



## CASE REPORT

1. Complaint reference number	146/05
2. Advertiser	Toyota Motor Corp Aust Ltd (Hilux)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 June 2005
7. DETERMINATION	Dismissed

## DESCRIPTION OF THE ADVERTISEMENT

This print advertisement features a studio photograph of a silver Toyota HiLux against a black background. The text that surrounds the HiLux is in a “cartoon” style and is designed to appear as though it has been forced into the corners of the advertisement by the power of the HiLux. The text above the vehicle reads: *“The all new V6 4L HiLux 4x2 with 175kW of power”*. Below the vehicle appears a paragraph of technical information that also contains the following text: *“Get ready for a more aggressive presence. A larger, more muscular body. The biggest HiLux ever. Get ready for the world’s first action utility vehicle. With more power and strength, the new HiLux is ready for anything.”* The tagline: *“Get in or get out of the way”* appears in the lower right-hand corner of the advertisement.

## THE COMPLAINT

Comments which the complainant/s made included the following: *“This promotes aggressive use of a large 4WD utility vehicle. These vehicles are dangerous enough when used responsibly but this ad encourages a ‘might is right’ approach to driving.”*

## THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s included the following: *“The phrase is intended as a call to action for those interested in owning what we believe to be the latest and best vehicle of its type on the market, to ‘get in’ and purchase the vehicle and join us in enjoying the advantages the vehicle has to offer.” “It is our view that this advertisement is not a display of, nor does it encourage, driving aggression, recklessness or ‘community values’, as the complainant alleges. The imagery portrayed is clearly linked to fantasy and self evident exaggeration and is well within acceptable creative boundaries.” “While we respect the right of individuals to hold their view, we believe that these complaints do not accurately or fairly represent the content or tone of the advertisements. We believe it is clear that the advertisements portray a fantasy, even as it ‘moves the printed word or copy’ out of the way.”*

## 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 “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 other valuable consideration given that it was being published in print media 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”. 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 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2 (a) and 2(c) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached. The Board first considered whether clause 2(a) of the FCAI Code had been breached. In order to breach clause 2(a) of the FCAI Code, the driving depicted must be:

*“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law... if such driving were to occur on a road or road related area...”*

The Board formed the view clause 2(a) had not been breached. The Board noted that the advertisement featured a studio photograph of a stationary HiLux and as such, did not depict any driving. The Board noted the advertiser’s comments that the image portrayed was clearly linked to fantasy and self-evident exaggeration. The use of fantasy and exaggeration does not enable an advertiser to avoid compliance with the provisions of the FCAI Code, however, as the advertisement did not depict any driving, the Board considered that clause 2(a) had not been breached.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. 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 ...”*

The Board formed the view that clause 2(c) had not been breached. Similar to clause 2(a), the Board formed the view that no driving practices were being depicted and as such, there was no breach of this clause 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) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.