



CASE REPORT

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| 1. Complaint reference number | 67/04 |
| 2. Advertiser | Mitsubishi Motors Australia Pty Ltd (Lancer VR-X) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Other |
| 6. Date of determination | Tuesday, 13 April 2004 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The advertisement depicts a Mitsubishi Lancer VR-X featuring the additional “livery” of a rally car version of that vehicle and being driven along a track in bushland and muddy terrain. The driver’s hand is depicted wearing a driving glove.

The car is then depicted being sprayed with water and the racing “livery” is removed by the water along with the mud. The production version of the vehicle is then revealed.

THE COMPLAINT

Comments which the complainant/s made included the following:

“This advertisement violates the Code in a number of respects as it depicts reckless driving, manoeuvring around corners at unsafe speeds and driving at a speed inappropriate for the conditions.”

“As the driving behaviour depicted in the advertisement is illegal in NSW if it were to occur on a road or road related area, the section of the Code of the Practice violated by the advertisement is 2(a).”

THE ADVERTISER’S RESPONSE

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

“The Mitsubishi vehicles that race in the World Rally Championships and the Australian Rally Championships are based on the Mitsubishi Lancer production vehicle. There are a very high number of common parts shared between the race and road cars – in fact, even high-stress parts like the braking system are shared between the production and Group N Rally Cars. This television commercial is a dramatisation of this link.”

“We maintain the driving footage featured within the commercial is a legitimate use of Motor Sport.”

“The Motor Sport footage is followed by a sequence where the car is cleaned to remove the mud it has collected on the track. Here, fantasy is employed – where not only the mud is washed off the car, but so is its racing ‘livery’.”

“The commercial in question quite clearly employs both fantasy and self-evident exaggeration.”

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 (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 Lancer VR-X “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 Lancer VR-X 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(a) was relevant in the circumstances.

In order for clause 2(a) to be breached, the driving practices described in that clause are a breach of the Code to the extent that they would breach any law of the Commonwealth or State dealing with road and safety or traffic regulation, were they to occur on a “road or road related area.”

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

“Obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any Commonwealth law.”

Although the Board acknowledged that the driving practices depicted were unsafe, 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 considered that the aesthetics of the advertisement created a surreal-like effect and made legitimate use of fantasy and self-evident exaggeration. The Board pointed to the stylistic visual and audio effects and dark fantasy-like filming techniques as evidence of the use of fantasy.

The Board also noted that the car displayed racing decal and that the driver was wearing a racing glove which supported the legitimate use of motor sport. Further in support of this conclusion, the Board noted that the car was being driven in a rally track environment.

The Board therefore found that the driving practices depicted in the advertisement made legitimate use of fantasy and self-evident exaggeration and motor sports in creative ways.

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(a) of the FCAI Code.

The Board dismissed the complaint.