



CASE REPORT

1. Complaint reference number	434/09
2. Advertiser	Toyota Rav 4
3. Product	Vehicle
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Driving practice that would breach the law
6. Date of determination	Wednesday, 23 September 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

Red Toyota RAV4 driving along sand dunes at the beach. The voiceover says "for a limited time only the original SUV offers even more with the introduction of the new RAV 4 Edge special edition". The RAV 4 is then shown driving along the beach.

THE COMPLAINT

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

At the start of the ad the vehicles four wheels leave the ground as it drives down the dune onto the beach. Also the ad doesn't say if approval was given for driving on the beach and whether it was a closed/controlled road on the beach.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following: *It should be known that Toyota Motor Corporation Australia Ltd (Toyota) takes its responsibility as an advertiser very seriously. We are committed to understanding and responding appropriately to community concerns and issues. Over and above this, we have established our own stringent internal review and approval process including obtaining legal advice. Accordingly, Toyota is extremely sensitive about prevailing community standards and we have an internal process that we believe is considerably more robust than the industry standard. We have carefully considered the complaint and strongly disagree with the concern put forward by the complainant. Whilst we respect the right of individuals to express their view, it is our firm belief that the TVC does not breach the AANA Advertiser Code of Ethics (AANA Code), nor the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code). Our understanding is that there is one clear aspect to the complaint which we need to respond to, which is the perceived breach of Section 2.7 of the AANA Code, which relates directly to our adherence to Sections 2(a) and 2(c) of the FCAI code. As section 2.7 relates specifically to the FCAI Code, we have responded only to the complainant's challenges of the perceived breach of sections 2(a) and 2(c) of the FCAI Code. **Section 2.7 of the AANA Code:** "Advertisements for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Motor Vehicles and section 2.6 of this Code shall not apply to advertisements to which the Federal Chamber of Automotive Industries Code of Practice applies.*

*Please find below our response to the FCAI Code: **Clause 2 of the FCAI Code: Clause 2(a) of the FCAI Code:** Advertisers should ensure that advertisements for motor vehicles do not portray any of the following: "Unsafe driving, including reckless and 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.*

*"Response: The Toyota RAV4 Edge Special Edition vehicle (Vehicle) featured in the TVC was never driven recklessly or beyond its capabilities at any time throughout the shoot and was driven within Australian speed limits. Given that the Vehicle was not driven on any roads, was handled under strictly controlled conditions in a beach environment, Toyota was given formal permission to do so and Toyota passed all safety requirements and driving restrictions imposed on it by the relevant authorities on location, we feel that the TVC does not breach clause 2(a). A highly experienced 4WD expert and precision driver was responsible for all driving of the Vehicle at all times on the day of the shoot, filmed or otherwise, in all areas of the off-road environment, including the dunes and the beach. The TVC was demonstrating the capabilities of the Vehicle as a recreational, action utility vehicle and at all times the driver was in complete control of the Vehicle and drove to the total satisfaction of the safety officer. Because of the undulating nature of the terrain, the Vehicle was not driven beyond its ordinary capabilities. **Clause 2(c) of the FCAI Code:** Advertisers should ensure that advertisements for motor vehicles do not portray any of the following: "Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic violation. Response: The TVC was filmed in a legitimate All Wheel Drive environment and the extreme terrain matched the capabilities of the Vehicle. The Vehicle was not driven at an excessive speed at any stage and certainly was not speeding at the point when the wheels left the ground. The vehicle demonstrated a very real situation, which occurred naturally as a result of the sudden change in the terrain which it was driving over at the time of shooting. You may remember from previous advertising campaigns, that 'Get Outdoors' has long been the strategic platform for RAV4 and so we chose to film this TVC in a picturesque beach environment. All necessary permissions were obtained for the filming and driving in this location. Under normal circumstances, given that this location is privately owned, driving vehicles on the beach and filming with a helicopter in the area is not permitted. It would not have been possible, therefore, to film the TVC had we not obtained the necessary permissions. The entire area was controlled by the safety officers and was closed to the public at all times the Vehicle was in motion or when filming was taking place. All restrictions imposed on the driving of the Vehicle at the location were 100% adhered to. We, therefore, strongly feel that the TVC is also not in breach of clause 2(c) of the FCAI Code as all rules and regulations were strictly adhered to and the driving footage depicted was an accurate representation of the driving experience of the terrain and environment in which the TVC was filmed.*

Whilst we respect the right of the complainant to voice their opinion, given the nature of the marketing positioning of the Vehicle, its relationship with the outdoors and its target audience, and the measures undertaken to ensure that all filming was undertaken in a controlled and safe environment, we feel that the TVC does not breach the FCAI Code. Further, we do not believe it is not necessary to disclose on the TVC that the TVC was filmed under controlled conditions or that permission was obtained to film at the specific location

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches 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.

The Board noted the complainant's concerns that the vehicle was depicted with four wheels leaving the ground and that there was no statement in the advertisement that the advertiser had pre approval to use the beach to record its advertisement.

The Board reviewed the advertisement and noted the advertiser's response.

The Board noted that the vehicle was an off-road vehicle and therefore clause 4 of the FCAI Code applies. Clause 4 of the FCAI Code states:

"An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area".

The Board then went on to consider the substantive provisions of the FCAI Code. The Board first 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 that even though the vehicle was depicted driving on sand, and all four wheels leaving the ground, that there was no unsafe driving through the entire advertisement and the vehicle was demonstrating the type of terrain and capacity of the vehicle to maintain control in that terrain.

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 while there was no depiction of the car being driven at excessive speed.

The Board then considered clause 2(c) which provides that advertisers should ensure that advertisements for motor vehicles do not portray 'driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation'. The Board considered the use of language was encouraging drivers to drive at excessive speeds and as such was encouraging drivers to break the law.

The Board considered that clauses 2(d), and (e) and clauses 3(a) and (b) and clause 4 of the FCAI Code were not relevant to the present advertisement.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). The Board determined that the advertisement did not comply with the FCAI Code as per Section 2.7 of the Code. Finding that the advertisement was in breach of the Codes the Board dismissed the complaint.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.