



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0102/19
2	Advertiser	Holden Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	17/04/2019
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(b) Breaking the speed limit
FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement involves a group of people stealing a painting from a house. They then escape in a Holden Equinox and are chased by men on motorcycles. They are able to return the painting to a gallery.

THE COMPLAINT

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

In my opinion it would qualify for a loss of licence under the current hoon laws and the vehicle impounded. Quite an inappropriate ad in today's climate of road safety.

The AdStandards (FCAI) Code states: 2. GENERAL PROVISIONS

Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

(a) Unsafe driving, including reckless and 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.

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]

(c) 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 recent VW ad which AdStandards found to have breached the code has since being modified <https://www.crikey.com.au/2018/11/02/too-powerful-for-tv-volkswagen-ad-breaches-tv-advertising-code/> The new ad is now mocking the Code. These advertisers must learn that the Code is there for a very good reason and the FCAI was responsible for its wording. This new Holden ad is clearly in breach of the Code and should be withdrawn immediately

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 a cut-down version of the Advertisement which was broadcast on television throughout the month of March (and continues to be broadcasted in April).

The concern raised by the complainant relates to the driving of the Equinox as it evades the pursuing motorcycles, specifically in relation to the driving manoeuvres in the shipyard scene of the Advertisement. The complainant describes these manoeuvres as dangerous and reckless. The complainant specifically refers to the vehicle making a 180 degree turn.

The Advertisement



The Advertisement forms part of a broader campaign for the Holden SUV range. The objective of the campaign is to showcase the range of Holden's SUVs and their respective features. The Advertisement is titled "A Holden Heist" and it depicts a cliché, Hollywood-style heist, where the "heroes" use a range of Holden SUVs to escape the pursuing "villains".

The Advertisement starts with the heroes performing a daring heist to recover a stolen painting from the villains' mansion. As the heroes run from the mansion, they are chased by the villains.

The heroes then jump into their Holden SUVs and are pursued by a black van and the villains on motorcycles. Using the features of each SUV, the heroes are able to escape, and return the painting to its rightful place (albeit the painting falls to the ground as some comic relief at the end of the Advertisement).

The driving scenes deliberately leverage cliché, Hollywood environments and actions to help our audience quickly understand that this Advertisement is designed to look like a movie trailer, rather than a depiction of real life events. Examples of this include:

- The small Trax squeezing through tight alleyways where the large black van cannot;*
- The Trax hiding in a laneway while our heroes drop through a man-hole to the waiting Equinox;*
- A game of cat-and-mouse between the Equinox and motorcycles in a shipyard;*
- The Equinox hiding in plain sight in front of a billboard of the same Holden Equinox;*
- and*
- The Equinox driving into a hidden trap door at the back of a mock-caravan to eventually escape for good.*

The Complaint specifically refers to a cut-down version of the Advertisement that focuses only on the Equinox's role in the Advertisement. Specifically, the Equinox features in the Advertisement in order to demonstrate the dynamic handling and power of the vehicle – this is demonstrated by the scene in which it manages to evade the motorcycles.

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 Zealand, however, has also been broadcast in Australia where the complainant resides. The relevant laws and standards relating to driving in Australia are:

- 1. Road Traffic Act 1961 (Cth) (RTA)**
- 2. The Code*

Section 46 of the RTA applies to ‘reckless and dangerous driving’. Please find a copy of the provision attached. Subsection (1) contains a general requirement that a person must not drive a vehicle recklessly or at a speed or in a manner which is dangerous to any person. In determining whether this provision has been breached, regard will be given to the nature and road.

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 (RTA) 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 at all times filmed under controlled conditions by trained and experienced professionals. There was no unaccounted-for traffic, or any other potential obstacle present at any point during filming.*
- c) the Advertisement was deliberately created so as to mimic a Hollywood-style “heist. This is a common and effective technique used in advertising to demonstrate to viewers that certain acts are not based on real life footage and would not be condoned in a public space. The clear intent is to showcase the features of the vehicles in a comedic way.*
- d) the Advertisement was rigorously reviewed by our internal legal team who came to the same conclusion; and*
- e) crew members present on the day of 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.



We therefore request this complaint be dismissed.

**Equivalent legislation also exists in the States and Territories of Australia, for example, the Road Safety Road Rules 2017 (Vic).*

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).

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 Holden Equinox was 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.

The Panel noted the complainant's concern that the advertisement shows the car performing a 180 degree turn which would be illegal on a road, driving at a high speed and driving recklessly.

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

The Panel noted that the motor vehicle advertisement features a theme of a heist, in that the characters are shown to take a painting from a party and then evade pursuers in their vehicle before returning the painting to a museum. The Panel noted that the vehicle is depicting travelling through the city and a shipping container yard. A particular scene in the advertisement shows the vehicle performing a 180 degree turn, essentially changing direction suddenly, while evading the pursuers.

The Panel considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: '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 examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Panel noted the complainant's concern that the advertisement depicts dangerous driving, in particular the depiction of a 180 degree turn.

The Panel noted the scene in the advertisement which does depict the vehicle performing a sudden 180 degree turn in order for the characters to evade their pursuers after stealing a painting.

The Panel noted the advertisement featured the disclaimer "Filmed under controlled conditions. Expert driver used". The Panel noted this disclaimer was on screen for three seconds.

The Panel noted the guidance in the FCAI Code which states "In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code."

In this instance, the Panel considered that the use of a disclaimer does not justify the inclusion of any unsafe driving, in particular the manoeuvre to change the direction of the motor vehicle.

The Panel noted the guidance in the FCAI Code states: "that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code."

The Panel noted the advertiser's response that this advertisement was intended to showcase the features of the vehicle in a comedic way, however, the Panel considered that this depiction was a realistic image of a vehicle in an industrial area performing a sudden 180 degree turn, and that this is a realistic scenario which is unsafe.

The Panel considered that while the advertisement does use humour and a Hollywood



style heist theme, the vehicle is still depicted as performing a 180 degree turn. The Panel considered that there is significant community concern around road safety in relation to unsafe driving. The Panel considered that although the advertisement had fantastical elements, the depiction of the vehicle performing that turn was a realistic scenario that would constitute unsafe and reckless driving.

The Panel considered that the use of fantasy elements and exaggeration did not mitigate the depiction of unsafe driving. The Panel determined that this scene in the advertisement did breach Clause 2(a) of the FCAI Code.

The Panel then considered clause 2(b) of the FCAI Code. Clause 2(b) requires that "Advertisements for motor vehicles do not portray: people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast."

The Panel considered the complainant's concern that the advertisement depicted the vehicle travelling at high speed through a shipping container yard.

The Panel considered that there was no depiction of the speedometer in the advertisement and no context to clearly indicate how fast the vehicle was travelling.

The Panel considered that the turns performed and the landscape in the shipping container yard would make it very difficult for the vehicle to reach speeds that would breach the law, and additionally noted that the vehicle is not shown to gain speed during these scenes. Rather, the vehicle is mostly depicted turning corners. The Panel noted that dust is stirred up during these scenes, however considered that this is a result of a dusty location, rather than a result of excessive speeds.

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

The Panel then considered clause 2(c) of the FCAI Code. Clause 2(c) 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. (examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle]."

The Panel noted the complainant's concern that the advertisement depicts the man's car stopped in a position where it may be hit by another vehicle and pushed onto the tracks.



The Panel noted that this section of the Code is particular to activities relating to road safety or traffic regulation, as opposed to unsafe driving which is detailed in Section 2(a) of the Code.

The Panel considered that there is no depiction in the advertisement of the vehicle performing any driving practices that would breach the law. Specifically, the vehicle is not shown to violate any traffic regulations when driving in the city, for example ignoring traffic lights, stop signs. Additionally, all passengers are depicted as wearing seatbelts, and the driver is depicted as being focussed on the road.

The Panel considered that the advertisement did 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.

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

Finding that the advertisement did breach Cause 2(a) of the FCAI Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

I refer to the Advertising Standards Community Panel's determination regarding the recent advertisement featuring the Holden Equinox, outlined under case report 04102/19 ("Determination"). While we do not agree with the conclusions drawn in the Determination, we agree to cooperate fully and modify the advertisement to give effect to the concerns expressed in the Determination and the original complaint. We wish to provide this Advertiser's Statement below to be published as part of the case report and outline how we intend to modify the advertising to comply with the Code.

To demonstrate the exciting driving capability and class-leading turbo power of the Holden Equinox, we included a 180-degree turn within the 'A Holden Heist' advertisement as our heroes evade pursuing motorcycles. This manoeuvre was filmed under controlled conditions in a shipping yard with the intent of story-telling and was not intended to represent a real-world scenario. While it was our belief that this manoeuvre was acceptable within the fantastical nature of a comedic story heavy with Hollywood cliché, we will modify the advertisement to alleviate the concerns expressed in the Determination. This scene appears in a wide range of Holden's TV and online advertising and as such we will update the advertisement to create an updated version where the 180-degree turn is removed. We are working urgently through a plan with our broadcast partners to remove the current version of this advertisement from all environments including TV, online and social media.

We are taking these steps to modify the advertising as Holden takes its commitment



to the Code seriously, and we support the safety of all participants in the filming of our advertisements and the wider Australian driving community.