



CASE REPORT

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| 1. Complaint reference number | 274/04 |
| 2. Advertiser | Toyota Motor Corp Aust Ltd (Camry Sportivo V6) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Other |
| 6. Date of determination | Tuesday, 12 October 2004 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

The advertisement reviewed by the Board opens with a visual of a long road set in the outback with no other vehicles in sight. The road has a broken white line marking down the middle of it. The Toyota Camry is filmed driving along the road. From the side of the road an orange traffic cone flies through the air towards the Toyota Camry and the Toyota Camry crosses the line marking on the road to avoid hitting the traffic cone. Several more traffic cones begin to fly from the side of the road towards the Toyota Camry and the Toyota Camry moves from one side of the road to the other to outmanoeuvre the flying traffic cones. The Toyota Camry then continues down the road having avoided all of the flying traffic cones and enters into a city made up of large traffic cones of all different sizes. The Toyota Camry drives in and around the city of traffic cones and eventually pulls over. A super appears on the screen which states “Outmanoeuvre”.

THE COMPLAINT

Comments which the complainant/s made included the following:

“A series of traffic cones bounce onto the road and he swerves the vehicle several times to avoid them. The vehicle does not slow from highway speed for these evasive manoeuvres, which involve repeated crossing from one side of the road to the other, without use of the indicators.”

“If you encounter unexpected obstacles on the road in real life, the responsible course of action is to slow down or stop, not test your reactions and steering skills.”

“The advertisement breaches Provisions 2(a) of the Code by showing unsafe driving in particular, sudden, extreme and unnecessary changes in direction of a motor vehicle.”

“This advertisement clearly violates the intention of the FCAI’s motor vehicle advertising code. It demonstrates a dangerous and irresponsible response to debris or obstacles on the road.”

“When driving fast on public roads is treated as a test of the driver’s skills or the vehicle’s capabilities, the potential for death and injury to the vehicle occupants and to other road users is significantly increased.”

“To portray the driver swerving across the centre line at speed further serves to promote reckless, irresponsible and incurteous driving behaviours – those very behaviours exhibited by some drivers, particularly the young, naïve and inexperienced drivers, that ruin the driving experience for others, and result in frequent road deaths and injuries.”

THE ADVERTISER’S RESPONSE

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

“The TVC portrays a fantasy or surreal world and driving conditions. While we accept that the use

of fantasy and exaggeration does not justify the portrayal of unsafe or unlawful driving practice, it does significantly alter the interpretation of what occurs in this commercial.”

“The changes in direction are obviously necessary to avoid the objects and are not extreme.”

“The driver manoeuvres around the objects without losing control of the vehicle.”

“There is no indication of excessive speed.”

“There is nothing unsafe, reckless or menacing in the driving portrayed in the TVC. The driving is prudent and appropriate for the conditions.”

“To the best of our knowledge the TVC does not portray any driving practices or other actions which would breach any law in the relevant jurisdictions dealing directly with road safety or traffic regulation.”

“In particular, the driver’s manoeuvring does not involve the crossing of double lines or any other traffic. There is no indication of excessive speed and...the actual speed of the vehicle did not breach applicable speed limits during filming.”

“The failure of the driver to use his indicators in the circumstances would not constitute a breach of any road rules.”

“The use of indicators was impossible in the scenario due to the imminent danger and the need to keep control of the steering wheel. There was no oncoming traffic or traffic behind and therefore all collisions were avoided.”

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 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 Camry Sportivo V6 “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 Camry Sportivo V6 depicted 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(b), 2(c) were relevant in the circumstances. The Board had to consider whether those 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 practices 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 been breached. The Board formed this view based upon the opening scene of the advertisement which depicted the Toyota Camry swerving from one side of the road to the other several times without the use of indicators to avoid collision with the flying orange traffic cones. The Board noted that to change lanes without using an indicator was in breach of the Australian Road Rules. The Australian Road Rules make it an offence to change lanes to the right or left without indicating with the vehicle’s direction indicator lights. The Board noted that this was contrary to the advertiser’s assertion that changing lanes without indicating was not a breach of any road rule. The Board was also of the view that the depiction of the vehicle swerving from lane to lane (albeit over broken line markings) was a portrayal of reckless and unsafe driving that would be illegal if it were to occur on a road or road related area.

The Board took into consideration the advertiser’s assertion that the legality of the driving practices depicted (including the non-use of indicators and the swerving from lane to lane) should be assessed in the context of the particular circumstances and that such driving practices would not be considered illegal in circumstances where there was a need to avoid an unexpected obstacle. The Board noted that the Australian Road Rules did not exempt vehicles attempting to avoid unexpected obstacles from the application of the relevant offence provisions. The Board considered that the question of whether the circumstances of a particular offence would or would not result in police enforcement was not for them to determine.

On this point, the Board noted that the advertiser’s use of a fantasy like situation (i.e. flying traffic cones appearing from nowhere) as a representation of real life unexpected circumstances actually detracted from the force (if any) of the advertiser’s argument that the driving practices would not be illegal in such circumstances. The Board formed the view that the use of the flying traffic cones did not responsibly represent to ordinary viewers the presentation of unexpected and dangerous real life obstacles (such as animals or objects falling off the back of a truck) which may justify a breach of the road rules in order to avoid them safely. The Board was of the view that the use of the fantasy scene gave the overall impression of enjoyable, irresponsible and reckless driving to outmanoeuvre flying objects rather than of a real life attempt to avoid unexpected danger requiring spontaneous driving reactions in breach of the law. This view was further enhanced by the visuals of the drivers’ eyes which appeared to be revelling in the swerving from lane to lane and avoidance of the flying traffic cones rather than appearing concerned for his safety and trying to safely outmanoeuvre them.

By making use of a fantasy like scene and by depicting the driver as enjoying the experience, the Board did not consider that the advertiser had made it clear to the ordinary viewer that the depiction was one intended to demonstrate how the vehicle would be handled in unsafe and unexpected real life circumstances.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

“people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”

The Board formed the view that clause 2(b) had not been breached. The Board noted that there was no overt indication that the car was driven at excess speeds during the advertisement and noted the advertiser’s written representation that the actual speed of the vehicle did not breach applicable speed limits during the filming of the advertisement.

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 also been breached. Given that the Board had found that the advertisement did breach clause 2(a), the Board made a similar determination in relation to the driving practices depicted for the purposes of analysing clause 2(c).

On the above basis, the Board confirmed its prima facie view and held that the material before it constituted an advertisement in breach of clauses 2(a) and 2(c) of the FCAI Code. The Board therefore upheld the complaint.