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**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	<b>Case Number</b>	<b>0114/19</b>
2	<b>Advertiser</b>	<b>Mitsubishi Motors Aust Ltd</b>
3	<b>Product</b>	<b>Vehicle</b>
4	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
5	<b>Date of Determination</b>	<b>08/05/2019</b>
6	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving  
FCAI Motor Vehicles 2(e) Environmental damage

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features the vehicle driving in and around various obstacles, including a space with several construction vehicles, a sandy area, and an area where lightning narrowly misses the vehicle.

## THE COMPLAINT

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

*The ad clearly breaches sections 2 (a), (c) and (e) of the FCAI CODE OF PRACTICE FOR MOTOR VEHICLE ADVERTISING*

### *2. GENERAL PROVISIONS*

*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 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.*

*[Examples: Vehicles 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; or the apparent and deliberate loss of control of a moving motor vehicle.]*

*(c) 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.*

*(e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.*

#### **4. DEPICTION OF OFF-ROAD VEHICLES**

*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.*

*While there are several instances where the is arguably in breach of the Code, the scene at around 15 seconds where the vehicles is shown doing a drift at high speed in sand and spraying the sand in all directions.*

*This breaches (a), (c) and (e) and it cannot be argued that driving such as this is necessary to "legitimately depict the capabilities and performance of an off-road vehicle".*

*This behaviour would clearly be an offence in ALL jurisdictions.*

#### **4. DEPICTION OF OFF-ROAD VEHICLES**

*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.*

*It cannot be argued that this is safe driving under any circumstances because the vehicle could easily roll at this speed and being driven in this fashion. It is also clearly causing significant environmental damage. Imagine, for instance that 4WD's like this were being driven on a beach.*

*The ad must be removed from broadcast without delay and the advertisers should be asked to apologise for their utterly irresponsible behaviour.*

*As per my previous complaint, when oh when is the FCAI going to review the Code as requested by AdStandard's Independent Reviewer and the Deputy Prime Minister. This is an excerpt from his letter to me of 24 August 2018: "Dear Mr Scruby. Thank: you for your email of 19 June 2018 regarding the Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising (the Code). I understand your concerns about the FCAI Code including the promotion of vehicle acceleration capabilities. The FCAI introduced the Code in 2002 in response to*



*government and community concerns about the portrayal of unsafe driving practices such as speeding. Given the specific guidance provided to advertisers in the Explanatory Notes to the Code it is concerning to see acceleration figures are directly promoted in vehicle advertisements including the BMW advertisement which was the subject of your complaint. I have written to the FCAI and raised these issues with its Chief Executive together with a copy of your correspondence. I have also sought advice about plans to review the Code."*

*In an interview on 2GB with Ben Fordham of 17 October 2018 re Ford Raptor ad, Rob Belgiovane, Chief Creative Officer, BWM Dentsu. Belgiovane says millennials react to car ads in the same way as tobacco, alcohol and gambling. He notes the advertising normalises the behaviour. He recalls the effectiveness of the RTA pinkie ad. Belgiovane says kids are also being encouraged to imitate what they see when they play on Xbox and other games. He supports a review into the code.*

*The continued prevarication and obfuscation by the FCAI while its members bend every rule in the book, is clearly leading to more deaths and serious injuries on our roads.*

*They should hang their heads in shame.*

## **THE ADVERTISER'S RESPONSE**

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

*Complaint Ref No. 0014/19*

*We write in response to this complaint, a copy of which was provided under cover of your letter dated 11 April 2019. The complaint relates to a television commercial (TVC) broadcast as part of the launch campaign for the Mitsubishi Motors Australia Limited (MMAL) Triton (Triton).*

### **1 The TVC**

#### **1.1 General description**

*The TVC imaginatively builds on the concept of the familiar and sometimes frightening carnival "ghost ride" to create a fantasy world through which the Triton must travel. In the course of passing through that fantasy world, various features of the Triton are demonstrated. Those features include its off-road capability and (somewhat ironically given the complaint) those that enhance its safety, including its MiTEC Mitsubishi Motors Intuitive Technology*

#### **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 rating is G;  
(c) a digital copy of the TVC is provided;  
(d) the advertising agency and media buyer is provided.  
(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.  
You also requested information as to special permissions and permits that might have been obtained for the purposes of the TVC. This request is addressed further (in context) at paragraphs 3.2 (e) to (i) below.*

## *2 The Complaint*

*2.1 The complaint references clauses 2(a), (c) and (e) and clause 4 of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code).*

*2.2 It appears that the complainant does not share MMAL's views as to the creativeness of the TVC, including as he does his critique of the "ever so boring and beige ad" and the rhetorical comment "Why can't these advertisers be creative".*

*While that is gratuitous and otherwise irrelevant, it is also surprising given that the tenor of the complaint suggests that it is very effort to be creative that contributes to the mischief that is its subject.*

*2.3 However, leaving that to one side, the substance of the complaint is that the TVC: "features a 4WD being driven furiously all over the place dodging unsuspecting objects ... Dangerous and reckless driving at speed. Sudden turns. Sudden stops".*

*2.4 In addition, the complainant asserts that:*

*While there are several instances where the is arguably in breach of the Code, the scene at around 15 seconds where the vehicles is shown doing a drift at high speed in sand and spraying the sand in all directions. This breaches (a), (c) and (e) and it cannot be argued that driving such as this is necessary to "legitimately depict the capabilities and performance of an off-road vehicle". (sic)*

*2.5 More particularly in respect of clause 4 of the FCAI Code, the complainant asserts: "It cannot be argued that this is safe driving under any circumstances because the vehicle could easily roll at this speed and being driven in this fashion. It is also clearly causing significant environmental damage. Imagine, for instance that 4WD's like this were being driven on a beach."*

*2.6 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).*



*2.7 We deal with each element of the complaint and each of the referenced clauses of the FCAI Code and the Code of Ethics below.*

### *3 Response to Complaint*

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

*General matters related to clauses 2(a) and (c)*

*(a) The complaint references and generally asserts that the TVC breaches clause 2(a) and (c) of the FCAI Code, which (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...]*

*(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 advertising agency, 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..*

*(c) You will also note the specific obligation to comply with road laws, specific speed restrictions and the like that are contained in the permit and consent that are addressed more particularly at paragraphs 3.2 (e) to (i) below and in response to the allegation of a breach of clause 4.*

*(d) We deal with the obligations contained in clauses 2(a) and (c) further below in response to the specific complaints made by reference to those clauses.*

*Specific complaints related to clauses 2(a) and (c)*

*(e) The complainant alleges that the TVC depicts:*



- (i) the Triton being driven "furiously" and "all over the place" with it "dodging unsuspecting objects";*
  - (ii) "Dangerous and reckless driving";*
  - (iii) driving "at speed";*
  - (iv) "Sudden turns"; and*
  - (v) "Sudden stops".*
- (f) It seems that this element of complaint is primarily focused on the sequence within the "ghost train" environment.*

*As already noted (and importantly, as we believe the TVC itself depicts), the Triton was driven within speed limits would be applicable whether driving shown to have occurred on a road or road related area. It is as the TVC clearly depicts, driven deliberately and does not weave or otherwise deviate from the path between the imaginary obstacles that define its route.*

*As the Triton passes through the "ghost train" environment, the driver is shown reacting to obstacles that are encountered unexpectedly – much the same as occurs every day in our cities, suburbs and on the open road. The driver's responses are deliberate, measured and appropriate. The driver remains in full control at all times as the particular attributes of the Triton that are being demonstrated are activated or utilised.*

*(g) There is a particular emphasis in this element of the complaint on "sudden" stops and turns. There are a number of matters to note in response:*

*(i) the first "sudden" stop occurs when the driver unexpectedly encounters a mechanical grab.*

*In real life, that might be a mother walking a pram or another vehicle entering an intersection. The Triton stops. It does so safely, in a controlled manner. That is because, as the next frame in the TVC highlights, the forward collision mitigation system was triggered. The obstacle was detected, a visual and audio alert of a danger of collision was issued to the driver and at the same time, the brakes of the Triton were automatically applied to bring it safely to a halt.*

*(ii) The next "sudden" stop occurs when the driver reverses the Triton. As he does so the "Multi-around Monitor" which provides a 360° birds-eye view of the environment around the Triton from cameras mounted on the front, rear and sides enables him to detect the presence of a further obstacle behind the Triton. The driver (after checking in his rear vision mirror) turns to avoid the obstacle and comes to a stop. The weight and suspension of the Triton are such that there is movement in body as it comes to a halt, but that is just as it would be on the road. There is no movement indicative of a loss of control or dangerous or reckless driving.*

*(h) The complainant himself seems to recognise that his complaints are somewhat*



*lacking in substance when he says in his specific allegation in support of a breach of these provisions that:*

*"While there are several instances where the is arguably in breach of the Code, the scene at around 15 seconds where the vehicles is shown doing a drift at high speed in sand and spraying the sand in all directions. (sic) (emphasis added).*

*(i) In this particular element of the complaint, the complainant is referring to the reversing manoeuvre just addressed above. A dispassionate and less emotive viewer might however struggle to identify the reversing manoeuvre depicted as a "drift at high speed", let alone a "drift" at all. The reversing turn is executed without any suggestion of careless or reckless driving and while the environment is dusty, there is no "sand ... spraying in all directions.*

*(j) In summary, therefore, MMAL is of the view that there is no breach of clauses 2 (a) and (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 Clauses 2(e) and clause 4 of the FCAI Code*

*General matters related to clause 2(e) and clause 4*

*(a) The complaint references and generally asserts that the TVC breaches clause 2(e) of the FCAI Code, which (relevantly) provide 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*

*and clause 4, which relevantly 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."*

*(b) 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.*



*(c) The Triton therefore conforms to the requirements of the definition of an off-road vehicle under the Australian Design Rules (MC category).*

*(d) MMAL and its agency are very conscious of these provisions of the FCAI Code and their environmental responsibility more generally.*

*(e) The TVC was shot in locations including the Lavis Lane Car Park, Williamtown, the Stockton Sand Dunes and Birubi Dog Beach. In order to shoot in these locations it was necessary for the production company to obtain permission from Screen Hunter and the Worimi Local Aboriginal Land Council.*

*(f) That permission was obtained. Attached are a copy of the permit and the formal document evidencing the grant of Consent in the form issued by the New South Wales Minister, dated 25 February 2019. The Permit and the Consent set out in great detail the strict conditions with which the production company and MMAL were bound as a term of the grant of the permission and consent.*

*(g) You will see that those conditions included obligations to accept supervision and comply with directions during the shoot, comply with specific traffic control plans and the road laws more generally, adhere to strict speed restrictions and confine access to specific tracks and other identified areas. An indemnity was granted against any liability arising from a breach of those conditions.*

*(h) The obligations set out in both the Permit and the Conditions were strictly complied with. There has been no allegation, let alone a claim, against the production company, the advertising agency or us of breach of either the Permit or the Consent.*

*(i) Relevantly for present purposes, that includes, in particular, any allegation or claim based on an assertion of excessive speed, a failure to adhere to specific access plans or the causing of environmental damage.*

*Specific complaints related to clause 2(e) and clause 4 of the FCAI Code*

*(j) The complainant alleges that the TVC is in breach of clause 2(e) and clause 4. In support of that allegation he says:*

*"it cannot be argued that this is safe driving under any circumstances because the vehicle could easily roll at this speed and being driven in this fashion. Is also clearly causing significant environmental damage. Imagine, for instance that 4WD's like this were being driven on a beach"*

*(k) The assertion that the Triton "could easily roll" at the speed and in the manner in which it is being driven is entirely without foundation and should, with respect to the complainant, be dismissed as emotional hyperbole.*





*(l) First, as already noted, the Triton was at all times driven under strict conditions and controls as to matters including speed and the manner of driving. Secondly, there is nothing in the TVC to suggest that even without this knowledge of the actual circumstances in which it was driven, there is any risk that the Triton might roll over. Thirdly, there is no basis as a matter of engineering or other fact for the allegation made.*

*(m) The assertion that the driving depicted "is causing significant environmental damage" is also entirely without foundation and (together with the rhetorical flourish in the last sentence in this part of the complaint) should be dismissed as hyperbole.*

*(n) Leaving aside that clause 2(e) speaks in terms of "Deliberate and significant damage...", what we have set out above makes clear (and it was the case) that the Triton was driven responsibly and did not in fact cause any environmental damage, deliberate or otherwise. What is more, there is no need to "imagine" anything in order to dismiss this aspect of the complaint; the Triton was in fact driven on a beach (Birubi Dog Beach) without any environmental damage being caused whatsoever.*

### *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. You have suggested that we consider whether the TVC might be covered by clause 3 and that in the course of doing so, we should have regard to 2 questions that are set out at the top of page 3 of your letter.*

*(b) We are of the view that clause 3 does not apply. Both of the questions you have posed assume that it does, but the very substance of the questions demonstrates the contrary. More particular, what is depicted is not a scene of motorsport or simulated motorsport. There is no motorsport involved and there is therefore no set of governing rules brother requirements or regulations that ought to have been addressed.*

*(c) Rather, the driving depicted is of a kind that complies with applicable Commonwealth and State law but which has been set in a fantasy environment and (to very limited extent) self-evidently exaggerated and emphasised in creative ways for the purpose of advertising to specific attributes of the Triton.*

### *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 we look believe that the TVC does not breach this provision.*

### *3.5 Other Matters*

*We note for completeness that the last quarter of the complaint comprises criticism of the FCAI and its members. While the complainant is free to lobby for a review of the FCAI Code and otherwise express his personal views as he sees fit, that material is entirely irrelevant to the resolution of the complaint, which is to be determined objectively by reference to the codes currently in force and the TVC itself.*

*For these reasons, 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.*

*Please let us know if you require anything further.*

## **THE DETERMINATION**

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (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 a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

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.

The Panel noted that this television advertisement features two men driving in the vehicle driving around and dodging various obstacles, including construction vehicles, a fun-house style gate and sand dunes.

The Panel noted the complainant's concern that the advertisement depicts sudden turns and stops, speeding and driving in a dangerous manner, as well as driving in a



way which causes significant environmental damage.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

The Panel considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: '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 considered that the advertisement, especially the first half, was fantastical and unrealistic and resembled a video game or movie rather than real-life conditions

The Panel noted that the guidance for the practice not advises: "FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code."

The Panel noted the complainant's concern that the way the vehicle is being driven in an unsafe manner, with sudden stops and depicted the vehicle drifting.

The Panel noted the advertiser's response that the vehicle is only shown doing a sudden stop to demonstrate the forward collision mitigation system and that the vehicle comes to a stop in a controlled manner, the second stop after reversing is to demonstrate the multi-around monitor feature.

The Panel considered that the sudden stops were necessary in the context of the advertisement to avoid collision. The Panel considered the setting of the advertisement, including the music and lightning, creates a high-energy feel to the advertisement, however the driving itself appears to be in control and not unsafe.

The Panel noted the complainant's concern that around 15 seconds into the advertisement the car is seen to do a drift.

The Panel noted the advertiser's response that the car does not drift but rather executes a reversing turn manoeuvre which is executed without any suggestion of careless or reckless driving and while the environment is dusty, there is no sand spraying.

The Panel considered that there is some dust sprayed into the air in this scene when



the car moves, but that there was no suggested loss of traction for the vehicle and the driver appeared in control at all times.

The Panel considered that although the advertisement resembled a video game, the advertisement does not depict unsafe driving or driving which would undermine other provisions of the FCAI Code as the stops are turns are carefully controlled, demonstrating safety features and execute driving moves that would not be considered unsafe in appropriate circumstances on a road or road related area.

The Panel then noted that the vehicle then moves out of the fantasy game-style environment and into a sandy desert environment.

The Panel noted the complainant's concern that the vehicle was driven over the sand in a manner which could cause it to roll.

The Panel noted the advertiser's response that the vehicle was driven in a controlled manner at all times within the relevant speed limits and was not in danger of rolling at any point.

The Panel considered that the vehicle is shown driving over the sand to demonstrate its off-road capabilities, however it does not appear to be driving at excessive speed or in an unsafe manner.

The Panel considered that the advertisement did not depict the men engaging in unsafe driving or any behaviour 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 portray unsafe driving.

The Panel then considered clause 2(c) of the FCAI Code. Clause 2(c) requires that:

"Advertisements for motor vehicles do not portray ...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. (examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle]."

The Panel considered that the men in the advertisement were depicted as wearing seatbelts. The Panel considered that the driver had both hands on the wheel when appropriate, was looking and paying attention to his driving and was not otherwise distracted. Similar to the consideration in Clause 2(a) the advertisement did not portray any driving practices or other action which would if they were to take place on a road or road related area, breach any commonwealth law.



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

The Panel considered Clause 2(e) of the FCAI Code which requires that advertisements for motor vehicles do not portray “deliberate and significant environmental damage, particularly in advertising for off-road vehicles.”

The Panel considered it had recently dismissed a similar advertisement for Isuzu in case 0408/14 where:

“The Board noted the Isuzu D-Max is shown driving over sand and through streams and considered that driving vehicles with off road capabilities over these terrains is not uncommon and does not necessarily contribute to environmental damage. The Board noted that some people may consider that environmental damage can be caused by any incursions by people in vehicles into wild/environmental areas however the Board considered that the vehicle is shown to be driven in a cautious manner which is not intentionally damaging to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.”

The Panel noted that in the current advertisement the vehicles were being driven in a manner consistent with off-road recreational use of SUV vehicles, and that the advertisement depicted the vehicles’ abilities in off-road conditions. Specifically, the advertisement demonstrated the vehicle’s capability to drive on sand.

The Panel considered that the vehicle is depicted as being driven in a controlled manner and the driving manoeuvres are not shown as being reckless or dangerous or done without due regard to the environment. The Panel noted the advertiser’s response that no environmental damage, significant or otherwise, was caused by the filming of the advertisement.

The Panel considered that the advertisement did not depict the vehicle 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.

The Panel noted Clause 4 of the FCAI code states “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 driving of the vehicle in the advertisement was a depiction which was consistent with demonstrating the car's capabilities. The Panel considered that the sudden stops were necessary in the context of the advertisement to avoid collision. The Panel considered the setting of the advertisement, including the music and lightning, creates a high-energy feel to the advertisement, however the driving itself appears to be in control and not unsafe. The Panel considered that the vehicle is shown driving over the sand to demonstrate its off-road capabilities, however it does not appear to be driving at excessive speed or in an unsafe manner.

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

Finding that the advertisement did not breach Cause 2(a), Clause 2(c) or Clause 2(e) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.

