



Case Report

1	Case Number	0412/11
2	Advertiser	Chrysler Australia Pty Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	07/12/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles	Driving practice that would breach the law
Motor vehicles	environmental damage
Motor vehicles	Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement shows a Jeep Wrangler driving on a beach and features a Kite surfer. The Advertisement cuts from the driving to the Kite surfer surfing a large wave.

The following disclaimer is shown on screen: Filmed under controlled conditions using a professional driver.

THE COMPLAINT

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

A Jeep 4WD is shown driving very close to a washed out dune drop off along the top of the dunes on a beach. This is illegal in national parks and is sending the wrong message to drivers that it is OK to denigrate beach foreshores with reckless driving. Secondly the vehicle is shown driving at speed through the surf wash, spraying water across the vehicle. Many tourists lose control and die every year along our coastline, especially Fraser Island, due to losing control of their vehicles. This very irresponsible type of driving should not be depicted as it not only could cause injury and death but can also cause significant vehicle damage. Advertising should depict safe tread lightly 4WD driving and not what JEEP is showing.

THE ADVERTISER'S RESPONSE

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

The Complaint alleges that the vehicle in the Advertisement:

- (a) is being driven in an illegal manner;*
- (b) is being driven in an unsafe manner; and*
- (c) is causing environmental damage.*

In fact, the very mild four wheel driving featured in the Advertisement was conducted under strictly controlled conditions, at very low speeds (less than 50 km per hour) and on existing four wheel tracks.

Further, all necessary permits (being a filming permit and beach vehicle access permits) were obtained from the appropriate authorities prior to the Advertisement being filmed. It should also be noted that Redland Shire Council were, as part of the process for obtaining the filming permit, supplied with maps of the intended filming areas and approved those areas.

Additionally, it is noted that the Code of Practice for Motor Vehicle Advertising allows the depiction of off-road vehicles to legitimately depict the capabilities of an off-road vehicle while travelling "off-road" so long as (as is the case with the Advertisement) the depiction of the vehicle does not portray unsafe driving and the vehicle is not speeding.

Finally, the cinematic style of the Advertisement involves a collage of quick cuts to give the edit a pace that matches the music in the Advertisement.

4. AANA Advertiser Code of Ethics (the "AANA Code")

I note that you request CAPL to respond to the Complaint with reference to Section 2 of the AANA Code. This section deals with the AANA Code specifically and sets out CAPL's comments in relation to the specifics of the Complaint, while issues relating to the FCAI Code are dealt with in Section 5 below.

CAPL does not believe the Advertisement breaches any part of Section 2 of the AANA Code.

In particular, it is our view that the Advertisement:

- (a) does not discriminate or vilify any person or section of the community (section 2.1);*
- (b) does not portray violence (section 2.2);*
- (c) does not contain reference to or depiction of sex, sexuality or nudity (section 2.3);*
- (d) is not directed at children 14 years or younger and is not for goods or service facilities targeted towards children (section 2.4);*
- (e) does not contain strong or obscene language (section 2.5);*
- (f) does not depict material contrary to Prevailing Community Standards on health and safety (section 2.6);*
- (g) does not breach the FCAI Code (section 2.7); and*
- (h) is not for food or beverage products (section 2.8).*

5. The FCAI Code

This section addresses the FCAI Code.

CAPL sees no basis for construing the Advertisement as being in breach of any part of clauses 2(a) to (e) of the FCAI Code as, for the reasons set out above, CAPL believes that the Advertisement does not depict:

- (a) any unsafe driving that would breach any Australian law. The FCAI Code refers to examples such as excessive speed, sudden, unnecessary changes in direction, unnecessarily setting motor vehicles on a collision course.*

The Advertisement does not in any way display this.

(b) people driving at speeds in excess of the limit.

The Advertisement does not in any way display this.

(c) any driving practices or other actions that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction. For example, use of hand held mobile phone, not wearing seatbelts.

There is no evidence that the Advertisement contains depiction of any practices that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction.

(d) any people driving whilst fatigued or under the influence of drugs or alcohol.

The Advertisement does not in any way display this.

(e) any environmental damage whatsoever.

There was no environmental damage depicted or caused by the creation of this Advertisement.

CAPL further confirms that:

(i) the Advertisement has been released nationally; and

(ii) the Advertisement has been made available on the internet.

CAPL takes its responsibilities as an importer and distributor of motor vehicles seriously and this extends to CAPL's obligations under the AANA Code and the FCAI Code. When preparing advertisements including the Advertisement CAPL is conscious of the provisions of the AANA Code and the FCAI Code.

CAPL believes that the Advertisement was, by means of a parallel being drawn between a Kite surfer surfing a large wave and a Jeep Wrangler being driven on a designated four wheel drive beach, that the Jeep Wrangler has the right gear to take on challenges, advertising the Jeep Wrangler appropriately, with no intention to undermine the provisions of the AANA Code and/or the FCAI Code. As such, CAPL does not believe that the Advertisement breaches either the AANA Code or the FCAI Code and therefore requests that the Complaint be dismissed.

CAPL will endeavour to continue to produce advertisements consistent with the standards as set down by the AANA Code and the FCAI Code.

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 Chrysler Jeep 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 Chrysler Jeep 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 reckless driving, driving at speed and environmental damage caused by driving the vehicle on sand dunes.

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 the Chrysler Jeep is shown being driven on a road and then on a beach and across sand dunes. The Board noted the advertiser's response that all necessary permits were obtained in order to film on the beach and sand dunes and that during the advertisement the Chrysler Jeep is the only vehicle shown and that there are no people or animals on the beach at the same time.

The Board noted one scene where the vehicle was driving close to the edge of the sand dunes but that the driver appeared in control and as the vehicle was a four wheel drive this driving behaviour is unlikely to be dangerous.

The Board considered that the vehicle is, at all times, depicted driving in a safe and controlled manner and that the advertisement did not depict unsafe driving. The Board determined that these images did not breach Clause 2(a) of the Code.

The Board then considered Clause 2(e) of the FCAI Code which requires that advertisements for motor vehicles do not portray "deliberate and significant environmental damage, particularly in advertising for off-road vehicles."

The Board noted the Chrysler Jeep is shown driving on a beach and across sand dunes and considered that the use of off-road vehicles on these terrains is not uncommon and do not necessarily contribute to environmental damage. The Board considered that the vehicle is

shown to be driven in a manner which is not damaging to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.

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