



**Ad Standards** Community Panel  
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Advertising Standards Bureau Limited  
ACN 084 452 666

## Case Report

1	<b>Case Number</b>	<b>0074/18</b>
2	<b>Advertiser</b>	<b>Holden Ltd</b>
3	<b>Product</b>	<b>Vehicle</b>
4	<b>Type of Advertisement / media</b>	<b>Internet-Social-FB</b>
5	<b>Date of Determination</b>	<b>21/02/2018</b>
6	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

### DESCRIPTION OF THE ADVERTISEMENT

This Facebook advertisement features a short 'press and hold' video on the advertiser's Facebook page. The advertisement features the caption, "Christmas is always a dangerous time of year on our roads. 'Press and hold' to see how a situation can change in an instant."

When a user holds their finger over the advertisement (from a smartphone) the video plays. The video is filmed from the point of view of a cyclist who is looking down at their handlebars while riding. The cyclist then looks up to see a car door being opened in front of them, and they don't have time to stop. The advertisement goes black before collision and the text "be prepared for their mistakes" appears followed by the text "stay safe these holidays" and the Holden logo.

### THE COMPLAINT



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

*This advert seems to attempt to shift blame onto cyclists for what is very clearly a driver offence. Holden claims it is 'open to interpretation', and 'to be aware of' surroundings, yet there is absolutely no way, at law, under road Rule 269(3) that this offence is anything other than driver fault. The rule states that it is an offence "to cause a hazard to a person or a vehicle by opening a car door, leaving a door of a vehicle open, or getting off, or out of, a vehicle." If they were serious about promoting road safety, they would have clarified driver responsibilities (surely managing a door without injuring others is not a big ask), rather than trying to blur and minimise driver culpability.*

### **THE ADVERTISER'S RESPONSE**

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

*Holden takes its legal responsibilities under the Competition and Consumer Act, AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (Code), very seriously. This reflects Holden's robust commitment to complying with advertising and motor vehicle safety regulations.*

#### *The Complaint*

*The Complaint relates to the 9 second advertisement (which was linked by the complainant in the 'Ad Description') and was displayed on Facebook only from December 20 2017 to December 21 2017, via a link that can only be watched using a touch sensitive smart phone.*

*The concern raised by the complainant in the Complaint relates to the manner in which a cyclist is portrayed on the road. Specifically, the complainant's concern is that the Advertisement attempts to shift the blame onto cyclists in situations where the driver of a vehicle opens their car door causing a hazard, an act which is illegal.*

#### *The Advertisement*

*The campaign was designed to explore a number of safety risks on our roads, and to alert all drivers to be more aware of their surroundings and possible dangers. The Advertisement was placed during the holiday period, when there is unfortunately a heightened risk of accidents. The intent of the campaign was to advocate safe driving, by developing a content series to improve awareness and provide education regarding the importance of safe driving practices, particularly in response to some common risks on the road. The Advertisement was developed so as to demonstrate one of the ways in which drivers can put others at risk by acting unsafely. It was filmed in a*



*controlled environment where all participants were safe from harm.*

*The Advertisement is filmed from the point of view of a cyclist. At the beginning, the cyclist is looking down so that the ground and the front wheel of the bike are in sight. The cyclist then looks up so that the viewer can see the surroundings. The cyclist appears to be on a residential street. There are no other road users in sight, apart from a parked car on the left-hand side of the road. The boot of this car is open and a person is shown behind the vehicle, leaning into the boot. The cyclist then looks down, and the viewer again sees the ground and front wheel of the bike as the cyclist is pedalling. The cyclist looks up again and this time, is shown to be passing the rear wheel of the car. The driver's door is wide open and she is sitting in the driver seat. The screen then turns black. All of this happens in the space of 3 seconds. At 0:04 the words 'BE PREPARED FOR THEIR MISTAKES' are shown on the black screen for 2 seconds. At 0:07 the words 'STAY SAFE THESE HOLIDAYS' are shown on the black screen for the remaining 2 seconds of the Advertisement, with the Holden logo underneath.*

#### *Relevant legislation and regulations*

*The complaint is made pursuant to clause 2(c) of the Code, which requires that advertisers ensure that their 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.*

*The Advertisement was filmed in New South Wales. The relevant laws and standards relating to the opening of car doors are as follows:*

- 1. Road Rules 2014 (NSW) (Road Rules)<sup>1</sup>; and*
- 2. The Code.*

*Rule 269 of the Road Rules applies to 'opening doors and getting out of a vehicle'. Subsection (3) contains a general requirement that a person must not cause a hazard to any person or vehicle by opening a door of a vehicle, leaving a door of a vehicle open, or getting off, or out of, a vehicle.*

#### *Applying clause 2 of the Code to the Advertisement*

*Based on the above, Holden believes the Advertisement is at all times in compliance with the provisions of the relevant legislation (Road Rule 269(3)) and therefore also clause 2 of the Code.*

*In particular, in applying clause 2(c) of the Code to the Advertisement, we note the following:*

- a) Holden does not in any way condone the breach of any State, Territory or Commonwealth law;*



- b) the Advertisement was filmed from the perspective of the cyclist so as to demonstrate the problems that arise when drivers do not follow the Road Rules, namely, causing a hazard to a person by opening a door of a vehicle;*
- c) This is a common and effective technique used in advertising to demonstrate to viewers that certain acts are unsafe or unlawful, and highlights the consequences of such acts. The clear intent is to encourage the viewers to obey such laws – examples of other such advertisements include those of the TAC and Victoria Police;*
- d) prior to the posting of the Advertisement, the Holden team considered Commonwealth, State and Territory road safety laws and traffic regulations concerning hazards that may arise in relation to cyclists on the road – it was believed that no such law was breached in the filming of this Advertisement;*
- e) the Advertisement was rigorously reviewed by our internal legal team who came to the same conclusion; and*
- f) crew members present on the day of the filming, and contactable upon request, can attest to the fact that no one was harmed during the filming of this Advertisement.*

*While we respect the personal opinion of the complainant, Holden strongly believes that the Advertisement is in full compliance with the relevant laws and regulations, including the FCAI Code and AANA Code of Ethics, as well as real world community standards. Holden strongly supports the safety of all participants in its Advertisements and produces all of its advertising material in line with this policy. It is the very risk that the complainant describes that we were seeking to highlight and as such, Holden's aim to reduce such incidents on the road. In our view, it is clear that the reference to any mistake relates to the driver of the motor vehicle, and in no way shifts blame to the cyclist.*

*We therefore request this complaint be dismissed.*

## **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 Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code) or the AANA Code of Ethics.

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 this material did meet the definition of an advertisement as it



promoted the Holden brand and/or organisation.

The Panel noted that this Facebook advertisement features a 'click and play' video which is seen from a cyclist's perspective. The cyclist looks down and when they look back up a car door is opened in front of them.

The Panel noted the complainant's concerns that the advertisement depicts a person opening a car door into a cyclist and suggests that this is the cyclist's fault.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement. Clause 2 of the FCAI sets out general provisions that advertisers should comply with when advertising a 'motor vehicle'. Clause 1(d) of the FCAI Code defines a 'motor vehicle' as 'Motor vehicle: means passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle.'

Relevantly, the Panel considered clause 2(c) of the FCAI Code which requires that 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.'

The Panel considered the advertiser's response that the advertisement did depict material which would breach road regulations, however that it was done so in order to promote road safety in the holiday period.

The Panel considered that the advertisement did depict driving practices which would breach Commonwealth law, however noted that the advertisement was not for a 'motor vehicle' as defined in the FCAI Code.

The Panel instead considered that the purpose of this advertisement was to promote a community service message of vehicle safety, rather than to promote a motor vehicle and as such Clause 2 of the FCAI Code did not apply.

The Panel noted the complainant's concerns that the advertisement suggests that the behaviour was the cyclist's fault, not the driver's. However, the Panel considered that the advertisement was filmed from the perspective of the cyclist and that the most likely interpretation of the words 'be prepared for their mistakes' was a suggestion that the driver was making a mistake, not the cyclist.

The Panel noted that even if the advertisement was suggesting the behaviour was the cyclist's fault this was not a behaviour that would breach any provision of the FCAI Code or the AANA Code of Ethics.



Finding that the advertisement did not breach the FCAI Code or the AANA Code of Ethics the Panel dismissed the complaint.