



Case Report

1	Case Number	0428/15
2	Advertiser	Holden Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/11/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(b) Breaking the speed limit

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a male voiceover saying, "Don't tip-toe through life, don't live quietly....let tomorrow know you're coming" and we see a man get in to a Holden VFII and then drive along a deserted runway.

THE COMPLAINT

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

This ad is not about the car. This ad is about eliciting feelings of power, directing and motivating one to speed. Their car is the way to do this. But it is not an ad about motivating to purchase the car. Not only is it illegal to do these speeds in Australia, we have a major issue with deaths on our roads from speeding! Accidents can happen, but speed kills. Please remove it.

The advertisement is using speed as a leading point to sell their product when every law agency is doing its best to reduce the speed of cars.

It should be aiming at the general public with its advert and not the many speeding hoons who according to GMH out number the ordinary motorist.

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 and motor vehicle safety regulations.

The concern raised in the Complaint are as follows:

- *'using speed as a leading point to sell their product'; and*
- *Aiming our advertising at 'hoons' rather than the general public.*

The Advertisement

The campaign is designed to lift perceptions of the Commodore brand, while elevating the Holden brand by displaying the Commodore in a sophisticated and aspirational light. This advertisement depicts a man walking toward a Commodore slowly, starting the car and hearing the noise of the engine. He then drives off into the distance. The focus is on driving finesse, displaying the Commodore VFII driving along a vast flat fantasy landscape and announcing the arrival of Commodore VFII. To complement the superior engine and design, Holden engineers have put extensive effort into creating a notable engine soundtrack, through the introduction of the bi-modal exhaust, mechanical sound enhancer and the 'Bailie Tip'. This Advertisement is an illustration of the capabilities of the new Commodore, highlighting the mechanical sound enhancer, and is a testament of Holden's passion to exceed customer expectations.

Relevant legislation and regulations

The relevant laws and standards relating to vehicles driving in excess of speed limits 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 clause 2(b) of the Code, which requires advertisers to ensure advertisements for motor vehicles do not portray people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.

Applying Clause 2 of the Code to the Advertisement

In Holden's view, the Advertisement does not breach Clause 2 of the Code for the following reasons:

- *The Advertisement does not involve excess speeding, as the odometer reading is clearly displayed at a speed of 98 km/h, which is within the speed limit of 100 km/h. Therefore the vehicle is clearly within the legal limit of all jurisdictions in which the Advertisement has been broadcast.*
- *The clearly audible engine tones may have also contributed to the complainant's concerns of 'speed' being used 'as a leading point to sell [the] product'. The engine sound has been specifically featured in the Advertisement to draw attention to the introduction of the new bi-modal exhaust feature. This feature has been introduced in response to high consumer demand for the authentic 'overrun crackle' which consumers identify with the Holden Commodore brand. The 'crackle' has been featured in the Advertisement as, by its nature it can only heard, not seen. However, noise does not in these circumstances equate to speed. Holden engineers have confirmed the same note would be audible whilst the vehicle is being operated at speeds of between 25km/h to 99 km/h. Therefore, excessive speed was not required, and was not in fact used, to achieve the audible sound and we note the same sound can be produced at very low speeds (consistent with most V8s). The Advertisement does not encourage 'speeding' as a means for drivers to experience the true V8 engine noise. We therefore reject assertions that the vehicle was being driven at excess speeds, or in any case, recklessly.*
- *The complainant's concerns that the vehicle is being driven at excessive speed may be partly explained by the sophisticated videographic editing and background music used. These effects have been designed to create a high energy environment, in which the vehicle is the centre-point. This is further reinforced by the fantasy background landscape against which the vehicle is being driven. The lack of other vehicles, buildings or pedestrians provides the vehicle with an uninterrupted driving path and draws focus to the powerful capability and finesse of the vehicle, an impression that is in fact reinforced by the fact that it is clearly being operated under full control of the driver. The FCAI acknowledges that advertisers may make use of self-evident exaggeration or fantasy in creative ways in advertising, as long as such devices are not used to contradict, circumvent or undermine the Code. We confirm that the post production editing techniques use exaggeration and fantasy to highlight the features of the car. However they do not promote speeding or reckless behaviour in any way. On the contrary, these visual and sound effects draw attention to the Commodore as being a smooth, powerful and controlled world-class car.*
- *The TVC was filmed under controlled conditions at Avalon Airport and all necessary permits, including security permits were obtained prior to shooting.*
- *The complainant alleges the advertisement is targeted towards 'hoons' rather than the 'general public' or 'ordinary motorist'. In fact, we confirm the driver retained full control of the vehicle while filming and no 'hooning' behaviour was employed at any point. This vehicle was specifically designed in response to the high demand of the general public for quality design and the enhanced exhaust noise. Holden has created this Advertisement simply to demonstrate to the general public that we have delivered on what has been eagerly sought by a large percentage of automotive-buying Australians.*

In Holden's view the Advertisement is in full compliance with the Code and the Explanatory Notes, and the driving practices adopted were at all times conducted in a safe manner. Holden strongly supports and encourages safe driving practices, and produces all of its

advertising material in line with this policy. This Advertisement was created specifically to illustrate the features of the vehicle in a striking and memorable manner.

The advertisement has been rigorously reviewed internally and no objections were raised by CAD. While we respect the personal opinions of the complainant, we strongly believe the advertisement is in full compliance with the FCAI Code and AANA Code of Ethics. 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 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 VFII in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered whether that advertisement was for motor vehicles. 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 VFII 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 that the advertisement features the vehicle being driven across an expansive desert area. There are no other vehicles or people seen in the advertisement. The voiceover describes the features of the vehicle and toward the end of the advertisement, the speed of the vehicle is shown on the odometer at 98km/hr and the car is then shown in cgi form gliding across the screen.

The Board noted the complainants' concerns that the advertisement is using speed as a selling

point and by doing so is encouraging drivers to speed.

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

The Board considered clause 2(b) of the FCAI Code. Clause 2(b) requires that ‘Advertisements for motor vehicles do not portray...people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published.’

The Board noted the Explanatory Notes to the FCAI which state, “Advertisers should ensure that advertisements...avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle.”

The Board noted that the vehicle is shown in a way that makes it appear to be travelling fast, however when the speed is shown, the car is moving at 98km/hr which would not be considered excessive speeds in the environment that it is seen.

The Board noted that it had previously considered an advertisement for Mercedes-Benz (0357/11). In this case the Board noted that:

“there is no indication of the speed the car is driving at in the advertisement or of the speed limits of the roads the car is driving on and considered that it is the editing of the advertisement which gives the illusion of speed.”

The Board considered that similarly in the current matter, the overall look and feel of the advertisement is of fantasy and that the setting is clearly not a road related area. The Board noted that the speed of the vehicle is shown very briefly and that at this time the vehicle is travelling at 98km/hr. The Board noted that the vehicle is depicted as being super imposed over the background scene and that similar to the matter mentioned above, the editing of the advertisement gives an illusion of speed.

The Board noted that the voiceover states: “the new VFII, the most powerful Commodore ever.” The Board noted that that statement is a comparative claim, comparing this model to previous models of Commodore. The Board considered that although the statement is intended to appeal to a particular market because of the power, it is not suggesting that the vehicle should be driven in a reckless way or that the power of the car should be used irresponsibly.

The Board determined that the advertisement did not depict excessive speeding and therefore did not breach Clause 2(b) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code for the reasons mentioned above, the Board dismissed the complaints.