

Case Report

1. Case Number :	0005-23
2. Advertiser :	Ram Trucks
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	25-Jan-2023
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(e) Environmental damage

DESCRIPTION OF ADVERTISEMENT

This TV On Demand advertisement depicts two men who proceed to drive a RAM SUV/Utility.



THE COMPLAINT

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

Advertisement encourage irresponsible destruction of natural areas.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We refer to the above complaints received by the Advertising Standards Board in connection with our 30 second television advertisement of the RAM truck range, featuring the RAM TRX ("the Advertisement").

American Special Vehicles Pty Ltd (trading as RAM Trucks Australia) takes its responsibility as an advertiser very seriously and makes extensive efforts to understand and respond appropriately to community concerns and issues, including by having in place stringent review and approval processes.

We would also like to emphasise that RAM Trucks Australia takes extremely seriously its commitment to the AANA Code of Ethics ("AANA Code") and the FCAI Voluntary Code of Practice for Motor Vehicle Advertising ("FCAI Code") and is fully aware of the potential impact of its advertising on the community as a whole. Accordingly, all of our advertising, including the Advertisement, are carefully reviewed prior to publication, including by being reviewed and approved by legal counsel.

Additionally, we adhere to the Commercials Acceptance Division (CAD) pre-approval process to ensure suitability before production or publication begins as well as final approval classification before advertising is aired. The Advertisement was CAD approved with a G rating.

RAM Trucks Australia does not encourage anyone to drive in a reckless and/or unsafe manner, or in any way which violates any road or driving related laws. Accordingly, we respectfully disagree with the complainants' characterisation of the Advertisement in such a way.

In answer to the specific questions raised on page 2 of your letters we note and stress the following:

1. What assurances can the advertiser provide that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?

In both off-road and on-road scenarios the driving in the Advertisement conformed to all road safety regulations including:

- a. Seat belts were worn;*
- b. Speed limits were adhered to;*
- c. Professional drivers were used;*
- d. The drivers were always in control of the vehicle;*
- e. A safety officer was present at all times.*

2. Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?

We can confirm that the vehicle was at all times driven within applicable speed limits and at no stage exceeded a speed of 80 km per hour. We note further that the actual relevant road limit was 100 km per hour and as a reflection of our commitment to responsible advertising the decision was made to not exceed 80 km per hour.

3. Was it necessary for the advertiser to obtain any special permission/permits to undertake filming of any driving sequences depicted in the advertisement?

In order to gain access to:

(a) Nelson Bay Road, in Nelson Bay, NSW, where the road driving was filmed, a permit was required and obtained from Port Stephens Council.

A condition of this permit was that a police escort would be required during on road filming. A police escort was present both front and rear of the filmed vehicle. The purpose of this was to ensure compliance and public safety.

(b) Stockton Beach Sand Dunes, where off road filming was filmed, a permit was required from Worimi First Nation and two Worimi guides were assigned to ensure driving only took place on restricted designated areas.

4. Has the advertisement been made available on the internet?

The Advertisement has been available on the internet.

The Vehicle

The vehicle featured in the Advertisement is the RAM TRX ("the Vehicle"). RAM, the manufacturer of the vehicle has designed and developed the world's most powerful, extreme performance 4x4 full-size pickup truck.

The Vehicle is performance-tuned for on-road and off-road capabilities, never before seen in this class of vehicle.

The Vehicles features as depicted in the Advertisement may be summarised as follows:

1. Full size 4x4 dual cab pickup truck
2. Full time 4x4 Transmission: 4WD Auto, 4WD High, 4WD Low, Axle Lock, Neutral
3. Supercharged 6.2L V8 Hemi with power output of 702HP
4. Off-road mode functions featuring active slip control to prevent binding and excessive slip from front to rear : BAHA, MUD/SAND, ROCK
5. An all-new suspension system features upgraded components to provide enhanced performance and improved endurance. An independent front suspension system with active damping includes new front upper and lower control arms with special attention paid to the caster and camber angles during suspension cycling. A new rear suspension system with active damping and an exclusive five-link coil system provides for incredible ride characteristics, durability, and better articulation over obstacles than a leaf-spring system.

6. *Bilstein® Black Hawk® e2 adaptive performance shocks have been tuned to demonstrate the optimum balance between on-road handling and class-leading off-road capability.*
7. *A Dana 60® rear axle with electronic locking differential and full floating axle shafts that handle the increased torque output*
8. *35-inch Goodyear Wrangler® Territory 325/65/R18 All-Terrain tyres.*

The Vehicle's performance attributes are therefore clearly performance and power based. Indeed, the sounds heard emanating from the Vehicle in the Advertisement are the Vehicle's natural sounds when being started and when being driven within permissible and lawful speeds and in no way whatsoever are to be interpreted as sounds generated from any unlawful driving practices, unsafe, dangerous or menacing driving.

It follows from the foregoing that the Vehicle's attributes and features carry a sense of exhilaration and excitement. It is the objective of the Advertisement to showcase the characteristics, features and performance attributes of the Vehicle to create an impression in an extremely competitive 4 wheel drive market.

With respect to the Vehicle, we are able to make a claim that it is the world's most powerful pick-up, and it is not an unusual strategy for an automotive brand to seek to generate public interest by showcasing their most powerful vehicles for the benefit of the brand more broadly.

We stress that at no stage was there any depiction or portrayal of excessive speed in the Advertisement. There is no indication of the speed that the vehicle is driving at or of the speed limits of the roads that the vehicle is driving on (e.g. there is no footage of a speedometer reading or reference to any speed limit being exceeded). As indicated above, the Vehicle was at no stage driven above 80 km per hour and at all times within prevailing speed limits.

In order to generate the feelings of exhilaration and excitement in the viewer, the Advertisement is cut and edited in a quick shot manner in certain parts. The use of this filming technique does not mean that the Vehicle was driven recklessly or illegally, or outside of legal speed limits.

The scenes of sand/water flying behind the Vehicle do not suggest driving at an unsafe speed, but rather reflect the reality of driving within such an environment.

We note that the Panel has similar considerations in Case Number 0040/19 (Suzuki Australia Pty Limited) and made the following observations in dismissing that case:

"The Panel noted that 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 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 Panel noted that under Clause 4 it is reasonable for an advertiser to depict the capabilities of their off-road vehicles, so long as those depictions did not show unsafe driving which would breach any Commonwealth law or the law of any State or Territory.

The Panel noted the advertiser's response that there is no screeching of tyres, long drifting periods or other effects. The Panel noted that the advertisement contains a montage of scenes of the vehicle off road. The Panel considered that the scenes with dirt flying out behind the vehicle do not suggest driving at an unsafe speed, but rather reflect the reality of driving on a dirt road.

The Panel noted the scene where the vehicle is shown doing a turn, on a dirt track where there are tyre marks suggestive of a car doing 'donuts' (tight circles). The Panel considered that the advertisement does not depict the vehicle doing a donut, simply a turn and that this is not behaviour that is unsafe or that would be unsafe or illegal if it were carried out on a road or road related area.

We consider that the Panel's findings and observations in the above case should have equal application to the case at hand.

Accordingly, and on the basis of the foregoing, we strongly refute that the Advertisement is in contravention of clause 2(a) of the FCAI Code.

Further, we strongly refute that the Advertisement is in contravention of clause 2(e) of the FCAI Code, which requires advertisers to not portray "deliberate and significant environmental damage".

The Advertisement does not portray any environmental damage, let alone deliberate and significant environmental damage.

We reiterate the information contained above that all necessary permits were acquired, including of Worimi First Nation, in connection with filming at Stockton Beach Sand Dunes. Further, two Worimi First Nation guides were assigned to ensure driving only took place on restricted designated areas.

We also reiterate that the FCAI Code provides that advertisers may legitimately depict off road capabilities by showing vehicles travelling over loose or unsealed surfaces or uneven terrain, provided that such scenes do not involve unsafe driving and that such vehicles do not exceed speed limits. The Advertisement is a legitimate depiction of the

capability and performance of the Vehicle travelling over off-road terrain and any assertion that it portrays any environmental damage is misconceived.

Indeed, our position above is consistent with the Panel's finding in the Case 0027-22 (General Motors Specialty Vehicles), which involved similar considerations and where the complaints were dismissed.

Accordingly, we do not consider that the Advertisement gives rise to a contravention of clause 2(e) of the FCAI Code.

For the above reasons, we submit that the Advertisement is not in breach of the AANA Code or the FCAI Code. If you require any further assistance or information please do not hesitate to contact me.

THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concerns that advertisement promoted unsafe and aggressive driving which could cause damage to the environment.

The Panel viewed the advertisement and noted the advertiser's response.

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 Panel considered whether the 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 Panel determined that the RAM vehicles depicted were Motor Vehicles as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

Clause 2(a) - Advertisements for motor vehicles do not portray ...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 Panel noted the complainants' concerns that the advertisement featured scenes of unsafe and aggressive driving.

The Panel noted the advertiser's response that the vehicle was in the control of a professional driver, and driven below speed limits, and the driving was not unsafe.

The Panel first noted the scene of the vehicle driving along the road and then across puddles of water.

The Panel considered that while the vehicle was shown and heard accelerating on the road, there is no indication that the vehicle is speeding or that the driver is not in control.

The Panel noted that the water was on an existing dirt track and was clearly shown to be puddles and not water moving across the road. The Panel considered that the driving was consistent with that of off-road driving and was not unsafe. The Panel considered that this scene was not undermining important road safety messages around the dangers of driving through flood water.

The Panel then noted the scenes of the vehicle driving on sand dunes.

The Panel noted that there were clearly previous wheel tracks and that the most likely interpretation is that these are sand dunes which are used by vehicles either for recreation or to access water.

The Panel considered that the way in which the scenes of the vehicle driving across the sand dunes were shown, the vehicle appeared to be moving at a significant speed. The Panel noted the advertiser's response that the vehicle was not speeding and did not travel at over 80km per hour, however considered that whatever speed the vehicle appeared to be travelling at on the sand dunes appeared unsafe.

In particular, the Panel noted the scene in which the vehicle sprayed sand into the air, above the height of the vehicle, and considered that to spray sand that high the vehicle would need to be moving quickly.

The Panel considered that it is dangerous to drive across sand quickly, especially on a steep dune, and that it is not uncommon for people to roll their vehicles if they do not drive slowly and with caution in such environments.

The Panel considered that if a non-professional driver attempted to drive across sand dunes in the same manner as in the advertisement it could lead to an accident resulting in significant injury to the vehicle's occupants. The Panel considered that the advertisement portrayed unsafe driving.

The Panel noted case 0320-21 which was reconsidered after an Independent Review was sought. In that case:

“The Panel noted the comments of the Independent Reviewer relating to the interpretation of the Code - specifically, that Clause 2(a) may be understood to refer to both unsafe driving and driving that would breach road rules, rather than to mean that unsafe driving is defined as driving that would breach road rules. The Panel acknowledged this distinction and considered the advertisement with this in mind.”

For the reasons described above the Panel considered that even if not a breach of the law, the advertisement depicts a scene of unsafe driving by showing a vehicle driving on sand dunes in a manner which if copied could lead to a serious accident.

Clause 2(a) conclusion

The Panel considered that the advertisement did breach Clause 2(a) of the FCAI Code.

Clause 2(e): Advertisers should ensure that advertisements for motor vehicles do not portray... Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

The Panel noted the advertiser's response that the vehicle was driven in a location where the appropriate permits and permissions had been obtained and in a manner consistent with recreational use of off-road vehicles.

The Panel noted that there had been increasing attention in the media, particularly in Western Australia and Queensland, relating to environmental damage caused by people driving on beaches. The Panel noted that such driving had the potential to damage ecosystems, and in particular noted the concerns around the risk to turtle eggs.

The Panel noted that the sand dunes used in the advertisement are commonly used for four wheel driving and the vehicle is clearly following other tracks.

However, the Panel considered that the manner in which the vehicle is driving in the advertisement, including going at high speeds so that sand is sprayed into the air, was more likely to cause damage to the environment than lower speeds and more responsible driving.

The Panel considered that the theme of the advertisement is to emphasise the power of the vehicle, which is reflected in the tagline, "Eats everything else for breakfast". The Panel considered that the advertisement encouraged driving on beaches and sand dunes in an aggressive manner which would be against community standards on how to drive in such areas to minimise environmental damage caused.

The Panel considered that the advertisement did depict the vehicles driving in a manner which could be seen to cause deliberate and significant damage to the environment.

Clause 2(e) conclusion

The Panel considered that the advertisement did depict the vehicles driving in a manner which could be seen to cause deliberate or significant damage to the environment and determined that the advertisement did breach Clause 2(e) of the FCAI Code.

Clause 4: 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 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 Panel noted the advertiser's response that the driving behaviour in the advertisement was consistent with Clause Four of the Code which allows for advertisers to legitimately depict the capabilities and performance of off-road vehicles.

The Panel noted that Clause 4 does not allow for advertisements to portray unsafe driving, and noted that consistent with the discussion under Clause 2(a) of the advertisement the advertisement did portray unsafe driving.

Clause 4 conclusion

The Panel found that the driving in the advertisement was not consistent with Clause 4 of the Code.

Conclusion

Finding that the advertisement did breach Causes 2(a) and 2(e) of the FCAI Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

RAM Trucks Australia would like to thank the Panel for considering the complaints and providing comprehensive and detailed feedback.

We do take our commitment to compliance with the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (the Code) seriously and will continue to do so.

We have, as a result of the Panel's determination, elected to promptly modify the Advertisement to address the Panel's concerns as to the manner the vehicle was driven on the sand dunes, in particular the scene in which the vehicle sprayed sand into the air above the height of the vehicle. We envisage that the modified Advertisement will be finalised within 7 days from [10/02/23] and will replace the original version.

RAM Trucks Australia is committed to creating an Advertisement that complies with the Code while continuing to demonstrate the vehicle's performance attributes and characteristics.