



Case Report

1	Case Number	0287/12
2	Advertiser	Toyota Motor Corp Aust Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	25/07/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles	2a Unsafe driving
Motor vehicles	2b Breaking the speed limit
Motor vehicles	2c Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

The television commercial features world famous driver Keiichi Tsuchiya who maps out the ultimate track for this car by driving it on a temporary proving ground. He leaves behind an imprint of what he believes is the ultimate track for the 86 based on his experience in driving and creating race tracks.

THE COMPLAINT

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

This ad breaches numerous specific conditions of the code. First it shows the vehicle doing a very obviously deliberate wheel spin as it takes off. This type of loss of control is dangerous on our roads entirely unnecessary and critically for the code in breach of the law. Many states of Australia have laws specifically against such hoon behaviour which carry significant penalties. The ad also depicts excessive speed especially for the unsealed road conditions depicted. Again this is dangerous behaviour and again in breach of the law - basic speed limits as well as the requirement on the driver to drive to the conditions. The behaviours shown would constitute serious breaches of law including speeding hooning failure to maintain reasonable control of the vehicle and dangerous driving.

I note the usual lame disclaimer of it not being on a public road and I'm sure that those less caring about our safety would also argue the other loop-hole of fantasy. However the code is quite clear that the ad is in breach if it depicts behaviours which would breach the law if they were to occur on a public road. The idea that it may be seen as fantasy is equally irrelevant as a defence.

I ask that the Board acts immediately to have this ad removed from air.

It is beyond belief that you can allow such advertising to appear on Australian TV screens. Your organisation has no credibility at all. This is highly offensive and who knows how many young men will lose their lives as a result of being influenced by it. Who knows how many older males will be encouraged to complain about speed compliance and indeed put their lives and the lives of other innocent road users at risk due to this advert.

Under the code of practice it must be removed forthwith. You need to consider how you can prevent this rubbish which threatens the safety of all Australians being able to be aired in the first place. Toyota should be shamed for showing such dangerous material. Your system has enabled it to happen.

Absolute disregard for public safety with an emphasis on speed unsafe driving which if occurring on a public road would be highly illegal.

I note the relevant advertising Code does not concern itself with where the illegal or dangerous driving took place.

If the behaviour "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 " then it is unable to be aired. This is sickening stuff encouraging people to threaten life. Please act immediately.

This clearly promotes hoon behaviour encouraging owners of such a car to take a normal road car and partake in high speed 'drifting' activity. It promotes reckless and dangerous driving.

Ad encourages drivers to speed and drive recklessly. I understand that it's filmed with a professional and under controlled conditions though this only increases the fantasy of young inexperienced drivers who see this TVC and think they can race around on our roads like this. With the fatalities caused on the roads I don't see the point or relevance of this ad in promoting anything positive for drivers of this or any other car and would like to see it removed from airing.

The general provisions of the FCAI code of practice state 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]

The Toyota 86 advertisement does display unsafe driving including reckless and menacing driving if such driving were to occur on a road. With 33 900 people killed and seriously injured on Australian roads on average each year this is not behaviour we should be glorifying or encouraging and is not in accordance with the code. As such I request the Board's review of this ad.

THE ADVERTISER'S RESPONSE

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

We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics ("AANA Code") and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries ("FCAI Code"). We note that the nature of the complaint relates generally to the AANA Code and FCAI Code and specifically to the concern that the ad in question contains imagery that is alleged to condone or encourage reckless and dangerous driving activities.

We have carefully considered the AANA Code and FCAI Code, and have assessed the provisions against the content of this advertisement. We submit that the advertisement does not breach the AANA Code or the FCAI Code on any of the grounds set out in the same.

Looking at the FCAI Code, clause 3 provides 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; and (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery."

We note that the advertisement clearly depicts a testing activity conducted by Toyota for the 86 sports vehicle. The purpose of the testing activity was to evaluate the performance of the vehicle using highly skilled expert drivers in order to establish the parameters needed for an ideal racetrack for the vehicle, based on the vehicle's capacities and capabilities. Thus, it was a pure

"testing" scenario.

The driver depicted in the advertisement is retired professional driver Keiichi Tsuchiya. Keiichi Tsuchiya was engaged to participate in the testing activity due to his specific experience:

- in designing tracks including the world famous Fuji Speedway;*
- in vehicle evaluation and accessory development for companies including Toyota, Honda and Nissan; and*
- having raced in various professional motor sport categories including NASCAR and Le Mans.*

Toyota also secured the assistance of a qualified engineer with experience in track design, Paul Diamandis and another professional driver, Rick Bates, to assist with the design of a racetrack for the vehicle. Following the completion of test evaluations by these individuals, Toyota intends to replicate the track that results from this test to allow consumers to also experience the full capabilities of the vehicle, as a passenger in a test vehicle driven by a highly skilled professional driver.

Regarding the shooting location of the advertisement, an agreement was made with the private land owner in Broken Hill, NSW to not only film the advertisement but also to actually undertake an authorised testing activity in the open environment. All due care and consideration was taken both

prior to and during the testing event to minimise any environmental impact and no permanent damage was caused to the environment in which the advertisement was filmed .

Having regard to the complainant's specific concern that the advertisement promotes reckless and dangerous driving, including encouraging owners to take a car on a normal road and partake in a "drifting" activity, we note that in the advertisement itself, it is inescapably clear that the driving

undertaken is taking place as a part of an official and authorised vehicle testing activity.

Indeed, the entire nature of the advertisement makes it more than clear that the entire event was a testing activity, with various safety personnel clearly depicted operating at the site, with signage and

cordoned testing areas clearly visible throughout. Further, we note that the advertisement prominently displays a disclaimer that states "Testing took place under controlled conditions on a temporary private proving ground using a professional driver." The driver is depicted clearly as a

professional, and is undertaking all driving in a safe and controlled manner, utilising a high degree of skill. The driver is also wearing all necessary safety equipment for the purposes of undertaking the activity shown. For clarity, at no stage whatsoever during the entire advertisement is the vehicle depicted drifting. Further, at no point during the advertisement is there any unreasonable focus on speed or the speedometer of the vehicle.

Having regard to clause 2 of the FCAI Code, whilst we note clause 2 is not limited generally in its application due to clause 3, the fact that a legitimate testing activity is taking place as authorised by clause 3 means that the context of a testing activity must be considered when assessing the

advertisement against the provisions of clause 2.

Accordingly, in our view, all driving in the advertisement, in the context of the testing activity, is not in breach of any provision of clause 2 of the FCAI Code. In particular, we note that the driver is clearly depicted in the advertisement of being in control of the vehicle at all times.

He is utilising a

high degree of skill to test the vehicle's capabilities, and does not undertake any manoeuvre or driving practice that would not be appropriate for a testing exercise, particularly one designed to evaluate the vehicle's capabilities for use in legitimate motor sports. His driving, whilst dynamic and skilful, is not menacing, "hooning" or aggressive. Rather, it is highly professional and deliberately designed to test the vehicle's capabilities as a sports vehicle.

Further, the speed at which he is travelling is appropriate in the context of the testing activity.

In a brief shot of the dashboard during the advertisement, the speedometer shows that the vehicle is actually travelling

no more than 54kms per hour in the shot, well within what would be considered to be a safe driving speed.

Looking at the AANA Code, Provision 2.6 provides that advertisements "shall not depict material contrary to Prevailing Community Standards on health and safety."

We note that the advertisement depicts a testing environment, and that all relevant attendees of the testing ground are depicted in the advertisement as wearing the appropriate safety equipment.

Further, all non-participating attendees are clearly shown to be within appropriate safety areas for the duration of the activity. Safety officers and emergency crew were employed throughout the shoot to ensure the safety of all those involved in the production of the advertisement and the

testing activity itself. Again, electronic signs, indicating that the site was a test area, also

surrounded the site itself. One of these signs is visible in the advertisement itself. Finally, as stated above, the driver himself is shown to be wearing all necessary safety equipment,

including a helmet and racing suit with clear livery. Driving was undertaken under the direction of a stunt

coordinator, to ensure the safety of the driver.

Accordingly, we submit that the advertisement does not breach Provision 2.6, or any other provision of the AANA Code.

In conclusion, we submit that the advertisement is completely compliant with the AANA Code and the FCAI Code. Great care was taken by Toyota to ensure that these Codes were respected and considered both in pre-production and during production of this advertisement, and Toyota went to great lengths to ensure that such safety considerations were present in the advertisement itself.

The advertisement does not in any way condone any form of "hooning", that is, reckless and dangerous driving practices or behaviour. Accordingly, we submit that this complaint should be dismissed.

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) and the Advertiser Code of Ethics (the 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 Holden Colorado 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 86 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 complainants' concerns that the advertisement depicts an unsafe driving practices, excessive speed and driving practices that would breach the law.

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

The Board considered clause 3 of the FCAI Code. Clause 3 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 Board noted that the advertisement features driver Keiichi Tsuchiya who maps out the ultimate track for this car by driving it on a temporary proving ground. He leaves behind an imprint of what he believes is the ultimate track for the 86 based on his experience in driving and creating race tracks.

The Board noted that at the start of the advertisement there are scenes of preparation and discussion within an office style environment where the driver and crew are seen drawing and discussing the track.

Before the vehicle drives anywhere the advertisement shows aerial shots of the Australian outback and includes the text 'Outback Australia – Toyota testing area'.

The Board noted that the driver arrives via helicopter and the car itself is unloaded from the back of a truck. There are crew members in high visibility gear setting up safety cones and preparing the area. The Board noted that at the point of where the car drives off into the desert there is a large electronic sign that indicates that that it is a testing area.

The Board noted that the advertisement continues to show images inside and outside of the vehicle with the driver working quickly changing gears and accelerating, steering and utilizing the clutch pedal. The Board noted the vehicle is depicted as being driven at speed and is using quick changes of direction. The Board noted that the speedo is seen only to reach the speed of 54kmh and that although the driver is encouraging the vehicle to 'drift' it is clear that this is to create what is to be the outline of a race track.

In the Board's view the continued reference to testing and the use of large, open, outback spaces is clearly identifiable as racing livery and does not depict unsafe driving. The Board noted the disclaimer that appears on screen indicates that "testing took place under controlled conditions on a temporary private proving ground using a professional driver".

The Board considered that most members of the community would be able to ascertain that the scenario was not a depiction of a driving activity that would be considered suitable for a

common street environment and that it was clearly part of an organized testing or proving activity and did not breach clause 3 of the FCAI code.

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