



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: M17/2023  
File Title: Mitsubishi Motors Australia Ltd & Anor v. Begovic  
Registry: Melbourne  
Document filed: Form 27F - Outline of oral argument  
Filing party: Respondent  
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#### Important Information

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IN THE HIGH COURT OF AUSTRALIA  
MELBOURNE REGISTRY

No M17/2023

BETWEEN:

**MITSUBISHI MOTORS AUSTRALIA LTD (ACN 007 870 395)**

First Appellant

**NORTHPARK BERWICK INVESTMENTS PTY LTD (ACN 075 238 121)**

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Second Appellant

and

**ZELKO BEGOVIC**

Respondent

### **RESPONDENT'S OUTLINE OF ORAL SUBMISSIONS**

20 **Part I: Certification**

1. This outline is in a form suitable for publication on the internet.

**Part II: Outline of oral submissions**

2. Subject to the issue of compulsion, the present matter is a straightforward case of misleading and deceptive conduct. The vehicle was displayed and sold with a fuel consumption label providing fuel consumption figures and stating that the vehicle had been tested in accordance with a standardised testing methodology. The actual fuel consumption, when tested using the same methodology, was much greater (up to 37% greater). The properties of the vehicle sold did not match those stated on the label for that vehicle.
- 30 3. The purpose of the requirement to provide fuel consumption information is so that consumers can compare the fuel consumption of different vehicles on a comparable basis. It is to enhance the protection of consumers by providing them with useful information in a standardised and comparable form about products they are considering purchasing.
4. Mitsubishi's contention that it cannot be liable for conduct under compulsion: (a) misstates the operation of the requirements of the vehicle standard; and (b) overlooks that

the relevant conduct is not merely the making of a representation.

5. The relevant vehicle standard (ADR 81/02) requires a manufacturer to report the fuel consumption and CO2 emissions “for the vehicle” (not some other vehicle, or a test vehicle), and to include the figures “for the vehicle” on the label. As a practical matter, manufacturers may decide to report the figures produced by a test on a representative vehicle (as representing all vehicles of a particular type or model), but that does not alter the requirements of the standard and will not be appropriate if the test vehicle is not in fact representative and does not match the one being sold. Mitsubishi is not required, or permitted, to provide incorrect information on the label attached to the vehicle in question.  
10 The form of the label is proscribed, but not its content.
6. Nor is the conduct in selling a vehicle with properties that do not match the properties stated on its label mandatory, even if (contrary to point 4) the content of the label is mandatory, because the “conduct” is not limited to a representation, and there is no compulsion to sell a vehicle that has properties that do not match the label.
7. *The Queen v The Credit Tribunal; ex parte General Motors Acceptance Corporation, Australia* (1977) 137 CLR 545 concerns circumstances far removed from the present case. Even if a general principle can be derived, it would be limited to circumstances where the contravenor has no control over any aspect of its conduct, which is not this case.
8. The label in question conveys a representation about the properties of the vehicle to which  
20 it is affixed, including that has a particular fuel consumption when tested in accordance with the Type I test. It does not simply convey that some different different vehicle produced the test results contained on the label.
9. It is not now open to Mitsubishi to say that the findings of the Tribunal are not relevant because the results were obtained some time after purchase. That is inconsistent with the manner in which the proceedings were conducted before the Tribunal.

Dated: 1 August 2023



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