



CASE REPORT

1. Complaint reference number	385/06
2. Advertiser	Toyota Motor Corp Aust Ltd (Camry Sportivo)
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, 10 October 2006
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a black car driving on a country road with a voiceover announcing “There is a car with a sophisticated VVT-I engine. A car available with an intelligent 5 speed automatic. A car that always finds the perfect balance between power and economy...” The car catches up with a caravan and waits for a semi-trailer coming towards him to pass, then indicates and overtakes the caravan. We then see the car driving along a road parallel to a train track with a diesel locomotive hauling stock carriages.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

Car recklessly overtakes a caravan by driving on the wrong side of the road. How many youngsters need to die on the roads before car manufacturers get a conscience and stop showing unsafe driving habits on TV ads, influencing impressionable teens.

THE ADVERTISER’S RESPONSE

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

The driver is on a road with a broken dividing line. At all times, he drives in conformity with road safety regulations.

It is our view that this advertisement in no way depicts, encourages or condones dangerous, aggressive or reckless driving and that the driver/vehicle acts within the law at all times. The advertisement in question has also gone through internal legal review to ensure that the creative complied with the FCAI Code of Practice.

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 Camry car, “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 Camry 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(b) were relevant in the circumstances.

In order to breach clause 2(a), the driving practices depicted must be:

“obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any Commonwealth law”

In making its decision, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

“The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

The Board viewed the advertisement and considered the complaint’s comments that the car depicted is driving recklessly in over-taking a caravan on the wrong side of the road.

The Board considered that the driver of the car is not depicted breaking any road rules, noting in particular that the car is depicted waiting for another car to pass before overtaking, overtakes where the line marking is a broken line, and is depicted indicating as he pulls out to overtake. The Board determined that the advertisement was not in breach of clause 2(a).

In relation to clause 2(b) of the FCAI Code, the Board considered whether the driving depicted was speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

The Board agreed that the speed of the car depicted was not excessive.

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(b) of the FCAI Code. The Board therefore dismissed the complaint.

The Board then considered whether the advertisement breached the AANA Code of Ethics (the Code). The Board noted that clause 2.6 of the Code does not apply to advertisements to which the FCAI Code applies. The Board considered that the advertisement did not contravene the Code on any basis.