



CASE REPORT

1. Complaint reference number	354/03
2. Advertiser	Holden Ltd (Crewman)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 October 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a medium shot of a couple standing on the front porch of their house with their arms crossed staring into the distance. The camera then pans back to front/side three quarter profile a red Holden Ute in front of the house. The camera then cuts back to a close up of the woman's face. She then turns to look to her husband. He then turns to look at her. He has a smile on his face. The camera then cuts to a close up of a nail attached through a metal chain being driven into the ground. The camera then pans back to show the Ute having being attached by chains to metal pegs in the ground. A close up of the chains is then shown as they are tightened before a close up three quarter rear/side profile of the Ute as the rear tyres begin to spin throwing up dust. The camera then cuts to a close up of the side panels of the cabin before cutting back to an image of the man driving the vehicle. The camera angle then returns to the side panels of the vehicle which are shown to stretch. The man is then shown to walk back to the front porch and stand by his wife with his arms crossed in a pensive pose. A voice over then says: "Introducing Australia's first four door Ute, the all new Holden Crewman."

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

"The vehicle is seen chained to a gate trying to escape its "captivity", like a caged animal. Like the other Holden Ute add running at the moment, about which we would also like to formally complain that the vehicle wheel spins to such an extent that dirt is thrown backwards for 100's of metres. This explicitly breaches 2 sections of the Code. First..... it is illegal to do wheel spins. Secondly, there is "deliberate and significant environmental damage in both Holden Ute ads".

THE ADVERTISER'S RESPONSE

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

"The advertisement is a fantasy and humorous theme. There are various elements of the advertisement which support the fantasy and humorous them, i.e. The use of dramatic music, and the idea that a Holden Ute can be stretched out..."

THE DETERMINATION

The Advertising Standards Board ("the Board") considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics ("the Code").

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 (the "FCAI Code").

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines an “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 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 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 “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 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) and 2(g) were relevant in the circumstances.

In order for clauses 2 (c) to be breached, the driving practices described in this clause must take place “on a “Road or Road-related area”.

In relation to clauses 2(c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “Road” as defined by the FCAI Code. The definition provides as follows:

“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”

The Board then proceeded to consider that based on the fact that the vehicle was filmed right outside a remote homestead, on what appears to be a dusty track which is barely distinguishable from the broad stretch of dust around it, the dust track was unlikely to qualify as a “Road or Road-related area”. The Board determined that the remoteness of the area in which the advertisement was shot, the dust surrounding the homestead and the absence of any indication of any contact for miles around, were further indications that the dust track was not a public road in any sense.

On the basis of these factors, the Board formed the prima facie view that the surface depicted in the advertisement is not a “Road”.

In verifying its prima facie conclusions, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

”The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

The Board found that the notion of a two door vehicle being stretched into a four door vehicle, as depicted in the advertisement is clearly fanciful.

Clause 2(g), of the Code prohibits and advertisement from portraying

“deliberate and significant environmental damage...”

The Board considered that blowing up dust and a dust bowl like area 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 for a motor vehicle in breach of clauses 2(c) or 2(g) of the FCAI Code. The Board dismissed the complaint.