



Case Report

1	Case Number	0491/15
2	Advertiser	Toyota Motor Corp Aust Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	20/01/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
2.1 - Discrimination or Vilification Other

DESCRIPTION OF THE ADVERTISEMENT

This television 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. In one scene we see a group of cyclists in front of the HiLux and the camera focuses first on the visible G-string of one of the cyclists and then on the look of horror on the male passenger's face.

THE COMPLAINT

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

The ad shows a Ute full of tradies turning their nose up at a group of cyclists. As a bike rider our biggest trouble has to deal with trades people on the road, being impatient and aggressive when passing or driving near cyclists. It is very disappointing that Toyota is endorsing this stereotype of behaviour.

*There are two reasons for my objection to this advertisement:-
It depicts cyclists very poorly and serves to reinforce negative stereotypes of cyclists. They are shown in transparent lycra shorts which I find offensive and they are shown cycling in an unacceptable way by taking up most of the road. I am a serious and responsible cyclist and I contend that the vast majority of cyclists do not behave in this way. The ad seriously*

misrepresents the normal behaviour of cyclists.

The ad also shows the driver paying no heed to the safety of cyclists by swerving round them at speed and not giving them sufficient clearance. As cyclists are much more vulnerable to injury than motorists it is essential that drivers exercise due caution when passing them, however they are behaving on the road.

I am sure the advertisers will argue that the ad is tongue in cheek and not meant to be interpreted in this way. Forty five cyclists died on our roads in the last year and in almost every case a motorist is to blame. So I for one do not appreciate the joke.

THE ADVERTISER'S RESPONSE

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

First Issue: sub-section 2.1 AANA Code

The first issue raised falls under sub-section 2.1 of the AANA Code of Ethics. It raises a concern that the Advertisement depicts cyclists in a negative light and reinforces negative stereotypes of cyclists.

Sub-section 2.1 of the AANA Code states that:

“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 following objection:

“[The cyclists] are shown in transparent lycra shorts which I find offensive and they are shown cycling in an unacceptable way by taking up most of the road”

Toyota submits that the concerns raised in the Complaint do not constitute a breach of sub-section 2.1 as the Advertisement does not depict any discrimination or vilification of any person or community sector on account of their race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness, or political belief.

It was in no way Toyota's intention to hold any specific group up for ridicule or vilification. As stated earlier, the tone of the Advertisement is humorous and tongue in cheek. 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. While Toyota regrets that the complainant may personally be opposed to the depiction of cyclists in semi-transparent Lycra, we do not believe that this is reflective of broader community expectations or that the Advertisement in any way discriminates against, or vilifies cyclists as a group, or any individual.

As to the complainant's concerns that the cyclists are portrayed cycling in an unacceptable way; it is clear from the context of the Advertisement that the scenes are intended to depict a fantastical testing ground, and in no way is it a depiction of reality. The Advertisement shows

the HiLux been put through a series of testing scenarios that are comical and exaggerated for effect. The cyclists represent a hazard that a driver could encounter on a city road. It was not the intention of the Advertisement to comment on the practices of cyclists, but rather to demonstrate the agility and dynamism of the vehicle in a variety of environments. In another scene the HiLux is shown weaving backwards through pop up cardboard kangaroos.

Accordingly, we submit that the advertisement does not breach sub-section 2.1 of the AANA Code

For completeness, and while not specifically raised in the Complaint, Toyota submits that the Advertisement does not breach any other provision in section 2 as it does not employ sexual appeal (2.2), violence (2.3), sex, sexuality or nudity (2.4) or strong language (2.5).

Further, and again while not 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 discussed below, Toyota submits 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.

Second Issue: 2(a),(b),(c) FCAI Code of Practice

The second part of the Complaint raises a concern that the Advertisement depicts unsafe driving practices in breach of the FCAI Code of Practice. Specifically the Complaint states that Advertisement shows:

“The driver paying no heed to the safety of cyclists by swerving round them at speed and not giving them sufficient clearance.”

Toyota takes significant care when producing 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.

Toyota appreciates the concern of the complainant for the safety of cyclists and encourages safe driving at all times. We disagree however that the Advertisement depicts the unsafe driving practices as described by the complainant. The vehicles are not shown driving at speed, nor are they shown swerving around the cyclists. Rather the vehicles are shown driving alongside the cyclists. Care was taken to ensure that at least 1 metre was maintained between the vehicles and the cyclists at all times, as recommended by most state transport authorities.

Again, we note that the Advertisement utilises humour in depicting the HiLux cars overcoming a series of extreme and highly unrealistic obstacles in a fantastical testing ground.

To this end, the explanatory statement to the FCAI Code specifically 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”

(emphasis added)

The opening scene of the advertisement shows a high fence with a sign saying “keep out” and it is clear from the context of the whole Advertisement there was no intention to depict normal driving practices on public roads.

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)

Nevertheless, 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.

In light of the above and for the reasons discussed earlier, it is Toyota’s position that the Advertisement is not in breach of either section 2(a),(b), or (c) of the FCAI Code.

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) and the AANA 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. 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 complainants' concerns that the advertisement depicts a driver swerving around cyclists in a dangerous manner, and depicts cyclists in a negative light, suggesting that they are not responsible road users therefore it's acceptable for drivers to drive dangerously around them.

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 examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Board noted this television advertisement features a HiLux driving through a test environment which has been set up to resemble a busy city and that in one scene we see the HiLux overtaking a group of cyclists before swerving to avoid a number of pedestrians on the

road.

The Board noted that this advertisement is the latest in a campaign and that it had previously dismissed complaints about an earlier advertisement in case 0414/15. The Board noted that this latest advertisement had raised different issues with regards to the content.

The Board noted that the city scene is described by the voiceover as a test environment and considered that most members of the community would recognise that the high concentration of obstacles placed before the HiLux, such as the cyclists, pedestrians and road works, are there to showcase the handling of the vehicle.

The Board noted the complainants' concerns that the HiLux is shown to swerve when driving past the cyclists and pedestrians but considered that this scene is clearly portrayed in the context of a test environment and both of the vehicles depicted in this scene appear to be driven in a controlled manner suggestive of the respective drivers being aware of their surroundings and the capabilities of the vehicles. The Board considered that at no time do the drivers or any of the cyclists or pedestrians portrayed appear to be in any danger.

The Board considered that overall the advertisement does not portray any driving which is unsafe, or reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

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

The Board 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 that the cyclists in the advertisement are presented in a negative light. The Board noted that it is not uncommon to see a group of cyclists on the road but considered in this instance the inclusion of the cyclists in a test environment is to demonstrate potential road users the drivers of the HiLux vehicles may encounter. The Board noted that various pedestrians are also depicted in the advertisement and considered that the cyclists are not singled out as being negative but rather as being a not uncommon presence on public roads.

The Board noted the complainants' concerns over the depiction of the cyclists wearing lycra and considered that lycra is a common material worn by many athletes, including cyclists, and that the depiction of the lycra-clad cyclists in the advertisement is consistent with a portrayal of cyclists who take their sport seriously. The Board noted the reaction of one of the passenger's in the blue HiLux at the visibility of one of the cyclist's thong-style underpants which are visible through the lycra shorts he is wearing and considered that the passenger's reaction is a humorous reference to the community poking fun at lycra wearing

cyclists and is not aimed at cyclists per se but rather at the fact that a person's underwear is clearly visible. The Board considered that this reaction is not degrading or vilifying.

Based on the above the Board considered that the advertisement did not portray or depict material in a way which discriminates against a person or a section of the community on account of their lifestyle choice or gender.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

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