



CASE REPORT

1. Complaint reference number	209/05
2. Advertiser	Holden Ltd (Storm Ute)
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

The first scene in this television advertisement depicts a small group of surfers sitting in relatively clam waters. The following scenes show several close-up shots of a Holden Storm Ute that is travelling along a coastal road. The driver is shown to peer into the rear-vision mirror to see a storm front forming behind him. As the ute travels along the road, the storm continues to develop behind him, creating large ocean waves. A voiceover reads: "The value – packed limited-edition Storm Ute. The ultimate ride." The Holden logo then appears.

THE COMPLAINT

Comments which the complainant/s made included the following:

"The vehicle being advertised is shown to be driving at high speed along a coastal road..."

"What I find most offensive about this ad is the active encouragement of Holden to use their products in dangerous manner..."

THE ADVERTISER'S RESPONSE

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

"... at no time is the Storm Ute 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 well below the speed limit and as seen by the viewer, also appears to be travelling in a safe manner and at safe speeds."

"Holden takes great care when developing television commercials to ensure that we do not encourage unsafe, illegal or reckless driving."

"The central idea of the advertisement is that the Special Edition Storm Ute creates a storm that results in a huge wave."

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 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 Storm Ute “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 Storm Ute 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(a), 2(b) and 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the FCAI Code had been breached. The Board first considered whether clause 2(a) of the FCAI Code had been breached.

In order to breach clause 2(a) of the FCAI Code, the driving depicted must be:

“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law... if such driving were to occur on a road or road related area...”

The Board formed the view that clause 2(a) had not been breached. The Board considered that the advertisement did not depict reckless and menacing driving that would breach any Commonwealth law. The Board noted that the advertisement did not depict any sudden, extreme or unnecessary changes in direction.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

“people driving at speed in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast”.

The Board formed the view that clause 2(b) had not been breached. The Board considered that there was no overt indication that the vehicle was being driven at speeds in excess of the speed limits in Australia. The Board also noted the advertiser’s comments that during filming the vehicle depicted in the advertisement was driven at safe speeds well below the speed limit.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c) of the FCAI Code, the driving practices depicted must:

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

The Board formed the view that clause 2(c) had not been breached. The Board considered that no driving practices were depicted that would breach any law of the Commonwealth.

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(a), 2(b) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.