



## **CASE REPORT**

1. Complaint reference number	204/05
2. Advertiser	Holden Ltd (Adventra)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 9 August 2005
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

In the opening scenes of this television advertisement a kangaroo is shown to hop along a wide unsealed, dirt road in the Australian outback. The advertisement then depicts a Holden Adventra travelling along a separate, more rugged outback track. This track is also unsealed and involves uneven terrain. The car is shown to negotiate the unsealed surface and uneven terrain.

The following scene in the advertisement shows the kangaroo approach a road sign. The kangaroo stops to read it. The road sign contains an image of the Holden Adventra and contains the words "Next 10km". At this point the Holden Adventra leaps out from the track it has been travelling on, crosses the path of the kangaroo and continues on the opposite side of the road. After the Adventra has passed, the kangaroo resumes its travels down the road.

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*"The advertisement showed a kangaroo hopping along a perfectly good dirt road, paid for and maintained by the taxpayer, while the 4WD smashed through the native bush alongside, destroying ecosystems and soil structures that had evolved for centuries for fun!"*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*"In accordance with the regulations, at no time is the Adventra V6 seen driving in a manner where there are sudden, extreme or unnecessary changes in direction and the vehicle is always shown in total control. During the filming of the commercial, the vehicle was driven at safe speeds (no greater than 45km/h) and as seen by the viewer, also appears to be travelling in a safe manner and at safe speeds."*

*"... Holden believes that the Adventra V6 advertisement portrays a driving scenario which is legitimate, safe and responsible for this type of All Wheel Drive vehicle. At all times the vehicle was driven on bush tracks avoiding disruption and damage to native vegetation."*

*"Holden takes great care when developing television commercials to ensure that we do not encourage unsafe, illegal or reckless driving and do not present a vehicle being driven in a manner that encourages deliberate and significant environmental vandalism."*

## **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 which came into effect on 1 July 2004 (the “FCAI Code”).

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines “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 other 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 Adventra “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 Adventra depicted 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(c), 2(e) and 4 were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

Before looking at whether clauses 2(c) and 2(e) of the FCAI Code had been breached, the Board first considered whether clause 4 of the FCAI Code had been complied with. The Board noted that if clause 4 of the FCAI Code was satisfied, there would be no need for the Board to consider clauses 2 (a) and 2(b) as both unsafe driving and excess speed were covered in clause 4. Clause 4 does not deal with the matters raised in clauses 2(c) - 2(e) and therefore, where relevant, they must also be considered by the Board.

The Board noted that pursuant to clause 4 of the FCAI Code, advertisers are permitted to:

*“... legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area.”*

Clause 4 further states that:

*“Such 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 Board first gave consideration to whether the advertisement legitimately depicted the capabilities and performance of an off-road vehicle in accordance with clause 4 of the FCAI Code. “Off-road vehicle” is defined in the FCAI Code as meaning:

*“... a passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive.”*

The advertiser informed the Board in its response that the Holden Adventra was an off-road vehicle as defined under the FCAI Code.

The Board was then required to consider whether the capabilities and performance of the off-road

vehicle had been legitimately depicted. The television advertisement featured the Holden Adventra travelling on an outback/bush track. The advertisement depicted the car negotiating the unsealed surfaces and uneven terrain. In some scenes, dirt is shown to be thrown up from the vehicle. The Board formed the view that the driving shown (driving on unsealed surfaces and over uneven terrain) was a legitimate depiction of an off-road vehicle's performance and capabilities.

The Board was then required to consider whether such depictions portrayed either unsafe driving or excessive speed in breach of clause 4 of the FCAI Code.

The Board considered that there was no overt indication that the vehicle was being driven recklessly or unsafely. There were no other cars in the footage and the vehicle was not shown to be out of control. Further, the Board was of the view that there were no overt indications that the vehicle engaged in any unsafe driving or levels of speed that would contravene the laws of any State or Territory in Australia were they to occur on a road or road related area. The Board noted the advertiser's comments that the car was being driven at safe speeds (no greater than 45km/h).

Having determined that the driving practice depicted was a legitimate depiction of the capabilities and performance of an "off-road vehicle" under clause 4 of the FCAI Code, the Board then had to consider the general application of the relevant sub-clauses in clause 2.

Having already determined that clauses 2(c) and 2(e) were relevant in the circumstances, the Board first considered whether clause 2(c) of the FCAI Code had been breached.

In order to breach clause 2(c), the driving practices depicted must:

*"...if they were to take place on a road or road related area, breach any Commonwealth law...."*

The Board determined that no driving practices depicted were in breach of clause 2(c) of the FCAI Code.

The Board then considered whether clause 2(e) had been breached. In order to breach clause 2(e), the advertisement must not portray:

*"deliberate and significant environmental damage....."*

The Board was not convinced that the depiction represented "deliberate" environmental damage. In any event, the Board still had to determine whether such damage was "significant" within the meaning of clause 2(e). The Board determined that the advertisement lacked any overt indication that damage was caused to the environment in which the vehicle was filmed. The Board considered that the scenes displayed did not portray significant environmental damage.

On the above basis, the Board confirmed its prima facie view and held that the material before it did not constitute an advertisement in breach of clauses 2(c), 2(e) or 4 of the FCAI Code. The Board therefore dismissed the complaint.