



## CASE REPORT

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| 1. Complaint reference number | 600/09                                      |
| 2. Advertiser                 | Toyota (Prado)                              |
| 3. Product                    | Vehicle                                     |
| 4. Type of advertisement      | Print                                       |
| 5. Nature of complaint        | FCAI - Environmental damage<br>FCAI - Other |
| 6. Date of determination      | Wednesday, 20 January 2010                  |
| 7. DETERMINATION              | Dismissed                                   |

## DESCRIPTION OF THE ADVERTISEMENT

This print advertisement from Toyota for its Prado vehicle shows the vehicle on the edge of a large sand dune almost a cliff face with a lake and mountain scenery beyond. The vehicle is parked in front of an illuminated sign which says: There is a fallen tree in front! Proceed with care. A description of the vehicle is included below the scene.

## THE COMPLAINT

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

*This advertisement breaches the Voluntary Code of Practice for Motor Vehicle Advertising. The ad is irresponsible because it promotes deliberate and significant environment damage.*

*It suggests that driving off-road in sensitive alpine environments is something that is suitable and what others should aspire to. It is obvious that the area surrounding the car is a sensitive high mountain environment. There are high mountain peaks in the distance at a similar level, the grass is tussocky (suggesting alpine grasses) and there are no trees (hence it is above the tree-line). These environments are highly erodible, and the vegetation is easily damaged and slow-growing. It is irresponsible to drive on these areas without an existing trail.*

*There is no trail near the vehicle. There is grass under the vehicle and in front of and behind the tyres on both sides of the vehicle.*

*Toyota should not be promoting off-road driving, particularly in very sensitive environments such as alpine areas.*

## THE ADVERTISER' RESPONSE

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

*Firstly, it should be known that Toyota Motor Corporation Australia Ltd (**Toyota**) takes its responsibility as an advertiser very seriously. We make extensive efforts to understand not only our current and target audiences, but also community issues. Over and above this, we have established our own stringent internal review and approval process, including both legal and corporate affairs review and advice.*

*We have carefully considered the complaint us and strongly disagree with the concern put forward by the complainant:-*

**FCAI Code Environmental damage section 2(e):**

## ***The ad is irresponsible because it promotes deliberate and significant environment damage***

*While we respect the right of such individuals to hold their view, it is our firm belief that the Advertisement does not breach either the AANA Advertiser Code of Ethics (AANA Code), or the FCAI Code of Practice for Motor Vehicle Advertising (FCAI Code).*

### ***Section 2 (e) FCAI Code***

*Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.*

*The imagery used in the Advertisement is a combination of stock imagery and CAD imagery (computer generated). At no stage was the vehicle ever driven within this environment. In fact, the environment does not exist, simply being a digital composition of a number of different images. It goes without saying, that historically, where advertisements have been shot on location, Toyota and its advertising agencies always undertake appropriate due diligence in sourcing suitable locations not only suitable for the creative work, but locations that will not see any aspect of the environment threatened or disturbed in any way by the use of any of our vehicles. Further, we always obtain all relevant approvals to shoot on location, and environmental impact is always a key consideration. This means our vehicles are never driven through highly erodible or sensitive areas that would cause any type of environmental harm, and we certainly do not promote such driving.*

*In regards to the specific complaint that it is irresponsible to drive on these areas without an existing trail, the very nature of a 4WD is that it is meant to be driven off-road. This is even reinforced within section 4 of the FCAI Code Depiction of off-road vehicles. Here it clearly states that an advertisement may legitimately depict the capabilities and performance of an off-road vehicle traveling over loose or unsealed surfaces or uneven terrain, not forming part of a road or road related area. Toyota 4WDs have a hard-earned reputation for toughness; they are vehicles which can literally handle anything you throw at them. We therefore promote our 4WD, including Prado, in a way that portrays our toughness, and the 4WD technologies that make this vehicle capable the multi-terrain vision and select system technologies advertised within the Advertisement.*

*In addition to the perceived breach of FCAI Code, you have also requested we review the advertisement in its entirety against Section 2 of the AANA Code.*

### ***Section 2 AANA Code***

*Section 2.1: The Advertisement does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.*

*Section 2.2: The Advertisement does not present or portray violence Section 2.3: The Advertisement does not reference sex, sexuality or nudity. Section 2.4: The Advertisement is not aimed at children. Section 2.5: The Advertisement does not use any inappropriate language. Section 2.6: The Advertisement does not depict material contrary to Prevailing Community Standards on health & safety. Section 2.7: Refers to FCAI Code. This is addressed above. Section 2.8: The Advertisement does not promote food or beverage.*

*It is our belief that the Advertisement is appropriate for the audience it was intended for and meets the intended aim of highlighting the technological capabilities of the new Prado. The Advertisement was certainly not intended to create any perception of harm to, or disturbance of, the environment in any way, shape or form.*

*It is very unfortunate that the complainant's takeout from the Advertisement is that Toyota is promoting environmental damage, as this was certainly never our intention. However, we do apologise for any distress or concern we may have caused the complainant.*

*Based on the above explanations, we strongly submit that the complaint should be dismissed*

## **THE DETERMINATION**

The Advertising Standards Board (the 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 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 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 Prado 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 Prado 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(e) and 4 were relevant in the circumstances.

The Board noted that clause 2(e) requires that: *'advertisements for motor vehicles do not portray...deliberate and significant environmental damage, particularly in advertising for off-road vehicles.'*

The Board noted the complainant's concern that the advertisement depicts and encourages driving a 4WD in a sensitive Alpine environment. The Board noted the advertiser's response that the image is photoshopped and that the environment is no particular environment. The Board considered that the depiction of the vehicle suggests that the vehicle is in a remote and relatively inaccessible environment but that there is no suggestion or depiction that the vehicle is creating any environmental damage. The Board determined that the advertisement did not breach clause 2(e).

The Board noted that pursuant to clause 4 of the FCAI Code, advertisers are permitted to:

"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 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 first gave consideration to whether the advertisement legitimately depicted the capabilities and performance of an off-road vehicle in accordance with clause 4 of the FCAI Code. Off-road vehicle is defined in the Code as meaning:

"a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC Category). An off-road vehicle will normally have 4 wheel drive."

The Board concluded that the Toyota Prado vehicle was an off-road vehicle as defined under the FCAI Code.

The Board was then required to consider whether the capabilities and performance of the off-road

vehicle had been legitimately depicted. In this print advertisement the Prado is depicted near the top of a mountain. The Board formed the view that such driving, was a legitimate depiction of an off-road vehicles performance and capabilities on such a surface.

The Board was then required to consider whether such depictions portrayed either unsafe driving or excessive speed in breach of clause 4 of the FCAI Code.

The Board noted that the Prado was depicted in a still image but that the image did not suggest that the vehicle was being driven recklessly or unsafely. The Board was of the view that there were no overt indications that the vehicle engaged in any unsafe driving practices or levels of speed that would contravene the laws of any State or Territory in Australia were they to occur on a road or road related area.

On the above basis, the Board determined that the advertisement did not breach clauses 2(e) or 4 of the FCAI Code. Finding that the advertisement did not breach any other section of the Code, the Board therefore dismissed the complaint.