



Case Report

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| 1 | Case Number | 0182/13 |
| 2 | Advertiser | Holden Ltd |
| 3 | Product | Vehicle |
| 4 | Type of Advertisement / media | Internet |
| 5 | Date of Determination | 12/06/2013 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement features a Holden Cruze driven on the Sandown closed test track. All scenes of the Advertisement were filmed at the closed test track and the words “Closed test track” appear at the bottom of the screen at the beginning of the Advertisement.

Three Holden employees from the interior design team are told that the lead interior designer will take them on a lap around the Sandown track in the Holden Cruze. They are blindfolded and wear earphones, “to shut off their sense of sight and sound.”

What the blindfolded interior designers do not realise is that it is a professional driver rather than the lead interior designer taking them on the “hot lap” around the track. The lead interior designer describes the track to the blindfolded interior design team via radio from the side-lines as the professional driver drives.

When the professional driver completes the “hot lap” of the Sandown track the blindfolded interior designers take off their blindfolds and realise that the lead interior designer was not driving.

The professional driver is dressed in protective racing attire and the blindfolded interior design team all wear protective helmets.

THE COMPLAINT

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

The FCAI code of conduct states;

"FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles

participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles"

This advertisement fails that guideline specifically and makes a mockery of the original intent of the purpose of the guidelines overall.

THE ADVERTISER'S RESPONSE

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

The relevant laws and standards relating to the depiction of motor sport in advertising include:

- 1. The FCAI Code of Practice for Motor Vehicle Advertising (Code); and*
- 2. The Explanatory Notes of the Voluntary Code of Practice for Motor Vehicle Advertising (Explanatory Notes).*

The Complaint is made pursuant to the Explanatory Notes which state that 'the FCAI urges also [sic] advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles.'

Clause 2 of the Code requires that advertisers ensure that advertisements for motor vehicles do not portray, amongst other things, '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.'

Clause 3 of the Code provides that advertisers may legitimately make use of motor sport in advertising including vehicle-testing or proving provided that 'such scenes should be clearly identifiable as part of an organised motor sport activity or testing or proving activity, of a type for which a permit would normally be available in Australia.'

In applying Clauses 2 and 3 of the Code to the Advertisement, we note the following:

a) The Advertisement was filmed at the Sandown closed test track and the words "Closed test track" appear at the bottom of the screen at the beginning of the Advertisement. Holden received a permit to drive on the Sandown closed test track and engaged a professional driver who wore protective driving attire for the Advertisement. As a result the scenes are clearly identifiable as being part of part of an organised motor sport activity or testing or proving activity in accordance with Clause 3 of the Code.

b) In Holden's view nothing in the Advertisement suggests an association between the professional driver driving on the Sandown closed test track and normal on-road use of motor vehicles;

c) The Advertisement was filmed in such a way as to generate humour, pretending the lead interior designer was driving the Holden Cruze for the "hot lap" rather than the professional driver. The use of humour is in accordance with the Explanatory Notes and does not in any way prevent the Advertisement from complying with the Code.

In our view the Advertisement is in full compliance with the Code and the Explanatory Notes. The driving practices adopted were, in Holden's view, at all times conducted in a safe and controlled manner, performed by an experienced professional driver, and on a clearly identifiable race track. The Advertisement constitutes legitimate testing. Further, by virtue of the Advertisement being filmed on a closed test track we were conscious of avoiding any

association with normal on road use.

THE DETERMINATION

The Advertising Standards Board (Board) 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).

The Board noted the complainants' concerns that the advertisement associates competitive driving with normal on-road use of a motor vehicle.

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 Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Holden Cruze in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that 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 Board determined that the Holden Cruze is a motor vehicle as defined in the FCAI Code.

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

The Board noted that the advertisement features footage of the interior design team of the vehicle, lead by 'Meryl' the lead interior designer. Meryl explains that she will drive the team around the track, but to help them gain a better understanding of the interior features she will have them blindfolded. The team are then seen in the car with blindfolds on and helmets. Meryl switches places with a seemingly experienced race driver dressed to look similar to the 'Stig' from the program Top Gear. The car is driven around the race track as Meryl speaks to the passengers through a radio transmitter.

The Board first considered Clause 3 of the FCAI Code. Clause 3 states that:

Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following:

- (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia.
- (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery.

The Board noted that the entire advertisement was filmed within a race track environment and that this was evident from the commencement of the advertisement. The Board noted that at the beginning of the advertisement there is text that appears on screen that states: "closed test track."

The Board considered that most members of the community would recognise the test environment that the vehicle is being driven in and that in conjunction with the directive from the lead interior designer, it is clearly identifiable that the scene is part of a testing or proving activity did not breach clause 3 of the FCAI Code.

The Board 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. Motor cyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion]."

The Board noted that the advertisement includes footage of the Holden being driven in a test environment and the passengers in the vehicle are clearly wearing seatbelts and helmets.

The Board also noted that each of the participants willingly place the blindfolds on and take a position in the car for the test lap.

The Board considered that as the vehicle driven only in a test environment it is not condoning or encouraging driving practices that are unsafe and does not depict a driving practice that would breach any law and does not breach clause 2(c) of the FCAI Code.

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