



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0223/11</b>
<b>2</b>	<b>Advertiser</b>	<b>Ford Motor Co of Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Pay TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/07/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles - Driving practice that would breach the law  
Motor vehicles - Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

Features of the new Ford Territory Diesel are described by a female Ford Engineer and we see the Territory being driven on normal roads as well as on dirt tracks.

### THE COMPLAINT

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

*The ad features a Ford Territory being driven on the wrong side of the road. In fact it's wholly on the wrong side of the road cutting the corner.  
Should there have been another vehicle approaching on the correct side of the road it can be reasonably assumed there would have been a head-on collision.  
Of course as you have stated on numerous occasions your recently released Practice Notes permit this behaviour if the ad is filmed overseas.  
But the Practice Notes require no written statement or voice-over advising viewers that the ad is made overseas.  
That's up to all of to guess.  
So in this case I must admit because there are a lot of eucalypt trees around and the vehicle is being driven on the left hand side in other shots there's a possibility it was filmed in Australia.  
If this is so the driver behaviour is clearly in breach of the General provisions 2 (a) and 2 (c).  
The Australian Road Rules – February 2009 version – state:*

*Keeping left overtaking and other driving rules Part 11*

*Division 2 Keeping to the left*

*129 Keeping to the far left side of a road*

*(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.*

## *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.*

*[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]*

*Additionally the vehicle is seen on several occasions with the fog lights on (I'm presuming they are fog lights and not running lights because running lights usually cannot be switched off.)*

*It's also shown on other occasions with the fog lights off.*

*In all scenes they are very clear days and there is no fog.*

*I draw your attention to the decision of the Independent Reviewer in the Hyundai complaint (copy attached). This review deals extensively with the use of fog lights when there is no fog. It's an offence in all jurisdictions.*

*I look forward to your swift review and your reply.*

*In the meantime would you please acknowledge receipt of this email so I know it's being processed.*

## **THE ADVERTISER'S RESPONSE**

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

*At the outset, I would like to emphasise that Ford Australia takes seriously its commitment to the AANA Code of Ethics and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and we are very aware of the potential impact that our advertising may have on members of the public.*

*All of our advertising, including the Territory TVC, is carefully reviewed in that context. In this case, we do not believe that the scenario depicted in the Territory TVC is in breach of the AANA Code of Ethics or the FCAI Code.*

*The complaint referred to in your letter dated 21 June 2011 raises two issues under section 2 of the AANA Code of Ethics. Given that the Territory TVC is an advertisement for a motor vehicle, the FCAI Code applies. We note that the first complaint alleges that the Territory TVC depicts a driving practice which would breach the Australian Road Rules and which would therefore breach provision 2(a) and 2(c) of the FCAI Code. As you well know, a breach of provision 2(a) will occur if the advertisement portrays "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 directly dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area...". A breach of provision 2(c) will occur if the advertisement in question portrays "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". Specifically, this complaint relates to a driving sequence in which it is alleged that the Territory vehicle featured is driving on the wrong side of the road. The second complaint alleges that the Territory is shown on several occasions during the TVC with fog lights switched on and states that this is an offence in all jurisdictions. We strongly disagree with both of the complainant's allegations and we respond to them in turn below.*

*Allegation that driving practice would breach the law*

*We strongly disagree with the allegation that the Territory TVC depicts a driving practice which would breach the law and therefore breaches provisions 2(a) and 2(c) of the FCAI Code. The Territory TVC is a story-telling piece which revolves around the journey of a Ford engineer as she explores how far she can travel in the new Territory Titanium diesel on a single tank of fuel. The Territory TVC does not portray a vehicle engaging in any driving practices or other actions which are unsafe or which would breach a law relating to road safety or traffic regulation and we therefore contend that the Territory TVC complies with all relevant provisions of the FCAI Code and is consistent with the objectives and guidelines of the FCAI Code as expressed in the*

*Explanatory Notes.*

*The complaint states that the Territory TVC depicts a Ford Territory being driven on the wrong side of the road, cutting a corner. The complaint does not reference the specific section of the TVC to which the complaint relates, however, it references eucalypt trees surrounding the vehicle and mentions that the vehicle was driving around a corner. We therefore assume that the complaint refers to the driving footage at approximately 11-12 seconds into the TVC. The Territory is shown driving around a corner on an unsealed, dirt road. The road is not marked with lanes and the Territory is the only vehicle visible in the shot. From the footage shown, which is less than 1 second in duration, and particularly the absence of marked lines or other vehicles, it could readily be assumed that the unmarked road way is a one way carriage way. The Territory is at all times driving in a controlled manner and at an appropriate speed. The stretch of road in question was 'locked down' to 40km and at no time did the vehicle exceed this speed in the designated 'lock down' zone. For the actual filming of the relevant section of the Territory TVC, all required local council permits and approvals were obtained and accredited traffic controllers, Filcon Safety Group, were engaged to prepare and oversee a traffic management plan.*

*Fog lamp allegation*

*The complaint alleges that the Territory is seen on several occasions with fog lights on in circumstances where fog is not evident and states that use of fog lights when there is no fog is an offence. The Territory model shown in the TVC is a Territory Titanium. This model is fitted with front LED position lamps as standard equipment. We attach for your reference two excerpts from the published Territory brochure which references the front LED position lamps fitted to the Titanium model. As you will see from the specification table attached, the Territory Titanium is not fitted with fog lamps. The operation of the Territory Titanium's front LED position lamps can be controlled by the driver and these lamps were at times featured in the Territory TVC. As stated above, the Territory Titanium is not fitted with fog lamps and fog lamps were not demonstrated at any stage of the Territory TVC. We strongly believe that the Territory TVC does not breach the FCAI Code or the AANA Code of Ethics. I trust that this correspondence adequately addresses the concerns raised in the complaint referenced.*

## **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 Ford Territory 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 Ford Territory 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 features a car being driven on the wrong side of the road, and with its fog lights on in clear, daylight conditions.

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 Ford Territory being driven in different road conditions. The Board noted that at the start of the advertisement the Ford Territory is shown turning a corner and that during this manoeuvre one of the car's front wheels, when shown in slow motion, is on the wrong side of the road. The Board considered that this scene, when viewed in the context of the advertisement being shown at normal speed was very brief and that if the advertisement were to be viewed in its normal context most viewers would not notice the car crossing the line. The Board noted that in a later scene the car is shown driving on the right hand side of a dirt road. The Board noted that there are no road markings because of the nature of the road, and that it is not clear if this dirt road is a single track road. The Board also noted that the Ford Territory is shown driving on the right hand side of tarmac road and again noted that this road could be a one way street. The Board considered that the advertisement did not portray unsafe driving as it was unclear in all shots whether the vehicle was actually driving in a manner that would be illegal.

On the above basis, the Board determined that the advertisement does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement breached clause 2(c) of the Code. Clause 2(c) of the FCAI Code provides that advertisers should 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 dealing directly with road safety or traffic regulation''.

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board noted the complainant's concern that the Ford Territory is shown using fog lights during clear day time conditions. The Board noted the advertiser's response that the model of Ford shown in the advertisement is not fitted with fog lights. The Board noted that the specifications for this Ford vehicle confirm the advertiser's response that no fog lights are fitted to this vehicle.

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

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

