



## Case Report

1	Case Number	0408/16
2	Advertiser	Holden Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/10/2016
6	DETERMINATION	Dismissed

### ISSUES RAISED

- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement begins with a host arriving at a rural Truck Swap in a new Colorado. People start to arrive at the Truck Swap in their own vehicles. The host introduces himself to the people and asks whether they would like to test drive the new vehicle. Each test driver is filmed driving the vehicle and providing feedback on the performance and driveability of the Colorado. One of the test drivers is a woman who is accompanied by her dog and when she test drives the vehicle we see her dog in the passenger seat.

### THE COMPLAINT

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

*I object to holden encouraging people to allow dogs in the front seat of their car. This is extremely dangerous for the dog and driver in an accident even if both are restrained. I contacted Holden regarding this; they stated the dog was restrained by the seat belt however it is clearly retracted in the footage, if they used a buckle clip in an accident the dog basically becomes a missile in the cabin. I think Holden should be promoting safety given they ramble on about their safety rating and then advertise stupid things like this! Given the height of the dog depicted at a sit and how it "was apparently" restrained would mean it could easily move onto the drivers lap which is illegal.*

## THE ADVERTISER'S RESPONSE

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

*Complaint reference number: 0408/16*

*Advertiser: GM Holden Ltd*

*I refer to your letter addressed to GM Holden Ltd (Holden) in which you enclose a complaint (Complaint) received in relation to Holden's 'New Colorado Regional Truck Swap' advertisement for the Holden Colorado (Advertisement).*

*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 and motor vehicle safety regulations.*

### *The Complaint*

*The Complaint relates to two versions of the 'New Colorado Regional Truck Swap' advertisement – the first is the short-form 30 second TV commercial (TVC) which was displayed at the time and in the place described in the original complaint <https://youtu.be/ueOm0WCP4fo> and the second relates to the long-form advertisement which was linked by the complainant in the 'Ad Description' and was only displayed on digital media only <https://youtu.be/QLbfxy7vU>*

*The concern raised by the complainant in the Complaint relates to the manner in which a dog is portrayed in the front passenger seat of the vehicle. Specifically, the complainant's concern is that the dog has been restrained in an illegal manner.*

### *The Advertisement*

*The campaign is designed to highlight the broad appeal of the new Colorado to a wide audience of everyday Australians by capturing the 'ad-hoc' comments of random real people as they experience the vehicle for the first time. The Advertisement was filmed in various locations in rural New South Wales.*

*The Advertisement begins with a host arriving at a rural Truck Swap in a new Colorado. People start to arrive at the Truck Swap in their own vehicles. The host introduces himself to the people and asks whether they would like to test drive the new vehicle. Each test driver is filmed driving the vehicle and providing feedback on the performance and driveability of the Colorado.*

*One of the test drivers is a woman who is accompanied by her dog. She had arrived at the Truck Swap site in her own vehicle, carrying her dog.*

*In the short-form Advertisement, the woman and the dog are first seen at :15 for approximately one second and then at :21 for approximately one second. In the first scene, the dog is portrayed as sitting upright in the front passenger seat with an appropriately fitting restraint in clear sight. In the second scene, the dog is again seen facing forwards in an upright position with the harness in clear sight to the viewer.*

*In the long-form Advertisement, the woman is depicted driving the Colorado with her dog sitting in the front passenger seat at two points, first at :53 for two seconds, and secondly at 1:27 for another two seconds. In both scenes the dog is sitting upright in a forward facing position and the harness is in clear sight.*

#### *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 shot in New South Wales. The relevant laws and standards relating to restraining dogs in the front seat of the vehicle are as follows:*

- 1. The Prevention of Cruelty to Animals Act (NSW) 1979 (Act) ; and*
- 2. The FCAI Code of Practice for Motor Vehicle Advertising (Code).*

*Section 7 of the Act applies to ‘carriage and conveyance of animals’. Please find a copy of the provision attached. Subsection (1) contains a general requirement that a person not carry or convey an animal (or authorise that an animal be carried or conveyed) in a manner which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal.*

*Section 7(2A) provides a particular requirement in relation to dogs. It provides that a person must not carry or convey a dog (other than a working dog) on the open back of a moving vehicle on a public street unless the dog is restrained or enclosed in such a way as to prevent the dog from falling from the vehicle. There is no particular requirement specified where the dog is being carried or conveyed within the vehicle as was the case with the Advertisement. Therefore the general wording of section 7(1) would apply to give guidance in such situations to ensure the dog is not carried or conveyed in a manner “which unreasonably, unnecessarily or unjustifiably inflicts pain upon the animal”.*

*Applying Clause 2 of the Code to the Advertisement*

*Based on the above, Holden believes the conveyance or carriage of the dog as shown in the Advertisement is at all times in compliance with the provisions of the relevant legislation (sections 7(1) and 7(2A) of the Act) and therefore also clause 2 of the Code.*

*In particular, in applying Clauses 2(c) of the Code to the Advertisement, we note the following:*

- a) the dog is clearly not in any pain, in accordance with the requirements of section 7(1) of the Act;*
- b) the animal was depicted at all times seated on the inside of the vehicle (meaning section 7(2A) of the Act is not applicable);*
- c) the animal was depicted at all times as being safely and comfortably seated within the vehicle, hence meeting all requirements of the Act;*
- d) over and above the requirements of the Act, the animal was at all times wearing an*

*appropriate harness for its size and weight (which was the owner of the dog's own harness);*

*e) the harness was secured to the seatbelt buckle and prevented the dog from moving freely around the vehicle cabin, ensuring it would be held safely and comfortably in place;*

*f) the harness is clearly visible at all relevant points during the Advertisement;*

*g) crew members present on the day of the shooting, and contactable upon request, can attest to the dog's harness being properly secured and the dog being safely and comfortably restrained at all times;*

*h) prior to going to air the Holden team had considered Commonwealth, State and Territory road safety laws or traffic regulations concerning the carriage of animals and believes that no law prevented any animal from being seated and restrained in the front passenger seat in the manner portrayed in the Advertisement;*

*i) the Advertisement was rigorously reviewed by our internal Legal team as well as by Commercial Advice Pty Ltd (CAD) prior to airing. No objections were raised by CAD; and*

*j) upon receipt of your letter dated 13 September 2015, and in light of the complainant's broader social concerns about depiction of the lawfully restrained animal in the front seat of the vehicle, as an extra measure, we consulted:*

- the NSW Roads and Maritime Services (RMS) and were advised that they had no objections to the depiction of the dog in the Advertisement;*
- the NSW RSPCA and were informed that they had no objections with the depiction of the dog Advertisement.*

*While we respect the personal opinions 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, and real world community standards. Holden strongly supports the welfare of all participants in its TV commercials, including humans and animals, and produces all of its advertising material in line with this policy.*

*We therefore request this complaint be dismissed.*

## **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).

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 determined that the material before it was an advertisement.

The Board then considered 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 complainant's concerns that the advertisement depicts an unrestrained dog in the front passenger seat of a car which is dangerous and potentially illegal.

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 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 Board noted that when the vehicle is being test-driven by members of the community selected by the presenter, we hear one man encourage another to 'floor it'. The Board noted the accompanying visuals show the Colorado being driven up a steep hill and considered that in this context the request to 'floor it' is clearly to test the vehicle's ability to maintain speed in this situation rather than to see how fast the vehicle can travel.

The Board noted that in another scene we see the Colorado driving through water and considered that this water appears to be a large puddle in the road rather than flood water and there is no suggestion that the driver is taking any risks by driving through this on-road puddle.

Finally the Board noted that a driver comments that the Colorado sticks to the road and she can't 'fishtail' (when the rear end of the car skids to one side) the car as it won't do it. The Board considered that this comment is the context of how well the car handles rather than an encouragement or endorsement of losing traction of a vehicle when driving around corners.

The Board considered that the advertisement did not depict unsafe driving and determined that the advertisement did not breach clause 2(a) of the FCAI Code.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that '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 Board noted that this television advertisement features people test driving the new Holden Colorado and we see a woman with her dog in the passenger seat.

The Board noted that Dog restraint laws for each State and Territory vary and that there are restraint requirements when transporting an animal on the open back of a vehicle or utility vehicle, as well as rules against operating a vehicle with an animal in the driver’s lap. The Board noted that there is a strong recommendation to have dogs restrained in order to avoid unnecessary harm, however it is not a specific requirement by law.

The Board noted that in some scenes where the woman and dog are in their original car it is not clear if the dog is wearing a restraint however the Board considered that in these scenes the car is stationary. The Board noted that when the woman test drives the Holden Colorado her dog is in the passenger seat and considered that the dog is clearly wearing a restraint. The Board considered that, consistent with a similar complaint in case 0202/14, the dog is not distracting the driver at any time.

Overall the Board considered that the advertisement did not depict any 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.

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

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