



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0389-20</b>
<b>2. Advertiser :</b>	<b>Toyota Motor Corporation Australia</b>
<b>3. Product :</b>	<b>Automotive</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>20-Jan-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This television advertisement opens with an aerial scene in which the GR Yaris (Vehicle) is being driven. The vehicle specifications are shown alongside dust, which is kicked up from the Vehicle as it drives in circles. The focus then changes to the driver of the Vehicle who is shown in full racing livery, including helmet. The Vehicle is then shown driving down a dirt road in the country and turns onto a bitumen road. The words 'ALL-NEW GR YARIS RALLYE; FROM RALLY TO ROAD; COMING SOON' are displayed, as the voiceover announces 'From rally to road. The all new GR Yaris Rallye'.

### THE COMPLAINT

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

*Advertising a Toyota vehicle through inappropriate use of a motor vehicle "Circle work" etc.*

*Other manufacturers have had ads banned for same depictions.*

### THE ADVERTISER'S RESPONSE

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



*Your letter refers to an advertisement by Toyota Motor Corporation Australia Ltd (Toyota) featuring the Gazoo Racing (GR) Yaris during a testing activity.*

*Toyota takes its commitment to both the AANA Code of Ethics (AANA Code) and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) seriously 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*

*The Advertisement opens with an aerial shot of an off-road testing ground on which the GR Yaris (Vehicle) is being tested. The vehicle specifications are shown alongside dust, which is kicked up from the Vehicle as it drives around the track. The Vehicle is shown driving in tight circles designed to test the Vehicle's handling and control. The focus then changes to the driver of the Vehicle, renowned professional rally driver, Harry Bates. Mr Bates is the 2019 Australian Rally Champion. Mr Bates is shown in full racing livery, including helmet. The shot then pans out to the front of the vehicle as Mr Bates drives the Vehicle across the testing ground.*

*The Vehicle is then shown driving down a dirt road in the country, indicating that Mr Bates has left the testing ground. The Toyota Gazoo Racing logo is displayed prominently above the vehicle as Mr Bates continues onto a bitumen road. The words 'ALL-NEW GR YARIS RALLYE; FROM RALLY TO ROAD; COMING SOON' are displayed, as the voiceover announces 'From rally to road. The all new GR Yaris Rallye'.*

#### *The Complaint*

*In your letter, you state that the Complaint was received on 21 December 2020, and that it stated:*

*"Advertising a Toyota vehicle through inappropriate use of a motor vehicle "Circle work" etc.*

*REASON FOR CONCERN: Other manufacturers have had ads banned for same depictions."*

*You have advised us that the Complaint raises issues under Sections 2, 3 and 4 of the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code), and Section 2 of the AANA Advertise Code of Ethics (AANA Code).*

#### *Toyota Response to the 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 encourage customers to drive vehicles in an unsafe manner. Toyota's intention is to emphasise that Toyota developed and tested its new vehicle technology in extreme conditions, including the off-road testing ground shown in the Advertisement. The words: "FROM RALLY TO ROAD", together with sequence of the Vehicle leaving the off-road testing ground and entering a public road, intend to demonstrate that the technology developed and tested in the Vehicle during testing conditions is used to make the vehicle better for consumers. The majority of the Advertisement was filmed internationally by Toyota Australia's affiliates. However, Toyota Australia modified the Advertisement by including shots of renowned rally driver Harry Bates, and the end sequence featuring Mr Bates driving on public roads. By adding these shots, Toyota Australia has sought to ensure that the Advertisement complies with the FCAI Code and the AANA Code.*

*The last approx. 10 seconds of the Advertisement features the Vehicle being driven in ordinary 'on-road' operation. In these shots, the Vehicle is being driven safely and in compliance with all applicable road rules and regulations. Toyota confirms that the Vehicle was being driven within the legal speed limit and that the speed was closely monitored at all times during filming. Toyota confirms that it obtained council approval and permits as necessary for filming each sequence. Toyota Australia has not made the Advertisement available on the internet. However, other global Toyota subsidiaries may have made the off-road testing content available on platforms such as YouTube.*

*The first approx. 20 seconds of the Advertisement features footage of the Vehicle engaged in an off-road testing activity. Although this portion of the Advertisement was not filmed by Toyota Australia, we have taken steps to ensure that the sequence is clearly identifiable as a testing or proving activity, including by showing the driver in full racing livery. Under the FCAI Code, the use of testing or proving activity in Advertisements is permissible in instances where the activity is within a closed circuit environment (off public roads) or a type for which a permit would normally be available in Australia. In the Advertisement, Mr Bates appears in clearly identifiable racing livery and has taken relevant safety precautions (such as wearing a helmet and seat belt). Likewise, the testing ground is clearly identifiable as being an off-road testing ground, and not a public road. Furthermore, Toyota has emphasised that these shots were taken as part of a testing or proving activity by including the disclaimer "Filmed under controlled circumstances with a professional driver."*

*While the Advertisement does depict the Vehicle in "off-road operation", this is because the Vehicle is being shown in off-road testing activities. Under section 4 the FCAI Code, Advertisers can portray the performance and abilities of their vehicles in "off-road operation". The depiction of the Vehicle driving off-road over loose dirt terrain was intended to show that the Vehicle's all-wheel drive capabilities have been tested in off-road settings, rather than demonstrating what customers may do with the vehicle if purchased. The off-road driving segments were filmed under controlled conditions and did not cause deliberate or significant environmental damage, as it was in a designated off-road testing facility. The Vehicle has all-wheel drive capability and is a passenger vehicle that does not exceed 9 seating positions.*



*Toyota also confirms that, at all times during the filming, the drivers were all professional drivers and were always in full control of the Vehicle.*

*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 automotive testing activities in accordance with section 3 of the FCAI Code and off-road driving 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, and does not seem to relate to the other sections. 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 and has addressed Section 2 (specifically Section 2.6) of the AANA Code below.*

*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, while driving the Vehicle, Mr Bates is engaging in testing or proving activities. 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. Where not engaged in a testing or proving activity, Toyota confirms that the Vehicle was being driven within the legal speed limit and was 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 all drivers of the Vehicle were professional drivers and were always in full control the Vehicle. Given that these are professional drivers engaged in a testing or proving activity, these drivers are able to control the Vehicle to a much higher standard than a regular driver. 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 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. If you require any further information or assistance, please do not hesitate to contact the writer.*

## **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).

The Panel noted the complainant's concern that the advertisement contains inappropriate use of a motor vehicle – including depictions of circle work.

### **Is this an advertisement for a motor vehicle?**

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 GR Yaris was a Motor Vehicle 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.

**Clause 2(a): 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 first noted the scenes in the advertisement where the vehicle was shown driving in circles with dust spraying into the air.

The Panel noted the advertiser's response that the advertisement clearly shows that the beginning sequence of the advertisement is clearly identifiable as a testing or proving activity, including by showing the driver in full racing livery.

The Panel noted Clause 3 of the FCAI code provides:

“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, testing or proving activity, or vehicles being driven in a high-performance sports nature, provided that this activity is within an closed circuit environment (off public roads) 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 noted that the advertisement featured a professional rally driver in full racing livery. The Panel noted the advertiser's response that the footage was of a driver in a testing ground. The Panel considered that although the voice-over mentions rally driving, and the advertisement features a well-known rally driver in full racing livery, the footage at the start of the advertisement is of a vehicle-testing ground and is not a depiction of motor sport. As such, the Panel considered that the vehicle itself did not need to be in racing livery to comply with the code.

The Panel considered that the behaviour in the advertisement would be illegal if performed on a road or road related area, however, in the context of the advertisement the driving behaviour is within a closed circuit environment and undertaken to demonstrate the vehicle's capabilities.

The Panel considered that the first part of the advertisement was in line with the requirements under Clause 3 of the FCAI Code, and was not in breach of Section 2a of the FCAI Code.

The Panel noted the scene which featured the vehicle pulling onto the road.

The Panel noted that the vehicle does indicate however considered this is difficult to see in the context of the advertisement.

A minority of the Panel considered that the vehicle did not appear to slow down towards the intersection, and there was no indication that the driver checked that the



road was clear before pulling out. A minority of the Panel considered that the advertisement did feature reckless driving which would breach the law.

The majority of the Panel considered that the scene in the advertisement was quick and it was not possible to tell what speed the driver was going. The Panel considered that it was not possible to tell from the scene what the driver's visibility was like, and that the driver could have seen that the road was clear as he was approaching. The Panel considered that it is not a requirement that drivers stop completely before pulling out onto a road, only that they give way to traffic already on the road. The Panel considered that there was no clear depiction in the advertisement that the driver had not checked the road was clear before pulling onto it.

### **Clause 2(a) conclusion**

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

### **Conclusion**

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