



## **CASE REPORT**

1. Complaint reference number	334/08
2. Advertiser	Mitsubishi Motors Australia Ltd
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Wednesday, 10 September 2008
7. DETERMINATION	Dismissed

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement depicts a young man removing a surfboard from the boot of his car. As he removes the board, the car starts to roll downhill, so he chases it, lifting the boot and climbing into the car, using a button to lower the rear seats so he can progress towards the front of the car. Noticing an ice cream van ahead he throws a ball to activate the bluetooth mobile phone to call the number on the van, causing the driver to stop and answer the call. The surfer then jumps into the driver's seat, fastens the seatbelt and switches from 2WD to 4WD so he can swerve to avoid the ice cream van just jutting into his path. As he pulls into a parking space, he is watched by two young women holding ice creams. One ice cream falls out of its cone onto the ground. A male voiceover announces "With tons of technology, you'll love that Outlander. Love that car."

## **THE COMPLAINT**

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

*I write to lodge a complaint about an advertisement that violates the Federal Chamber of Automotive Industries (FCAI) Voluntary Code of Practice for Motor Vehicle Advertising. This Code seeks to support road safety efforts by providing "guidance to advertisers in relation to appropriate standards for the portrayal of images, themes and messages relating to road safety". It highlights that "advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving." The Mitsubishi Outlander television advertisement which breaches this Code is currently being aired. This advertisement shows a man chasing a moving car, climbing in through the real' hatch, crawling through seats, and steering the vehicle from a position behind the front seat. It also shows the driver swerving to miss other vehicles while trying to maintain control of the car on a busy suburban road. This advertisement clearly breaches the spirit of the Code by depicting dangerous, illegal and reckless driving behaviour. This is in direct conflict with accepted road safety messages. I therefore ask the Advertising Standards Board to demand the immediate and permanent withdrawal of the Mitsubishi Outlander advertisement referred to above, and to discourage similar depiction of vehicles in advertisements.*

## **THE ADVERTISER'S RESPONSE**

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

Complaints are against the whole of the advertisements. Both focus on (or appear to be intended to focus on) paragraph 2(c) of the FCAI Code. However, MMAL submits that when considered as a whole (or indeed, analysed element by element) by reference to the Code and even "the spirit of the Code" as one complainant has suggested, the Outlander TVC complies.

## 2.2 Observations on the FCAI Code

While not part of the operative provisions of the Code, the Explanatory Notes to the FCAI Code include an acknowledgement that: "...advertisers may make legitimate use of fantasy, humour and self-evident exaggeration

in creative ways in advertising for motor vehicles". However, such devices should not be used in any way to "contradict, circumvent or undermine the provisions of the Code". Paragraph 2(c) of the Code, on which both complainants appear to have focused, is particularly concerned with advertisements that "portray" any of the following: "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 Law of any State or Territory in the relevant jurisdiction... dealing with road safety or traffic regulations".

## 2.3 Application of the Code to the Outlander TVC

In creating the Outlander TVC, MMAL and its agents have sought to "make legitimate use" of "fantasy, humour and self-evident exaggeration" in order to draw the attention of potential purchasers to a range of features – including, in particular, safety features - that are available in the Outlander. The advertisement does so by demonstrating in an obviously exaggerated and (hopefully) humorous way the process by which an absent minded surfie uses the features of the Outlander to regain control of the vehicle. Those features include:

- keyless entry;
- one touch roll and tumble rear seats;
- Bluetooth mobile phone connectivity;
- two wheel drive to four wheel drive shift at the turn of the button; and
- Active Stability Control

In so doing, we were mindful to ensure that at every stage of the advertisement we demonstrated compliance with all relevant laws as our surfie retook control of the vehicle – albeit that he is not actually "driving" until the latter stage of the TVC. For that reason, for example, the first thing that the driver does when he reaches the driver's seat is fasten his seatbelt. Similarly, the last shot displays the driver properly bringing the vehicle to a halt in an angle park - to the amazement of two young ladies who have apparently witnessed the whole of the extraordinary sequence of events. While on the process of taking control of the vehicle, you will also see that the surfie activates the blue tooth mobile phone system (consistent with the law relating to the use of mobile phones in motor vehicles) and whilst the advertisement obviously creates some sense of urgency, he completes the (lawful) call to the driver of the ice cream van well in advance of the Outlander reaching the intersection and in more than sufficient time for the driver of the van – also shown driving sedately and barely having reached the intersection

– to bring the vehicle to a halt.

Further, while the Outlander does then drive past the ice cream van, as a demonstration that the driver is by then well in control of the vehicle – and the benefits of Active Stability Control in that regard - it might be noted that the sequence has been put together in such a way as to show:

- that in approaching the intersection the Outlander would, in the ordinary course, have had right of way in any event;
- that neither vehicle is travelling at speed, let alone excessive speed; and
- while as already noted, there is some sense of urgency generated by the whole sequence, vehicles are not deliberately set on a collision course and there is more than ample – but after an obviously incredible process of phone activation and calling – time for both drivers to respond.

While we realise that each advertisement must be considered on its own merits, there are other current examples of the advertising of this same feature by other manufacturers that use far more aggressive driving sequences – including near collisions with reversing trucks – in order to demonstrate the benefit of ASC in the difficult or dangerous situations to which it is relevant.

On a separate note, but as a further indication of the notice we have taken of our general obligation as a responsible advertiser, you will note that we even ensured that when the surfie dropped his board in the opening sequence, he did so onto the verge rather than the road.

Finally and for the sake of completeness we should note that in our view no question of (nor do the complaints assert there to be) any breach of section 2 of the AANA Code.

In producing the Outlander TVC, MMAL and Clemenger BBDO have permitted the creative team licence to use fantasy, humour and self-evident exaggeration in order to depict the capabilities of our vehicle. The cool headed and quick thinking action of the surfie, the precision and accuracy with which he acts is obviously extraordinary and fanciful. At the same time we have taken every care to

ensure that no driving sequence portrays any driving practice that would contravene any law of any State or Territory otherwise complies with the law. We believe that the result is another distinctive TVC that complies strictly with the Code.

We therefore submit that there is no breach of the Code and request that the complaint be dismissed.

### **THE DETERMINATION**

The advertisement is an "advertisement for a motor vehicle" and therefore the Advertising Standards Board ("Board") was required to determine whether it was in breach of the Federal Chamber of Automotive Industries' Advertising for Motor Vehicles Voluntary Code of Practice (the "FCAI Code").

The Board noted the advertiser's reliance on the reference to the legitimate use of fantasy in the FCAI Code. The Board acknowledged that the depiction of the man trying to regain control of the runaway vehicle had a level of fantasy and exaggeration. Where actual driving was portrayed in the advertisement, the Board noted that it was not unsafe driving. It also noted that the man used a hands-free telephone to warn another vehicle and that he put on his seatbelt once he took the driver's seat and took control of the steering wheel.

The Board then considered the depiction of the man jumping into the back of a vehicle to stop it rolling away. As this sequence of events did not show the vehicle being driven, the Board determined that the operative provisions of the FCAI Code had not been contravened.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). It was noted that under Section 2.7 of the Code, Section 2.6 relating to health and safety does not apply where the FCAI Code applies.

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