



CASE REPORT

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| 1. Complaint reference number | 244/04 |
| 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, 14 September 2004 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a tornado and dark clouds at a railway crossing. A red Storm Ute pulls up to a halt on the road. The voiceover describes it as a Limited Edition Storm Ute and provides details of all its features. The Storm Ute then drives off down the road.

THE COMPLAINT

Comments which the complainant/s made included the following:

“The theme, I recall was promoting the sale of a new model, and was quoted as raising or creating a storm. The vehicle was driven around in tight circles, which created a huge dust cloud resembling a tornado or whirlwind after which it was driven away at high speed. (It performs DOUGHNUTS as the young nickname this behaviour).”

“[The advertisement] promotes the misuse of these vehicles and seems to me to give tacit approval to our impressionable young that this type of driving and abuse is commendable. I am concerned that this could lead to an increase in our road toll if this type of advertising is used to promote sales of these vehicles.”

THE ADVERTISER’S RESPONSE

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

“I have attached an advertisement for the Storm Ute, which has been on air recently, and although the details of the complaint don’t seem to relate specifically to this ad, I am providing it for you to judge. 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 and as seen to the viewer, also appears to be travelling in a safe manner and at safe speeds.”

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 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 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 noted that there was some confusion between the advertisement described by the complainant and the advertisement described and provided by the advertiser. Further information was sought by the Board from the advertiser to clarify this confusion. The advertisers have not broadcast the version of the advertisement that the complainant describes in his/her correspondence since February 2003. Accordingly, the Board determined that that version of the advertisement could not be considered under the FCAI Code, which came into effect on 1 July 2004. The version of the advertisement provided by the advertiser was broadcast after 1 July 2004 and therefore the Board had to determine whether it breached the FCAI Code. The Board noted the comment of the advertiser that neither versions of the advertisement for the Holden Storm Ute are aired anymore, as Holden no longer have any stock for sale of the Holden Storm Ute.

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. At no time during the advertisement did the motor vehicle exhibit any unsafe, reckless, menacing or otherwise illegal driving. The motor vehicle was actually only featured driving for very short periods in the advertisement and such depictions only involved the car safely pulling up to a stop on the road and then driving off down a straight sealed surface within the line markings as the voiceover described the special offer. The motor vehicle made no sudden or extreme turns or changes of direction nor did it lose control at any time.

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. The Board noted that there was no overt indication that the car was driven at excess speeds during the advertisement and noted the advertisers confirmation that the car was driven at safe speeds at all times during the filming of the advertisement.

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. Given that the Board had found that the advertisement did not breach clause 2(a), the Board made a similar determination in relation to the driving practices depicted under clause 2(c). The Board noted that there were no additional driving practices as contemplated by clause 2(c) depicted in the advertisement.

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.