, both on and off road. Toyota is dedicated to upholding the highest degree of safety and control, not only whilst filming these advertisements, but also to the consumer that would purchase these vehicles. In light of this, Toyota ensures that in



filming and collating the advertisement, we were highly conscious not to promote any unsafe behaviour or practices.

In summation, Toyota submits that:

- I. This Advertisement does not portray, to any degree, unsafe driving and other dangerous driving practices (section 2 of the FCAI Code)*
- II. This Advertisement depicts scenes of motor sport activity as one that is safe, maintained, and in compliance with the general safety requirements associated with the activity (section 3 of the FCAI Code)*
- III. This Advertisement depicts off road driving in vehicles that are suitable for such activity and that do not cause deliberate or significant environmental damage (section 4 of the FCAI Code)*
- IV. This Advertisement does not breach any section of the AANA Code of Ethics (specifically, Section 2.6 of the AANA Code)*
- V. Overall, this advertisement does not portray any unsafe, dangerous, or unethical practices or driving, and was created as a means of accentuating the technology featured in Toyota vehicles.*

Given all of this, 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 vehicles depicted in the advertisement were 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 advertisement alludes to speed and emphasis of racing type performance, and encourages race track speed for on road vehicles.

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 examples given in the FCAI Code include: *'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'*

The Panel noted the Guidance to Advertisers within the FCAI Code which states: *"Other factual references to the capabilities of the motor vehicle (for example, cylinder capacity, kilowatt power of the engine, or maximum torque generated) are acceptable, provided that they are presented in a manner that is consistent with the provisions of the Code."*

The Panel noted that the words: "TIME SPENT OUT HERE MEANS YOU FEEL IT HERE" and "EVERY ROAD CONQUERED HERE MEANS YOU FEEL IT HERE" appear on screen during the advertisement, but considered that this is in reference to technological advancements in racing vehicles and those advancements being integrated into road vehicles. The Panel considered that the advertisement was not suggesting that drivers should attempt to emulate racing driving behaviours.

The Panel considered that while the advertisement does depict some of the vehicles in an off-road environment, this is a demonstration of the capabilities of these off-road vehicles and the Panel considered that this is not a depiction of unsafe driving.

The Panel considered that most members of the community would consider that these scenes are not a depiction which encourages or condones unsafe driving and did not breach section 2(a) of the FCAI Code.

The Panel considered clause 2(b) of the FCAI Code. Clause 2(b) requires that *"Advertisements for motor vehicles do not portray: people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast."*



The Panel noted the complainants' concern that the advertisement encourages race track speed for on road vehicles and depicts vehicles speeding.

The Panel again noted the words that appear on screen during the advertisement, but considered that the language is in reference to technological advancements in racing vehicles being beneficial for consumer vehicles, and was not a suggestion that drivers should attempt to emulate such driving behaviours or driving at high speed.

The Panel considered that the engine sound is particularly prominent during the scene showing a blue vehicle accelerating, this is not uncommon for V6 engine models like the one in the advertisement and is not of itself a depiction of excessive speed.

The Panel noted that several scenes depicted the vehicle from a low angle, particularly scenes filmed on a closed course which highlighted the road handling capabilities of the motor vehicle. The Panel considered that these scenes and the camera technique does have the effect of making it seem as if the vehicle is moving quickly. However the Panel considered that there is no context to indicate that the vehicle was exceeding the speed limit in these scenes.

The Panel noted that the feeling of the advertisement is one of speed, due to the upbeat soundtrack and the imagery/sound of the racing vehicles, however considered that there is no indication that any vehicle was exceeding the speed limit and in breach of the law.

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

The Panel then considered clause 3 of the FCAI Code which requires that:

“Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

(a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.

(b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.”

The Panel considered that advertisers are allowed to depict scenes of motor sport in advertisements, and considered that in this advertisement the scenes depicting motor sport were clearly identifiable as such and all drivers and vehicles were clearly identified in racing livery.

The Panel considered that the advertisement did not breach clause 3 of the FCAI Code.

Finding that the advertisement did not breach Clause 2(a), 2(b) or Clause 3 of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaints.

