



## CASE REPORT

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| 1. Complaint reference number | 277/08   |
| 2. Advertiser                 | Mitsubishi Motors Australia Ltd                                      |
| 3. Product                    | Vehicles   |
| 4. Type of advertisement      | Print  |
| 5. Nature of complaint        | FCAI - Driving practice that would breach the law<br>FCAI - Speeding |
| 6. Date of determination      | Wednesday, 13 August 2008  |
| 7. DETERMINATION              | Upheld – discontinued or modified                                    |

## DESCRIPTION OF THE ADVERTISEMENT

This print advertisement features the new Lancer on a ramp in what appears to be a parking station. Text on the advertisement reads "Defy Physics. Brutal 217kW Turbocharged MIVEC Engine. Race-bred Twin Clutch Sport Shift Transmission. Ingenious Super All-Wheel Control System. Hammer the straight. Scream through the corner. The new lancer Evolution is waiting at lancerevolution.com.au". An alternative scenario for the image and wording shows the car with a cityscape behind it.

## THE COMPLAINT

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

*The ad in my opinion focuses on the car's ability to go fast and promotes this in an aggressive manner ("Brutal 217kW Turbocharged MIVAC engine"). The headline "DEFY PHYSICS" and the lines "Hammer the straight. Scream through the corner. " seemingly implore the driver to drive recklessly.*

*Overt emphasis on speed and power of this car.*

*Socially responsible manufacturers would focus on advertising the safety pluses of such vehicles, not encourage already irresponsible road users to tear around in vehicles because they can take corners better than they used to. I think this is a real safety issue and am disgusted at Mitsubishi and other manufacturers who are seemingly encouraging speed hoons.*

*It depicts and encourages potential drivers of the vehicle to drive recklessly and menacingly and be in breach of the law as it stands in Qld. Most fanatics of turbo charged sports cars would recall the car-park drag races depicted in the cult movie "The Fast and the Furious: Tokyo Drift" and I believe the advertisers are targeting this group and explicitly encouraging them to "hammer" this car into the straights and "scream" their tyres into the corners. Both potentially lethal for the driver, occupants and bystanders, particularly in the concrete confines of a high-rise car-park...I object to this type of advertising in a publication to the general public that includes impressionable teens and young drivers, who are constantly in the news for causing deadly car crashes.*

*I'm an environmentalist. I object strongly to the irresponsible nature of advertisements that say nothing/do nothing to prevent the ongoing manner of an economy that tears headlong to an elusive destination leaving destruction in its wake such as HIGH SPEED, HIGH POWERED, PETROL GUZZLING CARS!*

## THE ADVERTISER'S RESPONSE

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

## 1. THE COMPLAINTS

It appears that the “complaint” comprises four separate complaints. They are as follows:

### 1.1 Complaint by Mr Lewis: 19 July 2008 (the Lewis Complaint)

Mr Lewis refers to the advertisement in the following terms:

“The full page ad depicts the Lancer coming down the ramp of a public car-park with the ad headed “DEFY PHYSICS”. A scene reminiscent of an illegal drag race portrayed in the drifting movie, “The Fast and the Furious: Tokyo Drift”. The advert’s narrative goes on to say “Hammer the straight. Scream through the corner.””

Mr Lewis’ concern is expressed as follows:

“I believe it doesn’t comply with the FCAI’s Code of Practice for Motor Vehicle Advertising. Specifically it depicts and encourages potential drivers of the vehicle to drive recklessly and menacingly and be in breach of the law as it stands in Qld. Most fanatics of turbo charged sports cars would recall a car-park drag race as depicted in the movie “The Fast and the Furious: Tokyo Drift” and I believe (sic) the advertisers are targeting this group and explicitly encouraging them to “hammer” this car into the straight and “scream” their tyres into the corners. Both potentially lethal for the driver, occupants and bystanders, particularly in the concrete confines of a high rise car-park...”

### 1.2 Complaint by Anonymous of New South Wales: 20 July 2008 (the NSW Complaint)

The complainant refers to the statements “Hammer the straight” and “Scream through the corner” and expresses the reason for concern as follows:

“I find this approach to marketing irresponsible in the extreme at a time when all governments are taking steps to enforce the road safety message, to the young people in particular.

We wouldn’t allow carmakers to claim “drive this car when drunk and have fun” so why are we allowing them to say, in effect, “drive this car at breakneck speed on public roads and have fun”. Both statements are equally irresponsible”.

### Anonymous Complaint: 20 July 2008 (the Environmental Complaint)

The complainant describes the advertisement as “Picture of car Description relates only to the speed” (sic) and expresses the reason for concern as follows:

“I am an environmentalist. I am a thinking human being who takes responsibility for her actions and choices. I object strongly to the irresponsible nature of advertisements that say nothing/do nothing to prevent the ongoing manner of an economy that tears headlong to an illusive destination leaving destruction in its wake such as HIGH SPEED, HIGH POWERED, PETROL GUZZLING CARS!”.

### 1.3 Anonymous Complaint: 30 July 2008 (the Second Anonymous Complaint)

The complainant refers to the copy and asserts that it focuses on:

“the car’s ability to go fast and promotes this in an aggressive manner...seemingly to implore the driver to drive recklessly”.

## 2. THE ADVERTISEMENTS

There are two press advertisements for the Evolution that carry the body copy that is complained of. The first (a copy of which is attached and marked “A”) is in landscape format and depicts the Evolution on a roadway against the backdrop of the Sydney skyline. The second, which is marked “B” and which is in portrait format, depicts the Evolution travelling on an upward roadway or ramp.

Both advertisements carry the same copy which in full is as follows:

### “DEFY PHYSICS

Brutal 217k/W Turbocharged MIVEC Engine. Race-bred Twin Clutch Sport Shift transmission. Ingenious Super All-Wheel Control System. Hammer the straight. Scream through the corner. The new Lancer Evolution is waiting at lancerevolution.com.au”.

The advertisements have been published in a number of specialist print media and in a variety of newspapers.

## 3. RESPONSE TO COMPLAINTS

### *3.1 The FCIA Code:*

*When taken together the four complaints refer to all sub-paragraphs of paragraph 2 of the FCAI Code. It is therefore necessary to address all of those sub-paragraphs.*

*However the complaints each argue a different breach and need to be considered separately.*

### *3.2 The advertisements as a whole*

*Each advertisement relates to MMAL's high performance Lancer Evolution – the Evolution.*

*The Evolution is the high performance car in the range of Mitsubishi vehicles. It is, as the print advertisements specifically record, a “race-bred” vehicle. As the performance car in the Mitsubishi range it is promoted as such to driving enthusiasts.*

*The two advertisements are static print advertisements. They stand alone and are not supported by any television campaign. They comprise both a visual image and the body copy already referred to. In determining the complaints they should be considered as a whole and in context.*

*The importance of this in determining the complaint is, we feel, made even plainer by the way in which each complainant has argued from elements of the advertisements rather than the advertisements as a whole and the elements in context (we say more about this below).*

*It should also be noted in relation to context that while these advertisements contain no price reference, the base model Evolution carries a recommended retail price of \$59,490(m) / \$64,490 (TC-SST auto)\*. The Evolution MR model depicted in the advertisement carries a recommended retail price of \$71,690\*. The Evolution is not priced as an entry level vehicle and is not promoted as such.*

*\*Prices shown above contain the proposed legislation to increase the luxury car tax that is currently going through parliament.*

### *3.3 Depiction of the vehicle*

*MMAL has elected to depict the Evolution travelling on the streets of Sydney at night in one advertisement and “emerging” (by travelling up a ramp) in the other. The latter shot is intended to evoke, in particular, the arrival or emergence of the new model Evolution.*

*Notwithstanding the high performance characteristics of the vehicle that are expressly referred to in the body copy, the Evolution is depicted (and in fact was photographed) in each rendition of the advertisement in a way that it does not “portray” any:*

- Unsafe driving (including reckless and menacing driving) that would be a breach of any law dealing with road safety or traffic regulation.*

*In particular, the visual images do not convey any sense of speed or any other manner of driving that would contravene and relevant law.*

- Driving at speeds in excess of speed limits;*

- Driving practices that if they were to take place on a road would breach any law with Commonwealth or State;*

- People driving while apparently fatigued or under the influence of drugs or alcohol; or*

- Deliberate and significant (indeed, any) environmental damage.*

*To the contrary, in photographing the Evolution for these advertisements MMAL and its agency Clemenger were concerned to ensure that notwithstanding the fact that the Evolution is a high performance vehicle, it was depicted – as it properly should be – in an ordinary driving situation and in a manner that complied in every respect with any relevant law.*

*You will also note that there is no “blur” or other special effect or enhancement of the kind often seen in press and other static advertisements to indicate movement or speed.*

*It is therefore our view that in so far as the complainants rely on the visual images included in the advertisements, there is nothing in those images themselves that can be argued to contravene the Code.*

### *3.4 Body Copy*

*All complaints other than the Environmental Complaint also rely upon the inclusion in the copy of the words “Hammer the straight” and “Scream through the corner”. In those complaints the words are taken out of context and arguments are developed to the effect that those words, when so considered, “implore” a breach.*

*We are concerned about the way the complainants then proceed to embellish the words used in*

order to try to construe a breach of the Code and we say more about that below.

However, the starting point must be the words used, the context in which they appear and the provisions of the Code.

The words complained of appear immediately after a factual statement about the performance characteristics of the Evolution. They are intended to convey to the reader the fact that those characteristics add a new performance dimension to the base model Lancer that reflects an increase in engine capacity and vehicle stability and manoeuvrability. They take their context from the headline “Defy Physics”.

The words do not “portray” any unsafe, reckless or menacing driving that would breach any relevant law and thus be in breach of the Code. Nor on any reasonable reading (let alone a reading in context) do they “implore” anything, let alone a breach of the law that might therefore result in a breach of the Code.

The fact that the vehicle has superior acceleration to other model Lancers on a straight road and that it has an all wheel control system that makes it more stable when cornering are just that – facts about the vehicle itself – and words complained of are intended to engender some excitement in what are otherwise dry statements.

### 3.5 Specific aspect of the complaints

#### The Lewis Complaint

We note that Mr Lewis asserts that one advertisement “depicts the Lancer coming down the ramp of a public car park” (that is incorrect – it is in fact travelling up a ramp) in a scene “reminiscent of an illegal drag race portrayed in the movie ‘The Fast and the Furious: Tokyo Drift’”.

He goes on to assert that this “depicts and encourages potential drivers of the vehicle to drive recklessly and menacingly and breach the law.”

Mr Lewis’ complaint thus depends on a connection first being made between the pictures contained in the advertisements and a movie – and then some reaction on the part of person looking at the advertisement that is stimulated and influenced by the driving in that movie rather than anything actually appearing in the advertisements.

That Mr Lewis might himself somehow make that connection is very much a matter for him. The ordinary member of the community (by reference to whom we believe the advertisement should be assessed) would not, in our view, make any such connection and we suggest that whether the advertisements comply with the Code should not be assessed on the assumption that they might! These comments in relation to Mr Lewis’ complaint about the link that first needs to be made between the advertisement and the movie from which he derives his concern applies equally to the copy, even when it is taken in isolation.

In short, Mr Lewis’ complaint begs the only relevant issue, namely, whether the advertisements themselves “portray” any offending conduct.

#### The NSW Complaint

The NSW Complaint asserts that use of the words complained of is akin to or can be compared with a claim such as “drive this car when drunk and have fun”.

There is no basis for such an approach, either on a fair reading of the words in question or having regard to the provisions of the Code by which the advertisements are to be assessed.

The statement “drive this car when drunk” would in our view clearly be a breach of the Code (and in particular, paragraph 2(d)). However, there is nothing in this advertisement that suggests that the vehicle is or should be driven while someone is fatigued or under the influence of drugs or alcohol.

The use of this analogy only highlights the need, once again, for the complainant to elevate the express words of the advertisement (and move them from the context in which they appear) to something they are not (in this case, an express exhortation to engage in what would without question be illegal conduct) in order to make good the complaint.

Again, therefore, we are of the view that no reasonable member of the community viewing these advertisements as a whole would go on to interpret them as “explicitly encouraging” or exhorting (in the words of the complainant) readers to break the law.

#### The Environmental Complaint

For the sake of completeness we should also make comment on this complaint. Insofar as it refers to speed we repeat what we have said above.

Insofar as it suggests that the complaint is in some way a contravention of paragraph 2(e) of the Code, we respectfully reject that. The complaint appears to be based on the a view by the

*complaint that any motor vehicle that has high performance characteristics must be a petrol guzzling vehicle – propositions for which there is no factual basis. Further and more importantly having regard to the complaint, there is no portrayal anywhere in the advertisement of any “environmental damage” being caused by the vehicle, let alone any deliberate or significant damage such as is required for a contravention of 2(e).*

#### *The Second Anonymous Complaint*

*This complainant relies on the words of the advertisement (again in isolation) and asserts that they “seemingly implore” drivers to drive recklessly.*

*The complainant then quotes portion of the explanatory notes and asserts that the advertisement contravenes “this statement”.*

*In response to both of these elements of this complaint we repeat what we said above in relation to the Lewis Complaint. We also add that the advertisements are to be tested as a whole against the provisions of the Code and that the relevant question is whether the advertisement as a whole “portrays” any manner of driving that contravenes any relevant law. It does not.*

*For the reasons set out above we therefore respectfully submit that each of the complaints 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 considered that even though they were reviewing a print advertisement there was a portrayal of unsafe driving through the text that clearly encouraged drivers to *scream through the corner*.

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 while there was no depiction of the car being driven at excessive speed. The language used in the advertisement clearly depicted speed with the use of the word *hammer*.

The Board then considered clause 2(c) which provides that advertisers should ensure that 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'. The Board considered the use of language was encouraging drivers to drive at excessive speeds and as such was encouraging drivers to break the law.

The Board considered that clauses 2(d), and (e) and clauses 3(a) and (b) and clause 4 of the FCAI Code were not relevant to the present advertisement.

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 not comply with the FCAI Code as per Section 2.7 of the Code.

Finding that the advertisement was in breach of the Codes the Board upheld the complaint.

### **ADVERTISER'S RESPONSE TO DETERMINATION**

Comments which the advertiser made in response to the determination regarding this advertisement included the following:

*As a result of the recent determination that upheld the complaint referred to above, we advise that we will no longer despatch the advertisements concerned in their current format.*

*An alternate version has been developed to be used for any future despatches required. The determination found no issue with the imagery, and as such, the imagery will remain the same.*

*The particular copy section referred to in the complaint was 'Hammer the straight. Scream through the corner'. The revised version removes this copy and replaces it with an alternative statement and is shown below in red.*

*Headline: Defy Physics*

*Copy: Brutal 217kW Turbocharged MIVEC Engine. Race-bred Twin Clutch Sport Shift Transmission. Ingenious Super All-Wheel Control System. Brute force with precise control. Experience the new Lancer Evolution at [lancerevolution.com.au](http://lancerevolution.com.au) or at a specialist Mitsubishi Evolution dealership.*

*The new phrase 'Brute force with precise control' is simple a statement of fact about the vehicle's capability.*

*I trust this addresses the concerns raised.*