



CASE REPORT

1. Complaint reference number	258/04
2. Advertiser	Mitsubishi Motots Australia Ltd (Magna V6)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 September 2004
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a council pick-up truck driving along a road with council workers running along side of it and throwing rubbish into the back of it from the sidewalk. As the council workers run past a Mitsubishi dealership, they get distracted by the Magna V6 in the window and the council pick-up truck continues driving. The council pick-up truck pulls up momentarily parallel to a parked vehicle on the street. The council workers then pick up the parked car and throw it into the council pick-up truck. The tagline is “At this price, everyone should have a new car”.

THE COMPLAINT

Comments which the complainant/s made included the following:

“The ad features the following direct breach of your code: driver of truck double parks the truck and exits the vehicle leaving the vehicle unattended. This is clearly unsafe driving. It is an offence to double-park a vehicle in every State and Territory, especially a large truck, which will force other vehicles to dangerously overtake on the wrong side of the road and obstruct the vision between motorists and motorists and pedestrians.”

THE ADVERTISER’S RESPONSE

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

“MMAL believes that the commercial is not in breach of any relevant road safety laws, and that it therefore fits within the Code’s requirements.”

“That the scene depicts a lawful act is proven by the fact that the commercial shows an activity, which occurs every day in every State of Australia – that is, the collection of garbage. Garbage would not be collected in the manner it is collected if to do so would be unlawful.”

“MMAL would also like to indicate to the Board that: a professional safety officer and traffic controllers were employed throughout the course of the filming to ensure the safety of all people in the immediate vicinity of the production; a council permit was obtained for the filming; and driving sequences were all performed at low speeds, well below the posted speed limit.”

“MMAL believes that the driving depicted in the commercial is not unsafe. It further submits that reckless and menacing driving is also not depicted.”

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 which came into effect on 1 July 2004 (the “FCAI Code”).

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines “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 other 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 Magna V6 “in a manner calculated to promote.....that product”. Having concluded that the material was an “advertisement” as defined by the FCAI Code, the Board then needed to determine 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 Magna V6 depicted 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(a) and 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board considered whether clause 2(a) and 2(c) of the FCAI Code had been breached together. Both clauses deal with the requirement on advertisers not to portray driving practices which would be illegal in Australia.

In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law....if such driving were to occur on a road or road related area...”

In order to breach clause 2(c), the driving practices depicted must:

“...if they were to take place on a road or road related area, breach any Commonwealth law....”

The Board considered the advertiser’s detailed submissions about the relevant Australian Road Rule that deals with the driving practice that the complainant alleged was breached by the depiction in the advertisement, i.e., double parking. The Board agreed with the interpretation of the relevant road rule by the advertiser and determined that the driving practice depicted in the advertisement was not in breach of any relevant State/Territory or Commonwealth law.

The Board noted that, contrary to the complainant’s allegation, at no time in the advertisement did the driver of the truck leave it unattended. It was clear from the advertisement that the truck was only stopping momentarily to collect garbage. The Board also agreed with the advertiser’s comment that the manner in which the council pick-up truck was depicted in carrying out the garbage collection was no different to the manner in which it is conducted every day in Australia and could not therefore be seen to be illegal. The pick-up truck did not double park and leave the vehicle permanently. The driver remained in the driver’s seat while the council workers loaded the parked car into it and then the presumption that can be drawn from the prior footage of the council truck proceeding along the street is that it continued driving.

There were no other driving practices depicted in the advertisement that could be interpreted as unsafe, reckless, menacing or otherwise illegal.

The Board therefore formed the view that neither clause 2(a) nor 2(c) had been breached.

On the above basis, the Board confirmed its prima facie view and held that the material before it did not constitute an advertisement in breach of clauses 2(a) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.