

Case Report

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| 1. Case Number : | 0110-24 |
| 2. Advertiser : | GWM |
| 3. Product : | Automotive |
| 4. Type of Advertisement/Media : | App |
| 5. Date of Decision: | 1-May-2024 |
| 6. Decision: | Dismissed |

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(c) Driving practices
FCAI Motor Vehicle Advertising Code\2(e) Environmental Damage
FCAI Motor Vehicle Advertising Code\4 Off-road vehicles

DESCRIPTION OF ADVERTISEMENT

This advertisement features surfer Sally Fitzgibbons talking about her GWM Tank. It features footage of her driving on the sand.



THE COMPLAINT

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

Breaches voluntary code of practice for motor vehicle advertising clause 4: shows unsafe practices. People have died on beaches when vehicles steering sharp turns rollover.

https://www.fcai.com.au/library/publication/fcai_voluntary_advertising_code_of_practice.pdf

THE ADVERTISER'S RESPONSE

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

Contrary to the assertion, Sally was not driving dangerously on the sand; rather, she was executing a turn at a safe and reasonable speed that kicked up loose sand. Sally did not exceed the 40km per hour speed limit whilst on the beach as per the MidCoast Council Requirements. A day permit was purchased for this shoot.

Sally, an experienced driver with training in Off Road Driving and she exercised due diligence and caution while manoeuvring her vehicle on the beach. She adhered to all pertinent safety guidelines and regulations, ensuring the well-being of herself and others present.

THE DECISION

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

The Panel noted the complainant's concern that the advertisement depicts a vehicle driving in an unsafe manner.

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

Is this advertisement for a motor vehicle?

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 GWM Tank vehicle is a Motor Vehicle 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.

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 advertiser's response that the advertisement depicts the vehicle under control and moving at safe speeds.

The Panel considered that at all points throughout the advertisement the vehicle is depicted moving at moderate or slow speeds. The Panel noted the sand spray out from the vehicle's wheels and considered that this was the result of the vehicle turning at a speed that would be needed to prevent the vehicle from becoming stuck.

The Panel acknowledged that for inexperienced drivers, and drivers of non-off-road vehicles, driving on sand can be dangerous and there is a high risk of vehicles rolling over. However, the Panel considered that in this advertisement the vehicle being used is appropriate to the circumstances, and the driver appears to be going at a safe speed for the location.

Overall, the Panel considered that the driver appears to be in control of the vehicle and is not driving in a manner which is unsafe, or which would breach road rules.

Clause 2(a) conclusion

The Panel concluded that the advertisement did not breach Clause 2(a) of the FCAI Code.

Clause 2(c) - 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. (examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle)].

The Panel noted a scene towards the end of the advertisement where Sally Fitzgibbons can be seen sitting in her vehicle, with her seatbelt on, but below her shoulder. The Panel noted it had previously considered a similar issue in case 0107-24, in which:

"The Panel considered that the person in the advertisement is clearly depicted as wearing a seatbelt, with the belt seen across their chest and lap.

The Panel noted that the person appears to have leant to the side when they've fallen asleep, causing the seatbelt to be across their upper arm and not over their shoulder.

The Panel considered that if the vehicle were to stop suddenly the seatbelt, although not ideally placed, would still likely prevent the person from being thrown forward and injuring themselves.

Overall, the Panel considered that the use of a seatbelt in this manner in these circumstances would not be against prevailing community standards on health and safety.”

The Panel considered that community standards are that safe driving practices should be demonstrated in vehicle advertisements. The Panel considered that ideally in the current advertisement the woman would be wearing her seatbelt correctly, over her shoulder, in a manner that would most effectively prevent injury.

However, the Panel noted that the vehicle is stationary at the time the woman’s seatbelt can be seen. The Panel noted that there is no requirement for seatbelts to be worn when a vehicle is stationary, and the woman having her seatbelt below her shoulder would not breach road rules.

Clause 2 (c) conclusion

The Panel found that the advertisement did not breach clause 2(c) 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 that the vehicle was being driven in a manner consistent with the recreational use of off-road vehicles, and that the advertisement depicted the vehicle’s abilities in off-road conditions. The Panel noted that there was no indication of the presence of flora or fauna that may be harmed, and there was no environmental damage evident in this or any other scene.

The Panel considered that the advertisement did not depict the vehicle driving in a manner which could be seen to cause deliberate or significant damage to the environment.

Clause 2(e) conclusion

The Panel found that the advertisement did not 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 considered that the advertisement depicts the capabilities and performance of an off-road vehicle travelling over terrain not forming part of a road or road related area and did not portray unsafe driving which would contravene relevant laws if the driving were to occur on a road or road related area.

Clause 4 conclusion

The Panel found that the driving in the advertisement was consistent with Clause 4 of the Code.

Conclusion

Finding that the advertisement did not breach the FCAI Code, the Panel dismissed the complaint.