



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0347-21
2. Advertiser :	Mitsubishi Motors Aust Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Dec-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(c) Driving practices
AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

There are two versions of this television advertisement featuring a montage of scenes. The scenes in the advertisements include:

- A woman in a bright scarf posing next to street art of a colourful bird.
- Two people unload mini dirt bikes from the back of a vehicle and then ride them along a beach.
- A young girl sits on the shoulders of a man with flowers on decorating his beard.
- A person in the passenger seat of a vehicle blows bubbles which are popped by people in the back seat.
- A person uses a drone and virtual reality headset
- A man opens the boot of his car to reveal several puppies and a young boy excitedly runs over to him and they play with the puppies.
- Two women stand facing each other before falling sideways to tandem bungee jump into water.
- A group of people travel in a car with a large inflatable flamingo strapped to the top. They then park on a clifftop near the ocean and have a picnic.

THE COMPLAINT

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



Because it shows the adult passenger in the front seat excitingly blowing liquid bubbles which are floating all over the car and certainly to my mind this would have to be a definite and perhaps dangerous distraction to the driver.

I am concerned re content of man opening the boot of the car to a young boy. It can be read as he is attracting the child, luring him with the puppies

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, details of which were provided by your letters dated 30 November and 1 December 2021. There are in fact two complaints, each of which relates to television commercials launching the all-new Mitsubishi Motors Australia Limited (MMAL) Outlander (TVC).

1 The TVC

1.1 General description

The TVC is part of MMAL's campaign to launch its all-new Outlander.

The launch campaign is built around the premium production values that are evident in the Outlander's bold styling, luxurious interior and adventurous capabilities. Those features combine to offer drivers and the passengers all of the latest automotive features in a comfortable and exciting environment. In the campaign, MMAL intends to display those features with the sense of fun, flair and finesse and an emphasis on the enjoyment of life.

All scenes therefore have a sense of playful quirkiness to them. They are intended to portray a sense of joie de vivre.

2 The Complaints

2.1 *The 30 November 2021 complaint (Bubbles complaint) is expressed as follows: "REASON FOR CONCERN: Because it shows the adult passenger in the front seat excitingly blowing liquid bubbles which are floating all over the car and certainly to my mind this would have to be a definite and perhaps dangerous distraction to the driver."*

The complainant 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 Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) and to the general obligation to comply with the section 2 of the AANA Code of Ethics (Code of Ethics).

2.2 *The 1 December 2021 complaint (Puppies complaint) is expressed as follows:*



"REASON FOR CONCERN: I am concerned re content of man opening the boot of the car to a young boy.

It can be read as he is attracting the child, luring him with the puppies"

Again, the complainant does not assert a breach of any particular code or law. We note, though, that you direct our attention to clauses 2(c) of the FCAI Code and to clause 2.6 of the Code of Ethics.

2.3 We deal with the Bubbles complaint and the Puppies complaint and each of the referenced clauses of the FCAI Code and the Code of Ethics below.

3 Response to Bubbles complaint

3.1 The FCAI Code

(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) The complainant does not assert that 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 driver of the vehicle or the manner in which the vehicle is being driven that is or would be contrary to the law. Instead, the complainant simply asserts that the manner in which the passenger is blowing bubbles might distract the driver.

(c) In doing so, the complainant inappropriately conflates the obligation of the driver with the conduct of the passenger.

(d) The law is concerned with the conduct of the driver. It is an offence to drive a vehicle without due care or attention or without reasonable consideration for other persons on the road. There is no offence constituted simply by conduct on the part of a passenger that "might" distract a driver.

(e) It might be another matter if the driver was actively participating in the conduct and was in fact distracted by it. However, that is clearly not the case, as we



discuss further at paragraphs 3.2(c)-(d) below. There is therefore no unsafe or illegal driving depicted in the TVC and MMAL believes that there is not basis upon which a complaint based on clause 2 of the FCAI Code can be made out.

(f) For completeness, we note the reference to clauses 3 and 4 of the FCAI Code.

(g) Clause 3 is not applicable to the scenes the subject of the Bubbles complaint; the TVC clearly does not depict or otherwise use motor sport.

(h) MMAL also believes that clause 4 is not applicable to the TVC. The Outlander is a Medium SUV and is available in 5+2 seating. However, while available in 2WD and All-Wheel Drive it does not have special features for off road driving (and in particular, does not have a 4WD system).

(i) Further and in any event, the Outlander in the scenes the subject of the Bubbles complaint is portrayed at travelling in a straight line at a sensible speed along a well maintained country road. There is therefore no driving depicted (other than the bubbles sequence complained about) upon which a complaint by reference to clause 4 of the FCAI Code might be based; and again, that sequence depicts no unsafe or illegal driving, as is discussed above and further at paragraphs 3.2(c)-(e) below.

3.2 Section 2 of the Code of Ethics

*(a) Clause 2.6 of the Code of Ethics provides that:
"Advertising shall not depict material contrary to Prevailing Community Standards on health and safety"*

(b) MMAL acknowledges that the issue of driver distraction is a serious matter and that a driver may be prosecuted if in fact not driving with due care and attention (or for a more specific offence, such as using a mobile phone while driving). MMAL also acknowledges that advertising that might be understood to depict, encourage or condone an unsafe driving practice might contravene clause 2.6 of the Code of Ethics.

(c) However, (and as also noted at paragraph 3.1(d) above), the law is concerned with the conduct of the driver, not the passenger. A driver who actively participates in the conduct of their passengers, so as not to be giving, or be capable of giving, proper care and attention to their driving, might therefore be at risk of prosecution. But conduct by passengers in a vehicle that "might" be capable of distracting a driver (such as, for example, a child playing with a toy or the bubbles here) but in which a driver is not an active participant and by which the driver is not in fact distracted, is not an offence; and that is an important consideration when considering whether the conduct complained of might nevertheless contravene clause 2.6 of the Code of Ethics.

(d) In the bubble sequence, all occupants of the vehicle are wearing seatbelts and the car is clearly travelling in a straight line, in control and at a reasonable speed. The sequence begins as the driver completes a brief glance (less than 1 second) at the front seat passenger (as one might do irrespective of the bubbles). The driver's attention



then returns immediately to her driving. She is not a participant in the activity (indeed, the bubble blowing passenger directs them toward her own side of the vehicle) and the driver is seen to be in control of the vehicle throughout, with both hands on the wheel and a clear line of vision ahead. The driver thus maintains control of the vehicle at all times, in compliance with the requirement under section 297 of the Australia Road Rules that "a driver must not drive a vehicle unless they have proper control". What is more, the bubbles do not actually impair the driver or her vision or control of the car. They can be seen (particularly in overhead shot) flowing upwards and into the back of the car; none move towards the driver or enter her field of vision.

(e) In those circumstance, MMAL is of the view that the bubble sequence does not depict, encourage or condone an unsafe driving practice (our emphasis) and therefore does not contravene clause 2.6 of the Code of Ethics.

4 Response to Puppies complaint

4.1 The FCAI Code

(a) MMAL notes that its attention has been directed to clause 2(c) of the FCAI Code. However, there is no driving depicted in the sequence complained of. Nor are there any "other actions" depicted that would if they were to take place on a road or road-related area, breach a law "directly dealing with road safety or traffic regulation".

(b) In those circumstances clause 2(c) of the FCAI Code does not apply.

4.2 Section 2 of the Code of Ethics

*(a) Clause 2.6 of the Code of Ethics provides that:
"Advertising shall not depict material contrary to Prevailing Community Standards on health and safety"*

(b) MMAL acknowledges that advertising that depicts or includes content that might encourage or condone unhealthy or unsafe behaviour will contravene clause 2.6. The practice note specifically directs the attention of advertisers to ensuring that they take care not to depict behaviour children may imitate and which might lead them into danger or encourage them to unsafe behaviour.

(c) However, the sequence complained of does no such thing.

(d) The sequence depicts a mature age man using his foot to trigger the release of the rear hatch the Outlander. It is shot in a semi-comedic manner in a domestic setting. The hatch releases and three puppies are revealed to be inside in a wicker basket - to the obvious delight of the young boy. Puppies are then removed and both adult and child are shown delighting in them.



(e) *There is at no stage any suggestion of any conduct on the part of the adult male that is inconsistent with a familial relationship (father/son or grandfather/grandson). After the hatch is opened, the visual focus of the grandparent is on the puppies, not on the child and there is nothing suggestive of any attempt to lure child into the vehicle or that is suggestive of anything other than a delightful interaction of the kind that any father/son or grandfather/grandson might wish to enjoy.*

(f) *In short, the sequence complained of does not at any point depict, exhibit or encourage behaviour that a child might imitate that is contrary to health and safety or that is otherwise contrary to prevailing community standards and the sequence does not contravene clause 2.6 of the Code of Ethics.*

5 Summary

In the circumstances set out above, MMAL is of the view that the TVC does not contravene either the FCAI Code or the Code of Ethics and requests 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) and the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement depicts:

- A passenger distracting a driver by blowing bubbles
- A man using puppies to attract a young child.

Is this an 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 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.

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 the complaint's concern that the advertisement depicted someone blowing bubbles which could distract the driver's attention.

The Panel noted the advertiser's response that the driver is not participating in the bubble blowing and is shown to be in control of the vehicle, with both hands on the wheel and her eyes on the road.

The Panel noted that Australian Road Rules – Regulation 272 is:

*A passenger in or on a vehicle must not:
(a) interfere with the driver's control of the vehicle; or
(b) obstruct the driver's view of the road or traffic.*

The Panel noted that the passenger or the bubbles are not obstructing the driver's view of the road or interfering with the driver's control of the vehicle.

The Panel also noted that Australian Road Rules – Regulation 297 is:

*(1) A driver must not drive a vehicle unless the driver has proper control of the vehicle.
(1A) A driver must not drive a vehicle if a person or an animal is in the driver's lap.
(2) A driver must not drive a motor vehicle unless the driver has a clear view of the road, and traffic, ahead, behind and to each side of the driver.*

The Panel noted that the driver in the scene does not appear distracted. The Panel noted that both of her hands are on the wheel and she is mostly looking ahead. The Panel noted that she briefly glances away from the road, but that she remains in proper 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.

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.



The Panel noted the complainant's concern that the advertisement can be interpreted as a man luring a young boy with puppies.

The Panel noted the Practice Note to Section 2.6 which states:

"Advertisers should take care not to depict behaviour that children may imitate. For example, advertisements which are likely to attract the attention of children or could indicate to children that appliances or other domestic/commercial equipment are a safe place to hide, are seen to encourage unsafe behaviour."

The Panel noted that while the scene was brief there was no suggestion that the man and child did not know each other. The Panel considered that the most likely interpretation of the advertisement is that the man is the child's grandfather or relative and that he has brought the puppies specifically for the child to play with.

The Panel considered that most members of the community would not interpret the brief scene as a depiction of a stranger luring a child, nor would it encourage children to approach strangers.

Section 2.6 conclusion

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

Conclusion

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