



Case Report

1	Case Number	0443/12
2	Advertiser	Holden Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Internet
5	Date of Determination	28/11/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(e) Environmental damage

DESCRIPTION OF THE ADVERTISEMENT

The Colorado 7 is shown being driven through various 4WD terrains, including sand, shallow water, mud, rock and steep terrain.

THE COMPLAINT

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

This shows blatant disregard of "tread lightly" i.e. preserving the nature we all love and care, by using vehicle so irresponsibly, driving in a manner more suited to very controlled competitive environment, not to mention the damage to the vehicle due to such reckless driving.

As a 4WDriver which belongs to a qualified 4WD club and holds formal off-road driving and recovery certification, I found this advertisement to be very offensive and may portray us responsible 4WDrivers in the wrong way.

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 the Colorado 7 being driven through various 4WD terrains, including sand, shallow water, mud, rock and steep terrain. The Advertisement was filmed in various locations including designated state forest. However, the Advertisement was predominantly filmed on private property.

The concerns raised in relation to the Advertisement relate to the manner in which the vehicle is being driven, the effect of the driving on the environment and the portrayal of four wheel drivers' generally.

Relevant legislation and regulations

The relevant laws and standards relating to off-road driving and four wheel drive vehicles are as follows:

1 FCAI Code of Practice for Motor Vehicle Advertising (Code);

2 Vehicle Standard (Australian Design Rules – Off Road Passenger Vehicle (MC) 2007 (ADR);

3 Relevant Victorian and NSW road safety rules (Road Rules).

Clause 2 of the Code requires that advertisers ensure that advertisements for motor vehicles do not portray, amongst other things, unsafe driving or driving that results in deliberate and significant environmental damage.

Clause 4 of the Code provides that advertisers may legitimately depict the capabilities and performance of off road vehicles traveling over loose or unsealed surfaces, or uneven terrain, provided that such scenes do 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, were such driving to occur on a road or road related area.

In applying Clauses 2 and 4 of the Code to the Advertisement, we note the following:

a. Holden engaged Mr Simon Christie, a recognised 4WD expert, to drive the vehicle during the filming of the Advertisement. Mr Christie has approximately 30 years of off-road driving experience and is also currently the host of three weekly 4WD television shows, namely 4WD TV, YOUR4X4 and 4WD Pro Tips;

b. We are informed by Mr Christie that, during the filming of the Advertisement:

i. at no time did the vehicle exceed a speed of 40 kilometres per hour. All driving was therefore within legal speed limits and compliant with applicable Road Rules;

ii. when driven in state forests, only gazetted 4x4 trails were used;

iii. driving on sand was performed in an area that experiences seasonal flooding twice annually whereby vehicle foot prints are erased;

iv. driving on rocky river beds resulted in no terrain damage, the river bed was rock and stirring of silt was short lived and cleared quickly due to normal water flow;

v. filming in muddy areas was selected in a non-vegetated area and a minimal footprint was left whereby no pot holes or ruts remained at the conclusion of filming; and

vi. great care was taken to adopt a 'tread lightly' approach and ensure that there was no track degradation above and beyond the normal passage of 4WD vehicles;

c. No permits were obtained for filming the Advertisement, which was predominantly filmed on private property;

d. The Advertisement has been published on the internet and at the Sydney International Motor Show only;

e. The Holden Colorado 7 meets the requirements for classification as an off-road vehicle under the ADRs (MC Category). In particular, the Holden Colorado 7 has:

i. 7 seating positions;

ii. four wheel drive capabilities;

iii. at least 4 of the 5 characteristics required pursuant to the definition of 'Off-Road Passenger Vehicle (MC)' as described under the ADR; and

f. The driving practices adopted during the filming of the advertisement were primarily aimed at legitimately displaying the capabilities and performance of the Holden Colorado 7 as an off-road vehicle. The Advertisement was filmed in such a way as to generate high energy action and excitement through fast paced music and successive cutting from image to image. Holden believes that the Advertisement is in full compliance with the Code, the ADR and the Road Rules. The driving practices adopted were, in Holden's view, at all times conducted in a safe and controlled manner and performed by an experienced and professional 4WD driver. The care taken to select appropriate sites to film the Advertisement, with the intention to avoid and minimise the environmental impact, indicates neither deliberate nor significant environmental damage resulted from the Advertisement.

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 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 complainant's concerns that the advertisement depicts reckless driving on off-road terrain which is also environmentally irresponsible.

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

The Board noted Clause 4 of the FCAI Code which relates to the depiction of off-road vehicles which have been designed with special features for off road operation: “This clause provides some limited flexibility allowing advertisers to legitimately demonstrate the capabilities and performance of such vehicles in an off-road context...advertisers should avoid portrayal of images of off-road driving which would otherwise be construed as being unsafe”.

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 Holden Colorado is shown being driven through forest terrain. The Board noted the advertiser’s response that no permits were necessary for filming as private property was used, and that at no time during the advertisement did the vehicle exceed 40 kilometres per hour.

The Board noted that the vehicle is depicted as being driven in a controlled manner throughout the advertisement and considered that the advertisement did not depict or encourage unsafe or reckless driving.

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

The Board then considered Clause 2(e) of the FCAI Code which requires that advertisements for motor vehicles do not portray “deliberate and significant environmental damage, particularly in advertising for off-road vehicles.”

The Board noted the Holden Colorado is shown driving through forest areas and through streams and considered that the use of off-road vehicles on these terrains is not uncommon and do not necessarily contribute to environmental damage. The Board noted that some people may consider that environmental damage can be caused by any incursions by people in vehicles into wild/environmental areas however the Board considered that the vehicle is shown to be driven in a manner which is not damaging to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.

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

