



CASE REPORT

1. Complaint reference number	364/04
2. Advertiser	Mitsubishi Motots Australia Ltd (Colt)
3. Product	Vehicles
4. Type of advertisement	Radio
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 8 February 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a radio advertisement which features the sound of a car engine being repeatedly revved and other cars honking their horns. A young boy tells his mother the lights are green and they can go. The voiceover states that the new Mitsubishi Colt feels like a much larger car.

THE COMPLAINT

Comments which the complainant/s made included the following:

“The main concern regarding this advertisement is the constant high revving sound of the motor which I believe would be very stimulating to young mind with speed being such a problem with young drivers.”

THE ADVERTISER’S RESPONSE

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

“The car is clearly stationary when the engine is being revved.”

“You clearly hear the lady drive off at the end of the commercial at a relaxed pace.”

“This commercial is not about anti-social driving practices, rather about a car that sounds different to the way you expect it to.”

“The commercial is now off air, with no plans to run it again.”

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 which came into effect on 1 July 2004 (the “FCAI Code”).

To come within the FCAI Code, the material being considered must be an “advertisement”. The FCAI Code defines “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 a 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 other valuable consideration given that it was being broadcast on radio 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 Colt “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 Colt depicted 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(a), 2(b), 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board first considered whether clause 2(a) of the FCAI Code had been breached.

In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law...if such driving were to occur on a road or road related area...”

The Board formed the view that clause 2(a) had not been breached. The Board considered that the sound of the engine revving was not extreme and was only carried out whilst the vehicle was stationary. The Board was of the view that the female driver was only revving the engine to demonstrate the size of the engine in comparison to the size of her car and not due to a desire to drive recklessly. The Board noted that when the Mitsubishi Colt was heard pulling away from the traffic lights, it did so in a calm, quiet and controlled manner. There was no overt indication that the vehicle engaged in any unsafe, reckless or menacing driving.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

“people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”

The Board formed the view that clause 2(b) had not been breached. The Board noted that there was no overt indication that the car was driven at excess speeds during the advertisement.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must:

“...if they were to take place on a road or road related area, breach any Commonwealth law...”

The Board formed the view that clause 2(c) had also been breached. Given that the Board had found that the advertisement did breach clause 2(a), the Board made a similar determination in relation to the driving practices depicted for the purposes of analysing clause 2(c).

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