



CASE REPORT

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| 1. Complaint reference number | 455/03 |
| 2. Advertiser | Toyota Motor Corp Aust Ltd (Rav 4 - 4WD) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Other |
| 6. Date of determination | Tuesday, 17 February 2004 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The TVC opens with a visual of a camel figure dressed in a tracksuit working with a trainer in an old style gym. The trainer suggests to the camel that it has the speed but maybe not the power but after more exercise tells him that he is ready. The scene then moves to the camel driving a new RAV4 and he cruises along the street. A group of children follow him from behind. The camel sees the children in the rear mirror and glides away. He then drives up a series of steps into a forecourt area where he pulls over, jumps out of the car and surveys the scene jumping in the air with his arms aloft.

THE COMPLAINT

Comments which the complainant/s made included the following:

“The actions are irresponsible by virtue of: 1. taking the vehicle off the road pavement onto a pedestrian thoroughfare. 2. the vehicle is being chased by children on the road. 3. the vehicle comes to a halt after a ‘handbrake turn’ which is frowned on by authorities and the driver teaching industry. 4. the manufacturers will not honour guarantees and/or warranties if the vehicle/s are driven in this fashion.”

“... the driving of a vehicle down a flight of stairs is an example of reckless and illegal driving behaviour.”

“... the driving behaviour depicted in the advertisement is illegal in NSW if it were to occur on a road or road related area”

THE ADVERTISER’S RESPONSE

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

“The vehicle is in control at all times and is not depicted as, nor driven at speeds in excess of the speed limit.”

“... the advertisement in question is clearly fictitious based upon the popular Rocky movies”

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 Rav 4 4WD “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 Rav 4 4WD 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) and (c) were relevant in the circumstances.

In order for clause 2(a) to be breached, the driving practices described in that clause are only a breach of the Code to the extent that they would breach any law of the Commonwealth or State dealing with road and safety or traffic regulation, were they to occur “on a road or road-related area”.

In order for clauses 2(b) or (c) to be breached, the driving practices described in these clauses must take place “on a road or road-related area”.

In relation to clauses 2(b) and 2(c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “road” as defined by the FCAI Code. The definition provides as follows:

“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”

The Board then proceeded to consider the following factors as indicators of whether the images of the surface on which the vehicle travelled depicted in the advertisement constituted a “Road” for the purposes of the Code, or not:

although there were no line markings on the surface, the surface was very wide;

there were street lights and telegraph poles running right along side of the surface;

there was a narrower pedestrian footpath along the right hand side of the surface; and

the surface was running through what appeared to be a public park area and the surface appeared to be for use as road access through the premises.

On the basis of these factors, the Board formed the prima facie view that the surface depicted in the advertisement was a “Road”.

The Board therefore had to consider whether clauses 2(a), 2(b) and 2 (c) of the Code had been breached.

The Board considered that it would be illegal for a motor vehicle to drive in the manner depicted in the advertisement including driving up the stairs of a public area and with a body part outside the window of the vehicle. However, in verifying its prima facie conclusions, 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 noted further that the driving practices depicted in the advertisement were demonstrated in a fantastical way. The Board noted the advertiser’s comments that the advertisement is intended to be in a fictitious setting and is based upon the popular Rocky movies. The Board noted that this was made clear in the advertisement by the beginning scene in the gym prior to the vehicle being driven and also by the use of a character, being the camel, as opposed to a real life human being.

On the above basis, the Board confirmed its prima facie view and held that the material before it did not constitute an advertisement for a motor vehicle in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code. Further finding that the advertisement did not breach the Code in any other grounds, the Board dismissed the complaint.