



CASE REPORT

1. Complaint reference number	147/05
2. Advertiser	Toyota Motor Corp Aust Ltd (Hilux)
3. Product	Vehicles
4. Type of advertisement	Outdoor
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 June 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement depicts a black Toyota HiLux “bursting” through the centre of a billboard. The background area of the billboard that the HiLux is shown to have broken through is white, however, the remainder of the billboard background is black. The text that surrounds the HiLux includes the following: “*The all new HiLux*” and also includes the tagline: “*Get in or get out of the way*”. The text is in a “cartoon” style and is designed to appear as though it has been crammed into the corners of the billboard by the force of the HiLux.

THE COMPLAINT

Comments which the complainant/s made included the following: “*I think this is an extremely offensive advertising tact considering aggressive and dangerous driving is claiming the lives of thousands of Australians every year.*”

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 [or] recklessness... 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 displayed on billboards 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.