



## **CASE REPORT**

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| 1. Complaint reference number | 248/04                                      |
| 2. Advertiser                 | Holden Ltd (Commodore Alloytec V6 - onroad) |
| 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 young man in a Holden Commodore Alloytec V6 about to take off onto the road. He revs the engine before taking off and smiles. He goes onto the road and is filmed driving along the road. When he changes gear his head is thrown back against his headrest and he smiles. The man is filmed looking into his rear vision mirror and his young child smiles back at him and says "Whoa". The tagline is "There's no holding back".

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*"The commercial is inappropriate because it is promoting speed and a sense of recklessness. It does not promote safety and responsibility in any way."*

*"The new television commercial for the Commodore SV6 focuses on the speed of the car. This is irresponsible. It is made even more irresponsible by having a child in the back seat while the father is revving the engine down the highway."*

*"This type of ad invites dangerous driving and child endangerment."*

*"It flies completely in the face of all the government attempts to reduce road accidents through discouraging fast driving."*

*"This ad would appear to endorse the fact that it is ok to travel at high speed with a child in the car and that the child enjoys the experience. The ad simply does not convey a responsible message. It should be noted that I am a motorsport competitor and enjoy fast driving, I'm not opposed to fast driving provided it is done in the appropriate place and does not have the potential to harm others, young or old."*

*"It has been long established that speed and excessive use of power are major contributors to road accidents, yet advertisements like the GMH one continue to promote speed, power and performance as attractive things in a car purchase."*

*"The attitude of the driver, the overlay of a sound track of a fast driven vehicle and the final shout of triumph by both the driver and this infant son in the back seat, scream out the message 'Wow! Doesn't she go? Isn't this a thrill?!'"*

## **THE ADVERTISER'S RESPONSE**

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

*"The SV6 TVC complained about does not feature any footage of the vehicle speeding. Revving an*

*engine in itself does not constitute speeding and the revving of the engine is not excessive.”*

*“The driving depicted in the advertisement conforms to the relevant road safety regulations. The Commodore SV6 was driven with the posted speed limit at all times. Special permits were obtained for the use of the road in the SV6 TVC. The advertisement has been broadcast nationally. The advertisement has only been made available on Holden’s intranet site.”*

*“From the footage shown on the advertisement it is clear that the vehicle is not at any time driving in an unsafe, reckless or menacing manner.”*

*“The vehicle is driven within the posted speed limit, we note that the speed limit on the road shown in the SV6 TVC is 80km/h.”*

*“There is nothing within the advertisement that breaches any Commonwealth, State or Territory laws i.e. use of hand held mobile phone etc.”*

*“We also wish to assure the Board that during the entire television production that the SV6 was operating within the posted speed limits of the shoot location. Furthermore the child featured in the commercial was legally fastened within an approved child seating restraint and is clearly enjoying the driving experience of the SV6 along with his father.”*

## **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. At no time during the advertisement did the motor vehicle exhibit any unsafe, reckless, menacing or otherwise illegal driving. Whilst the motor vehicles engine was revving and the man was smiling, the Board formed the view that this does not necessarily indicate that the car was being driven unsafely. The motor vehicle was featured driving down a straight sealed road surface within the line markings and did not make any sudden or extreme turns or changes in 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 the legal speed limit for the area at all times during the filming of the advertisement. The Board was of the view that the sounds of the engine revving were not excessive and the footage of the drivers head motioning backwards could also have been caused by the changing of the motor vehicles gears.

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 for the purposes of analysing clause 2(c).

The Board noted the complainants’ concerns about the child being in the back seat of the car, however, given that the Board did not find that the advertisement had depicted any unsafe, reckless, menacing or illegal driving practices it noted that the child’s safety would not have been likely to be endangered. The Board noted the advertiser’s comment that the child was in a child restraint at all times. There was no overt indication from the child’s expression in the advertisement that it felt afraid or endangered by the father’s driving practices.

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.