



## CASE REPORT

1. Complaint reference number	356/03
2. Advertiser	Mitsubishi Motors Australia Ltd (Magna AWD)
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

Several different camera shots of a number of Mitsubishi vehicles including the Mitsubishi Magna All Wheel Drive and Mitsubishi Lancer EVO are seen. A voice over is heard to say: "One car company has come a long way". The advertisement then cuts to a Mitsubishi All Wheel Drive vehicle driving through a body of muddy water, before it then cuts to an image of a Mitsubishi Lancer EVO driving down a curved country road. A voice over is heard: "From developing our first all wheel drive in 1934 to dominating world rallying for the last 20 years". Images of the Mitsubishi rally car are then shown to drive around a rally circuit performing jumps and four wheel slides. Images of the Magna all wheel drive are then shown to perform slides on dirt roads and then drive along a straight country road. The voice over then says: "The first Australian-built all wheel drive". The camera then shows various angles of the vehicle including the interior and exterior. The voice over then says "The new Magna all wheel drive with quad-tech from Mitsubishi". The Mitsubishi logo then appears at the end of the advertisement.

## THE COMPLAINT

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

*"..... [The advertisement] included vehicles racing at high speed, becoming air borne, doing four wheel drifts and a 360 degree turns (sudden changes in direction are explicitly contra to the code). All these actions are illegal in all states and territories of Australia".*

## THE ADVERTISER'S RESPONSE

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

*"...in order to give the Magna All-Wheel-Drive real credibility in the market place the television commercial shows footage from Mitsubishi's Global Motor Sport Program, both the Mitsubishi Pajero and the Mitsubishi Lancer rally car. ...After analysing all the footage we can confirm that at no time do we show a vehicle completing a 360 degree turn or part thereof. One of the motor sport shots does show a Mitsubishi Lancer rally car travelling around a hairpin bend during a rally event, but this is not a 360 degree turn, and again, is clearly motor sport footage."*

## 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 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 AWD “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 AWD 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 (b) and (c) were relevant in the circumstances.

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

In relation to clauses 2(b) and 2(c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “Road” as defined by the FCAI Code. The definition provides as follows:

*“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”*

The Board then proceeded to consider that in all instances where the vehicle is clearly depicted doing rally type driving stunts, it is depicted on a rally track and as a rallying car.

On this basis, the Board formed the prima facie view that the surface depicted in the relevant portion of the advertisement is not a “Road”.

In verifying its prima facie conclusions, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

*“The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”*

The Board found further that the driving practices depicted in the advertisement were demonstrated in a responsible way, generally in the form of legitimate use of motor sport, without showing negligent, dangerous or reckless driving conduct.

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(b) or 2(c) of the FCAI Code. The Board dismissed the complaint.