



CASE REPORT

1. Complaint reference number	453/06
2. Advertiser	Holden Ltd (Captiva)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 November 2006
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a aerial shot of a cityscape, and a Holden Captiva cruising around on of the building rooftops. A male voiceover announces “The all-new Holden Captiva takes the SUV to new heights”, as we see the driver taking enormous pleasure driving between chimneys and deftly negotiating rows of washing hanging from clotheslines with stunt-man skill. The voiceover continues “With Electronic Stability Program for advanced safety...” (he drives into the middle of a construction site) “...the control of Holden’s Active all-Wheel Drive...” (driving up two perfectly positioned planks, then accelerating sharply to jump the car from the rooftop of one building) “...the go you get from a powerful Aussie-built V6”. Suddenly the car comes to a dramatic halt at the edge of a building. The driver, as if satisfied with his parking, gets out of the car and disappears over the edge of the building, and sliding down rooftops, jumping across buildings, swinging on flagpoles he lands on a banana lounge perched on a rooftop garden. The voiceover continues “...and practicality of 7 seats...” as his remaining 6 passengers land in the garden beside him. We see a final shot of the car perched on top of the building as the voiceover concludes “ All-new All-Wheel Drive Holden Captiva. Go to new heights.”

THE COMPLAINT

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

A disgusting advertisement when the whole country is reeling under the affect (sic) of accidents to young drivers killed or mutilated.

THE ADVERTISER'S RESPONSE

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

Holden takes a great deal of care when creating advertising, with numerous reviews taking place prior to any advertising concept being approved and produced. These reviews are also undertaken with our Legal representatives.

Prior to filming, all required council permits were sought and granted. The local police were also advised of the activity.

Holden employed a professional, qualified driver to drive the Captiva whilst making the TVC. The driver of the vehicle was not under the influence of drugs or alcohol and is certainly in no way depicted as fatigued. A professional stunt man was used for all acrobatic activities with a whole range of precautionary safety measures in place, as you would expect.

Clearly the Captiva TVC is set in a ‘fantasy’ environment on the roof tops of buildings. The driver is skilfully negotiating the obstacles that you would typically find on the roof tops of city buildings

– not driving in a reckless, aggressive or menacing manner. This TVC is a clear example of self-evident exaggeration of a scenario that no person or road-user could ever replicate. To further make the point, the driving sequence is not undertaken on a road or road-related area and it is not an area accessible by the public.

During the filming of the commercial, the vehicle was driven at safe speeds below normal speed limits in urban areas. In some scenes, the vehicle shown was actually a computer generated image. At no stage does the driver ever lose control of the vehicle or even appears to do so. Some scenes are designed to replicate scenarios you would find in an off-road environment. No environmental damage is depicted in the TVC.

Holden takes great care when developing television commercials to ensure that we do not encourage unsafe, illegal or reckless driving and do not present a vehicle being driven in a manner that undermines the intent of the Voluntary Code of Practice.

We believe that the television advertisement demonstrates the driving characteristics of the new, all-wheel-drive Captiva in a responsible and entertaining way. The TVC highlights the ability of the Captiva to take families to new and interesting places in a non-stereotypical SUV manner.

We do not see a connection between the Captiva TVC and accidents to young drivers as stated by the complainant.

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”). 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 car, “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 car 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 clause 2(a) was relevant in the circumstances.

In order to breach clause 2(a), the driving practices depicted must be:

“obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any Commonwealth law.... if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.”

In making its decision, the Board noted that the driving takes place in an unrealistic environment (on and between skyscrapers etc.). The Board then considered whether the driving depicted would have been considered reckless, unsafe or menacing if the driving had been depicted on a road or road-related area. The Board noted that, while the car was clearly being driven across ‘unsafe’ (but unrealistic) ‘terrain’, the manner of the driving itself was not unsafe, reckless or menacing.

On the above basis, the Board held that the material before it did not constitute an advertisement in breach of clause 2(a) of the FCAI Code. The Board therefore dismissed the complaint.

The Board then considered whether the advertisement breached the AANA Code of Ethics (the Code). The Board noted that clause 2.6 of the Code does not apply to advertisements to which the FCAI Code applies. The Board considered that the advertisement did not contravene the Code on any basis.

Further finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.