



## **CASE REPORT**

1. Complaint reference number	263/04
2. Advertiser	Holden Ltd (Commodore SV6)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 12 October 2004
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

The advertisement is a print advertisement which features an image of a Holden Commodore SV6 on a road and the tagline is “New Commodore SV6. No holding back.”

## **THE COMPLAINT**

Comments which the complainant/s made included the following:

*“The clear message is for drivers to ignore all constraints and drive the vehicle to the maximum potential.”*

*“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 the 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 vehicle presented in the press communication is a static image.”*

*“The image does not portray unsafe driving, reckless or menacing driving.”*

*“No images of people are used in the communication.”*

*“The road used was properly sectioned off and the relevant permits were obtained whilst completing this photography.”*

## **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 published in Australian print media.

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a Holden Commodore SV6 “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 SV6 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. The Board was of the view that there were no overt indications that the motor vehicle on the road was undertaking any unsafe, reckless or menacing driving practices that would be in breach of any relevant law.

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 was of the view that there were no overt indications that the motor vehicle on the road was being driven at excessive speeds.

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 clause 2(a), the Board formed the view that there were no overt indications that the motor vehicle on the road was undertaking any driving practices that would be in breach of any law.

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.