



## Case Report

1	Case Number	0385/17
2	Advertiser	Mitsubishi Motors Aust Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	13/09/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law  
2.6 - Health and Safety Unsafe behaviour  
2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a young girl riding a motorised toy car in a park. The Mitsubishi Diamond Days Sale is introduced, offering up to a \$1,500 fuel card on a range of vehicles. The eligible vehicles are then introduced, with driving footage appearing on screen, accompanied by a graphic of a fuel card. Four vehicles are shown in total. At the end of the advertisement, the young girl riding the motorised toy car appears again briefly as the audience is advised that the Mitsubishi Diamond Days Sale ends Sunday.

### THE COMPLAINT

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

*We put great store in getting youngsters to ALWAYS wear helmets when on bikes, scooters and skateboards. This is crucial for off road activities. This ad is NOT sporting this important safety measure*

*It is telling other children that you can disobey the laws and ride these vehicles with helmets.*

### THE ADVERTISER'S RESPONSE

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

*Complaint Ref No. 0385/17*

### *1 The Complaint*

*The complaint relates to a television advertisement for Mitsubishi Motors Australia Limited (MMAL). The advertisement includes scenes of a young girl riding a ride on toy car (toy car) through a forest setting, which are intercut with scenes of different models of MMAL vehicles driving in various other settings.*

*The complainant describes the advertisement in the following terms: "A little girl was riding what appeared to be an all terrain vehicle in this ad she should have been wearing a protective helmet but she was not, in Australia it is illegal to ride such a vehicle without a helmet."*

*The complainant describes the reason for concern in the following terms: "It is telling other children that you can disobey the laws and ride these vehicles with helmets (sic)."*

### *2 Response to Complaint*

*MMAL submits that the complaint should be dismissed.*

*For reasons that we explain further below, the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code) is not applicable to the scenes complained about. However, even if the FCAI Code does apply, we are of the view that the advertisement does not breach the provisions of the FCAI Code, or separately, the AANA Code of Ethics (AANA Code).*

*These issues, as raised in the complaint and by the ASB in your letter, are addressed in more detail below.*

#### *2.1 Application of the FCAI Code*

*The general provisions in clause 2 of the FCAI Code apply to motor vehicles. "Motor vehicle" is defined in clause 1 of the FCAI Code as a "passenger vehicle; motorcycle; light commercial vehicle and off-road vehicle." The toy car does not satisfy this definition and is not a motor vehicle for the purposes of the FCAI Code. The sequences involving the toy car therefore do not involve the driving of a vehicle. On this basis alone the complaint should (consistent with the Board's decision in complaint 105/03) be dismissed.*

*However, for completeness we also note that:*

- Clause 3 of the FCAI Code relates to the use of motor sport in advertising. The advertisement does not depict any form of motor sport, let alone in the toy car sequences.*
- Clause 4 of the FCAI Code applies to the depiction of off-road vehicles. "Off-road vehicle" is defined in clause 1 of the FCAI Code as a "passenger vehicle having up to 9 seating positions including that of the driver having been designed with special features for off-road*

*operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have 4 wheel drive."*

*The toy car cannot (and does not) satisfy any aspect of this definition and does not have any of the special features for off-road operation required under clause 4.3.3 of the Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005. It is therefore not an "off-road vehicle" (let alone an "all-terrain vehicle" as alleged in the complaint).*

*On this basis and in the circumstances, the FCAI Code does not apply. Nevertheless, we should deal specifically with what the complaint records as the "issues raised".*

## *2.2 Clause 2(c) of the FCAI Code*

*The complaint records that the advertisement raises an issue with respect to clause 2(c) of the FCAI Code, which provides:*

*"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following: ... 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."*

*As already noted above, the toy car is not a "vehicle" for the purpose of the FCAI Code and therefore clause 2(c) does not apply. However, even if it did, the "driving practice" depicted (or evoked by the image) would then be driving a vehicle without a helmet; something that is not contrary to any law, even in the case of open convertibles or jeeps.*

## *2.3 Other provisions of the FCAI Code*

*The advertisement does not portray any other driving that is unsafe, reckless, menacing or otherwise in breach of the law or the FCAI Code.*

## *2.4 Other matters*

*As is apparent from the sequences themselves, the girl was riding the toy car in a highly controlled environment for the purposes of the filming of the advertisement. At the time of filming she was 6 years old. Toy cars such as that used in the advertisement are advertised as being suitable for children as young as 2-3 years. In any event, it is clear from the advertisement that (as was in fact the case) she was well in control. While not directly relevant to the specific complaint, she was also closely supervised by adults at all times.*

*MMAL acknowledges that section 162C(1) of the Road Traffic Act 1961 (RTA) provides that:*

*"A person must not ride, or ride on, a wheeled recreational device or wheeled toy unless the person is wearing a safety helmet that complies with the regulations ...."*

*The term "wheeled toy" is defined in section 5 of the RTA as "a child's pedal car, scooter or tricycle or similar toy ... ". You will note that the common element of all of these is that they are powered by the child rider and that there is a risk that they might run out of control and*

*expose the rider to a risk of harm as a result. The toy car does not have those characteristics and is in our view not a "wheeled toy" within the meaning of section 5.*

*The toy car is motorised and battery-powered. It stops moving immediately if the rider removes their foot from the pedal. It cannot be self-powered (by pedalling or pushing with the feet) and it does not "free wheel". The toy car also has an override function that allows an adult to override the rider's control by use of a remote control. The toy car also has a seatbelt, which the girl was wearing at all times as depicted in the advertisement. These features all distinguish the toy car from a pedal car, scooter or tricycle, and it is therefore not a "similar toy" and cannot constitute a "wheeled toy" for the purposes of section 162C(1).*

*Again, though, even if the toy car can in some way fit within the definition of a "wheeled toy" for the purposes of section 162C(1), section 162C(2c) provides a defence where "there were in the circumstances of the case special reasons justifying non-compliance with the requirements of this section." We submit that in the controlled circumstances and limited sequence involved here, that defence would be made good.*

## *2.5 Application of the AANA Code*

*MMAL acknowledges that the advertisement is also subject to the AANA Code. The advertisement does not contain any form of discriminatory, exploitative, degrading, violent, sexual or obscene material in breach of the AANA Code.*

*MMAL is mindful that, in accordance with the AANA Code of Ethics Practice Note (Practice Note), motor vehicle advertisements are subject to section 2.6 of the AANA Code, which provides that advertisements "shall not depict material contrary to Prevailing Community Standards on health and safety."*

*MMAL acknowledges that the Practice Note further states that images of bike riding without helmets will be contrary to prevailing community standards on health and safety. As we have explained above, we draw a distinction between a bicycle and the toy car – a distinction also apparently drawn by the law in its definition of a "wheeled toy" in the RTA.*

*MMAL is also mindful of the Practice Note and the requirement that it should avoid depicting behaviour that children may imitate (and which, by implication, might expose them to some health or safety risk). However, we submit that the sequences in question depict no such behaviour, or more particularly, as already noted, do not depict behaviour that if imitated would expose them to such a risk.*

*We should also further note that children were not the target audience of the advertisement and the advertisement was not intended to air in time slots or during television programs that are directed at younger audiences.*

*For these reasons, we submit that the advertisement does not contravene either the FCAI Code or the AANA Code and request that the complaint be dismissed.*

*However, in the event that it is not dismissed and/or that there is any residual or other concern, MMAL also advises that the advertisement is scheduled to cease airing on 31 August 2017 and that MMAL does not intend to use the advertisement again in the future.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement depicts a young girl riding an off-road bike and not wearing a helmet which is contrary to prevailing community standards on health and safety.

The Board viewed the advertisement and noted the advertiser’s response.

The Board 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 that this television advertisement depicts a young girl riding a motorised toy car in a park.

The Board noted the advertiser’s response that the vehicle the young girl is riding on is a toy. The Board noted the appearance and speed of the vehicle ridden by the girl in the advertisement and considered that it is clear that it is a toy car and in the Board’s view the manner in which the girl is riding on the toy is controlled and there is no suggestion that she is at risk of harming herself or others.

The Board noted that the girl is wearing a seatbelt whilst riding the toy car and considered that overall the depiction of a young girl riding a toy car at a low speed whilst wearing a seatbelt is not contrary to prevailing community standards on health and safety.

The Board noted that there is a significant level of community concern about child safety and the use of Quad bikes but considered that it is clear in the advertisement that the girl is riding on a toy only capable of low speeds and not on a Quad bike.

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

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaints.

