



Case Report

1	Case Number	0281/12
2	Advertiser	Holden Ltd
3	Product	Vehicles
4	Type of Advertisement / media	Internet
5	Date of Determination	25/07/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles 2a Unsafe driving
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 advertisement has been modified to include the following disclaimer when the tow chain is being used: "Rated shackle and chain used for safe recovery."

THE COMPLAINT

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

In my view the Holden Colorado television commercial depicts:

- *Very unsafe conduct on a worksite which is contrary to prevailing community standards on health and safety; and*
- *Reckless and unsafe driving.*

Therefore in my view Holden Colorado television commercial contravenes:

- *Section 2.6 of the AANA Code of Ethics; and*
- *Section 2(a) of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code).*

I refer to the following aspects of the Colorado TVC:

- 1) At 11 seconds the wheels of the vehicle are shown leaving the ground;*

- 2) At 14 seconds the wheels of the vehicle are again shown leaving the ground;
 - 3) At 16 seconds the vehicle is shown losing its rear end to the right – an apparent loss of control;
 - 4) From 17 to 18 seconds the vehicle is shown speeding through the worksite with muddy water spraying up on either side of the vehicle;
 - 6) The point used to attach the metal chain to on the bogged vehicle is plainly not a rated recovery point on that vehicle;
 - 7) The chain used to retrieve the bogged vehicle is shown to ‘snap taut’ as the vehicle is revved hard and then accelerates aggressively in an attempt to recover the bogged vehicle. This type of action could easily cause the chain to snap and cause a danger to people or property nearby; and
 - 8) At 35 seconds two workers are shown standing far too close to the recovery action underway. The minimum safe distance is 1.5 times the length of the recovery apparatus so that in the event it does snap onlookers are not struck.
- In summary I think that the Holden Colorado television commercial breaches both the AANA Code of Ethics and the FCAI Code and I ask the ASB to investigate.*

THE ADVERTISER’S RESPONSE

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

We refer to your letter dated 2 July 2012, outlining a recent complaint received by the Advertising Standards Bureau (ASB) in relation to the revised Holden Colorado Television Commercial released on 19 June 2012 (Advertisement). Holden believes that this recent complaint was lodged by Ford Motor Company of Australia Limited (Ford Australia), Holden having recently received correspondence from Ford Australia very similar to that received by the ASB directly. We provided Ford Australia with a written response in line with this letter at the time. GM Holden (Holden) takes its legal responsibilities under the Competition and Consumer Act 2010 (Cth) seriously, as it does its obligations under the provisions of the AANA Advertiser Code of Ethics and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising.

As stated in our earlier submission, the Advertisement clearly depicts a fantasy scenario, set in a colosseum-style construction scene. It is in this context that the Holden Colorado is depicted recovering a stopped vehicle from a watery location. The voiceover represents a motivational monologue for the driver, arriving on the scene with the Colorado, to "save" the day.

Feedback from Four Wheel Drive Australia (4WDA), the peak recreational four wheel drive organisation in Australia, was sought in amending the initial advertisement to better reflect the approach for vehicle recovery advocated by 4WDA. 4WDA's President, Eric Morley, has confirmed 4WDA's endorsement of the Advertisement.

The Advertisement was filmed at a private quarry under the supervision of a safety supervisor with knowledge and experience in both light and heavy vehicle recoveries, having commenced his career in the Australian Army. The safety supervisor was on site at all times during filming of the Advertisement, and the safety of the cast and crew was of paramount importance.

In response to the specific concerns raised by Ford Australia, Holden responds as follows:

1. At 11 seconds, the wheels of the vehicle are shown leaving the ground; Holden's view is that the image of the vehicle's wheel leaving the ground in this instance complies with Section 4 of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code), which states that "an advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain".

Inherent in the nature of four wheel driving, vehicles are regularly subject to rough and uneven surfaces, as depicted in this scene. This consequently requires drive from all four wheels of the vehicle. It is common, given the ground surfaces, for wheels to momentarily lose contact with tile ground. In the Advertisement, the instance shown is brief and was conducted at a safe speed.

Given that the Colorado is shown driving over rough surfaces, the wheel's momentary elevation from the ground is indicative of usual vehicle behaviour in such circumstances. As such, the imagery legitimately demonstrates the vehicle's capabilities and performance on loose, unsealed surfaces and uneven terrain.

2. At 14 seconds the wheels of the vehicle are again shown leaving the ground; As noted in relation to point 1 above, Section 4 of the FCAI Code permits the demonstration of the capabilities and performance of off road vehicles. In this instance, the vehicle's wheel is seen momentarily leaving the ground, having scaled an uneven, downward slanting mound in the vehicle's path. The wheel of the vehicle that is seen leaving the ground is in fact the wheel passing over the surface falling away from the vehicle. Again, it is Holden's view that this demonstrates the off road performance and capabilities of the vehicle, with the manoeuvre being undertaken at an appropriate speed in the circumstances.

Please see the CD enclosed with this letter, which contains recent competitor advertisements demonstrating similar imagery and activities to those depicted in the Advertisement. Included on the attached CD are advertisements which we understand the ASS has previously considered and found not to be in breach of the FCAI Code.

3. At 16 seconds the vehicle is shown losing its rear end to the right - an apparent loss of control;

It is Holden's view that the vehicle was at all times travelling at a safe speed, and that any loss of the rear was the result of the uneven and loose surface of the ground, demonstrating the legitimate four wheel drive capabilities and performance of the vehicle. The precision driver involved in filming the Advertisement has confirmed to Holden that at no time was the vehicle driven over 40 km/h and, as the vehicle is fitted with ESC, traction control and ASS, at those speeds the vehicle was always being driven in a controlled manner. Holden is also aware of competitor advertisements, both past and present, displaying similar (or more aggressive) driving footage. Please see enclosed CD for examples.

4. From 17 to 18 seconds the vehicle is shown speeding through the worksite with muddy water spraying up on either side of the vehicle;

It is Holden's view that at all times the vehicle was travelling at a safe and appropriate speed in the circumstances. The precision driver has confirmed that at no point was the car driven at a speed that exceeded 40km/h during filming. Water spraying up as a vehicle travels through water is a normal consequence of such actions, with spray occurring even at low speeds. Such driver actions are again common for off road driving and demonstrate the performance and capabilities that consumers would expect such a vehicle to handle. Again, please see the enclosed CD containing competitor advertisements, where similar activities at similar speeds are evidenced.

5. Tile point used to attach the metal chain to on tile bogged vehicle is plainly not a rated recovery point on that vehicle;

The vehicle being recovered in the Advertisement did not have a rated recovery point from which vehicle recovery equipment could be attached (this is not unusual in real life situations). Instead, the attachment visible in the Advertisement is an engineered and manufactured part of the truck chassis itself and accordingly was considered by the safety supervisor to be a suitable point to attach the metal chain.

In accordance with advice received from the President of 4WDA, a 0 shackle is depicted on the Holden Colorado, with a disclaimer relating to the rating point visible in the Advertisement.

6. The chain used to retrieve the bogged vehicle is shown to "snap taut" as the vehicle is revved hard and then accelerates aggressively in an attempt to recover the bogged vehicle. This type of action could easily cause the chain to snap and cause a danger to people or property nearby.

The decision to use a chain in the filming of the Advertisement was based on advice received by Holden from the safety supervisor who has knowledge and experience in this field, having also worked in the Australian Army recovering both light and heavy vehicles. Thorough risk assessments were undertaken and hazard controls put in place by the safety supervisor on set prior to the shooting of the scene. The chain used in the vehicle recovery was industrially rated for heavy plant and machine recovery, was the strongest available, and was designed to withstand forces far greater than those that would be exerted by a freewheeling truck on a ten degree angle.

The chain was also inspected by the safety supervisor prior to the filming of the Advertisement for wear and tear and was cleared as suitable for use in the filming.

The position of the President of 4WDA is that the use of the snatch trap method of recovery is in fact dangerous and of much greater risk to health and safety. The reason for this being that in the unlikely event that the chain or hooks were to give way, the energy in the chain would dissipate very quickly and the chain would simply fall to the ground. In contrast, there is an increased risk of serious injury or death to vehicle occupants and surrounding spectators where snatch traps or wire ropes are used, as these devices tend to recoil when broken. For these reasons, the safety supervisor also indicated that he would not have allowed the use of a snatch strap in these conditions. In discussions with the 4WDA President Holden also notes that in its discussions with the President of 4WDA, the 4WDA has agreed to collaborate with Holden to produce materials promoting safe recovery methods to increase public awareness around these issues and clarify the common misconceptions about safe recovery practices, which appear to exist.

The recovery manoeuvre depicted in the Advertisement was conducted at appropriate speeds and under the strict supervision of the safety supervisor. It was in fact a slow pull, as demonstrated by the fact that the recovered truck exits the water in a slow and controlled manner. The images of the vehicle's engine revs were indicative only of the engine power required to recover a truck the size and weight of that depicted in the Advertisement, and was in no way intended to promote dangerous driving. The vision of the chain tightening is illustrative only of the normal behaviour of such chains when used to recover vehicles, given the pressures exerted on the chain. The reaction of the chain was normal for the situation and would be evident even during a slow pull, with the resulting water splash also a usual consequence of a chain rising out of water.

7. At 35 seconds two workers are shown standing far too close to the recovery action underway. The minimum safe distance is 1.5 times the length of the recovery apparatus so that in the event it does snap, onlookers are not struck I refer you to the Queensland 4x4 press release (relating to the first Colorado TVC) attached in this regard.

In addition to our comments under item 7 on the safety of the recovery methods used, we note that every precaution was taken during the filming of the Advertisement to ensure the safety

of the cast and crew involved. The apparatuses and methodologies used were at all times thoroughly considered by the on-site safety supervisor. The safety supervisor has extensive knowledge and experience in both light and heavy vehicle recovery and conducted a careful safety and risk assessment prior to filming.

In response to the complaint received by the ASB concerning the Advertisement depicting the Holden Colorado being driven down a set of stairs (date and complainant undisclosed), Holden reiterates that the Advertisement clearly depicts a fantasy scenario where the driver of the vehicle is called upon to 'save the day'. The activity undertaken was in no way intended to encourage dangerous driving. The safety supervisor was onsite at all times during the filming of the Advertisement and had no concerns regarding the shooting of the Advertisement. The safety of the cast and crew was always of paramount importance to Holden.

We note that Section 4 of the FCAI Code states that "advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area". The scenario depicted (namely a vehicle traversing a set of stairs in a stadium) is clearly not a depiction of any driving activity that could be correlated to driving on a public road. The scene is pure fantasy, and Holden believes the Advertisement displays the footage in this light.

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 the internet 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 noted that this was a modified version of the previously considered case 0251/12.

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 the advertiser’s response that the scenes related to the towing of the light truck, were amended to reflect a safer and more secure method of towing as advised by 4WD Australia.

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 reaches 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 include the use of a D shackle to attach the tow chain safely and securely to the Colorado and the tow bar of the light truck now includes a full right angled bar to prevent any chance of the chain slipping off the end of the bar.

Noting the advice of 4WD Australia that the method of towing depicted in the advertisement was in accordance with the advice it provides to its members, the Board considered that the method used during the assisted tow was not contrary to community standards on health and safety and did not breach section 2.6 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics, the Board dismissed the complaint.