



Case Report

1	Case Number	0456/11
2	Advertiser	Ford Motor Co of Aust Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	07/12/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles Unsafe driving
2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a range of Ford vehicles, including a Fiesta passing a petrol station, a boy squirting water onto a Mondeo windscreen, a Fiesta driver changing his radio station by voice command, a woman unlocking her Focus hands free, a Ranger 4x4 XLT crossing a creek, a Mondeo warning the driver of possible fatigue, and concludes with a recommended offer of \$39,990 driveaway on a Territory TX rear wheel drive.

THE COMPLAINT

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

In this advertisement the vehicle owner is depicted judging that it is safe/desirable to cross a deeply flooded stream/river/roadway based on the vehicle in use. This is unsafe and contradictory to advice provided by SES and state and commonwealth authorities relating to the dangers posed by attempting to cross flooded roadways/streams. There is no clear distinction made that the situation being depicted constitutes "off-road" or "outback" driving. As such this advertisement unreasonably suggests that drivers of this particular vehicle are safe when crossing flooded roadways.

The advertisement in question clearly depicts an unsafe situation without providing any warning about the extreme dangers of attempting to cross a flooded road or stream in a vehicle.

Given the number of rescues required last summer of people who attempted to cross flooded causeways and bridges I believe that this ad should be withdrawn immediately. This action may save lives.

The four wheel drive vehicle is shown driving through deep water. I feel this advertisement promotes unsafe driving. This seems irresponsible especially at a time when government is running an advertising campaign to try to stop people doing exactly this because it has resulted in loss of life.

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 complaints referred to in your letter dated 22 November 2011 raise issues concerning safety, and therefore the FCAI Code applies. We note both complaints refer to the Territory TVC depicting a driving practice which is allegedly unsafe and would therefore breach provision 2(a) 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...". Both complaints relate to a sequence in which a Ford Ranger 4x4 XLT is depicted crossing a creek. Specifically, the first complaint alleges that the Ranger is driving across "a deeply flooded stream/river/roadway". The second complaint alleges that the ad "appeared to suggest that this vehicle was capable of driving through flooded creeks". The complainants either claim or imply that the driving practice depicted is unsafe, although they do not allege that the driving would breach any Commonwealth, State or Territory law. We strongly disagree with both complainants' allegations and we respond to them below.

Allegation that driving practice would breach the law or be otherwise unsafe

We strongly disagree with the allegation that the Territory TVC depicts a driving practice which would breach the law or be unsafe and therefore breaches provision 2(a) of the FCAI Code. The Territory TVC depicts a number of Ford vehicle models and their drivers and passengers engaging in a variety of driving and "lifestyle" situations centred on their vehicles. 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.

Both complaints suggest that the Territory TVC depicts a Ford Ranger being driven through a "flooded" or "deeply flooded" stream, river, roadway or creek. The Ranger 4x4 XLT has been designed with many special features to enable it to traverse deeper water than most vehicles of its type, and certainly much deeper water than typical road-going passenger vehicles. Details may be viewed on our website. Ranger 4x4 XLT's maximum water wading depth is 800 mm. The maximum depth of water that the vehicle drives through in the Territory TVC is approximately 600 mm. The scene is accompanied by a clearly visible disclaimer that reads "Ranger 4x4 XLT shown. 800 mm water wading maintaining steady speed no more than 7 km/h". Accordingly, we believe the driving depicted is safe for the vehicle depicted, driven as depicted. This is true regardless of whether the vehicle were to drive through such a depth of water in a creek or on a road or track. We are unaware of any State or Territory law that would prohibit such driving, and the speed depicted (no more than 7 km/h) would certainly not breach any State or Territory law.

Further, the Ranger 4x4 XLT is an "off-road vehicle" in the context of the FCAI Code, and as such the provisions of Section 4 apply. This section allows advertisers to "depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area." The Ranger is shown driving through a creek, which in our opinion falls within the types of surfaces contemplated in this Section.

We also strongly disagree with the implication that the Territory TVC may encourage drivers generally to enter flooded rivers or roadways. The creek is not depicted as being part of any road or road related area accessible to ordinary vehicles. It is not "flooded" in the sense of being deeper than usual. Further, the passenger's dialogue "you sure about this?" and the implied confirmation by the driver in proceeding to cross, suggests that the driver has, prior to entering the creek, assessed the depth of the water in relation to his vehicle's capability, judged it (correctly) to be within that capability and then drives through the water at an appropriate speed. In the context of a commercial that depicts numerous Ford models with many different attributes and capabilities we do not believe that this particular capability is implied more generally than for the specific vehicle and scenario depicted in the creek crossing scene. It would therefore not encourage drivers of ordinary vehicles to attempt to drive across a flooded roadway.

The TVC script and an mpeg of the Territory TVC are attached. The script, pre-production storyboard and final edit were approved by legal counsel. We have also attached correspondence between our advertising agency and Commercials Advice Pty Ltd (CAD), including the CAD reference numbers.

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 complaints referenced; however, I would be grateful if you would contact me if you have any questions or would benefit from further input or assistance from Ford Australia.

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 range of Ford vehicles 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 Ford motor vehicles were 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 is irresponsible in its depiction of a Ford Ranger 4x4 driving through a flooded road or stream and that this amounts to unsafe driving.

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 advertisement features various scenes of different Ford models in different situations and that in one scene we see a male passenger ask the unseen driver if they "are sure about this?" before we see the Ranger 4x4 he is travelling in drive through a creek.

The Board considered that the depiction of the passenger asking the driver if they were sure about driving through a creek further highlighted the fact that safety issues had been considered and that the Ranger 4x4 was equipped to drive through the creek in a safe manner.

The Board determined that all the vehicles depicted in the advertisement are shown to be driven in a safe and controlled manner and that the advertisement did not depict unsafe driving and did not breach clause 2(a) of the FCAI Code.

The Board noted the advertiser's response that the vehicle shown driving through the creek is a Ranger 4x4 and that as this is an off-road vehicle the provisions of the FCAI Code Section 4 apply:

“An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over...uneven terrain, not forming part of a road or road related area...”

The Board considered that it was reasonable to demonstrate the use of an off road vehicle driving off road and noted that a disclaimer is shown on screen which states, “Ranger 4x4 shown. 800mm water wading maintaining steady speed no more than 7 km/h”.

The Board determined that the advertisement did not depict unsafe driving and did not breach clause 4 of the FCAI Code.

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