



CASE REPORT

1. Complaint reference number	99/05
2. Advertiser	Toyota Motor Corp Aust Ltd (Hilux)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 10 May 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The first scene in this advertisement takes place in an underground car-park. As a couple approach their car, a car alarms start to sound and suddenly the parked cars around them begin to move and crash into each other as though being pushed along. The Toyota HiLux then appears on screen. The concept behind the scene is that there is a 'force-field' that surrounds the HiLux, "pushing" everything in its immediate surroundings away. As the vehicle exits the car-park, a small blue vehicle is shown to be 'spat out' out of the car-park and slides onto the street (as though it were "pushed" by the HiLux). As the HiLux travels along a city street, parked cars on either side of the HiLux are shown to be "pushed" out of its way. No physical contact is made between the HiLux and the other vehicles. The next scene in the advertisement shows the HiLux travelling along a suburban street where empty garbage bins are launched into the air having been pushed by the HiLux's 'force-field'. The advertisement then shows the car travelling along a country road where road-works are taking place. Witches hats, road horses and even the road-repair vehicles are "pushed" out of the HiLux's path before the car then turns on to farmland (with no marked roads) where its 'force-field' is shown to up-root the fence posts on the farm. A voiceover states: "Introducing the big, new Toyota HiLux, the World's first Action Utility Vehicle, with class-kicking power and torque, get in or get out of the way". A super appears on the screen that reads: "Get in or get out of the way".

THE COMPLAINT

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

"I am of the opinion that this ad is targeted at the persons who may draw the inference that ownership of such a vehicle empowers them with the right to expect other vehicles to yield to them in traffic. The ad may incite owners of similar vehicles to behave aggressively in traffic and selfishly in carparks."

"...they are showing that it's acceptable behaviour to run everyone else off the road because your car is bigger than theirs (or them)."

"...promotes the ideas of individual contempt for others and the property of others when cocooned in the vehicle on offer. The message is anti-social and destructive of our society's professed values."

"...but this commercial overtly aims to sell vehicles on the desire of certain people to use a car to intimidate other road users. This ad represents a far greater threat to the safety and health of road users and the environment alike than any previously withdrawn commercials."

"The textual message of the ad is that this car makes you invincible and promotes being a road bully."

THE ADVERTISER'S RESPONSE

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

“We believe that it is clear that the advertisements portray a fantasy representation of the impact of the HiLux, which is clearly self evident exaggeration.”

“At no point in the commercial is the HiLux shown speeding, breaking road rules, or in fact, actually making contact with any other object. To the contrary, the advertisements are at pains to ensure the viewer understands that there is no physical contact between the HiLux and any of the objects shown to be affected by it.”

“To reiterate, it’s just the HiLux’s clearly fictional “force field” that creates the movement and impression where ever it goes. We have been careful to ensure that all of these vehicles are very clearly empty of people; and that they are stationary before clearing out of the HiLux’s path.”

“At no point do we see the HiLux interfering with the safety of any person, in fact pedestrians are clearly totally immune to ...the HiLux.”

“Toyota maintains that there is nothing dangerous, illegal, aggressive or reckless in the driving portrayed in the commercial.”

“...the tag line “Get in or get out of the way” is intended as a catch-cry, a call to those interested in owning what we believe to be the latest and best vehicle of its type on the market, to “Get in” and purchase the vehicle and join us in enjoying the advantages the vehicle has to offer.”

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 which came into effect on 1 July 2004 (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 HiLux “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 HiLux 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(c) were relevant in the circumstances. The Board had to consider whether these clauses of the Code had been breached. The Board first considered whether clause 2(a) of the FCAI Code had been breached. In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

“unsafe driving, including reckless and menacing driving that would breach any Commonwealth

law... if such driving were to occur on a road or road related area...”

The Board formed the view clause 2(a) had not been breached. The Board noted the advertiser’s comments that the advertisement portrayed was a fantasy representation and that the events were clearly exaggerated. The use of fantasy and exaggeration does not enable an advertiser to avoid compliance with the provisions of the FCAI Code. However, the Board took into consideration the fact that at no time did the vehicle make contact with any other object. The Board noted and accepted the advertiser’s comments that there is nothing in the advertisement to indicate that the vehicle is speeding or otherwise being driven unsafely or in breach of any law.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must:

“... if they were to take place on a road or road related area, breach any Commonwealth Law ...”

The Board formed the view that clause 2(c) had not been breached. The Board was of the view that there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

On the above basis, the Board confirmed its view and held that the material before it did not constitute an advertisement in breach of clauses 2(a) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.