

## Case Report

1. Case Number :	0080-24
2. Advertiser :	Mitsubishi Motors Australia Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	3-Apr-2024
6. Decision:	Dismissed

### ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving  
FCAI Motor Vehicle Advertising Code\2(b) Breaking the speed limit

### DESCRIPTION OF ADVERTISEMENT

This advertisement depicts a vehicle leaving a shipping container and passing by a security station with two employees.



### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*Revvng engine, speeding car, promoting hoon behaviour and dangerous driving practises.*

### THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*The complaint relates to a television commercial (TVC) that is the first in a Mitsubishi Motors Australia Limited (MMAL) campaign to promote its new generation 2024 Model Triton. The campaign will demonstrate the advanced 4WD features of the Triton, its safety features and relevantly in relation to this first TVC, its advanced technological features. In each instance, this will occur against the backdrop of the theme "Nothing can frighten a Triton" and will, as in this first TVC, rely on elements of fantasy, creative self-exaggeration and humour.*

## *1 The TVC*

### *1.1 General description*

*The TVC depicts a new model Triton 'escaping' from a shipping container. With no driver, it rouses from its slumber and comes alive; and its headlights come on, its engine revs, its dashboard lights up (and it connects with the world by tuning into a radio station) as it does so. The doors of the container then fly open (without human intervention and without impact from the vehicle) and the Triton then enters into the open, passes two security guards and turns out of the container yard and onto city streets, where it travels into the night.*

### *1.2 Specific information sought*

*MMAL has supplied the specific information sought by you in relation to the TVC by completing the relevant sections of the online "Advertiser Response Form".*

## *2 The Complaint*

*2.1 The complaint does not reference any clauses of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code), but stipulates as the "Reason for Concern":*

*"Revving engine, speeding car, promoting hoon behaviour and dangerous driving practises"*

*2.2 You have assessed the complaint as raising the following issues under the FCAI Code:*

*(a) clause 2(a): Unsafe driving\unsafe driving that would breach road rules; and*

*(b) clause 2(b) Breaking the speed limit\driving at speeds in excess of speed limits.*

*2.3 In responding, you will see that we have also noted and addressed your general observations as to the operation of clause 2 of the FCAI Code.*

## *3 Response to Complaint*

*3.1 Clauses 2(a) and (b) of the FCAI Code*

*(a) Clause 2(a) and (b) of the FCAI Code relevantly provide as follows:*

*"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:*

*(1) Unsafe driving, including reckless and menacing driving that would breach any [Commonwealth or State law] ... dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area...*

*[Examples: vehicle travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course...]*

*(2) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast."*

*(b) The complaint is expressed to spring from a concern that the "Revving engine" and what the complainants see as a "speeding car" combine so as to "[promote] hoorn behaviour and dangerous driving practices". It appears from the description of the TVC provided by the complainants that the speed that concerns them is the speed at which the vehicle travels past the security guards.*

*(c) In response to those specific elements of the complaint (and noting the matters you suggest be addressed in response to a clause 2 complaint):*

- (i) the vehicle depicted in the TVC was driven within speed limits that would be applicable were the driving that is depicted to have occurred on a road or road-related area and where the driving did in fact occur on a road; and*
- (ii) all elements of the driving depicted in the TVC would conform to (and not breach) relevant road safety laws or regulations were the driving to occur on a road or road-related area;*

*(d) Further, the depicted revving of the engine of the vehicle is not itself a breach of any law of any State or Territory.*

*(e) However, the essence of the complaint is not that the TVC in fact depicts "Unsafe driving, including reckless and menacing driving" or "driving at speeds in excess of speed limits", but rather, that what is depicted – the overall look and feel of the TVC – will encourage unlawful or dangerous driving practices.*

*(f) In responding to that aspect of the complaint, MMAL is (and was when shooting the TVC) conscious of the guidance provided to advertisers in relation to clause 2(a) and in particular, the statements that:*

*"advertisers [should] be mindful of the importance of road safety and ... ensure that advertising ... does not contradict road safety messages or undermine efforts to achieve improved road safety outcomes in Australia.*

*Advertisers should ensure that advertisements do not depict, encourage or condone dangerous, illegal, aggressive or reckless driving ... [and should be] mindful that excessive speed is a major cause of death and injury ... and accordingly should avoid explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle."*

*(g) However, it is also important to note that the Guidance Note to the FCAI Code goes on to acknowledge:*

*"... that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the [FCAI Code]."*

*(h) This TVC is clearly intended to convey an air of fantasy and employ exaggeration and humour to excite interest.*

*Without human involvement, the vehicle wakes itself up, the container miraculously opens, and the unmanned vehicle leaves the container, passes the two security guards and then exits the yard to travel freely on the highway. The revving of the engine that is complained of is a device, which, together with the headlights coming on, the dashboard lighting up and the radio tuning into a station, conveys the intended impression that the Triton is waking up and, akin to a human, stretching and flexing and becoming alert, before going about its business. Again, though, the revving itself is not a breach of any road law, and importantly, it has completely subsided before the vehicle moves off. And when the Triton engages its gears and exits the container, it is clearly depicted as doing so under control, with no excessive noise or depiction of excessive acceleration; indeed, almost sedately. The vehicle then passes the two guards. It appears that it is this scene that is relied on by the complainants when they assert that the TVC depicts a "speeding car".*

*As already noted, the vehicle travelled within applicable (or any that might be applicable) speed limits at all time. Any sense as to the speed at which the vehicle is travelling must therefore be gleaned from the depictions of the vehicle's movement, rather than the fact of speed. And in relation to that, it is important to note that:*

- the scene in which the vehicle passes the security guards is very short;*
- it is another element of the 'escape' of the Triton and is purposely shot so as to suggest that the Triton is getting away. However, we have been careful to ensure that the scene does not suggest excessive speed by ensuring that the security guards are clearly well out of the vehicle's path and that while they show some initial surprise, there is no danger or risk to them;*
- indeed, once the security guards are alerted by the sound of the approaching vehicle, they have sufficient time to rise, shine their torches at the vehicle and track its movement, all without any sense of danger or apprehension that might be associated with the vehicle travelling at excessive speed – indeed they are almost casual about it (which is consistent also with this being 'another' Triton on the loose).*

*Further and very importantly (having regard to the complaint that the TVC promotes hoon behaviour and dangerous driving practices), what the TVC conveys as to the speed of the vehicle should be considered in context: the overhead shot that follows immediately after the vehicle passes the security guards and continues on its way, clearly depicts a vehicle travelling at a safe (even conservative) speed, with lights on and fully under control. That impression is only further reinforced by the driving (and*

*manner of driving) on the highway that then follows; driving that is also clearly not at excessive speed or otherwise unlawful.*

*(i) In summary, therefore, MMAL is of the view that there is no breach of clauses 2 (a) or (b) of the FCAI Code. To the contrary, MMAL believes that the TVC depicts the driving of the Triton in a way that is safe, without excessive speed and in a manner that, even when combined with the 'revving' of the vehicle in the container, does not depict, encourage or condone dangerous, illegal, aggressive or reckless driving. In short, the TVC is an example of the legitimate use of fantasy, humour and self-evident exaggeration in a creative way without in any way contradicting, circumventing or undermining the FCAI Code.*

### *3.2 Other provisions of the FCAI Code*

*(a) You have directed attention to clause 3 of the FCAI Code, which is concerned with use of motor sport in motor vehicle advertising.*

*(b) There is no motorsport depicted in the TVC therefore clause 3 does not apply.*

### *3.3 Application of the Code of Ethics*

*(a) We acknowledge that the TVC is subject to the Code of Ethics.*

*(b) The advertisement does not contain any form of discriminatory, exploitative, degrading, violent, sexual or obscene material in breach of the Code of Ethics.*

*(c) Section 2.6 of the Code of Ethics provides that advertisements "shall not depict material contrary to Prevailing Community Standards on health and safety." For the reasons set out above, MMAL believes that the TVC does not breach this provision.*

### *Conclusion*

*For the reasons set out above, we are of the view that the TVC does not contravene either the FCAI Code or the Code of Ethics and request that the complaint be dismissed.*

## **THE DECISION**

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the FCAI Code).

The Panel noted the complainant's concerns that advertisement promoted unsafe and aggressive driving and speeding.

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

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 a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct".

The Panel considered whether the 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 Panel determined that the vehicle depicted was a Motor Vehicles as defined in the FCAI Code.

The Panel determined that the material before it was an advertisement for a motor vehicle and therefore that the FCAI Code applied.

The Panel then analysed specific sections of the FCAI Code and their application to the advertisement.

**Clause 2(a) - Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would 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 with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.**

The Panel noted that the advertisement has a fantastical element as the vehicle is depicted as not having a human driver.

The Panel noted that the advertisement includes loud sound effects when the vehicle turns on, and when it passes the security guards. The Panel considered however that the depiction of loud engine sounds is not by itself a suggestion of 'hooning' or dangerous driving practices.

The Panel noted that the vehicle is shown to pass by the security guards, however noted that the speed does not appear to be particularly fast given the papers on the desk stay still and the security guards don't appear to have been affected (eg no windblown hair, clothes, alarm, jumping back). The Panel considered that while the vehicle may have passed closely to them, there is no suggestion that this was unsafe or that the security guards were or felt in danger.

The Panel considered that while the vehicle was shown and heard accelerating, there is no indication that the vehicle is speeding or that the (invisible) driver is not in control.

Overall, the Panel considered that the vehicle appears to be under control, and is not driving in a manner which would breach road rules or is unsafe.

### **Clause 2(a) conclusion**

The Panel considered that the advertisement did not depict the vehicle engaging in unsafe driving or menacing driving which would be likely to breach relevant Commonwealth Law were it to occur on a road or road related area. The Panel considered that the advertisement did not breach Clause 2(a) of the FCAI Code.

### **Clause 2(b) Advertisers should ensure that advertisements for motor vehicles do not portray people driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.**

The Panel noted that the impression of speed in this advertisement was due to the soundtrack, and not because the vehicle was travelling at excessive speeds. The Panel noted that the vehicle is shown to be under control and there was no indication that it was being driven in an aggressive or dangerous manner.

The Panel considered that there is no suggestion that the vehicle is exceeding speed limits or driving at a speed that is unsafe.

### **Clause 2 (b) conclusion**

The Panel found that the advertisement did not breach Clause 2 (b) of the FCAI Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the FCAI Code, the Panel dismissed the complaint.