



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0149/17</b>
<b>2</b>	<b>Advertiser</b>	<b>Holden Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>12/04/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

- 2.6 - Health and Safety Motor vehicle related
- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

The subject campaign is designed to highlight the integration between smartphone technology and the new Holden Trax. The entire campaign, titled “Mobile Made”, was shot on mobile phones. In fact, the actual filming of the Advertisement (including the various photographers and the photographic equipment) is part of the creative story.

## THE COMPLAINT

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

*I object to this ad due to several apparent w.h.s and road safety issues. One being a shot of a man on the top of a very high ladder, sitting atop it with a camera, above the safe working height with no apparent fall safety devices. This depicts an unsafe work practice. The second issue is vehicles shown driving around with protruding camera rigs which would protrude well beyond safe and Legal load protrusion limits. These would also pose a very high pedestrian/cyclist impact risk.*

## 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 Competition and Consumer Act, AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising very seriously. Further, Holden adheres to the Commercial Acceptance Division (CAD) pre-approval process to ensure approval classification before the commercial is aired. This reflects Holden's robust commitment to complying with advertising, workplace and motor vehicle safety regulations.*

*The concerns raised in the Complaint are as follows:*

*Occupational Health and Safety concerns in relation to the manner in which a camera man is depicted on a ladder ("The Ladder Scene"); and*

*Road safety concerns over the use of "protruding camera rigs" (Russian arm) on public roads. ("The Russian Arm Scene").*

*The Advertisement*

*The subject campaign is designed to highlight the integration between smartphone technology and the new Holden Trax. The entire campaign, titled "Mobile Made", was shot on mobile phones. In fact, the actual filming of the Advertisement (including the various photographers and the photographic equipment) is part of the creative story. Given the focus on mobile connectivity, the Advertisement is intended to appeal to tech-savvy adults, and have a fun, vibrant and youthful atmosphere.*

*The Advertisement is delivered as a series of short clips of Jane Lu, the crew members and behind-the-scene footage. The format enhances the excitement and energy of each clip, and the overall Advertisement.*

*The clips, in order of appearance, are:*

- *Jane Lu, introduces the campaign whilst recording herself on her mobile phone. She introduces the new Holden Trax.*
- *Behind-the-scene footage of the director reviewing mobile phone footage, and the crew taking selfies.*
- *Jane filming a fashion shoot with some of her friends.*
- *Two crew members going for a coffee run in the Holden Trax.*
- *Jane driving around looking for lunch.*
- *Jane at a café, where she takes a photo of her lunch and uploads it to Instagram.*
- *The crew members posing in front of two Holden Trax.*
- *Inside of the car, a crew member is driving.*
- *Hyper lapse footage from inside the Trax as it travels down a street.*
- *High-angle footage of the Trax turning out of a street.*
- *Behind-the-scenes footage of the preceding clip (Trax turning out of a street) as it is being filmed. The photographer, who is filming, sits on top of a ladder.*
- *The crew attaching a phone to the Russian Arm System.*
- *Behind-the-scenes footage of the Russian Arm filming a Holden Trax. The Russian arm travels alongside, and ahead of, the moving Holden Trax.*
- *Actual footage of the Holden Trax.*
- *Two crew members, pictured inside the vehicle with the Russian Arm Scene, react to news that they have accidentally ruined a shot.*

- *Shot of the Trax driving across a bridge.*
- *Jane Lu and the crew take a selfie with the Trax, celebrating the end of the shoot.*

#### *Relevant legislation and regulations*

*The Advertisement was shot in Victoria. The relevant laws and standards relating to the complaints are as follows:*

*The AANA Advertiser Code of Ethics (Code);*

*The AANA Advertiser Code of Ethics (Practice Notes) ; and*

*Occupational Health and Safety Regulations 2007 (VIC) (Regulations) .*

*The Complaint is made pursuant to Section 2.6 of the AANA Advertiser Code of Ethics, which states that advertising or marketing communications shall not depict material contrary to Prevailing Community Standards on health and safety.*

*The Regulations imposes specific duties on an employer where there is a risk of a fall of more than 2 metres. Regulation 3.3.4 dictates that an employer must ensure that, where an employee or independent contractor is required to undertake a task at the workplace that involves a risk of a fall, the risk is controlled, so far as is reasonably practicable. Sub-regulation 3.3.4(4) indicates that an employer can control the risk of a fall (and thereby comply with the Regulations) through the use of a portable ladder in accordance with regulation 3.3.5. Under regulation 3.3.5, an employer must ensure that a portable ladder is fit for purpose, is appropriate for the duration of the task, and is set up in a correct manner.*

#### *Applying Section 2.6 of the Code of the Advertisement*

*It is Holden's position that the Advertisement is not contrary to motor vehicle health and safety, or Prevailing Community Standards on health and safety, by reason of this scene. The complainant's concerns are made without knowledge of the extensive range of safety measures undertaken by Holden and its business partners on the day of filming. In filming the Advertisement, Holden prioritised the safety of all cast and crew by implementing safety measures beyond prevailing community expectations. Such measures included the following:*

- *An extensive Safety Report/Risk Assessment was prepared on all aspect of filming prior to commencement of filming.*
- *A Registered Safety Officer /Stunt Action Consultant supervised filming and was present at all times.*
- *A first aider and medical kit were on standby at all times.*
- *Numerous safety inductions were conducted for all cast and crew, including: general safety induction, location safety inductions, Russian Arm specific safety induction,*

#### *The Russian Arm Scene*

*It is Holden's position that the Advertisement is not contrary to motor vehicle health and safety, or Prevailing Community Standards on health and safety, by reason of the Russian Arm Scene. We outline the reasons why, with the specific safety measures taken, below:*

*Some further measures specific to the Russian Arm Scene were as follows:*

- *Holden was not in violation of any road safety or "protrusion limits" as contended by the complainant. Holden acquired all necessary filming permits from the City of Melbourne and Vic Roads (available on request). This encompassed permission to use the Russian Arm.*
- *On the day of filming, the street was closed off to the public, and police escorts were on location to manage traffic. Under police supervision, no cyclists, pedestrians or offset vehicles were exposed to the Russian Arm. This should be apparent, as the Advertisement*

*clearly shows no other road users. Therefore, the complainant's concern that there was a risk to pedestrians and cyclists is unfounded.*

- *The use of the Russian Arm was facilitated and supervised by an experienced technician at all times. Only skilled precision drivers were allowed to drive the on-camera Trax while the Russian Arm was being used.*
- *All crew members received an induction on potential safety issues concerning the Russian Arm.*
- *Russian Arms are frequently used by Holden, and other automotive companies, to create advertisements. They enable advertisers to capture stable and dynamic footage of moving vehicles. As such, we have a good understanding of all aspects of their use, including safety considerations.*
- *The Russian Arm and Mercedes ML63 were supplied by a business specialising in the supply of remote camera systems and specialist technicians. The Russian arm is securely mounted onto the Mercedes Benz ML63 (chase car), and is safely operated by joystick consoles from within vehicle. The weight of the Russian arm is fully supported by the chase car. The chase car with the Russian Arm is not in excess of any "legal load" limits as contended by the complainant.*

#### *The Ladder Scene*

*It is Holden's position that the Advertisement is not contrary to safe behaviour, or prevailing community standards on health and safety, by reason of the Ladder Scene. We outline the reasons why, along with the specific safety measures taken, below:*

- *In compliance with regulations 3.3.4 and 3.3.5 (above), Holden confirms that the ladder was fit for its purpose, appropriate for the duration of the task and set up in the correct manner. Given the overall passive nature and short duration of the task, higher controls were not necessary.*
- *The street was closed off to the public, meaning unexpected interferences with the ladder which could lead to injury were highly unlikely. Furthermore, as one of the safety measures taken, all crew members were made aware of the ladder, so as to avoid accidentally interfering with it.*
- *A safety perimeter around the ladder was clearly marked out by four orange safety cones and is clearly visible in the Advertisement.*
- *The ladder was footed by a crew member, who is clearly visible in the Advertisement, firmly grasping both rails.*
- *The photographer, shown on the ladder, has extensive experience and skill in shooting from higher vantage points.*

*As you can see, safety was a key priority in filming the Advertisement with an extensive range of safety measures taken. We will note in previous cases, the Advertising Standards Board has found that where an advertiser has made significant safety efforts in creating their advertisement, then the advertisement will not be held as depicting material contrary to workplace safety, or Prevailing Community Standards. As illustrated above, Holden took significant safety measures, on and off camera, to create a safe work system and mitigate the risks around the use of the ladder and Russian arm in compliance with both internal and external safety standards.*

*As noted above, the inclusion of the photographers and the photographic equipment is part of the "story" of the Advertisement, The FCAI's Code of Practice for Motor Vehicle Advertising*

*(FCAI Code) acknowledges that advertisers may use creative devices to advertise their motor vehicles, as long as the devices are not used to contradict, circumvent or undermine the FCAI Code (an approach consistent with the Advertising Standard Board's application of its own code). Holden confirms that the photographer filming on the ladder was a creative decision made by in line with our creative objective, being to create a youthful and vibrant campaign that appeals to tech-savvy adults. The photographer and his use of the ladder are stylised in a way that highlights the photographer's agility and youth. The image of a professional photographer, mounted on a ladder, filming a television commercial, on a mobile phone, is meant to be an illustration of the exciting possibilities that can be achieved through mobile technology. This illustration is intended to prompt the audience into thinking of the possibilities that a new Holden Trax, with its amazing mobile connectivity, could bring into their lives e.g. the ability to stay connected to friends, music they love and maps they depend on all whilst driving. There is certainly no display of recklessness or of otherwise flouting safety considerations.. In the exercise of our artistic licence we do not endorse any unsafe behaviours, or compromise the safety of any cast or crew, or breach any relevant rules or standards (including clause 2(c) of the FCAI Code which states that a motor vehicle advertisement must not portray any actions in breach of laws and regulations).*

*While we respect the personal opinions of the complainant, Holden strongly believe that the Advertisement is in full compliance with the relevant laws and regulations, including the AANA Code of Ethics. Holden takes great measures to ensure the safety of its employees in all workplaces and also the employees of our business partners, as reflected in the Advertisement. Further, Holden strongly support and encourages road safety, and creates all of its advertising material in compliance with road safety rules.*

*The advertisement was reviewed by our internal Legal team as well as by the Commercial Advice Pty Ltd (CAD) prior to airing. We therefore request this complaint be dismissed.*

## **THE DETERMINATION**

The Advertising Standards Board (the "Board") considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement depicts behaviours that are unsafe and could cause harm.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted this television advertisement features a group of young adults filming themselves with their phones while showing the integration features between their smartphone technology and the new Holden Trax vehicle.

The Board noted the complainant's concerns that the advertisement showed two (2) scenes in particular that were unsafe. The first scene shows a man filming while sitting up on top of a ladder. The second scene shows camera rigs being used to film while in motion.

The Board considered the first scene of the man on the ladder and noted that there are cones around the bottom of the ladder and another man beneath the ladder securing it. The Board noted that there does not appear to be any safety harness in use or other safety equipment.

The Board considered the overall tone of the advertisement is one of an amateur feel, involving a group of friends that are filming with their own phones. The Board noted that the vision of the man on the ladder is fleeting and is not the emphasis of the advertisement or of this part of the advertisement. The Board noted that being on top of a ladder at this height without safety equipment is not ideal but in the Board's view the scene is very fleeting and clearly staged for an advertisement and is not condoning or encouraging unsafe behaviour.

The Board considered the second scene where long camera rigs (Russian arm) are seen in use. The Board noted that this type of equipment is the type associated with film making and that the use of this equipment in the advertisement is relevant to the overall theme. The Board noted that there appears to be several people around setting up the start of this scene and setting up the Russian arm. The Board noted the advertiser's response that safety inductions were conducted for all cast and crew and that Holden acquired all necessary filming permits ahead of filming and no 'protrusion limits' were violated. The Board noted that there are no other vehicles visible on the road where this scene is being filmed. The Board considered the use of such a camera rig is not likely to be copied.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.