



CASE REPORT

1. Complaint reference number	328/03
2. Advertiser	Mitsubishi Motors Australia Ltd (Magna)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 October 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a three-quarter front/side profile view of a red Magna travelling down a country road. The advertisement then shows a series of very short clips which display various close up detailed images of the vehicle, both interior and exterior including the steering wheel, airbags, power window switches, dashboard and steering wheel column. A voice over is heard reciting the standard features that come with the Mitsubishi Magna. The vehicle is shown to drive along the country road without number plates.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following

“It is against New South Wales road transport law to drive a car without displaying a front number plate”.

THE ADVERTISER’S RESPONSE

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

“The vehicle used in the particular footage that is complained of was not registered at the time of the shoot. It was therefore not fitted with number plates and no issue of removing number plates otherwise required and fitted therefore arises.

“Further, the vehicle was conveyed, rather than driven, to the site of the shoot. It was only driven once on site and the vehicle carried trade plates throughout the shoot.”

THE DETERMINATION

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

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”).

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 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 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 “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 a Mitsubishi Magna 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 clause 2 (c) was relevant in the circumstances.

In order for clause 2 (c) to be breached, the driving practices described in this clause must take place “on a Road or Road-related area”.

The Board formed the view that the surfaces depicted in many of the cuts referred to the advertisement are “Roads”, due to the road markings present on the surfaces.

The Board then considered whether the driving practices depicted in the advertisement breached any law dealing with road safety or traffic regulation. The Board was mindful of the fact that the Road Transport (Vehicle Registration) Regulation 1998 requires that a number plate be permanently affixed to a registered vehicle.

Clause 2(c) of the FCAI Code provides that advertisers should not portray driving practices which clearly take place on a road:

“ ... and which 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 directly with road safety or traffic regulation ”

Examples are given in the FCAI Code of illegal use of hand-held mobile phones or not wearing seatbelts in moving motor vehicles.

The Board considered that the examples that accompany clause 2(c) give a clear indication of the types of breaches that are considered to be an infringement of clause 2(c). Applying the sui generis rule, and reading it in conjunction with the Explanatory Notes which state that:

“Vehicle occupant protection and road safety are primary concerns for the automotive industry in the design and operation of all motor vehicles supplied to the Australian market. FCAI endorses the National Road Safety Strategy and acknowledges the importance of increased road safety awareness in the Australian community...”

The Board considered that failure to display a number-plate is unlikely to be the type of breach contemplated by clause 2(c) because absence of a number plate is not directly related to occupant protection or road safety. The Board determined that an occupant of a vehicle is unlikely to suffer harm from not having a number plate on his or her vehicle in the same way that he or she may suffer harm if driving while holding a mobile phone or not wearing a seat belt.

The Board considered that members of the public viewing the advertisement were unlikely to see the advertisement as being an endorsement for removing number plates, but would rather be likely to view this as an omission during filming of the advertisement due to the newness of the vehicle or because the vehicle used for filming was not yet registered and therefore not fitted with a number plate. Further, the Board considered that the vehicle might have traders plates displayed on the inside

of the vehicle.

The Board further had regard to submissions from advertisers that motor vehicle dealers are required to fit number plates before delivering vehicles to new owners and therefore it is unlikely that vehicle owners will misinterpret the advertisement as discouraging the need for number-plates.

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

The Board found further that the driving practices depicted in the advertisement were demonstrated in a responsible way without showing negligent, dangerous or reckless driving conduct.