



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

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0140/19
2	Advertiser	Mitsubishi Motors Aust Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	22/05/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts several vehicles travelling close to each other on a gravel road, in a dusty situation in a forest.

THE COMPLAINT

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

I have worked in the road safety area for 8 years full time, now a volunteer life member www.raag.com.au. I have been an accredited driving instructor and delivered low risk driving courses to mining for many years. I regard this ad condoning if not promoting tail gating, these vehicles are not at a safe spacing, totally the wrong message, particularly to younger drivers.

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 this complaint, a copy of which was provided under cover of your letter dated 9 May 2019. The complaint relates to an End of Financial year (EOFY) television commercial (TVC) broadcast for our company, Mitsubishi Motors Australia Limited (MMAL).

1 The TVC

1.1 General description

The TVC is a promotion of the end of financial year sales deals that MMAL is offering on a range of sport utility vehicles (SUVs). It involves 5 vehicles, each of which is seen driving through a forest on a graded dirt road, at various times in procession.

While there is a general reference to MiTEC safety and connectivity, which is a feature of all of the SUVs shown, the focus of the TVC is on the style and comfort of the vehicles and the deals being offered, rather than on the specific features of those vehicles. The driving scenes are therefore in the nature of a concours d'elegance rather than a display of on-road/off-road capability of the kind ordinarily associated with feature focussed motor vehicle advertisements.

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 advertisement is rated G;*
- (c) a digital copy of the TVC is provided;*
- (d) the advertising agency and media buyer have been provided.*
- (e) the TVC has been broadcast nationally, in all states and territories of Australia;*
- (f) the TVC can also be accessed through the Mitsubishi YouTube Channel and Facebook; and*
- (g) the TVC was shot in the Belanglo Forest and a "Forrest Permit" was obtained (copy attached).*

2 The Complaint

2.1 The complaint references expresses the complaint as an opinion in the following terms:

"I regard this ad condoning if not promoting tailgating, these vehicles are not at a safe



spacing, totally the wrong message, particularly to younger drivers " (sic)

2.2 The complaint does not assert a breach of any particular code or law. We note, though, that you direct our attention to clauses 2, 3 and 4 of the FCAI Code and to the general obligation to comply with the section 2 of the AANA Code of Ethics (Code of Ethics).

2.3 We deal with 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 of the FCAI Code

General matters related to clause 2

(a) Clause 2 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...]

(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) MMAL 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) the TVC was shot in the Belanglo Forrest, where the speed limit is 60km/hr;

(ii) the speed at which each of the SUVs was driven did not exceed 40km/hr at any stage in any of the driving sequences included in the TVC, particularly in the sequences in which the vehicles are shown travelling in procession; and

(iii) all elements of the driving depicted in the TVC conformed to and did not breach the road safety laws applicable to driving in the Belanglo Forrest;

(iv) all elements of the driving depicted in the TVC would not breach relevant road safety laws or regulations were the driving to occur on [another] road or road-related area.

Specific complaints related to clauses 2



(c) Further to the observation made in paragraph 3.1(b) above, the complaint alleges that the TVC depicts "tailgating" and it is alleged that "these vehicles are not at a safe spacing".

(d) In ordinary parlance, "tailgating" is generally applied to a driver travelling too closely to the vehicle in front, making it unlikely that they will be able to avoid a collision if the driver in front were to brake quickly. It is most commonly associated with drivers in a hurry or who are bullying those in front of them, often travelling above the speed limit to nudge another driver along and encourage them to go faster than they wish to (or the law allows).

Were the TVC to depict such driving it would clearly fall foul of clause 2 of the FCAI Code. However it does not.

(e) There is also no offence of "tailgating" as such. Rather, section 126 of the Australian Road Rules provides that:

"A driver must drive a sufficient distance behind a vehicle travelling in front of the driver so the driver can, if necessary, stop safely to avoid a collision with the vehicle."

(f) The section imposes no absolute or objectively measurable obligation, as is the case, for example, with a speed limit. Nor does it (or any other provision of the Rules) define what is a "sufficient distance". Instead, the section leaves the matter of a "safe distance" to be determined on a case by case basis. What is a safe distance in each case will depend on a wide range of factors including the road conditions, the nature and age of the vehicle, the experience of the driver and the manner of driving.

(g) As already noted, the SUVs in the TVC were never driven above 40km/hr. Further, and importantly, the sequences included in the TVC clearly convey a sense of (what was in fact) low speed, measured driving (consistent, again, with the concours d'elegance theme).

(h) You will also note that, as the overhead shots after the initial procession sequence make clear, where there were more than two cars in procession, the vehicles were generally driven off the line of the vehicle in front. That is particularly evident in the sequence in which the vehicles separate at the "y" junction. Two vehicles follow the left fork, with the second clearly seen at an appropriate interval behind. The lead three follow the right fork, with the second in line driving off the line of the first and third, thereby giving the middle vehicle a clear view ahead and increasing the interval between first and third very significantly.

(i) There is also nothing in what is depicted that conveys a sense of aggression, bullying, or other driving that would indicate, let alone promote, that kind of



inappropriate behaviour. To the contrary, the drivers and passengers show are clearly happy, relaxed and careful. The scene of the child playing with the model car only reinforces the sense of calm and control. There is nothing to suggest that any of the drivers could not stop safely if required in order to avoid a collision with a vehicle in front.

(j) In our view the TVC therefore does not contravene clause 2 of the FCAI Code.

3.2 Clause 3 of the FCAI Code

(a) You have directed attention to clause 3 of the FCAI Code. Clause 3 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 so doing, we consider the 2 questions set out at the top of page 3 of your letter.

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

(c) Rather, the driving depicted is taking place on a graded dirt road of the kind often encountered in out of city driving and the driving itself complies with all Commonwealth and State law applicable to such driving.

3.3 Clause 4 of the FCAI Code

(a) You have also directed our attention to clause 4 of the FCAI Code, 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) All of the SUVs in the TVC conform to the requirements of the definition of an off-road vehicle under the Australian Design Rules (MC category). They all have either 4WD or AWD capabilities and two of the models included have advanced the 4WD Super Select System, Off-Road Mode and Rear Differential Lock. Seating positions range from 5 to 7.

(c) However, in the TVC all of the vehicles are shown driving over a graded dirt road



that can be (and frequently is) easily navigated by a 2WD vehicle. There is no depiction of any rugged, truly off-road driving. Further and in any event, there is also no depiction of unsafe driving, driving at an excessive speed or other driving that in contravention of the law, as explained above.

(d) While we are of the view that clause 4 is therefore not relevant or applicable to the TVC, there is therefore no driving depicted that might offend against the clause.

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 believe that the TVC does not breach this provision.

In summary therefore, 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 SUV range are 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 noted that there is a 15 second and a 30 second version of this advertisement.

The Panel noted that the 30 second version features an overhead shot of a blue SUV driving on a dirt road through a forest. The car is then shown from the front, and four other SUVs can be seen driving behind it. An overhead shot shows a fork in the road and three of the vehicles go right and two go left. A young boy in the back of one of the cars holds up a toy car near the open window. The drivers of the cars are seen to be enjoying the drive and the cars meet back up again and form a line. A voice over states, "Behind every great Mitsubishi SUV is an even greater deal. The Mitsubishi End of Financial Year Sale is on now and it's the perfect time to grab your own freedom machine. Equipped with the very latest MiTec Safety and Connectivity there are awesome deals across the entire SUV range. So hurry into Mitsubishi because the time of your life starts now".

The Panel noted that the 15 second version features an overhead shot of five SUVs driving down a dirt road which splits into two, three of the vehicles go right and two go left. The drivers are seen enjoying the drive. A young boy in the back of one of the cars holds up a toy car near the open window. The cars are shown from above back in a line. The voice over states, "The Mitsubishi End of Financial Year Sale is the perfect time to grab your own freedom machine. But hurry the time of your life starts now".

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 noted the complainant's concern that the advertisement condones tailgating and depicts vehicles as not being a safe distance apart.

The Panel noted the advertiser's response that the vehicles were depicted driving under the speed limit and that there are no specific laws relating to tailgating only that a driver must drive a sufficient distance behind a vehicle.

The Panel noted that regulation 126 of the Australian Road Rules state, "A driver must drive a sufficient distance behind a vehicle travelling in front of the driver so the



driver can, if necessary, stop safely to avoid a collision with the vehicle.”

The Panel considered that the advertisement did give the impression that the vehicles were travelling at over 40km per hour, however considered that that the effect of the dust and loose gravel spraying up behind the vehicles created this impression, and that the actual speed of the vehicles did not look excessive or like it would breach the 60km per hour speed limit.

The Panel first considered the 30 second version of the advertisement.

The Panel considered that the first ground level shot of the vehicles appeared to show them driving closely to each other in a straight line, however the Panel considered that in this shot the cars did not appear to be driving at more than 40km per hour, were driving along a straight stretch of road and that at this speed they did appear to have enough of a gap to stop safely if necessary.

The Panel considered that the first aerial shot depicts the vehicles as not being driven directly behind each other, with every second car driving on the left side of the road, and the others driving on the right. The Panel considered that a reasonable interpretation of the positioning of the cases is that if one of the vehicles had to stop suddenly then the other vehicles would either continue past the first vehicle or have sufficient time to stop.

The Panel considered that when a vehicle is depicted going over bumps or around corners other vehicles are depicted as being further back or driving off-centre with the vehicle in front and were a sufficient distance behind the other vehicle if necessary.

The Panel considered that in the final scene of the advertisement an aerial shot of the vehicles show them driving along a straight stretch of road in a single line. The Panel considered that the cars appeared to be travelling at least a car length away from each other. The Panel considered that the vehicles appeared to be travelling quite slowly and that they appeared to have sufficient time to stop if necessary.

The Panel then considered the 15 second version of the advertisement.

Similar to the discussion of the 30 second version of the ad, the Panel considered that the first aerial shot depicts the vehicles as not being driven directly behind each other, with every second car driving on the left side of the road, and the others driving on the right. The Panel considered that this meant that if one of the vehicles had to stop suddenly that the other vehicles would either continue past the first vehicle or have sufficient time to stop.

The Panel considered that when a vehicle is depicted going over bumps or around



corners other vehicles are depicted as being further back or driving off-centre with the vehicle in front and were a sufficient distance behind the other vehicle if necessary.

The Panel considered that in the final scene of the advertisement an aerial shot of the vehicles show them driving along a straight stretch of road in a single line. The Panel considered that the cars appeared to be travelling at least a car length away from each other. The Panel considered that the vehicles appeared to be travelling quite slowly and that they appeared to have sufficient time to stop if necessary.

The Panel considered that both the 30 second and 15 second versions of the advertisement did not depict unsafe driving or any behaviour likely to breach relevant Commonwealth Law were it to occur on a road or road related area.

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 all of the people depicted in both versions of the advertisement were wearing seatbelts. The Panel considered that the drivers had both hands on the wheel when appropriate, were looking and paying attention to driving and were not otherwise distracted. The Panel considered that the young boy was in an appropriate car seat, and that although his hand was close to an open window it was safely inside the vehicle. Similar to the consideration in Clause 2(a) both versions of 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.

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

