



CASE REPORT

1. Complaint reference number	255/05
2. Advertiser	Toyota Motor Corp Aust Pty Ltd (Hilux 4WD - Beach)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 13 September 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a Toyota HiLux entering a beach-side car park. As it approaches the boom gate, the boom gate is shown to flex and break from the force of the “imaginary force-field” around the vehicle. The Toyota HiLux does not touch the boom gate. As the car approaches a parking spot, cars on either side of it are shown to be pushed aside (without the Toyota HiLux actually connecting with the other vehicles). The voiceover states: “*Introducing the big new Toyota HiLux. The first ever V6 4 x 2 HiLux delivering 175 kilowatts of power. Get in or get out of the way.*”

THE COMPLAINT

Comments which the complainant/s made included the following:

“... This is promoting the aggressive use of these 4 wheel drives and displays their use in an area in which their design is not intended, i.e. for use on the public carriageway when clearly a vehicle of this size is not required. No mention is made of its intended use as a commercial or off-road vehicle. The market that is being targeted is being shown that if they use a vehicle of this type they will be bigger and better than everyone around them. This is socially irresponsible and neglects the social cost of these vehicles...”

THE ADVERTISER’S RESPONSE

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

“It is our view that this advertisement is not a display of, nor does it encourage, driving aggression or recklessness as the complainant alleges. The commercial advertises the introduction of a new, larger, stronger more practical vehicle than that which existed before. The imagery portrayed is clearly linked to fantasy and self evident exaggeration and is well within acceptable creative boundaries and not in breach of the FCAI Code;... At no time is this vehicle speeding, breaching any road rules or coming into contact with any vehicles, people or other objects in the parking lot.”

“... Toyota... maintains that there is nothing dangerous, illegal, aggressive or reckless in the imagery portrayed in this advertisement.”

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 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 4x2 “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 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 that clause 2(a) had not been breached. The Board noted that the driving depicted did not display any contact between the Toyota HiLux and the objects that were forced out of its path. The objects were forced out of the path of the HiLux by the vehicle’s imaginary force-field. The use of fantasy and exaggeration does not enable an advertiser to avoid compliance with the provisions of the FCAI Code, however, the advertisement did not depict any actual and/or deliberate collisions between the Toyota HiLux and other vehicles and objects at the beach. Nor did the advertisement display any driving that would breach a Commonwealth Law.

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. 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 held that the material before it did not constitute an advertisement in breach of clause 2(a) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.