

COMPLAINT NUMBER	18/042
COMPLAINANT	R Green
ADVERTISER	Mitsubishi Motors New Zealand Limited
ADVERTISEMENT	Mitsubishi Motors New Zealand Limited, Digital Marketing
DATE OF MEETING	27 February 2018
OUTCOME	Upheld

SUMMARY

The Mitsubishi Motors New Zealand website (www.mmnz.co.nz) and Facebook advertisements said, in part: “10 year. 5 year. Diamond Advantage. New Zealand’s best new car warranty and customer care. Visit www.mmnz.co.nz for terms and conditions.”

The Complainant was concerned the claim that Mitsubishi have “New Zealand’s best new car warranty” was misleading as it was only transferable for three years and the 10-year warranty was only available to the first owner of the vehicle.

The Advertiser said it was the only brand to offer a 5 year new car warranty with a 10 year Powertrain warranty across the full range of new Mitsubishi vehicles and provided industry articles and commentary on the warranty to support the claim.

The Complaints Board said the claim, “New Zealand’s best new car warranty”, was a broad claim and the substantiation provided did not support the likely consumer take out that it was the best overall. The Complaints Board said without referring to the specific feature or features that may be superior, such as the 10-year powertrain warranty, the advertisements gave a misleading impression to consumers.

The Complaints Board said the advertisements were in breach of Basic Principle 4 and Rule 2 of the Code of Ethics and ruled the complaint was Upheld.

[Advertisements to be removed / amended]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisements with reference to Basic Principle 4 and Rule 2 of the Code of Ethics.

Basic Principle 4 of the Code of Ethics required the Complaints Board to consider whether the advertisements had been prepared with a due sense of social responsibility to consumers and society.

Rule 2 of the Code of Ethics required the Complaints Board to consider whether the advertisements contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

The Complaints Board ruled the complaint was Upheld.

The Complaint

The Complainant was concerned the claim that Mitsubishi have “New Zealand’s best new car warranty” was misleading as it was only transferable for three years and the 10-year warranty was only available to the first owner of the vehicle.

Response from MinterEllisonRuddWatts, on behalf of Mitsubishi Motors NZ

The Advertiser said, in part: “Mitsubishi takes pride in its claim that its Diamond Advantage warranty is New Zealand’s best new vehicle warranty. Mitsubishi have offered the Diamond Advantage warranty since 2009. Since its introduction, it has been promoted as New Zealand’s best new car warranty and until the Complainant complaint has not been the subject of either competitor challenge or consumer complaint... MMNZ periodically undertakes an assessment of competitors’ warranty offerings in the market. This satisfies Mitsubishi that the statement it makes to the market (that Mitsubishi provides the best new car warranty in New Zealand) remains a truthful presentation that is capable of substantiation.”

The Advertiser said it offers the following on all new vehicles across its range:

- (a) a “bumper-to-bumper” warranty for the first 5 years or 130,000km (whichever occurs first) – pursuant to warranty terms and conditions, this is transferrable to a new owner within the first 3 years.
- (b) a 10 year or 160,000km (whichever occurs first) Powertrain warranty; and
- (c) a 5 year free roadside assistance package offered through New Zealand’s premium assistance provider, the AA.

The Advertiser explained that “Mitsubishi is the only brand to offer, without additional payment, a 5 year new car warranty with a 10 year Powertrain warranty across the full range of new Mitsubishi vehicles. While some brands have higher kilometre ranges on their new vehicle warranties, no other brand comes close to offering a free 10 year warranty which covers all driveline components.

...Mitsubishi’s Powertrain warranty covers the major internal mechanical components being the engine, transmission/transactional, 4 wheel drive transfer case, propeller shaft, drive shafts and axels, and differentials – in short, all main components of the vehicle’s propulsion system. These are typically a vehicle’s largest and most expensive components – and equivalently can be the most expensive parts to repair or replace... The additional conditions of the Powertrain warranty clearly and prominently disclose that it is available only to the original purchaser of the vehicle.”

Precedent Decisions

The Complaints Board noted the following precedent Decisions applicable to the matter before it.

Complaint 18/016 AWAP 18/001 considered whether the claim that the SsangYong Rexton G4 had a 'class leading warranty' was able to be substantiated or likely to mislead consumers. In that Decision the Panel said, in part: "the likely consumer takeout of the claim that the SsangYong Rexton G4 had a 'class leading warranty' was that the warranty was generally superior overall in comparison with other warranties in the same vehicle class. The transferability of the warranty would not necessarily be the only or most significant feature that consumers would look at when deciding which warranty is generally superior overall.

The Panel said there was no qualification in the advertisement, or reference as to the source of the claim, which informed the consumer that the transferability of the warranty was the main component which the Advertiser considered elevated the warranty to 'class leading'. The Panel said without the qualification and due to a lack of adequate substantiation to support the likely consumer takeout, the claim that SsangYong Rexton G4 had a 'class leading warranty'."

Complaint 16/178 Appeal 16/014 considered whether the claim that the Korando SUV was "New Zealand's best value mid-size SUV" was misleading. The Appeal Board considered the likely consumer take out of "Best Value" and said, in part: "'best' is a superlative term used for comparing one thing favourably with every other member of their group. The term 'best' is always used in relation to more than one alternative... 'Value' is a subjective term and can mean different things to different people. In this case value can be measured by a number of factors, including price, the cost of servicing the car, resale value, cost of spare parts, dealer back up and service, special features and so on."

The Appeal Board said the term 'Best value' is an absolute term and agreed consumers "need to have confidence the Advertiser has a reasonable basis for making a claim of 'best value'. Any claims made by advertisers therefore, should be supported by sound, relevant, clear and robust evidence. A "best value" claim would generally imply a comparison with other similar products available on the market. In this case this would mean a comparison with all the other mid-size SUVs available on the New Zealand market.

...The Appeal Board agreed that in order to support the unqualified claim that the Ssangyong Korando SUV is "New Zealand's best value mid-size SUV", the Advertiser would need to provide specific evidence...This evidence could include information about all the other mid-size SUVs available in New Zealand, and how the Ssangyong Korando was relatively better value overall.

As the advertisement did not contain this information the onus was on the Advertiser to provide this evidence, in response to the complaint. The Appeal Board agreed this evidence was not provided... The Appeal Board ruled the advertisement was likely to mislead the consumer and had not been prepared with a due sense of social responsibility to consumers."

Complaint 11/171 considered whether the claim that "Airtech are the premier Fujitsu installer in Auckland" was likely to mislead consumers. That Decision said, in part: "the majority of the Complaints Board was of the view that "premier" was a definitive term that meant "first" or "best". The majority also stated that the Advertiser had not substantiated their claim that they were "premier" or first in sales and noted that, in fact, they stated in their response that they were third in sales. Therefore, after making these observations and taking into account the above precedent [10/678], the majority was of the view that the inclusion of the word in the advertisement was likely to deceive or mislead the consumer and, as such, as in breach of Rule 2 of the Code of Ethics."

Complaint 09/700 considered whether the claim "When it comes to safety, follow the leader. Every new Hyundai has ESP" was misleading. In that Decision, the Complaints Board

noted, in part that the Advertiser, Hyundai, was of the view that ESP was *'one of the most important safety measures introduced into vehicles since the invention of the seat belt.'* However, [the Complaints Board] said that this referred to one factor, ESP, and it did not substantiate the likely consumer take out from the advertisement which, in the Complaints Board's view, was that Hyundai was the leading brand for car safety overall. Accordingly, the Complaints Board was unanimous in its view, that the advertisement contained a statement that created an overall impression which by implication was likely to deceive or mislead the consumer, abuse the trust of the consumer or exploit his/her lack of experience or knowledge. As such the Complaints Board ruled that the advertisement was in breach of Rule 2."

Complaints Board Discussion

The Complaints Board considered all the information provided to it and said its role was to consider the likely consumer take out of the claim "New Zealand's best new car warranty" and whether it was likely to mislead the consumer.

The Complaints Board took in to account the various precedent Decisions (18/016 AWAP 18/001; 16/178 Appeal 16/014; 11/171; 09/700) where it was established that claims such as 'best', 'best value', 'premier', and 'class leading', where no specific feature is identified and no qualification provided, the consumer would understand to be an overall comparison between products. The Complaints Board confirmed the absolute nature of such claims required robust substantiation which was ideally independent and used industry accepted methodology where relevant.

The Complaints Board said the likely consumer takeout of the claim "New Zealand's best new car warranty" in the advertisements before it was that the Mitsubishi warranty was generally superior overall in comparison with all other new vehicle warranties in New Zealand. The Complaints Board noted that a warranty would be an important part of a consumer purchasing decision and the specific value of components of a warranty may differ depending on the customer's individual needs.

The Complaints Board said the claim "New Zealand's best new car warranty" was an absolute claim and then considered whether the information provided to it from the Advertiser supported the claim. It noted the Advertiser provided industry articles which referred to the standard warranty components as bumper to bumper, power train and roadside assist and commentary on the Mitsubishi warranty which referred to the "Powertrain" aspect as "impressive" and "industry leading". The Complaints Board also noted the comparison table provided.

After making the above observations, the Complaints Board said the advertisement with just a reference to 5 and 10 years and the claim, "New Zealand's best new car warranty" was a broad claim and the substantiation provided did not support the consumer take out that it was the best overall. The Complaints Board said without referring to the specific feature or features that may be superior, such as the 10-year powertrain warranty, the advertisements gave a misleading impression to consumers. The Board noted that for some consumers a higher kilometre range for the bumper to bumper aspect of the warranty may be the most important feature.

The Complaints Board noted the Complainant's concern it was not clear the 10-year warranty was available only to the first owner of the vehicle. The Complaints Board did not accept that. It said the advertisement contained a link to the Advertiser's website where the terms and conditions of the warranty were set out.

The Complaints Board found the claim "New Zealand's best new car warranty" was not substantiated and ruled it was in breach of Rule 2 of the Code of Ethics and the

advertisements had not been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Upheld.

DESCRIPTION OF ADVERTISEMENT

The website (www.mmnz.co.nz) and Facebook advertisements for Mitsubishi Motors New Zealand said, in part: "10 year. 5 year. Diamond Advantage. New Zealand's best new car warranty and customer care. Visit www.mmnz.co.nz for terms and conditions."

COMPLAINT FROM R GREEN

I was recently in the market for a new 4WD Ute and looked at all the options available in New Zealand. One of the deciding factors for me was the new vehicle warranty. Mitsubishi advertise their "NZ's best new vehicle warranty" online and in most of their print advertisements. On further investigation their warranty is only transferable for the first three years. The 10 year warranty is only for the first owner. Instead of the Mitsubishi Triton, I purchased a LDV T60 which has a five year transferable warranty, which is a better warranty for me.

Mitsubishi's claims are misleading as their 10 year warranty is only for the first owner, many people may not realize this. They shouldn't be able to claim "best warranty".

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

RESPONSE FROM ADVERTISER, LEGAL COUNSEL MINTERELLISONRUDDWATTS ON BEHALF OF MITSUBISHI MOTORS NEW ZEALAND LIMITED

2. We act for Mitsubishi Motors New Zealand Limited (**Mitsubishi** or **MMNZ**).
3. This letter responds to the complaint (18/042) made by the Complainant regarding the website advertising for Mitsubishi's 'Diamond Advantage' warranty.

The complaint

4. In his complaint, the Complainant asserts that Mitsubishi's claim that the Diamond Advantage warranty is "NZ's best warranty" is misleading and that Mitsubishi should not be able to claim "best warranty". This is because, the Complainant says, the 10 year Powertrain component of the Diamond Advantage warranty is transferable only for the first three years, and a five-year transferable warranty that came with an LDV T60 ute which the Complainant has purchased is, in the Complainant's view, a better warranty for him.

5. LDV (formerly known as Leyland-DAF Vehicles) is now part of the Chinese state-owned SAIC Motor Group. LDV is represented in New Zealand by Great Lake Motor Distributors Limited (**GLMD**), which is also the New Zealand distributor for Ssangyong. See ldv.co.nz/about LDV.

MMNZ's response

6. Mitsubishi is very mindful of, and takes seriously, its obligations as an advertiser to make claims that are accurate, and that it needs to be in a position to substantiate its claims.
7. Mitsubishi takes pride in its claim that its Diamond Advantage warranty is New Zealand's best new vehicle warranty. Mitsubishi have offered the Diamond Advantage warranty since 2009. Since its introduction, it has been promoted as New Zealand's best new car warranty and until the Complainant complaint has not been the subject of either competitor challenge or consumer complaint.
8. The full terms and conditions of Mitsubishi's Diamond Advantage warranty are **enclosed** with this letter, and are available online (at <http://www.mmnz.co.nz/warranty/terms-and-conditions/>). In summary Mitsubishi offers on all new vehicles across the range (including the Mitsubishi Triton ute which the Complainant says he considered):
 - (a) a "bumper-to-bumper" warranty for the first 5 years of 130,000km (whichever occurs first) – pursuant to warranty terms and conditions, this is transferrable to a new owner within the first 3 years.
 - (b) a 10 year or 160,000km (whichever occurs first) Powertrain warranty; and
 - (c) a 5 year free roadside assistance package offered through new Zealand's premium assistance provider, the AA.

Objective analysis

9. Mitsubishi takes care to prepare its advertising message with a sense of social responsibility to consumers and society. In respect of its claim that the Diamond Advantage warranty is New Zealand's best new car warranty, MMNZ periodically undertakes an assessment of competitors' warranty offerings in the market. This satisfies Mitsubishi that the statement it makes to the market (that Mitsubishi provides the best new car warranty in New Zealand) remains a truthful presentation that is capable of substantiation.
10. A table summarising Mitsubishi's most recent assessment of competitor warranty offerings is set out in the **schedule** to this letter.
11. Mitsubishi is the only brand to offer, without additional payment, a 5 year new car warranty with a 10 year Powertrain warranty across the full range of new Mitsubishi vehicles. While some brands have higher kilometre ranges on their new vehicle warranties, no other brand comes close to offering a free 10 year warranty which covers all driveline components.
12. Mitsubishi's Powertrain warranty covers the major internal mechanical components being the engine, transmission/transactional, 4 wheel drive transfer case, propeller shaft, drive shafts and axels, and differentials – in short, all main components of the vehicle's propulsion system. These are typically a vehicle's largest and most

- expensive components – and equivalently can be the most expensive parts to repair or replace.
13. The additional conditions of the Powertrain warranty clearly and prominently disclose that it is available only to the original purchaser of the vehicle. MMNZ is at a loss to understand why the Complainant would say “many people may not realise this” when he apparently did (he maintains it influenced his purchasing decision).
 14. The full terms of LDV T60’s new car warranty terms are not publicly accessible on LDV’s website. The Complainant does not include them with his complaint.
 15. In his complaint, however, the Complainant compares Mitsubishi’s warranty to a 5 year/130,000km warranty that came with the LDV T60 he purchased. It appears that the Complainant personally preferred 5 year transferability to the protection of the 10 year/160,000 Powertrain warranty, where the Diamond Advantage warranty has (MMNZ assumes) similar bumper-to-bumper cover for 5 years/130,000km and is transferable for 3 years. Put simply, the Complainant took the view that 5 year transferability was, for him, “better” than 3 year transferability and the Powertrain component of the warranty can simply be ignored. But beyond advancing the Complainant’s personal preference, he does not explain the reasons for his view.
 16. Objectively, with the inclusion of the 10-year Powertrain warranty, Mitsubishi offers the best new car warranty in the New Zealand market.
 17. MMNZ relies on its own analysis of, and market intelligence collected on, competitor-brand new car warranties. While it does not place any particular weight or reliance on the following industry articles and commentary, MMNZ notes that they support its own assessment of the Diamond Advantage warranty as market leading:
 - (a) New Zealand Company Vehicle Magazine – a neutral industry commentator - reviewed the 2018 Mitsubishi Eclipse Cross (<https://www.youtube.com/watch?v=ES7YcKb3qpo>). At 3:58 Damian O’Carroll describes the Diamond Advantage warranty as an “industry leading” 10 year warranty. Company Vehicle magazine a widely recognised magazine that has been running since 1992, targeted at persons in fleet buying and management roles.
 - (b) Cars.com – a neutral industry commentator based in the US market – has compared warranties available in the US market. A copy is **enclosed**. While in a different market, the report lists Mitsubishi’s warranty as “The Best” (equal with competitors that – in the US, but not in NZ – also offer a 10 year powertrain warranty). Cars.com notes that the powertrain warranties are not transferable, but nonetheless places Mitsubishi’s warranty above competitors’ 5-year transferable warranties that it rates only “Very Good”.
 - (c) NZ Automobile Association – a neutral supplier of vehicle services and information in New Zealand - provides a website page on new car warranties. A copy is **enclosed**. While the article incorrectly reports that Mitsubishi customers must choose between the 5 year bumper-to-bumper or powertrain warranties (consumers get both at no additional cost), the AA describes the Diamond Advantage powertrain warranty as “impressive” and covering “expensive engine componentry”.
 18. MMNZ also observes from the above that the objective assessments and independent commentary do not simply ignore the Powertrain warranty.

APPEAL INFORMATION According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.



COMPLAINT NUMBER	18/042
APPEAL NUMBER	18/007
COMPLAINANT	R. Green
APPLICANT	Mitsubishi Motors New Zealand
ADVERTISER	Mitsubishi Motors New Zealand
ADVERTISEMENT	Mitsubishi Motors New Zealand, Digital Marketing
DATE OF MEETING	29 May 2018
OUTCOME	Not Upheld, Appeal Allowed

SUMMARY

The Complaints Board ruled the complaint from R. Green about a claim on the Mitsubishi Motors website was Upheld at its meeting on 27 February 2018. The Advertiser appealed the Decision to the Chairperson of the Appeal Board who accepted it to be heard by the Appeal Board.

The Complainant said the claim “New Zealand’s best new car warranty” was misleading as it was not transferable after three years where other car brands offer five years.

The Appeal Board was satisfied with the level of substantiation provided in the Advertiser’s Appeal and said the advertisement referred to the Diamond Advantage warranty as an overall package which had the most comprehensive cover for the longest period for new car buyers. The Appeal Board said there was sufficient information on the website to indicate to consumers the benefits and conditions of the warranty and consumers were unlikely to mislead by the “best new car warranty” representation.

The Appeal Board said the advertisement was not likely to mislead or deceive consumers and had been prepared with a due sense of social responsibility. The Appeal Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

The Appeal Board ruled the complaint was Not Upheld and the appeal was Allowed.

Please note this headnote does not form part of the Decision.

APPEAL BOARD DECISION

The Complaints Board ruled the complaint from R. Green about a claim on the Mitsubishi Motors website was Upheld at its meeting on 27 February 2018. The Advertiser appealed the Decision to the Chairperson of the Appeal Board who accepted to it be heard by the Appeal Board.

The Chairperson ruled the appeal was Accepted under ground (v), it was in the interests of natural justice for it to be reheard. The complaint was to be placed before the Appeal Board for determination.

The Appeal Board confirmed its role was to consider the matter de novo that is, starting from the initial complaint and reviewing all subsequent correspondence, rulings, and submissions, considering the matter afresh.

The Chairperson directed the Appeal Board to consider the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement was likely to mislead or deceive consumers by exaggerated claim, omission or ambiguity and whether the advertisement had been prepared with a due sense of social responsibility to consumers and society.

The Appeal Board ruled the complaint was Not Upheld and Allowed the Appeal.

Appeal from the Advertiser, Mitsubishi Motors New Zealand

The Advertiser, Mitsubishi Motors New Zealand, appealed the Complaints Board Decision to Uphold R. Green's complaint about the claim that Mitsubishi has "New Zealand's best new car warranty".

Mitsubishi said the Complaints Board incorrectly applied precedent Decisions, required a higher level of substantiation than previously required, did not consider the warranty as a whole or that the advertisement clearly referred to the 5 year bumper to bumper and 10 year Powertrain year warranties.

The Advertiser said the Diamond Advantage warranty is a package and "it is the best available in the NZ market overall, with the most comprehensive cover for the longest term." Mitsubishi said it does not rely on a specific feature of the Diamond Advantage warranty and said it has reasonable grounds for its claim to the best warranty package overall.

Mitsubishi said the Diamond Advantage logo refers to both the "10 year" and "5 year" components of the warranty, "as well as to MMNZ's customer care, and it is, therefore, difficult to follow the Complaints Board's reasoning and suggestion that the 10 year Powertrain warranty was not referred to. It features as part of the headline message."

In response to the complaint, the Advertiser included cross-market comparisons to similar warranty products available in the NZ market which "provided specific evidence, sound, relevant, clear and robust, and sufficient to provide reasonable grounds for MMNZ's claim to the best warranty package overall."

The Advertiser also submitted a Statutory Declaration from a Mitsubishi employee which confirmed that the 10 year Powertrain warranty was utilised by Mitsubishi car owners.

Response from Complainant, R. Green

The Complainant responded to the Advertiser's appeal stating, in part: "The fact of the matter is, even though I, and everyone else I have spoken to about this completely disagree that Mitsi have the 'best new car warranty', they have failed to substantiate their claim in their advertising. There is no-reference on their advertising as to how their warranty is "the best", and I see from previously ASA rulings that referencing data to back these claims is required."

Appeal Board Discussion

The Appeal Board carefully considered all the information provided to it. The Appeal Board said it was required to determine whether the claim before it was in breach of the Code of Ethics, considering the consumer takeout of the advertisement from the perspective of its likely audience.

The Appeal Board considered the likely consumer take-out of the advertisement. It noted the advertisement said: “10 year. 5 year. Diamond Advantage. New Zealand’s best new car warranty and customer care. Visit www.mmnz.co.nz for terms and conditions.”

The Appeal Board said the advertisement promoted Mitsubishi’s Diamond Advantage *New Car Warranty* [emphasis added] and was directed at new car buyers. It said the advertisement referred to the 10 year Powertrain warranty and the 5 year Bumper to Bumper warranty as well as the customer care and directed consumers to its website for more information. The Appeal Board agreed a warranty would be an important consideration when making a significant purchase such as a new car.

The Appeal Board noted the Complainant’s concern that Mitsubishi’s warranty was not “the best” as it was only transferable for the first three years, unlike the warranty they received from another car company which is transferable for five years. The Appeal Board noted the transferability was of greater importance to the Complainant than other features, however, the Appeal Board said this was subjective and based on individual requirements.

The Appeal Board said the Complainant focused on the transferability aspect of Mitsubishi’s warranty and this formed the primary consideration for the Complaints Board in its Decision. However, the Appeal Board accepted the Advertiser’s view that the warranty needed to be considered as a package, rather than a feature to feature comparison.

The Appeal Board said the advertisement referred to the Diamond Advantage warranty as an overall package and the Advertiser had provided substantiation, including the cross-market comparison to support that it had the most comprehensive cover for the longest period for new car buyers. The Appeal Board accepted the Advertiser had reasonable grounds to make the claim, noting its specific audience were new car buyers. The Appeal Board said there was sufficient information on the website to indicate to consumers the benefits and conditions of the warranty and consumers were unlikely to mislead by the “best new car warranty” representation.

Taking the above into account, the Appeal Board said the Advertiser had substantiated the claim made in the advertisement and it was unlikely to mislead the consumer. The Appeal Board ruled the advertisement was not in breach of Rule 2 or Basic Principle 4 of the Code of Ethics and ruled the complaint was Not Upheld.

Accordingly, the Appeal Board ruled the complaint was Not Upheld and the appeal was Allowed.

Decision: Complaint **Not Upheld, Appeal Allowed**

DESCRIPTION OF ADVERTISEMENT

The Mitsubishi Motors New Zealand website (www.mmnz.co.nz) and Facebook advertisements said, in part: "10 year. 5 year. Diamond Advantage. New Zealand's best new car warranty and customer care. Visit www.mmnz.co.nz for terms and conditions."

COMPLAINT FROM R GREEN

I was recently in the market for a new 4WD Ute and looked at all the options available in New Zealand. One of the deciding factors for me was the new vehicle warranty. Mitsubishi advertise their "NZ's best new vehicle warranty" online and in most of their print advertisements. On further investigation their warranty is only transferable for the first three years. The 10 year warranty is only for the first owner. Instead of the Mitsubishi Triton, I purchased a LDV T60 which has a five year transferable warranty, which is a better warranty for me.

Mitsubishi's claims are misleading as their 10 year warranty is only for the first owner, many people may not realize this. They shouldn't be able to claim "best warranty".

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

RESPONSE FROM ADVERTISER, LEGAL COUNSEL MINTERELLISONRUDDWATTS ON BEHALF OF MITSUBISHI MOTORS NEW ZELAND LIMITED

19. We act for Mitsubishi Motors New Zealand Limited (**Mitsubishi** or **MMNZ**).
20. This letter responds to the complaint (18/042) made by the Complainant regarding the website advertising for Mitsubishi's 'Diamond Advantage' warranty.

The complaint

21. In his complaint, the Complainant asserts that Mitsubishi's claim that the Diamond Advantage warranty is "NZ's best warranty" is misleading and that Mitsubishi should not be able to claim "best warranty". This is because, the Complainant says, the 10 year Powertrain component of the Diamond Advantage warranty is transferable only for the first three years, and a five-year transferable warranty that came with an LDV T60 ute which the Complainant has purchased is, in the Complainant's view, a better warranty for him.
22. LDV (formerly known as Leyland-DAF Vehicles) is now part of the Chinese state-owned SAIC Motor Group. LDV is represented in New Zealand by Great Lake Motor Distributors Limited (**GLMD**), which is also the New Zealand distributor for Ssangyong. See ldv.co.nz/about LDV.

MMNZ's response

23. Mitsubishi is very mindful of, and takes seriously, its obligations as an advertiser to make claims that are accurate, and that it needs to be in a position to substantiate its claims.
24. Mitsubishi takes pride in its claim that its Diamond Advantage warranty is New Zealand's best new vehicle warranty. Mitsubishi have offered the Diamond Advantage warranty since 2009. Since its introduction, it has been promoted as New Zealand's best new car warranty and until the Complainant complaint has not been the subject of either competitor challenge or consumer complaint.
25. The full terms and conditions of Mitsubishi's Diamond Advantage warranty are **enclosed** with this letter, and are available online (at <http://www.mmnz.co.nz/warranty/terms-and-conditions/>). In summary Mitsubishi offers on all new vehicles across the range (including the Mitsubishi Triton ute which the Complainant says he considered):
 - (a) a "bumper-to-bumper" warranty for the first 5 years or 130,000km (whichever occurs first) – pursuant to warranty terms and conditions, this is transferrable to a new owner within the first 3 years.
 - (b) a 10 year or 160,000km (whichever occurs first) Powertrain warranty; and
 - (c) a 5 year free roadside assistance package offered through new Zealand's premium assistance provider, the AA.

Objective analysis

26. Mitsubishi takes care to prepare its advertising message with a sense of social responsibility to consumers and society. In respect of its claim that the Diamond Advantage warranty is New Zealand's best new car warranty, MMNZ periodically undertakes an assessment of competitors' warranty offerings in the market. This satisfies Mitsubishi that the statement it makes to the market (that Mitsubishi provides the best new car warranty in New Zealand) remains a truthful presentation that is capable of substantiation.
27. A table summarising Mitsubishi's most recent assessment of competitor warranty offerings is set out in the **schedule** to this letter.
28. Mitsubishi is the only brand to offer, without additional payment, a 5 year new car warranty with a 10 year Powertrain warranty across the full range of new Mitsubishi vehicles. While some brands have higher kilometre ranges on their new vehicle warranties, no other brand comes close to offering a free 10 year warranty which covers all driveline components.
29. Mitsubishi's Powertrain warranty covers the major internal mechanical components being the engine, transmission/transactional, 4 wheel drive transfer case, propeller shaft, drive shafts and axels, and differentials – in short, all main components of the vehicle's propulsion system. These are typically a vehicle's largest and most expensive components – and equivalently can be the most expensive parts to repair or replace.
30. The additional conditions of the Powertrain warranty clearly and prominently disclose that it is available only to the original purchaser of the vehicle. MMNZ is at a loss to understand why the Complainant would say "many people may not realise this" when he apparently did (he maintains it influenced his purchasing decision).

31. The full terms of LDV T60's new car warranty terms are not publicly accessible on LDV's website. The Complainant does not include them with his complaint.
32. In his complaint, however, the Complainant compares Mitsubishi's warranty to a 5 year/130,000km warranty that came with the LDV T60 he purchased. It appears that the Complainant personally preferred 5 year transferability to the protection of the 10 year/160,000 Powertrain warranty, where the Diamond Advantage warranty has (MMNZ assumes) similar bumper-to-bumper cover for 5 years/130,000km and is transferable for 3 years. Put simply, the Complainant took the view that 5 year transferability was, for him, "better" than 3 year transferability and the Powertrain component of the warranty can simply be ignored. But beyond advancing the Complainant's personal preference, he does not explain the reasons for his view.
33. Objectively, with the inclusion of the 10-year Powertrain warranty, Mitsubishi offers the best new car warranty in the New Zealand market.
34. MMNZ relies on its own analysis of, and market intelligence collected on, competitor-brand new car warranties. While it does not place any particular weight or reliance on the following industry articles and commentary, MMNZ notes that they support its own assessment of the Diamond Advantage warranty as market leading:
 - (a) New Zealand Company Vehicle Magazine – a neutral industry commentator - reviewed the 2018 Mitsubishi Eclipse Cross (<https://www.youtube.com/watch?v=ES7YcKb3qpo>). At 3:58 Damian O'Carroll describes the Diamond Advantage warranty as an "industry leading" 10 year warranty. Company Vehicle magazine a widely recognised magazine that has been running since 1992, targeted at persons in fleet buying and management roles.
 - (b) Cars.com – a neutral industry commentator based in the US market – has compared warranties available in the US market. A copy is **enclosed**. While in a different market, the report lists Mitsubishi's warranty as "The Best" (equal with competitors that – in the US, but not in NZ – also offer a 10 year powertrain warranty). Cars.com notes that the powertrain warranties are not transferable, but nonetheless places Mitsubishi's warranty above competitors' 5-year transferable warranties that it rates only "Very Good".
 - (c) NZ Automobile Association – a neutral supplier of vehicle services and information in New Zealand - provides a website page on new car warranties. A copy is **enclosed**. While the article incorrectly reports that Mitsubishi customers must choose between the 5 year bumper-to-bumper or powertrain warranties (consumers get both at no additional cost), the AA describes the Diamond Advantage powertrain warranty as "impressive" and covering "expensive engine componentry".
35. MMNZ also observes from the above that the objective assessments and independent commentary do not simply ignore the Powertrain warranty.

SUMMARY OF COMPLAINTS BOARD DECISION 27 FEBRUARY 2018

The Mitsubishi Motors New Zealand website (www.mmnz.co.nz) and Facebook advertisements said, in part: "10 year. 5 year. Diamond Advantage. New Zealand's best new car warranty and customer care. Visit www.mmnz.co.nz for terms and conditions."

The Complainant was concerned the claim that Mitsubishi have “New Zealand’s best new car warranty” was misleading as it was only transferable for three years and the 10-year warranty was only available to the first owner of the vehicle.

The Advertiser said it was the only brand to offer a 5 year new car warranty with a 10 year Powertrain warranty across the full range of new Mitsubishi vehicles and provided industry articles and commentary on the warranty to support the claim.

The Complaints Board said the claim, “New Zealand’s best new car warranty”, was a broad claim and the substantiation provided did not support the likely consumer take out that it was the best overall. The Complaints Board said without referring to the specific feature or features that may be superior, such as the 10-year powertrain warranty, the advertisements gave a misleading impression to consumers.

The Complaints Board said the advertisements were in breach of Basic Principle 4 and Rule 2 of the Code of Ethics and ruled the complaint was Upheld.

APPEAL APPLICATION FROM ADVERTISER, MITSUBISHI MOTORS NEW ZEALAND

Re: Decision in Complaint 18/042 (R Green / Mitsubishi Motors New Zealand Limited Digital Marketing) — request by Advertiser for appeal

1. We act for Mitsubishi Motors New Zealand Limited (**Mitsubishi** or **MMNZ**).
2. The Decision of the Advertising Standards Complaints Board in Complaint 18/042 (R Green / MMNZ Digital Marketing) upheld a complaint in respect of MMNZ's website (www.mmnz.co.nz) and Facebook advertising for Mitsubishi's Diamond Advantage warranty, promoted as "New Zealand's best new car warranty and customer care."



3. The Decision was adjudicated on without the attendance of parties. MMNZ, as a party to the complaint, requests an appeal of the Decision. It does so on grounds that:
 - (a) the Decision is against the weight of evidence and/or evidence provided to the Complaints Board has been misinterpreted;
 - (b) there is new evidence of sufficient substance to affect the Decision;
 - (c) proper procedures were not followed, in that if the Complaints Board considered that MMNZ relied on specific features of the Diamond Advantage warranty as "trumping" features of other warranties in the market, MMNZ ought to have been (but was not) offered the opportunity to respond to that proposition; and
 - (d) it is in the interests of natural justice that the matter be reheard.

4. MMNZ requested interim directions that the Decision not be released pending its evaluation of the Decision and consideration of an appeal. Such direction was granted by the Acting Chair of the Appeal Board pending submission of a request for an appeal.

The complaint

5. The complainant, Mr Green, asserted that Mitsubishi's claim that the Diamond Advantage warranty is "NZ's best warranty" is misleading and that Mitsubishi should not be able to claim "best warranty". This was because, the complainant said, Mitsubishi's warranty is transferable only for the first three years and the 10-year Powertrain warranty is only available to the original purchaser. A five-year transferable warranty that came with an LDV T60 ute which the complainant purchased was, in the complainant's view, a better warranty for him.
6. LDV (formerly known as Leyland-DAF Vehicles) is, MMNZ notes, now part of the Chinese state-owned SAIC Motor Group and is represented in New Zealand by Great Lake Motor Distributors Limited (**GLMD**), which is also the New Zealand distributor for SsangYong. In Decision 18/016 AWAP 18/001, the Complaints Board upheld a complaint by MMNZ about GLMD's advertising of the warranty for the SsangYong Rexton G4 as a "class leading warranty". The Complaints Board's decision in this complaint came as a considerable surprise to MMNZ, particularly in light of the outcome of the GLMD complaint.

The Decision of the Complaints Board

7. The Complaints Board upheld the complaint, although not for the reasons advanced by the complainant.
8. The Complaints Board said that:
 - (a) Its role was to consider the likely consumer take out of the claim "New Zealand's best new car warranty" and whether it was likely to mislead the consumer.
 - (b) That an absolute claim to "best", where no specific feature is identified and no qualification provided, the consumer would understand to be an overall comparison between products.
 - (c) The absolute nature of the claim "required robust substantiation which was ideally independent and used industry accepted methodology where relevant".
 - (d) The claim was a broad claim and as it did not refer to the specific feature or features that may be superior, such as the 10-year Powertrain warranty, the advertisements gave a misleading impression. The Board noted that for some consumers a higher kilometre range for the bumper-to-bumper aspect of the warranty may be the most important feature.
 - (e) The information put forward by MMNZ to substantiate the claim did not support the likely consumer take out of the claim, that MMNZ's Diamond Advantage warranty was the best overall.

Decision against the weight of evidence and/or evidence misinterpreted

9. The Complaints Board may have considered that it was applying the logic of the Decision in 18/016 AWAP 18/001 (in which it upheld MMNZ's complaint regarding GLMD's advertising) to the complaint against MMNZ. MMNZ submits that the Complaints Board erred:

- (a) In failing to understand that the Diamond Advantage warranty is a warranty package combining a high kilometre range, 5-year bumper-to-bumper warranty, an industry-leading 10-year Powertrain warranty, 5 years AA Roadside Assist and industry leading customer care. MMNZ maintains that the package is the best available in the NZ market overall, with the most comprehensive cover for the longest term.
- (b) In, instead, approaching the Diamond Advantage warranty as a divisible proposition, and assuming that MMNZ relied on a specific feature or features of it to "trump" features of other warranties in the market.
- (c) In overlooking the fact that several components of the warranty, the 5-year (bumper-to-bumper) and 10-year (Powertrain) components, and customer care are, in fact, expressly referenced in the headline message logo promoting the warranty.
- (d) In its process, in not offering MMNZ an opportunity to respond to what the Complaints Board assumed to be its position.

The GLMD decision

- 10. In Decision 18/016 AWAP 18/001 *Great Lakes Motor Distributors Limited*, the Complaints Board upheld MMNZ's complaint regarding GLMD's advertising of a Rexton G4 warranty as "class leading". In that instance, GLMD clearly relied on the transferability of the Rexton G4 warranty as the feature that elevated it to "class leading", and maintained that consumers would understand that to be the message; yet there was no qualifier to its advertising message to inform consumers that such was the case. Accordingly, the Complaints Board ruled that GLMD's advertising was misleading.
- 11. The same logic was not, however, directly applicable to MMNZ's own claim (that its Diamond Advantage warranty is "New Zealand's best new car warranty"). The Diamond Advantage warranty is a package, as described above. MMNZ maintains that, as a package, it is the best available in the NZ market overall, with the most comprehensive cover for the longest term. MMNZ does not, as GLMD did, rely on a specific feature of the Diamond Advantage warranty as "trumping" features of other warranties.
- 12. In contract law, a warranty has various meanings. In the present context it is best understood as a written guarantee, issued to the purchaser of an article (in this case, a new car) by its manufacturer, promising to repair or replace if necessary within a specified period of time.
- 13. It is the promise that is important, as that is the commitment that the manufacturer offers to the new car buyer at the time of purchase, and it is the overall package of the promise offered that is to be compared and assessed.
- 14. The Complaints Board erred in assuming that MMNZ relied on divisible features of the promise, and failed to appreciate that MMNZ relied on the overall package of its promise to new car buyers as a whole. The Complaints Board appears to have approached "best overall" as requiring the product or service to be the best on all individual elements, and not to have considered whether MMNZ had reasonable grounds for its claim to the best warranty package overall. The outcome is particularly surprising where there was no contrary information presented to even call into question MMNZ's claim.
- 15. The Diamond Advantage logo (in paragraph 2 above) refers to both the "10 year" and "5 year" components of the warranty (as well as to MMNZ's customer care) and it is, therefore, difficult to follow the Complaints Board's reasoning and

suggestion that the 10 year Powertrain warranty was not referred to. It features as part of the headline message.

The correct approach

16. In referring to other precedent decisions, the Complaints Board referred to Complaint 16/178 Appeal 16/014 *SsangYong* (Korando SUV), in which the Appeal Board upheld a complaint on appeal. In that decision, the Appeal Board said:
 - (a) That a claim to "best value" is an absolute claim, and one in respect of which consumers "need to have confidence that the Advertiser has a reasonable basis for making the claim." [emphasis added]
 - (b) That such claims should be supported by "sound, relevant, clear and robust evidence" and that a "'best value' claim would generally imply a comparison with other similar products available on the market." (In that case, a comparison with all other mid-size SUVs available on the NZ market).
 - (c) It was incumbent on the Advertiser to provide specific evidence to substantiate its claim.
17. MMNZ agrees with the Appeal Board's description of the test. It better reflects the law in relation to substantiation of representations in section 12A of the Fair Trading Act 1986, and the definition of an "unsubstantiated representation" as being one where the supplier does not, when the representation is made, have reasonable grounds for making it.
18. MMNZ submits that while the Complaints Board referred the test outlined by the Appeal Board, it did not properly apply it:
 - (a) The information provided by MMNZ in response to the complaint included MMNZ's cross-market comparison to similar warranty products available in the NZ market.
 - (b) This was specific evidence, sound, relevant, clear and robust, and sufficient to provide reasonable grounds for MMNZ's claim to the best warranty package overall.
 - (c) The Complaints Board appears to have applied a higher bar to MMNZ in suggesting that the claim required substantiation that was "ideally independent and used industry accepted methodology where relevant". MMNZ relied on its own internal cross-market analysis, and an objective assessment of the promise comprising the overall warranty package.
 - (d) The Complaints Board failed to appreciate that MMNZ relied on its Diamond Advantage warranty as a package and, in apparently forming the view that MMNZ relied on a specific feature or features of its warranty as conferring superiority, did not offer MMNZ any opportunity to comment on that view. The Complaints Board appears to have approached "best overall" as requiring the product or service to be best on all individual elements. However, that does not properly reflect the legal test.
 - (e) The Complaints Board appears to have misinterpreted MMNZ's response to Mr Green's complaint as indicating that MMNZ relied on the Powertrain warranty to "trump" transferability, in a complaint where the complainant maintained that the LDV T60 ute's warranty was transferable for 5 years whereas the Diamond Advantage warranty is transferable within the first 3

years, and the 10-year Powertrain warranty is available only to the original purchaser.

What the Complaints Board seems not to have appreciated is that MMNZ's claim to "New Zealand's best new car warranty and customer care" rests on the full package comprising the warranty as being the best overall, with the most comprehensive cover for the longest term. MMNZ was, in addressing the matters which the complainant had raised, merely pointing out that the Powertrain warranty cannot simply be ignored in an objective comparison of the promises made to the new car owners that comprise the two warranties. The Complaints Board appears, however, to have misconstrued that response.

19. MMNZ submits that, in so doing, the Complaints Board arrived at a Decision that is against the weight of evidence and/or misinterpreted the evidence that MMNZ put before it.
20. MMNZ relies on the information provided to the Complaints Board with MMNZ's response to the original complaint and continues to rely on its cross-market analysis. A table reflecting that cross-market review is annexed to this letter.
21. MMNZ notes in particular the following warranties:
 - (a) Honda's 8-year/175,000km warranty is an extended warranty, extendable on payment by the customer (whereas MMNZ's Powertrain warranty extension is available at no additional cost). It is not a direct comparator.
 - (b) MG offers a 6-year warranty, available on its 6 Plus and GS models; the MG3 comes with a 3-year/100,000 kms warranty. MG's market share of new car sales in NZ in 2017 was 9 of 160,000 new car sales, ranking it the 45th brand in NZ for new car sales. This limited presence is why MMNZ's cross-market review initially missed this warranty.
22. To the best of MMNZ's knowledge and information from its cross-market review, MG is the only other brand in the New Zealand market to currently offer manufacturers' warranty cover beyond 5 years. MMNZ itself offers 10 years of Powertrain cover with Diamond Advantage.
23. MMNZ maintains that there is no other brand, besides Mitsubishi, that offers manufacturers' warranty cover, at no additional cost to the customer, beyond 6 years.

New evidence of sufficient substance to affect the Decision

24. MMNZ was not asked whether it in fact relied on a specific feature or features of its warranty that may be superior, such as GLMD had clearly done in relying on transferability, as "trumping" features of other warranties.
25. Had it been asked, MMNZ would have explained:
 - (a) that it did not, and that it relies on the overall package comprising the Diamond Advantage warranty as a whole, combining a high kilometre range, 5-year bumper-to-bumper warranty, an industry-leading 10-year Powertrain warranty, 5 years AA Roadside Assist and industry leading customer care; and
 - (b) that those features are embedded in the headline message: "10 year. 5 year. Diamond Advantage. New Zealand's best new car warranty and customer care" or are one click away in the Diamond Advantage terms and conditions website landing page that outlines the features of the warranty.

26. MMNZ provides the following new evidence, as further substantiation for the significance and value of the 10-year Powertrain component of the warranty and substantiation of the claim to industry leading customer care (which, together with the 5-year bumper-to-bumper warranty and 5-year AA Roadside Assist, comprise the key features of the Diamond Advantage warranty).

Powertrain warranty value

27. The Powertrain component of the warranty has tangible value for the first new vehicle owner in the long-term protection from the cost of repair or replacement of powertrain components. Such repairs can have a material cost.
28. If leave is granted for this appeal, MMNZ reserves the right to adduce further evidence of the value of cover conferred. MMNZ maintains that it represents a significant benefit to the new vehicle owner.

industry leading customer care

29. MMNZ's established track record for excellent customer care also comprises part of the Diamond

Advantage warranty, and is similarly a feature of the headline message promoting the warranty, and equally a relevant part of MMNZ's story and substantiation of its claim to "New Zealand's best

new car warranty and customer care."

30. MMNZ is the most awarded company at the annual CRM (customer relationship management)

Contact Centre Awards, which focus on customer care provided via head offices. The CRM awards have been running since 1997 and are the only recognised awards programme of their kind.

31. MMNZ is the recipient of:

(a) the Supreme Award for Contact Centre Under 50 Seats:

- (i) Diamond Supreme Award 2013 & 2016 (1st Place);
- (ii) Gold Supreme Award 2014, 2015 & 2017 (2nd Place);
- (iii) Silver Supreme Award 2012 (3rd Place).

(b) Best in Sector Awards:

- (i) Travel & Transport/Retail /Automotive 2011, 2012, 2013, 2014, 2015, 2016.

Proper procedures not followed

32. This ground has been covered above. If the Complaints Board considered that MMNZ relied on specific features of the Diamond Advantage warranty as "trumping" features of other warranties in the market in the same way that GLMD did, MMNZ ought to have been (but was not) offered the opportunity to respond to that proposition.

Interests of natural justice

33. For the above reasons, MMNZ submits that it is in the interests of natural justice that the matter be reheard.

Conclusion

34. Mitsubishi takes pride in its claim that its Diamond Advantage warranty is "New Zealand's best new car warranty". Mitsubishi has offered the Diamond Advantage warranty since 2009. Since its introduction, it has been promoted as New Zealand's best new car warranty and until Mr Green's complaint has not been the subject of either competitor challenge or consumer complaint.
35. MMNZ maintains that it had, and has, reasonable grounds for its claim to the best warranty overall, viewed objectively and assessed as an overall package, and based on its evidence of comparison with other similar warranties in the New Zealand market.
36. MMNZ therefore requests:
 - (a) an appeal/re-hearing; and
 - (b) continuation of the interim direction suspending publication of the Complaints Board's decision pending a hearing of, and determination on, MMNZ's appeal.

STATUTORY DECLARATION

Note from Secretariat: Please see the Dropbox for a signed and witnessed copy of the Statutory Declaration – including the evidence referred to.

I, Noel Anthony Comerford, of Wellington, General Manager, solemnly and sincerely declare that:

1. I am the General Manager of Aftersales for Mitsubishi Motors New Zealand Limited (Mitsubishi).
2. My department is responsible for the administrative responsibility and oversight of the processing of Diamond Advantage warranty claims in respect of new Mitsubishi vehicles sold in New Zealand.
3. All new Mitsubishi vehicles (excluding the Outlander PHEV (plug-in hybrid electric vehicle) come with a 10-year or 160,000km Powertrain Warranty, a 5-year or 130,000km New Vehicle Warranty and five years Roadside Assist so customers can experience worry-free motoring well into the future from the date of purchase. Mitsubishi's Diamond Advantage warranty comes complimentary with the vehicle purchase.
4. The 5-year New Vehicle component of the warranty is transferable to a subsequent owner within 3 years of the first registration date. The 10-year Powertrain component is not transferable to a subsequent owner, but will offer cover to the original purchaser.
5. The term "Powertrain" refers to the major internal mechanical components that comprise the engine, gearbox, transfer box and differentials. It includes the engine block and its internal components such as the crankshaft, pistons and rings, bearings and con-rods, camshafts, rocker arms, balance shafts and oil pumps, cylinder head, and valves. For the gearbox / transmission / differentials it includes the case, gears, torque converter, bearings, wet clutch packs, viscous control units and the integrated Electronic Control Units. These components can be costly to repair or replace.

6. Mitsubishi's cross-market analysis provided to the Advertising Standards Appeals Board confirms that no other brand besides Mitsubishi offers manufacturer's warranty cover, at no additional cost to the customer, beyond 6 years. Most offer 3- or 5-year cover, with MG the exception in offering 6-year cover on two vehicle models. Mitsubishi's Diamond Advantage warranty is available on all Mitsubishi models, other than the Outlander PHEV with Powertrain cover up to 10 years from first registration.
7. Mitsubishi receives warranty claims across the life of its Diamond Advantage warranty. Claims received include claims under the Powertrain component of the warranty for vehicles aged between 60 and 120 months (i.e. over 5 and up to 10 years old).
8. Repair and replacement costs on these claims can be a material cost for Mitsubishi, up to around \$20,000 on some claims. The avoided cost to these vehicle owners is similarly material and a significant benefit of the cover made available.
9. Powertrain cover is available for 10 years or up to 160,000km. The average mileage in New Zealand is on Ministry of Transport data (Ministry of Transport paper, *Driver Travel: New Zealand Household Travel Survey 2010-2013* (May 2014)) around 12,000 km per year for men and 8,000 km per year per woman. In Mitsubishi's experience, it is more often the warranty term that is limiting and not the kilometre range.
10. Mitsubishi relies on its own cross-market analysis of competitor-brand new car warranties. Although it does not place particular reliance on the following industry articles and commentary, they support Mitsubishi's own assessment of the Diamond Advantage warranty as market leading:
 - (a) *New Zealand Company Vehicle* magazine — a neutral industry commentator - reviewed the 2018 Mitsubishi Eclipse Cross (<https://www.youtube.com/watch?v=ES7YcKb3qpo>) At 3:58 Damian O'Carroll describes the Diamond Advantage warranty as an "industry leading" 10-year warranty. *Company Vehicle* magazine is a widely recognised magazine that has been running since 1992, targeted at persons in fleet buying and management roles.
 - (b) [Cars.com](http://www.cars.com) - a neutral industry commentator based in the United States - has compared warranties available in the US market. Whilst in a different market, the report lists Mitsubishi's warranty as "The Best" (equal with competitors that in the US, but not in New Zealand, also offer 10-year Powertrain-type warranties). [Cars.com](http://www.cars.com) notes that these Powertrain warranties are not transferable to subsequent owners, but nonetheless places Mitsubishi's warranty above competitors' 5-year warranties that it rates as only "Very Good". A copy of the report is **annexed** marked "NC-1".
 - (c) NZ Automobile Association - a neutral supplier of vehicle services and information in New Zealand - has a webpage article on new car warranties. The article incorrectly states that Mitsubishi customers must choose between the 5-year New Vehicle component and the Powertrain component. That is not correct; the new owner is entitled to cover under both. But the AA describes the Diamond Advantage Powertrain warranty as "impressive" and covering "expensive engine componentry". A copy of the article is **annexed** marked "NC-2".

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared 21st day of May 2018

Witnessed by S.C Mataeliga
Deputy Registrar
District Court
Porirua

SUMMARY OF CHAIRPERSON'S RULING

The Advertising Standards Complaints Board ruled on 27 February 2018 that the complaint was Upheld. The Advertiser appealed the Decision.

This application was considered by the Chairperson of the Appeal Board. The Chairperson noted the Advertiser raised concerns the Complaints Board Decision was against the weight of evidence as the "best warranty" claim was qualified in the advertisement and there were reasonable grounds for making the claim.

The Chairperson ruled the appeal was Accepted under Ground (v) and was referred to the Appeal Board to be considered de novo.

RESPONSE FROM THE COMPLAINANT TO THE APPEAL APPLICATION

Thank you for advising the appeal of Mitsubishi Motors of your boards ruling. I'm actually pretty shocked. As the owner of a Mitsubishi Triton ute with a blown turbo, I have experienced first-hand the so called Mitsubishi "best warranty". It is clear that Mitsubishi have no respect for the Advertising Standards Authority either, as since my original complaint was upheld, Mitsubishi have been advertising on T.V. that they have the "best warranty in the known universe" (https://www.youtube.com/watch?v=f8gxDsEo_hc) . Hyundai and Genesis in the USA have a 10 year/160,934km warranty. Kia and MG in many countries have a 7 year / unlimited km warranty which is fully transferrable.

They also continue to state the "best new car warranty" on their website and youtube T.V. advertisements (Link <https://www.mmnz.co.nz/warranty/diamond-advantage/>). One would have thought this should have been removed considering the advertising complaint was upheld and only in the event of the appeal winning should it be then be re-instated?

The fact of the matter is, even though I, and everyone else I have spoken to about this completely disagree that Mitsi have the "best new car warranty", they have failed to substantiate their claim in their advertising. There is no-reference on their advertising as to how their warranty is "the best", and I see from previously ASA rulings that referencing data to back these claims is required.

Mitsi's 10 year warranty is so false – it is only for the original owner, and only covers certain components. In my case, I bought and LDV T60, not only because it is a better vehicle than the Mitsi Triton, but also because the warranty is better. Although the T60 has a 5 year warranty – it goes to whoever the owners the car (i.e. transferrable when I sell it in a couple of years) and is comprehensive. I can also have my T60 serviced at any MTA garage as long as I use genuine accessories and I won't void the warranty. With my Mitsubishi, the moment it went to anywhere else other than a Mitsi dealer the warranty was void.

I'm usually not one to complain about this type of thing, but it is truly incredible for Mitsubishi to claim they have the "best warranty" when they clearly know they don't.

Further response from Complainant R. Green

4. The 5-year New Vehicle component of the warranty is transferable to a subsequent owner within 3 years of the first registration date. The 10-year Powertrain component is not transferable to a subsequent owner, but will offer cover to the original purchaser.

Paragraph 4 in the Statutory Declaration is the crux of this dispute, the word "best" is in no way substantiated so my warranty from LDV is for 5 years or 130000 km (whichever occurs first). So for me and anyone else that I sell my ute to will benefit from the full warranty, in the above excerpt from Mitsubishi they quite clearly state that if you sell your vehicle at 3 years and 1 day, the new owner will not benefit from either part of their warranty either the remainder of the five year warranty or the ten year powertrain warranty. Therefore for the second person it is definitely not the best warranty and even for me selling a used vehicle, it is not the best warranty as i cant offer the warranty protection to the new owner.

It is as simple as saying "my mother makes the best scones in the world" they may be to you. But you actually have no proof, it is only an opinion, which has to be prefixed by "in my opinion" which every one is entitled to. But they are not to say it as a fact in advertising.