



CASE REPORT

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| 1. Complaint reference number | 239/04 |
| 2. Advertiser | Holden Ltd (Crewman Cross8) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Driving practice that would breach the law
FCAI - Environmental damage
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 family of four with their Holden Crewman Cross8 in a red dirt desert expanse. The dad cannot find water to use his speedboat, and notes that it is too dry. The young child points to a dirt and rocky mound and says to his dad “Dad, what about over that?” The family get in the car and drive towards the mound. Dirt flies out from behind the car and the car climbs over the mound and arrives on the other side at a lake. The visuals cut to a mission control pad and an officer seeing the Holden’s discovery of water says ‘Sir, there is water on Mars, but we didn’t find it.’”

THE COMPLAINT

Comments which the complainant/s made included the following:

“The ad features the following direct breaches of your code: Speeding; Wheel-spinning; Dangerous driving; and Environmental damage.”

“The Holden in the advertisement about which we have complained is wheel-spinning and creating an enormous dust-storm. Apart from this causing deliberate and significant environmental damage, we have now provided additional information to reveal just how damaging this type of behaviour is to Australia’s and the world’s environment.”

THE ADVERTISER’S RESPONSE

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

“Firstly, all required council permits were sought and granted and Holden also advised the local police of the activity. At no time is the Crewman Cross8 seen driving in a manner where there are sudden, extreme or unnecessary changes in direction and the vehicle is always in total control. During the filming of the commercial, the vehicle was driven at safe speeds and as seen to the viewer, also appears to be travelling in a safe manner and at safe speeds. Holden believes that the Crewman Cross8 advertisement portrays a driving scenario which is a legitimate, safe and responsible manner for this type of All Wheel Drive vehicle.”

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 Crewman Cross8 “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 Crewman Cross8 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 a 4 wheel drive.”

The advertiser informed the Board in its response that the Holden Crewman Cross8 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 Holden Crewman Cross8 was depicted driving over loose unsealed red dirt surfaces in a desert area. It was also depicted driving over an uneven rocky

dirt mound to arrive at the water on the other side. The Board formed the view that these driving practices were legitimate depictions of an off-road vehicle's performance and capabilities on such surfaces and over such terrain.

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 noted that the Holden Crewman Cross8 was filmed driving towards the uneven rocky mound in a straight line without any overt indication that the vehicle was being driven recklessly or unsafely. There were no other cars in the footage and the vehicle made no sudden or extreme turns or changes of direction nor did it lose control at any time. Also, the Board noted that although a small amount of dust flew into the air as the car drove towards the uneven rocky mound, this was not excessive and would be the normal expected amount of dust created by the movement of the car on such a loose surface. There were no overt indications that the vehicle engaged in any unsafe driving practices 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.

Having determined that the driving practices depicted were 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...."

For the same reasons stated in relation to why the driving practices depicted did not portray unsafe driving practices under clause 4 of the FCAI Code, the Board subsequently determined that such driving practices would also not be 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 driving practices depicted must not portray:

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

The Board was not convinced that the depiction represented "deliberate" environmental damage, particularly whilst advertising off-road motor vehicles. 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 blowing up of a small amount of dust and the lack of any other overt indication that damage was caused to the rocky mound that the vehicle drove over did not constitute 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.