



Case Report

1	Case Number	0414/15
2	Advertiser	Toyota Motor Corp Aust Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	28/10/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

2.1 - Discrimination or Vilification Gender

2.1 - Discrimination or Vilification Other

DESCRIPTION OF THE ADVERTISEMENT

The advertisement consists of a fictional testing ground, in which the HiLux is put through various comical stress tests, each to emphasise the improvement of a separate element of the new model HiLux. Throughout the tests, a running commentary and explanation of the tests is provided by Bazza, a helicopter pilot. The HiLux successfully endures each of the tests, emphasising the attractive new value proposition of the brand new model series.

THE COMPLAINT

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

this particular vehicle is decribed as 'powerful enough to pull your mother-in-law away from a buffet'. I thought mother-in-law jokes went out in the 1950s. This 'joke' stereotypes women, portraying them as greedy, overweight and uncontrollable except by means of a powerful machine. Further, it excludes women from the audience of the ad - they are apparently not in the target demographic that Toyota wants to buy this vehicle. If the ad said 'powerful enough to pull your husband away from a buffet', then it would only be addressing women. I am astonished that any advertising agency would suggest such a line, and that Toyota could agree to it.

VoiceOver said "can even pull your mother-in-law away from a buffet". This is vilification of

women, perpetuating stereotypes, generally reinforcing negative community perceptions, reinforcing cultural mockery of older women and negative relationships.

To my knowledge it is.

Highly against the law in Australia to tow more than one trailer behind a vehicle at once. This ad shows four trailers behind each vehicle.

Un-called for comment and insulting to all mother in laws slightly discriminatory too I would think.

THE ADVERTISER'S RESPONSE

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

The complaints raise issues under section 2(c) of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and section 2.1 of the AANA Advertiser Code of Ethics (AANA Code).

Intention of the Advertisement

The Advertisement was produced introduce the All-New Toyota HiLux (HiLux), showcasing its improved power, utility, technological features and design. The advertisement consists of a fictional testing ground, in which the HiLux is put through various comical stress tests, each to emphasise the improvement of a separate element of the new model HiLux.

Throughout the tests, a running commentary and explanation of the tests is provided by Bazza, a helicopter pilot. The HiLux successfully endures each of the tests, emphasising the attractive new value proposition of the brand new model series. The Advertisement's tone throughout is comical, slapstick and highly fantastical.

The Complaints

Complaints relate to separate areas of concern. Section 2(c) FCAI Code

Firstly under section 2(c) of the FCAI Code (driving practice that would breach the law).

Concerns are raised that the Advertisement depicts vehicles towing multiple trailers simultaneously and states that

"[it is] highly against the law in Australia to tow more than one trailer behind a vehicle at once."

Toyota takes significant care when producing of its advertisements and communications to ensure that they accord with prevailing community standards and expectations. This involves making sure that they comply with best practice as well as the provisions of the FCAI Code and the AANA Code.

To this end, Toyota focuses specifically on ensuring that its advertisements do not encourage any form of unsafe, illegal or reckless activity.

The Advertisement depicts a vehicle testing ground where the HiLux vehicles are put through absurd and comical testing scenarios.

Many of the tests are highly fantastical, including a shed that simulates extreme weather conditions, and are not intended to reflect scenarios that are capable of being reproduced in real life. This was also the case with the scene depicting HiLux vehicles towing a chain of

trailers on or around 0:24 seconds into the Advertisement. As with the other testing scenarios, a highly exaggerated fantastical situation has been used to draw particular focus to the newly increased maximum towing capacity of the HiLux.

The guidance section of the FCAI Code provides that:

“FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code”

As referenced earlier, the Advertisement consists of a number of fantastical and clearly ridiculous testing scenarios that are intended to be taken in a light hearted and joking manner. Most of the tests defy reality and could not be interpreted as anything other than fantastical. The scene depicting numerous trailers being towed simultaneously is one such scene, using comical exaggeration to emphasise the towing capacity of the HiLux. For a number of reasons, it would not be possible to tow a row of trailers in the manner depicted including the fact that trailers do not themselves have towing apparatus.

In addition, section 3 of the FCAI Code states that:

“... 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.”

(emphasis added)

It is clear from the outset that the Advertisement is set in a vehicle testing scenario. The Advertisement opens with a view of a fenced off testing area in a desolate outback environment. Throughout the Advertisement, various staff are depicted taking notes on the results of the HiLux tests. Bazza turns to the passengers in the helicopter and says (referring to the testing ground)

“There it is gentlemen, it was originally built to test tanks”

followed later by

“Look, there’s a test run going on now”

Taken together, all of these elements serve to ensure that it is clear to the viewer that the HiLuxes are being tested in a specially created environment, not on public roads and not in any position that could be accessed by the general public.

Toyota notes that at all times during the scenes where driving is depicted, the driving is undertaken in a careful and safe manner, having regards to the conditions in which the testing is taking place. There are no indications that any vehicle is being driven at an unsafe speed. Further, there are no depictions of reckless or menacing driving. The drivers appear to be in complete control of the vehicles at all times. No driving takes place nearby any pedestrians, who only approach vehicles when they come to a complete stop.

In light of the above and for the reasons discussed earlier, it is Toyota’s position that the Advertisement does not breach clause 2(c) of the FCAI Code. It makes use of comical, exaggerated and fantastical elements, which serve to highlight to the audience that the scenes depicted are not intended to be taken seriously or in any way show real life scenarios. The scenes are also all depicted in a fictional and largely computer generated testing arena, where the HiLuxes are put through various comical stress tests.

Second Complaint: Section 2.1 AANA Code

Secondly complaints fall under section 2.1 of the AANA Code which provides:

“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.”

Specifically, the complaint states the line in the Advertisement “these new ones could tow your mother-in-law away from a buffet” is

“un-called for comment and insulting to all mother in laws slightly discriminatory too I would think”.

As stated earlier, it was the intention of Toyota that the tone of the Advertisement be humorous and tongue in cheek. The choice of language, jokes and style – forming the “Aussie colloquial” form of humour - were chosen to appeal to the typical HiLux target audience, consisting predominantly of tradespeople. Care was taken to ensure that all humour was in line with prevailing community expectations and did not discriminate or offend any people or group. It is a common theme of this sort of humour that people may not get along with their mother-in-laws. This is often borne out of the fact that the mother-in-law does not approve of the choice of partner for their child. We note that this theme often forms the basis of satire, sitcoms and various other forms of comedy. It was in no way Toyota’s intention to hold any specific group up for ridicule or vilification by the line. On the contrary, the intention was to create a more informal tone with which the target audience could relate. Toyota notes that while the role of mother-in-law comprises a legal status, it does not constitute a specific person or section of the community for the purposes of section 2.1 of the AANA Code. The term ‘mother-in-law’ is characteristic neutral, and does not imply anything about the person’s race, ethnicity or religion. Further it does not contain any vilifying or discriminatory judgements in relation to gender or any implications that can be generalised more broadly to gender. The focus of the joke is the strained relationship between a person and their mother-in-law.

Accordingly, we submit that the advertisement does not breach clause 2.1 of the AANA Code. For completeness, and whilst not specifically raised in the Complaint, Toyota notes that section 2.6 of the AANA Code may be relevant to the Advertisement. It states that advertisements “shall not depict material contrary to Prevailing Community Standards on health and safety.” For the reasons already discussed, namely, that the Advertisement was created in accordance with all laws, road rules and safety standards; used humour, fantasy and exaggeration; and was clearly depicted on a vehicle testing ground, it is Toyota’s view that the Advertisement does not breach this section.

Conclusion

In light of the issues contained in this letter, Toyota does not believe that the Advertisement is in breach of either the FCAI Code or the AANA Code. Accordingly, we request that the Complaint 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) or Section 2 of 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 Toyota Hilux, in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered whether that advertisement was for a motor vehicle. A 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 a Hilux towing more than one trailer behind it at the same time and that this is illegal under Australian Road Rules.

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

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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.'

The Board noted that the advertisement features more than one Hilux being driven in a testing environment with experts and passengers watching from a helicopter as the vehicles are put through a series of tests. This includes, reversing, towing and carrying mates.

The Board noted that clause 294 of the Australian Road Rules (February 2012) refers to keeping control of a vehicle being towed. The particular clause states that:

(1) The driver of a motor vehicle must not tow another motor vehicle unless:

(a) either:

(i) the driver can control the movement of the towed vehicle; or

(ii) the brakes and steering of the towed vehicle are in working order and a person who is licensed to drive the towed vehicle is sitting in the driver's seat of the towed vehicle, and is in control of its brakes and steering; and

(b) it is safe to tow the towed vehicle.

(2) The driver of a motor vehicle must not tow a trailer unless:

(a) the driver can control the movement of the trailer; and

(b) it is safe to tow the trailer.

In addition to the above, the Board noted the explanatory notes of the FCAI code and in particular the guidance to advertisers referring to the use of fantasy.

The Board noted that guidance to advertisers states that: FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.

Based on the above the Board noted that the depiction of the vehicles towing more than one trailer is conducted in a manner that shows the drivers in control of the trailers being towed and in this case is not a driving practice that is contrary to the provisions of the Road Rules and considered therefore the advertisement does not portray a driving practice that would breach any Commonwealth law or the law of any State or Territory.

In addition, the Board noted that the overall tone of the advertisement is one of fantasy and evident exaggeration and that most members of the community would recognise the comical and fabricated testing facility developed for the purpose of showcasing the vehicle's capabilities. The Board further noted the CGI effects of the scene showing the Hilux vehicles towing multiple trailers.

Based on the above, the Board determined that the advertisement did breach Clause 2(c) of the FCAI Code.

The Board then considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Board noted the complainants concerns regarding the references to your "mother-in-law" and that this negative reference is reinforcing negative community perceptions toward women.

The Board noted the particular reference in the advertisement where the helicopter pilot refers to the towing capacity of the vehicle being able to "tow your mother-in-law away from a buffet."

The Board noted it had previously dismissed a case which referred to mother-in-laws as "not worth messing with" (0482/12). In that matter the Board considered that:

"...the stereotyping of Mother-in-Laws is part of the common cultural narrative in Australia and that whilst this does not of itself make it acceptable the Board considered that in this instance a Mother-in-Law is being likened to Mother Nature and this is not a negative comparison. The Board noted that the tone of the advertisement is around the positive force of Mother Nature and considered that likening a Mother-in-Law to this positive force amounts to a stereotype which acknowledges the power a mother, and mother-in-law, can have within a family and that that this depiction does not discriminate or vilify women."

In the current matter, a minority of the Board considered that this type of reference is offensive and is portraying women in a negative light.

The majority of the Board considered however, that the reference is intended to be tongue in cheek and that the use of a humorous comparison between mother-in-laws eating compared to the towing power of the vehicles is light hearted and in the context of an advertisement about a motor vehicle, the joke is very subtle and does not amount to a discriminatory or vilifying comment.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender, and did not breach section 2.1 of the Code.

Finding that the advertisement did not breach the FCAI Code or section 2 of the Code of Ethics, the Board dismissed the complaints.