



CASE REPORT

1. Complaint reference number	72/10
2. Advertiser	Mitsubishi Motors
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 24 February 2010
7. DETERMINATION	Upheld – discontinued or modified

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts a four wheel drive being admired by some friends, it is shown on and off road. The scene cuts to water skiing and there are two men in the boat and one boy with another child ski boarding. The children are wearing life jackets but the men are not.

THE COMPLAINT

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

The men in the boat aren't wearing life-jackets (the two boys are). My understanding is that any person in a boat, regardless of their age, must wear life-jackets. This ad is encouraging dangerous and unsafe behaviour.

THE ADVERTISER'S RESPONSE

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

1. THE COMPLAINT

The complaint to which we are responding was made by an unidentified person. The complainant describes the TVC in the following terms:

“People at community sporting ground talking about another family’s new car and how they were going to drive to Lake Narabine and how you’d need a good 4WD to get there. Family goes off road to the lake and joins another family. Ad then shows one young boy waterskiing behind a moving boat, with two men and another boy in the boat.” (sic)

The complainant describes the cause for concern as:

“The men in the boat aren’t wearing life-jackets (the two boys are). My understanding is that any person in a boat, regardless of their age, must wear like-jackets. This ad is encouraging dangerous and unsafe behaviour .” (sic)

The complaint is stated to be based on section 2.6 of the Australian Association of National Advertisers Code of Ethics (AANA Code) which provides:

“advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety”.

2. RESPONSE TO COMPLAINT

2.1 General observations

The complainant's assertion that 'any person in a boat, regardless of their age, must wear life-jackets', is incorrect. To the best of MMAL's knowledge, there is no prescribed safety regulation in mainland Australia that requires every adult person in the boat depicted in the TVC to wear a life-jacket (although there are requirements that, for example, life jackets be available in the boat. However, that is not relevant here, as there is no challenge – nor could there be – suggesting that there was any failure to comply with this requirement).

Irrespective of the above, it should be observed that both of the young children in the TVC are wearing life-jackets. This is, by its very nature, promoting safety for children.

The TVC does not at any time, encourage 'dangerous and unsafe behaviour' as asserted

by the complainant. This is particularly true in light of the slow speed at which the vessel is travelling and the careful and cautious nature of the driving depicted.

The intention of the TVC is to show that the Mitsubishi Challenger is a versatile vehicle that is equally capable in both the city environment and in taking a family to an otherwise inaccessible location to enjoy a fun, relaxing and safe activity.

For all of the above reasons, in MMAL's view the TVC does not depict material contrary to 'prevailing community standards on health and safety' and is therefore compliant with clause 2.6 of the AANA Code. For completeness, in MMAL's view the TVC is compliant with all aspects of the Federal Chamber of Automotive Industries Advertising (FCAI) Code and the AANA code.

3. SUMMARY

MMAL and its agency, Clemenger BBDO, have taken every care in producing the TVC in order to ensure that it complies strictly with the AANA and FCAI Codes.

We have successfully ensured that the wake-boarding activity depicted appears to be a fun, but most importantly safe, activity to be enjoyed by a family.

We therefore submit that there is no breach of the AANA or FCAI Codes and request that the complaint be dismissed.

THE DETERMINATION

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

The Board noted the complainant's concerns that the advertisement depicted people in a boat without wearing life jackets and that it was dangerous and unsafe behaviour.

The Board noted the advertiser's response and viewed the advertisement.

The Board considered whether the advertisement was in breach of section 2.6 of the Code. Section 2.6 of the Code states:

"Advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety."

The Board noted that the men depicted in the advertisement are not wearing life jackets whilst in a vessel that is moving and that the advertisement sets the scene for the boating at Lake Narracan in Victoria.

The Board noted that the regulations in Victoria with respect to the wearing of life jackets whilst on board a moving vessel has recently changed and that all people on board a moving vessel of the type depicted in the advertisement are required to wear a life jacket, unless they were expressly exempted.

The Board noted that the vessel depicted in the advertisement did not fall within the exempted categories and therefore the advertisement depicted a scenario that was in breach of the regulations for wearing of life jackets in Victoria. The Board noted that the laws governing the wearing of life jackets was not harmonised and therefore it was jurisdictional based. Although not necessarily law in all jurisdictions, the Board considered that wearing life jackets is a community

expectation and that this does amount to a community standard. The Board considered that the advertisement's depiction of men not wearing a life jacket did amount to a depiction of material that is contrary to prevailing community standards on safety - specifically safety when boating. On this basis the Board agreed that the advertisement was in breach of section 2.6 of the Code in Victoria.

Finding that the advertisement was in breach of the Code, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

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

We write in response to the ASB's determination in complaint 72/10 that Mitsubishi Motors Australia's TVC that was the subject of that complaint is in breach of section 2.6 of the AANA/Code in Victoria.

On the basis of your determination we have created a modified version of the TVC for future broadcast in Victoria only so that the version aired in that State will not show adults in a boat without life jackets.