



CASE REPORT

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| 1. Complaint reference number | 106/08 |
| 2. Advertiser | Mitsubishi Motors Australia Ltd (Triton 4WD) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Other
Other - Environmental issues |
| 6. Date of determination | Wednesday, 9 April 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a black Triton 4WD traversing a variety of terrain, and at one stage passing a young woman standing on the side of a track fixing a dented wheel on her bicycle. The car is then seen with her bike in the back of the 4WD as the driver gives her a lift to a service station as they pass a sign advising "4WD only". The car is then seen in a city situation, driving through a forest, through a stream and eventually on a beach. A male voiceover announces "The Mitsubishi Trident, better at getting the hard jobs done. Love that car". The final scene of the car shows 3 other passengers the driver has picked up along the way.

THE COMPLAINT

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

It is disgraceful; one of a number of ads depicting speed, power & dangerous driving in an encouragement to sell cars. The black 4WD is depicted speeding through the bush & at one stage is up on 3 wheels! Not to mention the damage & erosion encouraged to National Parks tracks that the gov is having trouble with. With the national road toll the way it is the use of speed & power to sell cars should be illegal.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

(The complaint) is by its terms a somewhat sweeping and emotive complaint about motor vehicle advertising generally. While we respect the complainant's clearly strongly held views, it is important to note that our response is directed to the Advertisement itself and that in responding, we do so by reference to the Advertisement and not the complainant's (inaccurate) characterisation of it and his (apparent) general view that all such advertisements are or should be unlawful.

The Advertisement depicts the four-wheel drive variant of the Mitsubishi Triton being driven in various on- and off-road settings. The primary purpose of the Advertisement is to establish the versatility and durability of the vehicle. The driver of the car stops to pick up a passenger with a bicycle. The bicycle is loaded into the vehicle's rear tray. Later, some fishing equipment is also loaded into the rear tray. The car is shown with four occupants seated comfortably in the front and rear seats of the cabin.

We acknowledge that the Advertisement must comply with the Federal Chamber of Automotive Industries Code of Practice Relating to Advertising for Motor Vehicles (FCAI Code). More specifically, the vehicle is an off-road vehicle for the purposes of the FCAI Code as the Mitsubishi

Triton in the Advertisement is 4 wheel drive (and otherwise meets section 4.3.3(b) of the relevant Australian Design Rule (MC category)) with the result that section 4 of the FCAI Code applies.

Section 2.7 of the AANA Code states that advertisements for motor vehicles shall comply with the FCAI Code. Given our view that the Advertisement complies with all other sections of the AANA Code, we say that if the Advertisement complies with the FCAI Code, it therefore also fully complies with the AANA Code.

Section 4 of the FCAI code states in full 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 the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.”

For the reasons set out above, we say that the Advertisement does not portray unsafe driving, and does not show the vehicle travelling at an illegal or unsafe speed. The Advertisement’s purpose is, in part, to emphasise the ability of the vehicle to handle both on- and off-road conditions with ease. The Advertisement therefore contains legitimate depictions of the vehicle’s abilities in off-road conditions consistent with section 4.

For the reasons set out above we submit that the Advertisement would not be objectively viewed by any reasonable person as depicting unsafe driving or environmental damage and that the Advertisement is compliant with the FCAI and AANA Codes in all respects.

We therefore submit that the Complaint should be dismissed.

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

The Board then went on to consider the substantive provisions of the FCAI Code. The Board first considered clause 2(a) of the FCAI Code. Clause 2(a) provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following '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 carefully viewed the advertisement and considered that there was no depiction of any unsafe driving in the advertisement in particular that the images of the cars being driven in the streets was conducted at an obviously reasonable speed. The Board considered that there was no breach of clause 2(a). The Board also considered clause 2(b) which provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'People driving in speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.' The Board considered that there was no depiction of cars being driven at excessive speed.

The Board considered that clauses 2(c), (d), and (e) and clauses 3(a) and (b) of the FCAI Code were not relevant to the present advertisement.

Finally the Board considered clause 4 of the Code which states 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 the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.'

The Board considered that the images of the 4WD were clearly images of the car off road and while the car was depicted skidding in the dirt there was no suggestion that this driving was unsafe in the environment in which the car was driving nor that it was driving at excessive speed.

The Board determined that the advertisement did not breach any of the clauses of the FCAI Code and accordingly dismissed the complaints.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). The Board determined that the advertisement did comply with the FCAI Code as per Section 2.7 of the Code. The Board further agreed that the advertisement did not breach Section 2.6 which deals with prevailing community standards on health and safety.

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