



CASE REPORT

1. Complaint reference number	428/09
2. Advertiser	Mitsubishi Motors Australia
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Driving practice that would breach the law
6. Date of determination	Wednesday, 23 September 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

A young man and woman explain the many reasons why they enjoy their Mitsubishi Outlander so much. They are depicted in nature and are pleased their vehicle enables them to visit off-road locations. They talk about the speakers, ipod, bluetooth and the advertisement cuts to the vehicle driving (with its fog lights on) on the road with two bicycles on the top. The young man mentions how the vehicle has a very big sub-woofer and then says there is no where it cannot go. The advertisement then cuts to the young woman sitting near the back of the vehicle and she comments how they love the space in the back, it lets us get all our gear in. It is exactly the car we need. The voiceover refers to the new limited edition Mitsubishi Outlander.

THE COMPLAINT

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

The ad depicts a Mitsubishi Outlander driving in broad daylight with its fog lights in operation.

I believe that in all Australian states now, it is illegal to fog lights unless driving in fog or other hazardous weather conditions.

For example, the law in Victoria states:

"Using fog lights: A driver must not operate any front or rear fog light fitted to the vehicle unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility."

In summary, there are four reasons why I think the ad should be modified:

- 1. It demonstrates an illegal activity.*
- 2. Given that the relevant law is very poorly understood/known by the public, and particularly given that many cars today are being sold with fog lights fitted as standard, car companies should not be promoting the use of fog lights in a way that would mislead the public or create further confusion amongst the public.*
- 3. From an occupational health & safety perspective, there does not seem to be a need for having the fog lights in operation during the filming of the ad.*
- 4. From a sales & marketing perspective, having the fog lights in operation doesn't add any value to the ad.*

I look forward to your response.

THE ADVERTISER'S RESPONSE

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

2. RESPONSE TO COMPLAINT

2.1 General observations

The complainant's assertion that "the entire ad takes place in broad daylight" is incorrect. All footage displaying the exterior of the vehicle in the TVC is shown to be at dusk or in relatively low light conditions. In particular, the MMAL Outlander is shown in (and driving through) a forest in a heavily shaded area due to the canopy of the trees above. The low light conditions may be considered hazardous conditions causing reduced visibility.

2.2 Compliance with the AANA and FCAI Codes

The nature of the complaint specifically identified paragraph 2(c) of the FCAI Code. Clause 2 of the FCAI Code provides (relevantly): "Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

...

(c) 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 the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation." As the complainant cannot identify where the TVC was aired, we cannot be certain as to which laws are the relevant laws with regard to paragraph 2(c) above. However, the complainant appears to be referring to Road Rule 217 which provides:

"The driver of a vehicle fitted with front fog lights or rear fog lights must not operate the fog lights unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility." The TVC shows the vehicle driving at dusk and in low light (but not night time) conditions. Further, where the Outlander is depicted driving along a road at dusk the background of that scene clearly identifies trees alongside the road casting shadows over the road.

In light of the above, the reduced visibility due to it being dusk and the shading of trees, due to both the overhead canopy and those alongside the road, the vehicle is driving in hazardous lighting conditions with reduced visibility. It may therefore be appropriate in those circumstances that the fog lights be illuminated.

There is no question that all driving depicted was safe and at no time was any person dazzled by the lights of the Outlander.

For completeness, we consider that the TVC complies with paragraphs 2(a), 2(b), 2(d), 2(e) and 3 of the FCAI Code and other sections of the AANA Code.

3. SUMMARY

There are no other cars depicted with the Outlander. The Outlander is moving from and through shaded areas in low light conditions and is therefore moving in a hazardous environment with reduced visibility. It may be appropriate in these circumstances that its fog lights be illuminated. At no time is the Outlander driving in any way that is unsafe or a risk to the public.

On the basis of the above, we therefore submit that there is no breach of the AANA or FCAI Codes and request that the complaint be dismissed. MMAL takes its obligations under the AANA and FCAI Codes seriously. It particular, MMAL seeks to ensure that all driving shown in any advertisement for MMAL is safe while also highlighting the features and durability of its vehicles.

If for any reason the Board considers there to be any ambiguity or have any concern in relation to the TVC, MMAL's advertising agency will attempt to modify or otherwise discontinue the TVC within 3 weeks of being informed of the Board's concerns.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

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 complainant's observation that the vehicle was depicted driving during the day with its fog lights on and considered whether the advertisement was in breach of sections 2(a) or 2(c) of the FCAI Code.

Section 2(c) of the Code states: Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

"(c) Driving practices or other actions would, if they were to take place on a road or road related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

(examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle. Motor cyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion]."

The Board acknowledged that the vehicle was depicted driving on off-road terrain and then on a country road with its fog-lights on. However, the Board was of the view that the advertisement did not portray any unsafe driving and that the application of section 2(c) of the FCAI Code relates to the actions of the person in the vehicle and not the vehicle driving in a certain manner.

The Board then considered whether the advertisement depicted unsafe driving under section 2(a) of the FCAI Code. The Board noted that although the FCAI Code does not expressly refer to breaches of Australian road laws, the Guidelines to the FCAI Code state that advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. The Board noted that Australian Road Rule 217 states that:

'The driver of a vehicle fitted with front fog lights or rear fog lights must not operate the fog light unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility.

The Board also noted Rule 213 Using Lights When Driving At Night or In Hazardous Weather Conditions, which provides that:

(3) Also, a driver driving during the day in fog, or other hazardous weather conditions causing reduced visibility, may drive without the headlights of the driver's vehicle operating if the vehicle is fitted with front fog lights and those lights are operating effectively and are clearly visible.

The Board noted the advertiser's response that the vehicles is being driven at dusk where there are trees throwing shadows across the road and that in this situation the use of fog lights is in accordance with the Road Rules. The Board viewed the advertisement and considered that the scenes of the car in the forest area were certainly areas of reduced visibility. With regards to the depiction of the car driving along a road, the Board agreed that the shadows from the trees were across the road, and that the image is suggestive of dusk. The Board considered that some drivers would consider this a circumstance which amounts to a situation of reduced visibility in which the use of fog lights would be justified. The Board also noted that there were no other vehicles driving. The Board noted that the use of fog lights as depicted in this advertisement was arguably justified and that it did not breach section 2(a) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.