



CASE REPORT

1. Complaint reference number	295/05
2. Advertiser	Mitsubishi Australia Ltd (Lancer)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	Violence Other – section 2.2
6. Date of determination	Tuesday, 11 October 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The first scene in this television advertisement depicts a red Mitsubishi Lancer accelerating away from the side of the road. The advertisement cuts to the interior of the car where we see a young man change gears. As we hear the car accelerating, we see the man being forced deep into the cushion of the seat - so much so that his entire upper body is absorbed by the seat. The advertisement then cuts to an image of the speedometer. We see that the car is reaching 60 km/h. As it does so, the driver takes his foot off the accelerator and applies the brake. When he applies the brake he slowly emerges from the cushion of his seat. He looks across to his girlfriend who is also emerging from the front passenger seat when the car is slowing down. The voiceover states: *“With the amazing new 2.4 litre Mivec engine, Lancer has 25% more power”*. The final scene in the advertisement shows the red Mitsubishi Lancer park alongside a red Mitsubishi Lancer Evo and a red Mitsubishi station wagon. The voiceover states: *“So now you get impressive power right across the Lancer range”*. The Mitsubishi logo then appears together with the words: *“Engineered to excite”*.

THE COMPLAINT

Comments which the complainant/s made included the following:

“I was under the impression that the motor industry was on notice to dispense with emphasising the performance aspects of their products, in the interests of road safety and responsible driving... I believe this advertisement is irresponsible in regard to road safety in the fact that the entire advertisement is about the acceleration capabilities of its Lancer model.”

“I object to this ad as it is encouraging people to buy the car based on the increased horsepower giving the impression that it is an extremely fast car. It is against the law to speed so how can Mitsubishi motors be so irresponsible in their advertising to impressionable youth?”

“The ad promotes inappropriate acceleration in built up areas by young drivers.”

“This ad was shown immediately after the Channel 7 News headlines of a man who was killed by a young driver who was drag racing another car. This type of advertising is unnecessary and should be removed from television. Maybe Mitsubishi should be held accountable for some of the road deaths.”

THE ADVERTISER’S RESPONSE

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

“The Advertisement promotes the fact that the 2005 model Mitsubishi Lancer is fitted with the new Mivec engine, a significant advance over the previous engine.”

“A feature of that new engine is that it delivers more power to the vehicle than that with which it

was previously fitted...”

“... It is an obvious use of humour and self evident exaggeration.”

“... even in the representation of the improved performance of the Lancer with its new engine, Mitsubishi has not depicted reckless acceleration or driving in a manner that would encourage recklessness...”

“The vehicles portrayed in the advertisement were, in fact, driven within legal speed limit (60km/h in this case) at all times during the filming of the advertisement. We have been at pains to demonstrate that by including the shot of the speedometer and making it clear that after controlled and appropriate acceleration towards – but not in fact to – 60km/h, the driver immediately ceased accelerating and continued cruising within the speed limit...”

“There is no indication whatsoever in the advertisement that the vehicle depicted is speeding. Further, as already noted, the vehicle was not in fact speeding at the time the advertisement was filmed.”

“To emphasise the fact that the vehicle is travelling within the ordinary speed limit, the vehicle speedometer is depicted in the advertisement. It shows that the vehicle is accelerating – at a steady, not reckless rate – towards 60km/h. It also shows the acceleration ceasing – and in fact, deceleration occurring – prior to the vehicle reaching the speed of 60km/h. As already noted, the Advertisement was shot in an area where the speed limit was 60km/h, and all relevant road regulations were adhered to while shooting the commercial...”

“... there are no indications whatsoever that the motor vehicle was undertaking any driving practices that would be in breach of any law...”

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 Mitsubishi Lancer “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 Mitsubishi Lancer 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) and (c) were relevant in the circumstances. The Board had to consider whether those clauses of the FCAI 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 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 noted that the intent of the advertisement was to highlight a power increase in the new Mitsubishi Lancer and more specifically, to show the acceleration capabilities of the car. The Board considered that the depictions in the advertisement were against the spirit of the FCAI Code in showing a vehicle accelerating quickly, however, the Board noted that the driving depicted in the advertisement did not breach any law. The Board took into consideration that the advertiser had deliberately showed the vehicle approaching the speed limit (by showing the speedometer) and clearly indicated to viewers that the vehicle did not accelerate past the speed limit, but rather slowed down on reaching it. The Board also noted that the vehicle was not shown to compete against any other vehicle in accelerating to the speed limit.

The Board considered the advertiser’s comments that there was an obvious use of humour and self-evident exaggeration in this advertisement. The use of exaggeration does not enable an advertiser to avoid compliance with the provisions of the FCAI Code. However, on the basis of the above, the Board found that the advertisement did not breach clause 2(a) of the Code.

The Board then considered whether clause 2(b) of the 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 noted that car was shown to reach the 60km/h speed limit and then brake. The car was not shown to be travelling in excess of the speed limit. The Board concluded that clause 2(b) had not been breached.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c) of the FCAI Code, 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. The Board considered that no driving practices were depicted that would breach any law of the Commonwealth.

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) or 2(c) of the FCAI Code. The Board, therefore, dismissed the complaint.