



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

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Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0023-22
2. Advertiser :	Mitsubishi Motors Aust Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	2-Feb-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(b) Breaking the speed limit
FCAI Motor Vehicle Advertising Code\2(e) Environmental damage

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man picking up an older man by the side of the road next to a broken tractor. The older man looks unhappy. The advertisement follows them on the drive home, and upon getting out of the vehicle the older man is smiling.

THE COMPLAINT

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

The advertisement exhibits unsafe driving -

- 1 - In one scene, the front wheel locks-up, an example of excessive braking,*
- 2 - In another scene, the vehicle is driven at speed through a watercourse, and at excessive speed up what appears to be a creek embankment,*
- 3 - the vehicle generally appears to be driven at an excessive speed for the condition of the track.*

THE ADVERTISER'S RESPONSE





Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We write in response to the complaint that is the subject of this case, details of which were provided in your letter dated 18 January 2022. The complaint relates to a television commercial (TVC) for the Mitsubishi Motors Australia Limited (MMAL) Triton 'Super Select' II 4WD (Triton).

1 The TVC

1.1 General description

The TVC depicts the on-road/off-road capabilities of the Triton, and in particular, demonstrates the flexibility in driving options that is provided by MMAL's 'Super Select' control feature. It does this in an imaginary scenario that plays to the theme "It's the dial that puts a smile on yours" and the overarching concept that there is no on or off-road driving condition that the Triton cannot deal with in its various driving modes; that is, "Nothing can frighten a Triton".

The TVC opens with the Triton coming to a stop near an older man who is working on a tractor that has broken down and who is clearly frustrated and grumpy. Without words being spoken, the Triton driver offers him a lift; the lift is accepted and the older man thereafter directs the driver along back roads and across country (apparently through his own – private – property) to a homestead.

By the time the journey is completed the Triton driver has effectively demonstrated both the on road (2WD) and off-road (4WD) capabilities of the Triton, using the super select dial to transition from one mode to the other, and all to the obvious, albeit slowly realised, delight of the older man.

1.2 Specific information sought

MMAL provides the following information about the TVC in response to your specific requests:

- (a) a copy of the script is attached;*
- (b) the CAD Number is G9E1VMVA The rating is G;*
- (c) a digital copy of the TVC is provided;*
- (d) the advertising agency was Richards Rose. The media buyer was Wavemaker.*
- (e) the TVC has been broadcast nationally, in all states and territories of Australia;*
- (f) the TVC can also be accessed through the MMAL website, YouTube and Facebook.*

The TVC was filmed on private property with the consent of the owner. No special permissions or permits were required.

2 The Complaint

2.1 The complaint does not reference any specific clauses of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code), but complains that the TVC 'exhibits unsafe driving' and asserts that:



"1 - In one scene, the front wheel locks-up, an example of excessive braking,
2 - In another scene, the vehicle is driven at speed through a watercourse, and at excessive speed up what appears to be a creek embankment,
3 - the vehicle generally appears to be driven at an excessive speed for the condition of the track."

2.2 You have, under the heading "Issues raised to date" directed our attention to clauses 2(a), (b) and (e) of the FCAI Code. While the complaint might said to raise issues under clauses 2(a) and (b) (and indeed, (c)), we do not understand how any issue in relation to clause (e) is suggested to arise, whether on the face of the complaint or otherwise from the TVC. We will, nevertheless, address that sub-clause and clause 4, which is concerned with the depiction of off-road vehicles more generally, further below.

2.3 We also note your references to clause 3 of the FCAI Code, which is concerned with use of motor sport in motor vehicle advertising and to the general obligation to comply with the section 2 of the AANA Code of Ethics (Code of Ethics). Again, while we do not understand how any issue with respect to either might be said to arise, we will formally address them in the response below.

3 Response to Complaint

3.1 Clauses 2(a) (b) and (c) of the FCAI Code

General matters

(a) Clause 2(a), (b) and (c) of the FCAI Code relevantly provide as follows:

"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

(a) Unsafe driving, including reckless and menacing driving that would breach any [Commonwealth or State law] ... dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area...

[Examples: vehicle travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course...]

(b) People driving at speeds in excessive speed limits in the relevant jurisdiction in Australia in which the [TVC] ... is broadcast.

(c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any [Commonwealth or State law] ... directly dealing with road safety or traffic regulation."

(b) We and our agency, Richard Rose, are very conscious of all of the provisions of the FCAI Code, including these provisions that are concerned with unsafe, reckless and unlawful driving practices. As a general response to the complaint we confirm that:

(i) the Triton was driven within speed limits that would be applicable were the driving that is depicted to have occurred on a road or road-related area; and

(ii) all elements of the driving depicted in the TVC would conform to (and not breach) relevant road safety laws or regulations were the driving to occur on a road or road-related area.



Specific complaints

The first complaint is that: "In one scene, the front wheel locks-up, an example of excessive braking".

- (c) We assume the scene being referred to is that in which the Triton comes to a stop after having passed through a watercourse and accelerated up and over the bank of that watercourse.*
- (d) We do not understand the complaint. In particular, we do not understand the proposition that there is "excessive" braking and more particularly, how what is depicted might be suggested to be an unsafe driving practice, let alone a practice that might, were to take place on a road or road-related area, breach any law. Indeed, we do not believe there to be an offence of (or relating to) 'excessive braking'.*
- (e) Insofar as a more general concern as to safety might be involved, we note that the Triton is depicted brought to a halt after a short period of acceleration in order to complete the climb and clear the bank of the watercourse. It is brought to a halt before an adjustment is made to the driving mode. Not surprisingly, the wheels stop. That occurs on a strip of dirt road and there is the briefest of skids as a consequence.*
- (f) There is nothing in the specific frames relating to the Triton being brought to a halt – or immediately before or after those frames – that might suggest any unsafe driving practice. The Triton stops effectively, in a very short distance and in a straight line, consistent with it being under control at all times and the skid being a simple function of stopping the vehicle on a dirt road after a period of acceleration to clear a specific obstacle. No person or other vehicle is present or embarrassed by the action of bringing the vehicle to a halt.*
- (g) Separately, the relevant scene shows that the Triton can be brought to halt quickly and safely, even on a dirt track and after a period of acceleration to clear or avoid an obstacle, an aspect of the safety of the vehicle that we believe we are properly entitled to depict and promote in accordance with clause 4 of the FCAI Code.*

The second complaint is that: " In another scene, the vehicle is driven at speed through a watercourse, and at excessive speed up what appears to be a creek embankment".

- (h) We do not understand by reference to what measure the allegation of "excessive" speed is made. The complainant also provides no assistance to us in understanding the complaint as to the speed with which the vehicle is depicted passing through the watercourse.*
- (i) However, as already noted (and importantly, as we believe the TVC itself depicts), the Triton was driven within speed limits would be applicable even had the driving depicted occurred on a road or road related area.*
- (j) Further, and insofar as the perception of the viewer is concerned, the Triton is, as the TVC clearly depicts, driven deliberately and does not weave or otherwise deviate from the primary path of travel (which, even through the creek, is defined by the track on either side) and even though it is clear that the creek bed is rocky and uneven. Again, that is to do no more than depict*



the off-road capabilities of the Triton in a responsible and appropriate manner.

The third complaint is that: "the vehicle generally appears to be driven at an excessive speed for the condition of the track ".

- (k) Again, we do not understand by reference to what measure this complaint is made.*
- (l) The Triton was, as already noted a number of times above, at all times driven within speed limits that would be applicable even at the driving depicted occurred on a road or road -related area.*
- (m) Further, in so far as the perception of the viewer is concerned, we suggest that when viewed objectively, there is nothing to indicate "excessive" speed or speed that is inconsistent with the condition of the surface over which the Triton is passing at any particular time. Once again, the vehicle is clearly under control throughout and while the uneven surface leads to the occasional bump, that (whether in combination with the speed of travel or by itself) at no stage leads to the driver losing control of the vehicle or the vehicle otherwise failing to continue on a steady path.*
- (n) In summary, therefore, MMAL is of the view that there is no breach of clauses 2 (a) (b) or (c) of the FCAI Code and that to the contrary, the Triton is depicted travelling at speeds and undertaking manoeuvres all of which would be lawful if they occurred on a road or road related area.*

3.2 General matters related to clause 2(e) and clause 4 of the FCAI Code

- (a) As noted above, your letter references clause 2(e) of the FCAI Code, even though the complaint includes nothing that would suggest that to be a clause with which the complainant was concerned.*
- (b) Clause 2 provides as follows:
"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*
- (e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles*
- (c) In addition, and for completeness, we note that clause 4 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 [Commonwealth or State law] ... were such driving to occur on a road or road related area."*
- (d) The Triton has a sophisticated Super Select II 4WD system which offers 4 driving modes: 2WD High Range, Full Time 4WD and High and Low Range 4WD with locked differential. Triton also has Off Road Mode (as demonstrated in the TVC) which further improves off road traction by using the Gravel, Mud/Snow, Sand and Rock setting and which is activated by simply pressing the Off-Road Mode selector until the appropriate mode appears in the multi-information display. The maximum number of seating positions in Triton (Double Cab) is 5.*



- (e) *The Triton therefore conforms to the requirements of the definition of an off-road vehicle under the Australian Design Rules (MC category).*
- (f) *MMAL and its agency, Richard Rose, are very conscious of these provisions of the FCAI Code and their environmental responsibility more generally.*
- (g) *The TVC was shot on private property with the consent of the owner.*
- (h) *That permission was obtained.*
- (i) *There was no complaint whatsoever by the owner providing the consent in relation to the conduct of MMAL or its agency while shooting the TVC and more particularly, no complaint or suggestion of any (let alone significant or deliberate) 'environmental damage'. Nor do we believe that the TVC in any way suggests the contrary. In the circumstances no issue as to a breach of clause 2(e) therefore arises.*
- (j) *Insofar as clause 4 is concerned, we are of the view that on the basis and for the reasons already set out above, the TVC legitimately depicts the capabilities and performance of the Triton while travelling over loose or unsealed surfaces and uneven terrain without at any stage portraying unsafe driving practices or the Triton travelling at a speed that would contravene the law; in those circumstances, it conforms with and does not contravene clause 4 of the FCAI Code.*

3.3 *Other provisions of the FCAI Code*

- (a) *You have directed attention to clause 3 of the FCAI Code, which is concerned with use of motor sport in motor vehicle advertising.*
- (b) *There is no motorsport depicted in the TVC therefore clause 3 does not apply.*

3.4 *Application of the Code of Ethics*

- (a) *We acknowledge that the TVC is subject to the Code of Ethics.*
- (b) *The advertisement does not contain any form of discriminatory, exploitative, degrading, violent, sexual or obscene material in breach of the Code of Ethics.*
- (c) *Section 2.6 of the Code of Ethics provides that advertisements "shall not depict material contrary to Prevailing Community Standards on health and safety." For the reasons set out above in relation to the driving depicted, we believe that the TVC does not breach this provision.*

Conclusion

For the reasons set out above, we are of the view that the TVC does not contravene either the FCAI Code or the Code of Ethics and request that the complaint be dismissed.

THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the AANA Code of Ethics or the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).



The Panel noted the complainant's concern that the advertisement depicts unsafe driving and excessive speed.

The Panel viewed the advertisement and noted the advertiser's response.

Is this advertisement for a motor vehicle?

The Panel considered whether the 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 Panel determined that the Mitsubishi Triton was a Motor Vehicle as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

Clause 2(a): 'Advertisements for motor vehicles do not portray ...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 Panel noted the complainant's comment that a scene depicts "excessive braking".

The Panel considered that the scene the complainant refers to shows the vehicle stop and skid slightly. The Panel considered that this is unsurprising given the dirt road the vehicle is on.

The Panel considered that the braking depicted is not excessive in the sense that there is no suggestion that the driver has applied the brakes too quickly or that he has lost control of the vehicle while braking.

The Panel considered that skidding slightly on a dirt road base is not by itself a depiction of unsafe driving.

Clause 2(a) conclusion

The Panel considered that the advertisement did not depict the vehicle engaging in unsafe driving or menacing driving which would be likely to breach relevant Commonwealth Law were it to occur on a road or road related area. The Panel considered that the advertisement did not breach Clause 2(a) of the FCAI Code.

Clause 2(b) Advertisers should ensure that advertisements for motor vehicles do not portray people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.



The Panel noted the complainant's concern that the advertisement depicts the vehicle driving at excessive speeds.

The Panel noted that the appearance of speed in this advertisement was due to the fast transition between scenes, and not because the vehicle was travelling at excessive speeds. The Panel noted that the driver is shown to be comfortable and in control of the vehicle and there was no indication that they were driving in an aggressive or dangerous manner.

The Panel noted that throughout the advertisement the vehicle may be seen to bounce/bump around. The Panel considered that such movement is not unexpected when considering the off-road terrain and considered that this was not an indication of excessive speed.

The Panel noted that dust can be stirred up when driving on dirt roads at low speeds, and considered that there is no suggestion that the vehicle is exceeding speed limits or driving at a speed that is unsafe.

The Panel noted the scene showing the vehicle travelling through a watercourse, and considered that the vehicle was not driving at excessive speed but was driving at a speed necessary to maintain traction through the watercourse.

Clause 2 (b) conclusion

The Panel determined that the advertisement did not breach Clause 2 (b) of the FCAI Code.

Clause 2(e): Advertisers should ensure that advertisements for motor vehicles do not portray... Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

The Panel noted the advertiser's response that the vehicle was driven on private property. The Panel noted that the vehicle was being driven in a manner consistent with recreational use of off-road vehicles, and that the advertisement depicted the vehicles' abilities in off-road conditions.

The Panel considered that the advertisement did not depict the vehicles driving in a manner which could be seen to cause deliberate or significant damage to the environment.

Clause 2(e) conclusion

The Panel considered that the advertisement did not depict the vehicles driving in a manner which could be seen to cause deliberate or significant damage to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.



Clause 4: 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 Panel considered that the advertisement depicts the capabilities and performance of an off-road vehicle travelling over terrain not forming part of a road or road related area and did not portray unsafe driving or driving at a speed which would contravene relevant laws if the driving were to occur on a road or road related area.

Clause 4 conclusion

The Panel found that the driving in the advertisement was consistent with Clause 4 of the Code.

Code of Ethics Section 2.1: Advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.

Gender – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men.

Gender is distinct from 'sex', which refers to biological difference.

Does the advertisement portray material in a way which discriminates against or vilifies a person on account of gender?

The Panel considered the depiction of the woman at the end of the advertisement.

The Panel noted that the woman appears angry at the men, however considered that the man is presumably late home and her annoyance is likely due to the lateness rather than angry being her typical demeanour.

In either case, the Panel considered that her demeanour is particular to her and is not a comment on women generally. The Panel considered that the woman in the advertisement is not shown to receive unfair or less favourable treatment because of her gender, and the advertisement did not humiliate, intimidate or incite hatred, contempt or ridicule of the woman because of her gender.



Code of Ethics Section 2.1 conclusion

The Panel considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of gender and determined that the advertisement did not breach Section 2.1 of the Code

Conclusion

Finding that the advertisement did not breach any other section of the AANA Code of Ethics or the FCAI Code, the Panel dismissed the complaint.