



CASE REPORT

1. Complaint reference number	114/05
2. Advertiser	Land Rover Australia (Discovery)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Driving practice that would breach the law FCAI - Other
6. Date of determination	Tuesday, 10 May 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The first scene in this advertisement shows a silver Land Rover being driven on an icy (frozen lake) surface. The vehicle is shown to travel in a straight line before the driver engages the vehicle in a controlled slide where the rear wheels are shown to slide out. The remainder of the advertisement shows the vehicle travelling along a straight path in various settings including a beach, a forest, dirt track, a winding highway and finally an urban setting.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

“The advertisement shows the vehicle speeding, making sudden turns and a 4 wheel drift. The advertisement clearly breaches provision 2(a) of the Code by showing unsafe driving, in particular, ‘sudden, extreme and unnecessary changes in direction of a motor vehicle’. The advertisement breaches the Code in the following ways by depicting the driving behaviors which are offences in all Australian States and Territories:

- 1. Speeding*
- 2. Sudden turns*
- 3. 4 wheel drifts.”*

THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

“The advertisement shows a number of film clips revealing the vehicle’s driving characteristics both on-road and off-road. The commercial shows the vehicle tackling various challenging terrains to demonstrate its extreme capability.”

“It is shown cornering at moderate speed, which Mr Scruby describes as a 4 wheel drift.”

“The footage of the vehicle on ice – perhaps the most challenging of any terrain – shows the vehicle clearly being driven under complete control. The vehicle was never at any time out of control. The advertisement does not depict driving in a careless or reckless manner but is a true depiction of the vehicle’s off-road capabilities.”

“In our view, the vehicle did not make any sudden turns as the advertisement also deploys production techniques to create a sense of drama. However, this sense of drama should not be

confused with the vehicle actually traveling at illegal or irresponsible speeds – it isn't."

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 which came into effect on 1 July 2004 (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 Land Rover "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 Land Rover 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(a), 2(c) and 4 were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached.

Before looking at whether clause 2(a) and 2(c) of the FCAI Code had been breached, the Board first considered whether clause 4 of the FCAI Code had been complied with. The Board noted that if clause 4 of the FCAI Code was satisfied, there would be no need for the Board to consider clauses 2 (a) as unsafe driving is covered in clause 4. Clause 4 does not deal with matters raised in clauses 2 (c) and therefore, where relevant, they must also be considered by the Board.

The Board noted that pursuant to clause 4 of the FCAI Code, advertisers are permitted to:

"...legitimately 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."

Clause 4 further states that:

"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 Board first gave consideration to whether the advertisement legitimately depicted the capabilities and performance of an off-road vehicle in accordance with clause 4 of the FCAI Code. "Off-road" vehicle is defined in the Code as meaning:

"...a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC Category). An off-road vehicle will normally have 4 wheel drive."

The Board concluded that the Land Rover vehicle was an off-road vehicle as defined under the FCAI Code.

The Board was then required to consider whether the capabilities and performance of the off-road vehicle had been legitimately depicted. The Land Rover was depicted driving on an icy-surface. The vehicle was shown in a controlled sideways slide on that icy surface. The Board formed the view that such driving, a controlled slide on a slippery surface, was a legitimate depiction of an off-road vehicle's performance and capabilities on such a surface.

The Board was then required to consider whether such depictions portrayed either unsafe driving or excessive speed in breach of clause 4 of the FCAI Code.

The Board noted that the Land Rover was driven on the icy surface without any overt indication that the vehicle was being driven recklessly or unsafely. There were no other cars or other objects in the footage. The Board was of the view that there were no overt indications that the vehicle engaged in any unsafe driving practices or levels of speed that would contravene the laws of any State or Territory in Australia were they to occur on a road or road related area.

Having determined that the driving depicted was a legitimate depiction of the capabilities and performance of an "off-road vehicle" under clause 4 of the FCAI Code, the Board then had to consider whether the advertisement breached clause 2(c) of the FCAI Code.

In order to breach clause 2(c) the driving practices depicted must:

"... if they were to take place on a road or road related area, breach any Commonwealth Law ..."

For the same reasons stated in relation to why the driving depicted did not portray unsafe driving under clause 4 of the FCAI Code, the Board determined that such driving practices would also not be in breach of clause 2(c) of the FCAI Code.

On the above basis, the Board confirmed its view and held that the material before it did not constitute an advertisement in breach of clauses 2(a), 2(c) or 4 of the FCAI Code. The Board therefore dismissed the complaint.