



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0252/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Holden Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>11/07/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Motor vehicles	2a Unsafe driving
Motor vehicles	2c Driving practice that would breach the law
2.6 - Health and Safety	Motor vehicle related

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement is set in a run down stadium and we see a man being telephoned to come and help out someone who is stuck. We see the man driving his Holden Colorado down stadium steps and across mud before using a chain attached to his Holden Colorado to tow a stuck vehicle on to firm ground.

### THE COMPLAINT

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

*Also a tow chain should only be used for pulling not snatching. I.e. the slack must be taken up slowly to prevent damage which can cause serious injury. When a run up is required a properly rated snatch strap should be used with all observers standing well clear and appropriately rated recovery points used.*

*This ad shows 3 extremely dangerous practices. There have been fatalities caused by the use of equipment used in the manner depicted in the advertisement.*

*First the use of a chain to recover the truck it is shock loaded a couple of times. Chains are not designed to be used in such a manner they are designed to be used in a steady pulling fashion not loaded unloaded reloaded etc. This shock loading can cause the chain to break and the broken chain then becomes a missile that will maim or kill anyone it hits.*

*Second is the attachment of the chain to the truck slipped over the end of what appears to be a 50mm x 50mm square tube rear bumper. There is nothing to stop the chain from slipping off the end of the bumper again to become a lethal missile should the flaying end strike a bystander.*

*Third is the manner in which the chain is attached to the Holden Colorado by attaching it to the towball. This practice is EXTREMELY DANGEROUS and has cost the life of innocent persons in the past.*

*I have participated in 4wd activities for over 25 years and all 4wd clubs and associations will not permit the attachment of a recovery device to a towball. I believe that this ad may give the wrong information to those that may not be fully aware of correct vehicle recovery techniques with possible fatal consequences.*

## **THE ADVERTISER'S RESPONSE**

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

*GM Holden takes its legal responsibilities under the Competition and Consumer Act seriously, as well as the provisions of the AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising. The Advertisement*

*The Advertisement in question depicts a fictional demolition scene, in which the Holden Colorado recovers a stopped vehicle from a watery location. The vehicle is recovered by the use of a chain affixed to the tow bar of the Holden Colorado and to the metal bar affixed to the rear of the trailing vehicle. The concerns raised in relation to the advertisement relate to the method of attachment of the tow chain to the vehicles in question, as well as the recovery method depicted.*

*According to advice we have received from Four Wheel Drive Australia, there are three methods of recovering a vehicle that are commonly used in Australia:*

- 1. Use of shovels and reduced tyre pressures*
- 2. Use of a tow chain or rope, and*
- 3. Use of a 'snatch strap' where an elastic strap is stretched between the vehicles and the trailing vehicle is propelled with some force out of the bogged ground.*

*The Advertisement depicts a steady recovery process using a tow chain, as per item 2 above. The Advertisement was filmed on private property (a quarry), and was later digitally altered to insert the surrounding 'demolished stadium' imagery. All scenes within the Advertisement are depicted as private property locations (there are no public roads shown at any point).*

*Relevant legislation*

*The relevant laws and standards relating to towing and vehicle recovery are:*

- 1. Vehicle Standard (Australian Design Rule 62/02 – Mechanical connections between vehicles) 2007 (ADR)*
- 2. Australian Standard 4177 – Towbars and towing brackets (Standards)*
- 3. Relevant State/Territory road rules; in Victoria the Road Safety Road Rules 2009 (Road Rules)*

*The ADR requires that towbars and towballs used for towing trailers must comply with the Standards. The Standards require that towing equipment is designed in particular ways to*

*withstand required forces. All of the Holden Colorado towing equipment meets or exceeds the ADRs.*

*The Road Rules generally do not specify how a vehicle may/should be recovered on private property, as shown in the Advertisement. For example, the Victorian Road Rules only relate to towing a vehicle along a highway or public road, not a recovery situation. In addition, the Victorian Road Rules relate only to the length of tow rope or chain to be used, as well as warning flags to be used when towing on public roads, and do not relate in any way to vehicle recovery methods. The Advertisement therefore complies with all relevant legislation and does not breach section 4 of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising.*

*In addition, the Advertisement was filmed under the supervision of Occupational Health and Safety experts, and no OHS concerns were raised during the filming process. The recovery method and equipment was specifically considered by the OHS expert and approved as suitable and safe practice at the time of filming.*

#### *Industry Practice*

*Notwithstanding that we believe the Advertisement to be in full compliance with all legal obligations, since the launch of the Advertisement Holden has become aware that Four Wheel Drive Australia (4WDA) – the peak recreational four wheel drive organization in Australia – has published recommendations for vehicle recovery methods for the benefit of its members and the public. Holden has contacted the 4WDA to seek input and feedback into the Advertisement, and has made changes to the Advertisement to reflect an approach advocated by the 4WDA. We attach an email from the president of the 4WDA confirming the 4WDAs endorsement of the revised Advertisement. In addition, Holden and the 4WDA have agreed to collaborate on public statements regarding safe vehicle recovery methods to increase public awareness.*

*Holden believes that the revised Advertisement, which has been endorsed by 4WDA, is in full compliance with the AANA Advertiser Code of Ethics. The revised Advertisement was implemented on 19 June 2012, and the prior version of the Advertisement has been removed from YouTube and television.*

## **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) and the Advertiser Code of Ethics (the 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 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 Colorado 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 Colorado was 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 the complainants' concerns that the advertisement depicts an unsafe driving practice and the use of a tow chain and towing scenario that is unsafe and could cause serious harm.

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

The Board 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 Board noted that the examples given in the FCAI Code for unsafe driving include "Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle."

The Board noted that the advertisement shows a Holden Colorado being driven down a set of stairs on a construction site inside a stadium arena, over a dirt mound and toward other workers and a light truck that is bogged in some dense mud and water.

The Board noted that at the start of the advertisement the driver is seen answering his in car phone and he is asked to bring the Colorado down to assist with a vehicle that has become bogged. The driver returns to his vehicle and proceeds down the stadium stairs toward the incident. The Board noted that in his approach, the vehicle is driven over a large mound of dirt and around a tight turn. The Board noted that there is no verification of the actual speed of the vehicle and that the scenario is portrayed in a fanciful fashion in combination with the voiceover that is attempting to build suspense and pressure to the situation. The Board

considered that although the scene depicts a work site, the vehicle was not driven at excessive speed, and there were not extreme changes of direction or speed of the vehicle. The Board considered that the vehicle was driven well within the capabilities of a 4WD and on terrain that it was designed to handle. The Board considered that it was not a depiction of unsafe driving.

On the above basis, the Board determined that the advertisement does not depict unsafe driving and does not breach clause 2(a) of the FCAI Code.

The Board then considered whether the advertisement was in breach of Section 2.6 of the Code of Ethics. 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 that as the driver approaches the workers standing near the scene, that they are dressed in high visibility clothing and that the driver is aware of where they are and stops well clear of the men. The Board noted that the driver exits the vehicle and reached for a tow chain from the rear of the utility. He then fixes the tow chain to the light truck that is waiting to be assisted. The Board noted the safety aspects of the assisted tow and in particular, were very concerned that the equipment did not appear to be appropriate for the task. The Board noted that the tow chain is only looped over the tow ball of the Colorado and that the tow bar of the light truck is straight, with no ends that would stop the chain from slipping off the bar. The Board noted that the workers standing near were in very close proximity to the vehicles and in the event that the tow chain should come off the tow bar, they would be in considerable danger.

In the Board’s view most members of the community would consider that the method used and apparent lack of attention to safety during the assisted tow was a depiction that was contrary to community standards on health and safety.

The Board determined that the advertisement did breach Section 2.6 of the Code.

Finding that the advertisement did breach Section 2.6 of the Code, the Board upheld the complaints.

## **ADVERTISER RESPONSE TO DETERMINATION**

I refer to your email dated 30 Jul 2012, advising GM Holden (Holden) of the Advertising Standards Bureau’s (ASB) decision to uphold the above complaints regarding a recent Holden Colorado advertisement (the advertisement).

As stated in our earlier submissions, Holden takes its legal responsibilities, the AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising very seriously.

On being notified of the complaints above, Holden took immediate steps to review the Advertisement and consider the issues raised via the ASB. Holden proactively engaged both the ASB and Four Wheel Drive Australia (4WDA) to address concerns over the Advertisement and made subsequent amendments to the relevant images accordingly. Holden finalised and issued a revised version of the Advertisement within two weeks of its

receipt of the initial concerns above. The original Advertisement has been removed from all media channels.

4WDA have endorsed the revised Advertisement and is actively working with Holden on projects to increase public awareness on best practice for vehicle recovery procedures.

Holden received confirmation from the ASB on 25 July 2012 that the revised Advertisement complies with the AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising. Holden would like to take this opportunity to thank the ASB for its input and assistance in this matter.