



CASE REPORT

1. Complaint reference number	354/07
2. Advertiser	Holden Ltd (Hummer - TV)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 13 November 2007
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features an aerial view of a Hummer driving down a city street, with the camera view changing to show various features of the body, including the grille. The Hummer is then seen driving through the bush, then across a desert scene. The words "Now get lost" appear on screen as the shot changes again to an aerial view of the Hummer shown crossing sand dunes with the words "Hummer. Like nothing else".

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

This advertisement encourages aggressive driving and road rage behaviour, and promotes the car as a vehicle of intimidation and violence. The road is a resource for everyone's use - it is a public resource. The Hummer ad suggests that if people own and drive hummers then they will be able to behave outside of the regular principles or consideration of other people's rights pertaining to road use.

THE ADVERTISER'S RESPONSE

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

In relation to Section 2 of the FCAI Code our position is as follows:

1.1 Consistent with clause 2(a) of the Code, there is no depiction of unsafe, reckless or menacing driving in the TV Advertisement nor does it portray or encourage "aggressive driving" or "road rage behaviour" as suggested by the complainant. Forming part of the HUMMER's Australian launch, the advertisements are intended to herald the long-awaited arrival, by many HUMMER enthusiasts, of the vehicle into the Australian market. Viewed in this context, the phrase "now get lost" reflects the HUMMER's off-road reputation, as a vehicle designed to handle the most extreme conditions, empowering the HUMMER driver to go anywhere imaginable and 'get lost' in the HUMMER experience.

The HUMMERs in the TV advertisement were driven safely, responsibly and in accordance with all safety and traffic regulations (including the speed limit) at all times, consistent with clause 2(b) of the Code. There is no portrayal whatsoever of the vehicles being driven in a manner which is intimidating or threatening to other road users as claimed by the complainant.

1.1 Consistent with clause 2(c) of the Code, the advertisements do not depict unsafe driving practices, such as the illegal use of mobile phones or failure to wear seatbelts.

1.2 The advertisements do not portray people driving whilst fatigued, or under the influence of

drugs or alcohol, and therefore do not infringe clause 2(d) of the Code.

1.3 The advertisements do not depict any environmental damage, and therefore do not contravene clause 2(e) of the Code.

Accordingly, it is our view that the advertisements comply with Section 2 of the FCAI code.

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 (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 went on to consider the substantive provisions of the FCAI Code. The Board first considered clause 2(a) of the FCAI Code. Clause 2(a) provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'unsafe driving, including reckless or menacing driving that would breach any Commonwealth Law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.'

The Board carefully viewed the advertisement and considered that the vehicle is depicted driving at an appropriate speed at all times. The Board also considered whether the wording 'now get lost' suggested violence or aggressive and unsafe driving. The Board noted the advertiser's response that the wording was intended to describe the off road capabilities of the vehicle. The Board considered that although the interpretation placed by the advertiser was likely, it was also likely that it could be interpreted as a suggestion that other cars should get out of the way of this vehicle. The use of the text in the television commercial was less suggestive of unsafe driving or driving that would be so reckless or menacing that it would breach a road safety law as the images of the vehicle are clearly that of a vehicle on the road on its own driving appropriately. The Board considered that there was no breach of clause 2(a).

The Board considered that clauses 2(b), (d), (e), and 3 of the FCAI Code were not relevant to the present advertisement.

The Board also considered clause 2(c) and whether the advertisement depicted 'driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.' The Board considered that this television commercial gave no suggestion of road rage and was clearly suggesting that the vehicle could be taken, legally, to out of the way and off road places. The Board determined that there was no suggestion of unlawful behaviour of the driver to amount to a breach of clause 2(c).

Finally the Board considered clause 4 of the FCAI Code which provides that ' an advertisement may 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. 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 considered that the off road depictions of the vehicle in this advertisement were legitimate depictions and that the advertisement did not breach clause 4 of the FCAI Code.

The Board determined that the advertisement did not breach any of the clauses of the FCAI Code.

The Board then considered whether the advertisement breached any of the provisions of the AANA Advertiser Code of Ethics. In particular the Board considered whether the advertisement presented or portrayed violence unless it is justifiable in the context of the product of service advertised. In this television commercial, by contrast with the internet and outdoor advertising, the Board considered that there was little or no suggestion that other cars should get out of the way of this vehicle or of road rage or aggressive driving. The Board considered that the advertisement depicted a car driving in off road conditions and that there was no suggestion of violence.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.