



## **CASE REPORT**

1. Complaint reference number	362/03
2. Advertiser	Mitsubishi Motots Australia Ltd (Magna all-wheel drive)
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**

This television commercial opens with several different camera shots of a number of Mitsubishi vehicles including the Mitsubishi Magna All-Wheel Drive and Mitsubishi Lancer EVO. A voice over is heard to say: "One car company has come a long way...." The advertisement then cuts to a Mitsubishi 4WD vehicle driving through a body of muddy water, before it cuts to an image of a Mitsubishi Lancer EVO driving down a curved country road. The voice over continues ".....from developing our first all wheel drive in 1934 to dominating world rallying for the last 20 years." Images of a Mitsubishi rally car are then shown to drive around a rally circuit performing jumps and four wheel drifts. Following this, images of the Magna All-Wheel Drive performing slides on dirt roads and then driving along a straight country road are shown. The voice over then says "The first Australian-built all-wheel drive." The advertisement then shows various angles of the vehicle including the interior and exterior. The voice over says "The new Magna all wheel drive with Quadtec from Mitsubishi". The Mitsubishi logo 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 airborne, doing four wheel drifts and 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:

*"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 being published in print media 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 the 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”.

In relation to clauses 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 found that, given the road markings on the tarmac, the surface depicted was clearly a “Road”.

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 of breaches of clause 2(c) 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 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 section 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.