



CASE REPORT

1. Complaint reference number	235/04
2. Advertiser	Holden Ltd (Commodore Alloytec V6 - laboratory)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 September 2004
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a Holden engine test facility where the Alloytec V6 engine is being tested by lab technicians for performance and construction. The engine is not yet located in the car and is being tested independently of the entire vehicle. One lab technician asks the other whether the engine is ready. The other lab technician says he will find out and turns the engine on. He revs the engine and looks thrilled by its power. The voiceover states "With its high performance alloy construction, there is no holding back". The other lab technician looks on at the technician testing the engine with concern and then the testing technician stops the engine and says "Whoa. It's ready".

THE COMPLAINT

Comments which the complainant/s made included the following:

"This advertisement encourages young people to think that power in a car is really desirable. The message it gives is that these powerful engines are what every guy really wants."

"We already have an over representation of Commodores in fatal high speed crashes and this sort of promotion will do little to change that."

"The advertisement is targeted at young males and promotes speed and power and the type of behaviour that is responsible for the deaths of many of the target audience."

"Sound and visual effects give the audience the sensation of speed and excitement. The tagline 'No holding back' emphasises the potential for speed and reckless abandonment for this driving experience. This blatant glorification of speed and power of this vehicle clearly breaches the Code's intention of supporting road safety both explicitly and implicitly."

THE ADVERTISER'S RESPONSE

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

"The alloytec advertisement complained about does not feature any driving footage. Revving an engine in itself does not constitute speeding."

"Holden takes great care when developing television commercials to ensure that we do not encourage unsafe, illegal or reckless driving and we believe that our Alloytec television advertisement demonstrates the characteristics of our new engine in a safe and entertaining way."

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 Commodore Alloytec V6 "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 Commodore Alloytec V6 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(a), 2(b), 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the 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 practices 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. Clause 2(a) requires the depiction of actual driving practices. Given that there was no actual driving depicted in the advertisement and only the engine (not located in the motor vehicle) was depicted, the Board determined that clause 2(a) could not be breached.

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 speeds 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. Similarly to clause 2(a), clause 2(b) requires the depiction of actual driving practices. Given that there was no actual driving depicted in the advertisement and only the engine (not located in the motor vehicle) was depicted, the Board determined that clause 2(b) could not be breached.

The Board then 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 formed the view that clause 2(c) had not been breached. Similarly to clauses 2(a) and 2(b), clause 2(c) requires the depiction of actual driving practices. Given that there was no actual

driving depicted in the advertisement and only the engine (not located in the motor vehicle) was depicted, the Board determined that clause 2(c) could not be breached.

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