



Case Report

1	Case Number	0084/12
2	Advertiser	Toyota Motor Corp Aust Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	14/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles 2c Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

Open on a guy on top of a mountain, loading old fence posts into his bright shiny HiLux. He forgets to put the hand brake on and it starts to roll down a hill. He runs after it, but it's no good. From his vantage point he witnesses something that's difficult to experience.

THE COMPLAINT

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

The main reason is safety. Someone may actually buy one of these vehicles and test it in the manner shown on TV. There is NO such thing as an "UNBREAKABLE" car or road vehicle. If you want an "UNBREAKABLE" vehicle go buy a TANK!!! The vehicle in the ad would have needed a fair amount of speed to clear the cliff WITHOUT "bottoming out" on the edge. Sorry to tell you this but with such a heavy vehicle it cannot be done. In reality the vehicle in the advertisement would be a TOTAL WRITE OFF!! When are car makers going to learn that a lot of us are more interested in running costs and fuel consumption figures along with safety devices such as ABS and airbags rather than how "UNBREAKABLE" the car or 4WD and SUV is.

THE ADVERTISER'S RESPONSE

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

Firstly, it should be known that Toyota Motor Corporation Australia Ltd (Toyota) takes its responsibility as an automotive company and an advertiser very seriously. We make extensive efforts to understand not only our current and target audiences, but also community and safety issues. In every advertisement that we produce, we adhere closely to the FCAI Code of Practice for Motor Vehicle Advertising as well as the AANA Advertiser Code of Ethics. Over and above this, we have established our own stringent internal review and approval process across many departments, of which includes legal advice and corporate affairs. In addition, our advertising agency, Saatchi & Saatchi seek external legal advice before the production of any TVC. We have a very strict code of conduct that is stringent if not surpassing the industry standard. Whilst we respect the right of such individuals to hold their view, it is our firm belief that the Toyota Hi Lux 'Unbreakable' TVC advertisement does not breach section 2 of the AANA Advertiser Code of Ethics. We have carefully considered the complaint received by us and disagree with the concern put forward by the complainant. The reasoning for this is outlined below.

Whilst your letter specifically relates to Section 2 of the AANA Code of Ethics, the detailed complaint appears to hold concerns more so about Section 1.2 'Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive: Therefore, we will respond to both. Section 1.2; Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.

It is important to note that there is a certain element of puffery within this advertisement, which alludes to the toughness and sturdiness of the Toyota Hilux, which encourages a desire from consumers to want to own the arguably famous Hilux. Toyota 4WOs, in particular the Hilux, have a hard-earned reputation for 'toughness' in Australia. 'Unbreakable' has been Hilux's vehicle positioning for many years now, and in fact many famous advertising campaigns have been built off this positioning. As a result of its reputation, the Hilux range is Australia's highest selling ute and one of Australia's most loved vehicles. Through the use of over-exaggeration, it allows us to emphasise Toyota Hilux's toughness. Previous Toyota advertising campaigns, particularly for our 4WO's HiLux and LandCruiser have also championed sentiments of 'toughness' and 'unbreakable'.

In relation to Section 2 of the AANA Code of Ethics:

Section 2 Consumer Complaints:

2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief. The 'Unbreakable' TVC in no way depicts the above.

2.2 Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people The 'Unbreakable' TVC in no way employs sexual appeal.

2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised. The 'Unbreakable' TVC in no way portrays violence.

2.4 Advertising or Marketing Communications shall treat sex- sexuality and nudity with sensitivity to the relevant audience.

The 'Unbreakable' TVC in no way alludes to sex, sexuality or nudity.

2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The 'Unbreakable' TVC uses no language at all (no voice over within commercial).

2.6 Advertising or Marketing Communications shall not depict material contrary to prevailing community standards on health and safety.

The 'Unbreakable' TVC in no way depicts material that is contrary to any prevailing community standards.

It is highly unfortunate that the writer of the complaint believes that the message conveyed throughout this advertisement would encourage someone to test their vehicle in this manner, this was never our intention. We

do believe this takeout will be unique and in the minority, and certainly not in the majority. However we do apologise for any distress or concern we may have caused.

THE DETERMINATION

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (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 Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Toyota Hilux in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that 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 Board determined that the Toyota Hilux was a Motor vehicle as defined in the FCAI Code.

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

The Board noted the complainant's concerns that the advertisement depicts an unsafe driving practice.

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

The Board 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 Board noted that the advertisement shows a man forgetting to apply the handbrake to his Toyota Hilux and then watching as it rolls off a cliff to the beach below where he later finds it in perfect condition.

The Board noted that the examples given in the FCAI Code for unsafe driving include "...deliberately and unnecessarily setting motor vehicles on a collision course..." and considered that in this instance the driver does not deliberately forget to apply the handbrake and the consequent rolling over the cliff is not an action which the Board believes amounts to "unnecessarily setting motor vehicles on a collision course".

On the above basis, the Board determined that the advertisement does not depict unsafe driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board noted the complainant's concerns that the advertisement is misleading because a car would be damaged if it rolled off a cliff and noted that the FCAI Code allows for advertisers to "...make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles" provided there is no breach of the FCAI Code. The Board considered that the advertisement was clearly exaggerated and did so in a manner that does not breach the FCAI Code.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.

