



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0343/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Mitsubishi Motors Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Vehicle</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Pay TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>09/10/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

A man is shown driving his Mitsubishi around a city environment with his bicycle secured to the roof of the vehicle. We see him using his reversing camera to reverse up a lane, and then stopping to allow a female pedestrian to cross the road.

### THE COMPLAINT

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

*It encourages negative driving behaviour. Excessive dangerous speeding, reversing recklessly and nearly running into pedestrian. It is also based on poor cycling behaviour that exists and creates and celebrates further dangerous driving and cycling.*

### THE ADVERTISER'S RESPONSE

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

*Comments in relation to the Complaint*

*Encourages negative driving behaviour, Excessive dangerous speeding, reversing recklessly, nearly running into pedestrians, based on poor cycling behaviour.*

*In reference to the AANA Code of ethics section 3.2 and the FCAI voluntary code of practice*

*for motor vehicle advertising section 2a.*

*The ASX television commercial complies with all road rules and regulations. At no time during the television commercial is the driver displaying any unsafe or reckless behaviour. The vehicle is always under control and never exceeds the speed limit when changing lanes indicators are used. Key issues:-*

*Excessive dangerous speeding – the vehicle never travels faster than the speed limit*

*Reversing recklessly – When reversing the vehicles driver utilises the reversing camera – which in itself supplies greater safety than normal reversing techniques.*

*Nearly running into pedestrians – Significant distance is maintained between the pedestrian and vehicle. The vehicle approaches the pedestrian at a minor speed and comes to a complete halt.*

*Poor cycling behaviour – No cycling is portrayed in the commercial.*

## **THE DETERMINATION**

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code) and the Advertiser Code of Ethics (the 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 Board decided that the material in question was available in Australia or in a substantial section of Australia for payment or valuable consideration.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Mitsubishi ASX in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, the marketing communication is an advertisement as defined by the FCAI Code. The Board also 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 Board determined that the Mitsubishi ASX shown in the advertisement was a vehicle as defined in the FCAI Code.

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

The Board noted the complainant's concerns that the advertisement depicts excessive dangerous speeding, reversing recklessly and almost hitting a pedestrian and that it celebrates both dangerous driving and cycling.

The Board 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 Code provides the following as examples, "Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle..."

The Board noted the advertisement features a Mitsubishi ASX being driven in an urban environment with a bicycle strapped to the roof, and that we see the vehicle reversing up a street as well as coming to a stop to allow a pedestrian to cross the road.

The Board noted the complainant's concerns that the advertisement depicts excessive speeds. The Board noted the advertiser's response that the vehicle is driven within the set speed limits and considered that the vehicle is depicted as driving in a safe and controlled manner consistent with the environment and road conditions.

The Board noted the complainant's concerns that the advertisement depicts the vehicle reversing recklessly. The Board noted that the advertisement does depict the Mitsubishi ASX reversing up a street when an obstacle blocks its progress. The Board noted that when the vehicle is reversing we can see that the driver is using the reverse camera which clearly indicates that the road is clear and considered that the vehicle is shown to be reversing with due care and attention to the conditions. The Board considered that the advertisement does not depict a vehicle reversing in a reckless manner.

The Board noted the complainant's concerns that the vehicle almost runs in to a pedestrian. The Board noted that when the vehicle stops to allow the pedestrian to continue her crossing of the road it does so in a controlled manner and considered that there is no indication that the vehicle was driving too fast or was in any danger of hitting the pedestrian.

Based on the above, the Board determined that the advertisement does not depict reckless or unsafe driving and does not breach clause 2(a) of the FCAI Code.

The Board then considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted the complainant's concerns regarding poor cycling behaviour and considered that whilst there is a bicycle strapped to the roof of the Mitsubishi ASX it was not being ridden. The Board noted that the depiction of the bike strapped to the roof of the vehicle could be interpreted as a cheeky reference to delivery cyclists driving rather than cycling or that the Mitsubishi driver would rather drive his car than his bike. The Board considered that the advertisement does not depict or encourage poor cycling behaviour.

The Board considered that the advertisement did not depict material contrary to prevailing community standards on safe driving or cycling practices.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics the Board

dismissed the complaint.