



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0510/15</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>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>20/01/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving  
FCAI Motor Vehicles 2(b) Breaking the speed limit

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts the driver of a Mitsubishi Triton telling two cyclists that he will see them at the bottom of a hill. We then see the Triton making its way down the hill via sharp bends and a water crossing before coming to a stop next to the waiting cyclists who ask him what took so long. The driver replies with, "Back to the top?" before driving away.

## THE COMPLAINT

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

*This advertisement visibly promotes speeding, and racing against bikes which is not something that should be encouraged in our society.*

## THE ADVERTISER'S RESPONSE

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

*Response to Complaint*

*The FCAI code of practice states*

## **1. CODE OF PRACTICE**

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

*(a) Obviously unsafe driving, including reckless and menacing driving to the extent that such practices 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, were they to occur on a road or road-related area.*

*[Example: Sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle.]*

*(b) People driving on a road or road-related area at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.*

*The Triton television commercial portrays a vehicle travelling down a dirt road through a forest and scrub area. While the road was closed for filming (this is conveyed at the commencement of the commercial through the display of the following super - "Filmed under controlled conditions on closed roads") I can confirm that at no time did the Triton exceed any localised speed limits (the vehicle often only travelling between 20-30 kilometers an hour). Furthermore the vehicle is not depicted undertaking any reckless or unsafe driving practices and remains in total control of the driver (this being confirmed and conveyed through the dialogue within the commercial). For a short period the Triton is depicted traversing a rocky area and then a river - both of which are actual road related areas. The Triton being a 4wd ute with capacity for 5 passengers is well equipped and designed for off-road driving.*

## **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) or the AANA Code of Ethics.

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 published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia. The Board determined that the material draws the attention of the public or a segment of it to a product, being a Mitsubishi Triton in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered whether that 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 Triton was a Motor 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 promotes speeding and racing against cyclists which is not something to be encouraged.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement.

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 Board noted the examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Board noted the advertisement features the driver of a Mitsubishi Triton telling two cyclists that he will see them at the bottom of a hill, and then we see them driving/cycling down the hill via different routes which suit their particular modes of transport.

The Board noted the complainant's concern that racing cyclists is not something which should be encouraged. The Board noted that although the driver does say "see you at the bottom" to the cyclists he does not specifically mention a race. The Board noted that the following scenes which alternate between the car and the bikes, as well as the accompanying

fast paced music, give an overall impression of a race but considered that the driver of the Mitsubishi appears to be in control of the vehicle at all times and there is no suggestion that his driving is unsafe or irresponsible. The Board noted that the manoeuvres undertaken by the Mitsubishi are designed to showcase the vehicle's all-terrain capabilities and considered that the driving depicted is suited to the conditions and that overall the advertisement does not encourage drivers to race against cyclists.

The Board considered that overall the advertisement does not portray any driving which is unsafe, or reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did not breach Clause 2(a) of the FCAI Code.

The Board considered clause 2(b) of the FCAI Code. Clause 2(b) requires that 'Advertisements for motor vehicles do not portray...people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published.'

The Board noted the Explanatory Notes to the FCAI which state, "Advertisers should ensure that advertisements...avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle."

The Board noted the advertiser's response that the Mitsubishi Triton did not exceed any local speed limits and that it was driving between 20-30km per hour in most scenes. The Board noted that we do not see the speedometer of the Triton in the advertisement but considered that the manner in which the vehicle is driven is not suggestive of driving at a speed in excess of the speed limit or at odds with the driving conditions.

The Board determined that the advertisement did not depict excessive speeding and therefore did not breach Clause 2(b) of the FCAI Code.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that '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.'

The Board noted that in one scene we see the Mitsubishi Triton driving through shallow water.

The Board noted it had recently dismissed a complaint about a vehicle driving in water in case 0467/15 where:

“The Board acknowledged the important safety message regarding entering floodwaters but considered in this instance the vehicle is clearly shown driving in a shallow creek which does not appear to be flooded or unsafe. The Board noted that the setting of the advertisement is an off-road environment where crossing a shallow creek or river would not be uncommon and considered that as there is a dirt road leading to the water the most likely interpretation of this scene is that the water is intended to be driven through to get to the other side. The Board considered that the advertisement does not depict a situation which is contrary to the Prevailing Community standards around entering unsafe floodwater.”

In the current advertisement the Board noted the setting of the advertisement is off-road and considered that the dirt road the Triton is using leads to the water crossing which is suggestive of the water being intended to be driven through in order to reach the other side and continue on the road. Consistent with its previous determination the Board considered that the advertisement does not depict an unsafe driving situation and does not breach Prevailing Community standards around entering unsafe floodwater.

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

Finding that the advertisement did not breach the FCAI Code the Board dismissed the complaint.