



## **CASE REPORT**

1. Complaint reference number	343/07
2. Advertiser	Toyota Motor Corp Aust Ltd (TRD Aurion)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Driving practice that would breach the law
6. Date of determination	Tuesday, 13 November 2007
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement uses archival race footage to illustrate Toyota's 50 years of competing in global motorsports events, concluding with a cut from motorsport footage to that of the new TRD Aurion. A single question mark is seen throughout the advertisement. A Toyota F1 car is seen on a race track, and as the driver sees another car in his rear view mirror it has become a question mark. A Toyota GT car is then seen participating in a professional race and as a photographer snaps pictures of the car we see its brake discs glow with heat. A question mark appears in the brake disc. A scene shows the photographer's dark room where he is processing the photo of the GT car. An African tribesman is shown watching a Toyota rally car flying across a rough dirt track from the 1993 WRC Safari Rally. As the car hits the jump and becomes airborne, it is seen that the tribesman's staff is actually in the shape of a question mark. In the pits of an F1 race with the pit crew seen at work in the background, a young fashionable woman walks towards them. She has a question mark tattoo on her lower back.

As male voiceover explains "Having asked a thousand questions..." an icicle which looks like a question mark and a black TRD Aurion appears, cruising down a snow-landscaped highway with a question mark in the middle of the road..."we have the answer. The supercharged TRD Aurion from Toyota Racing Development. It's Toyota - supercharged."

## **THE COMPLAINT**

A sample of comments which the complainant/s made regarding this advertisement included the following:

*This advertisement makes a strong association between the Toyota Aurion V6 and a racing vehicle throughout the advertisement. It also breaches road safety practices by showing a vehicle being driven at excessive speed next to a pedestrian. This vehicle is being driven at such excessive speed that it becomes airborne when passing the pedestrian.*

## **THE ADVERTISER'S RESPONSE**

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

*Toyota Motor Corporation Australia Ltd (Toyota) takes its responsibility as an advertiser very seriously and we make extensive efforts to understand and respond appropriately to community concerns and issues. It is our firm belief that the TRD Aurion TVC does not breach the FCAI Code of Practice for Motor Vehicle Advertising (Code).*

*The whole premise of this commercial is to highlight to consumers the link between Toyota's extensive motor sports heritage and the development of the TRD Aurion. As such the majority of the footage shown clearly depicts motor sport and simulated motor sports scenarios. Such motor*

*sports activities are covered by clause 3 of the Code which recognises the legitimacy, and allows for the use, of motor sports footage in vehicle advertising. In reference to the alleged non-compliance with clause 2 of the Code, we have ensured that all of the shots of the black TRD Aurion that are depicted on a road, or road related area, comply with the Code.*

*There is a clear distinction between the motor sports footage (shown in the first part of the advertisement) and TRD Aurion vehicle driving on the road (shown in the last portion). We consider that consumers viewing the commercial would clearly identify the scenarios in the first part as being a depiction of a motor sport activity, with no confusion that they could be a road driving scene. All of the motor sport vehicles shown carry a clearly identifiable racing livery. All of the motor sports activities depicted are part of an organised motor sport such as Formula One and competitive rallies and comply with National Competition Rules of the Confederation of Australian Motor Sport (CAMS).*

*(The complainant) makes specific reference to “a vehicle being driven at excessive speed, next to a pedestrian.” This segment of the TRD Aurion TVC clearly depicts a Motor Sport Rally scenario set in a desolate area of Africa and the person shown is a spectator (not a pedestrian). The footage used is from the FIA World Rally Championship held in Nairobi in 1993. We consider that the use of this footage is permitted under clause 3 of the Code.*

*In summary therefore, it is our view that in no way does the TRD Aurion TVC breach the Code.*

## **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”). The Board determined that the material before it was an “advertisement for a motor vehicle” and therefore that the FCAI Code applied.

As the primary depictions in the advertisement were of racing or rally cars the Board first considered clause 3 of the FCAI Code which permits advertisers to 'make use of scenes of motor sport; simulated motor sport; and vehicle testing or proving in advertising, subject to the following:

(a) such scenes should be clearly identifiable as part of an organised sport activity or testing or proving activity, of a type for which a permit would normally be available in Australia

(b) any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.'

The Board considered that the images of the various cars were consistent with the permissions in clause 3 in that all racing scenes depicted the vehicles in racing livery and as part of an organised sport activity. The brief shot of the car driving past the person is inserted between images of the racing cars. The image is fleeting but it appears to be a rally style car. The Board considered that the brief image was not suggestive of a car driving close to a pedestrian but was more likely to be seen in a manner consistent with the advertiser's response - an image of a rally car during a race event in Africa. The Board considered that the racing and rally images were consistent with clause 3 of the FCAI Code.

The Board then considered clause 2(a) of the FCAI Code. Clause 2(a) provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'unsafe driving, including reckless or menacing driving that would breach any Commonwealth Law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.' The Board considered the images of the Aurion and considered that there was no depiction of any unsafe driving in the advertisement. The Board considered that there was no breach of clause 2(a).

The Board also considered clause 2(b) which provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'People driving in speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.' The Board considered that there was no depiction of cars being driven at excessive speed.

The Board considered that clauses 2(c), (d), and (e), of the FCAI Code were not relevant to the

present advertisement.

The Board determined that the advertisement did not breach any of the clauses of the FCAI Code and accordingly dismissed the complaint.