



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0126-22
2. Advertiser :	Mitsubishi Motors Aust Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	22-Jun-2022
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(c) Driving practices

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a number of scenes including:

- a woman driving onto a beach then letting her dog out of the car
- a family standing in the rain as they look at their bogged car
- another car pulling the bogged car out of the mud.

THE COMPLAINT

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

The Technique shown is wrong for the type of bog and equipment used and could lead to severe injury or death if copied by someone who doesn't know what they are doing. In short the way they do it is very dangerous.

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 14 June 2022.

The complaint relates to a television commercial (TVC) that forms part of the Mitsubishi Motors Australia Limited (MMAL) "You Can Count On It" campaign, and which highlights MMAL's 10 year new car warranty and capped price servicing.

1 The TVC

1.1 General description

The TVC depicts various MMAL vehicles in both on-road and off-road settings. In particular, the TVC focuses on two settings:

- (a) attending to a drive-on beach with a pet; and*
- (b) a wet-weather vehicle recovery scenario, with children looking on from a distance.*

This campaign is for Mitsubishi's 10 year warranty and 10 year capped price servicing, and is built around the phrase "because they count on you, can count on it". This overarching concept highlights the dependency the driver provides to others, thanks to the reliability the driver can place on their car due to the 10 year warranty.

The TVC opens up with an Eclipse Cross driving on sand, with a woman and her dog stopping to step out and enjoy the beach. The TVC then cuts to children shielding themselves from the rain, while looking at a Pajero Sport (Pajero) preparing to tow another vehicle bogged in the mud. The vehicle is successfully rescued from the mud and the drivers shake hands before driving away happily (Recovery Scene). These two contrasting scenarios reinforce the theme that consumers are able to "count on" MMAL vehicles. At the conclusion of these scenarios, a panel of six MMAL vehicles are shown driving on mostly sealed roads, while the announcer explains the 10 year new car warranty and capped price servicing.

1.2 Specific information sought

MMAL has provided information about the TVC in response to your specific requests.

1.3 Additional information provided

MMAL also provides the following addition material to supplement the below response:

- (a) An application form, approval and payment receipts obtained for the purpose of filming the TVC; and*
- (b) a technical safety report prepared by the production company dated 27 April 2022*

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 asserts that in relation to the Recovery Scene, "the technique shown is wrong for the type of bog and



equipment used could lead to severe injury or death if copied by someone who doesn't know what they are doing. In short, the way they do it is very dangerous."

2.2 You have, under the heading "Issues raised to date" directed our attention to clause 2(c) of the FCAI Code. However, we will also address clause 2(a) and clause 4, which are concerned with the depiction of off-road vehicles and unsafe driving more generally.

2.3 We also note your general 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). While we do not see how any issue with respect to these clauses may arise, we will formally address them in the response below.

3. Response to Complaint

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

(a) Clause 2 (a) 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)...

(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 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) all vehicles depicted in the TVC were driven within speed limits that would be applicable were the driving that is depicted to have occurred on a road or road-related area;

(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;

(iii) all relevant permission and permits to undertaking filming on council controlled land were obtained.

Specific complaint



The complaint is specific to the Recovery Scene of the TVC and such that: "the technique shown is wrong for the type of bog and equipment used and could lead to severe injury or death if copied by someone who doesn't know what they are doing".

(a) The complainant does not assert that the Recovery Scene in the TVC depicts driving practices that would breach any law applicable to road safety or traffic regulation. Indeed, the complainant does not assert any conduct on the part of the drivers of the vehicles or the manner in which the vehicles are being driven that is or would be contrary to the law. Instead, the complaint simply asserts that the technique and equipment depicted and by which the bogged vehicle is being (and is in fact) recovered is "wrong" and could be lead to injury or death if copied.

(b) The complaint is, with respect to the complainant, no more than a series of bare assertions and speculation. The complainant does not provide any facts or other particulars or details to support the bare assertions that the 'technique shown' is:

(i) 'wrong' per se;

(ii) 'wrong for the type of bog' (and explain what is meant by 'type of bog' and on what basis it is asserted that what is depicted is 'wrong' in that context; or

(iii) 'could lead to severe injury or death' (and as to which, note our emphasis – this is mere unsupported speculation or conjecture as to an outcome that even the complainant suggests is no more than a possibility).

We say more about this below, but for present purposes, it should be noted that each such assertion is, in any event, entirely rejected.

(c) In addition, and very importantly, the complainant provides no information to suggest, let alone demonstrate, that he has any academic or other qualifications that might qualify him/her as an expert on any of the matters in respect of which the various assertions are made. For that reason alone (but perhaps also having regard to what is actually depicted, that is, the safe recovery of the vehicle), the complainant's assertions should be rejected.

(d) In contrast to the position of the complainant, and contrary to the assertions made:

(i) the recovery technique that is depicted in the TVC was the subject of (and was filmed in accordance with) specific advice by a subject matter expert from an off-road training organisation;

(ii) the scene depicted was developed having regard to that expert's advice and following an expert towing demonstration provided by JAKEM Farm;

(iii) the equipment used in the 'rescue' was a genuine off road recovery kit manufactured by Dinkum Australia;

(iv) the production company undertook a comprehensive risk assessment and safety report that analysed all risks associated with the shoot and the 'rescue' to be depicted in the TVC; and

(v) the scene complained about was filmed in accordance with the expert's advice and in compliance with the dictates of the risk assessment, with the result that any and all safety requirements and recommendations for both safe completion of the 'rescue' and its filming were complied with. That included, for example, ensuring that all actors and crew were at least 1.5 times the length of the towing



strap away from the vehicles involved, as is in practice the safe clearance distance.

(e) Further, and insofar as the perception of the viewer is concerned, the vehicles, as the TVC clearly depicts, are driven deliberately, do not otherwise deviate from the primary towing path, include adequate checking of the surroundings and even though the conditions are wet, safely remove the bogged vehicle with passengers at an appropriate distance away from the tow ropes and vehicles. Again, that is to do no more than depict a recovery situation in a responsible and appropriate manner.

(f) In summary, therefore, MMAL is of the view that there is no breach of clauses 2 (a) or (c) of the FCAI Code and that to the contrary, the scene depicts no unsafe or illegal driving or any driving practice or other action, that if it was to take place on a road or road-related area, it would breach a Commonwealth or State law dealing with road safety or traffic regulations.

3.2 General matters related to clause 4 of the FCAI Code

(a) As noted above, your letter generally references clause 4, 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 [Commonwealth or State law] ... were such driving to occur on a road or road related area."

(b) The Pajero has a sophisticated Super Select II 4WD system which offers 2WD and 4WD drive modes. Super Select has four modes to handle gravel, mud, snow and rock. The maximum number of seating positions in the Pajero is 7.

(c) The Pajero 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 responsibility to portray safe driving practices and to not illegitimately depict any capabilities or performance of an off-road vehicle on unsealed services.

(e) 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 Pajero while operating in a recovery situation without at any stage portraying unsafe driving practices or any action 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



(1) *You have directed attention to clause 3 of the FCAI Code, which is concerned with use of motor sport in motor vehicle advertising.*

(2) *There is no motorsport depicted in the TVC therefore clause 3 does not apply.*

3.4 Application of the Code of Ethics

(1) *We acknowledge that the TVC is subject to the Code of Ethics.*

(2) *The advertisement does not contain any form of discriminatory, exploitative, degrading, violent, sexual or obscene material in breach of the Code of Ethics.*

(3) *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 Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concerns that the technique used to tow a vehicle out of a bog was dangerous.

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

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 vehicles depicted were Motor Vehicles 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 then analysed specific sections of the FCAI Code and their application to the advertisement.

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 a scene in the advertisement showing a vehicle rescuing another vehicle apparently bogged in the mud.

The Panel considered that the scene depicted is of a vehicle recovery rather than a vehicle being towed.

The Panel noted the advertiser's response that the scene was filmed in accordance with advice from organisations that provide training for off road driving.

The Panel considered that the advertiser was to be commended for obtaining advice, however community safety messaging advises that when a vehicle is being rescued using a towing strap the lead vehicle must engage the strap slowly in order to minimise any jerking and risk of snapping. The Panel considered that the advertisement shows the strap suddenly snapping taut as the accelerator is applied, and that there is a snapping sound as the strap pulls tight. The Panel considered that it is possible the scene may have been filmed slowly and sped up for production purposes, however the impression given is that the strap is engaged suddenly and snaps upwards.

The Panel noted that the strap does have flags, however considered that there is not a full cover of the entire strap and that if it snapped there would be no protection for bystanders or the driver of the second vehicle. The Panel noted the advertiser's response that when filming the scene all bystanders were a safe distance away from the strap however considered that that safety measure, and the fact that that is best practice, is not conveyed clearly enough and does not eliminate the risks associated with quickly pulling the tow strap taut.

The Panel noted case 0320-21 which was reconsidered after an Independent Review was sought. In that case:

"The Panel noted the comments of the Independent Reviewer relating to the interpretation of the Code - specifically, that Clause 2(a) may be understood to refer to both unsafe driving and driving that would breach road rules, rather than to mean that unsafe driving is defined as driving that would breach road rules. The Panel acknowledged this distinction and considered the advertisement with this in mind."



For the reasons described above the Panel considered that even if not a breach of the law, the advertisement depicts a scene of unsafe driving by showing a vehicle rescue using a towing strap in a unsafe manner.

Clause 2(a) conclusion

The Panel considered that the advertisement did breach Clause 2(a) of the FCAI Code.

Clause 2(c) - 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 noted that it is unclear whether the dog depicted in the advertisement is restrained in the vehicle.

The Panel noted that dog restraint laws for each state and territory vary and that there are restraint requirements when transporting an animal on the open back of a vehicle or utility vehicle, as well as rules against operating a vehicle with an animal in the driver's lap. The Panel noted that there are no specific road rules related to restraining pets in vehicles, however drivers can be penalised if the animal is causing the driver not to be in full control of the vehicle or if the animal was on the driver's lap.

The Panel considered that the dog was shown in the backseat and while it is unclear if it is restrained it is not distracting the driver or behaving in a manner which could cause the driver to lose control of the vehicle.

Overall, the Panel considered that the advertisement did not contain driving practices which would breach the law.

Clause 2 (c) conclusion

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

Conclusion

Finding that the advertisement did breach Cause 2(a) of the FCAI Code, the Panel upheld the complaint.



THE ADVERTISER'S RESPONSE TO DETERMINATION

We write in response to the correspondence received on 4 July 2022 that the Community Panel upheld the complaint and concluded that the advertisement has breached Clause 2(a) of the FCAI Code.

Based on this notification, Mitsubishi Motors Australia Limited (the Advertiser), has taken the necessary steps to modify the advertisement.

In summary, the modifications that have been made to the recovery scene within the advertisement are:

- Revised the edit so that the Pajero Sport (rescue vehicle) accelerates at a slower speed
- Removed the rear $\frac{3}{4}$ shot of the Pajero Sport that was deemed too jerky
- Removed the associated sound effect when the recovery cable tightens

The overall modification has lessened the visual drama of the scene and provided safer rescue environment.

We would also like to mention that the recovery cable between both vehicles have the correct weighted safety dampeners (x2) over the tow rope at all times – these are not flags, as mentioned in the Community Panels response.