



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0013/19
2	Advertiser	SsangYong
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	23/01/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement shows scenes of a man using the vehicle in his working life, with scenes of the vehicle driving on a dirt road, reversing camera, towbar and towing a trailer, as well as scenes of him using the vehicle in his home life, including driving on a beach area with his family.

THE COMPLAINT

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

This is very dangerous as sand can be saturated under the surface, forcing a rollover. It will also void the warranty of the vehicle, and cause long term serious damage. If the vehicle becomes stranded on an incoming tide it will be a total loss. This depiction is dishonest and dangerously misleading. Toyota, Nissan, Ford, and Jeep have all withdrawn these depictions in their advertising. Only SsangYong has decided to take it up again. Please stop them before a new cohort people are conned into thinking this dangerous behaviour is acceptable.



THE ADVERTISER'S RESPONSE

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

Please find enclosed SsangYong Australia's response regarding complaint reference 0013/19. Please also find attached to the originating email all correspondence as disclosed in this letter.

Advertisement Description –

Campaign Name - SsangYong Musso – What's your payload?

The Advertisement depicts a day-in-the-life of a Musso Driver where the owner takes his work crew and equipment to and from the worksite and at the same time, can take his family to the beach.

Comprehensive comments in relation to the complaint (taking into account the need to address all aspects of the advertising codes);

In regards to the complaint, at no time does the commercial depict any unsafe driving, and at no time does it demonstrate any reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory. A professional safety officer was employed and on-location to supervise all safety aspects of the vehicle's operation.

The vehicle at no time travels at excessive speed, there are no sudden changes in direction and speed of the motor vehicle, and at no time does it deliberately or unnecessarily depict the motor vehicle on a collision course or demonstrates a deliberate loss of control of motor vehicle while it is moving.

The advertisement at no time shows people driving while being apparently fatigued, or under the influence of drugs or alcohol.

The advertisement at no time shows deliberate and significant environmental damage. The advertisement was filmed with a Ballina Shire council environmental protection officer present to regulate environmental protection as well as the professional Safety officer overseeing all aspects of the production.

In regards to the depiction of the Musso as an off-road vehicle, we believe that the advertisement legitimately depicts the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area.



The vehicle does not travel at a speed which would contravene the laws of any State or Territory in which the advertisement has been broadcast, were such driving to occur on a road or road related area.

The vehicle was driving along the "hard sand" above the water-mark at all times in the commercial with the exception of the transition scene from work to play where it was necessary to obtain a pickup a shot of the vehicle emerging from a water splash. At this point, the water was a mere 5cm in depth and at the edge of the water mark and the scene was shot on hard sand that was not saturated.

The vehicle did not cross a high tide mark flowing river that encased the vehicle to the door line nor did the vehicle drive at excessive speed through the water at a dangerous depth. The vehicle merely skimmed the edge of the water mark.

The professional driver employed for the role was able to exert the splash required for the transition in the TVC without driving through deep water and without hindering the performance, usability and handling of the vehicle.

We do not believe that this action would provoke any buyer/4WD Enthusiast or purchaser to ignore their own safety and excessively drive their vehicle through beach water at speed and at a dangerously high-water level.

The safety officer was present throughout all filming of the vehicle. He was capable and very able to notify the driver via radio communications and it was his job at all times to control the safety aspect of the film production.

We do not believe that people (as the complainant has stated) will be influenced to participate in un-safe driving practices from what we have shown in our commercial. Any driver participating in off-road driving activity, should undertake their own due diligence, training instruction and appropriate research and comply with their local council and state regulations including obtaining the appropriate access permits.

It is an individual owners' decision to obtain a permit to drive their vehicle off-road and on an Australian beach and many 4WD enthusiasts regularly participate in on-beach driving at their own risk and knowing that they need to adequately clean down both sand and salt water from their vehicles post participating in these activities to maintain their vehicles.

There is absolutely nothing dishonest or dangerously misleading about our commercial and we are well within all legal, moral and ethical rights to show our vehicle in a beach scene to show its off-road ability whilst operating it within safe controlled conditions. The content of the commercial and the vision shown in no way breaches any of the codes of practice for motor vehicle advertising.



Assurances provided that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area:

The driving depicted within the advertisement can be related to any “heavy” wet weather driving environment where a vehicle drives through a depth of 5-10 cm of water. Whether it be rain, partially covered road surface or creek. In this related scene, the Musso travels along the beach and showcases its handling in such conditions.

Confirmation that any vehicles portrayed in the advertisement were driven within legal speed limits at all times:

During the advertisement, surrounding the scene were a number of safety precautions. This included a commercial safety officer and also a professional driver. The vehicle adhered to safety regulations as depicted, described and discussed by the commercial safety officer. The officer was present at all times and on live communications so was able to communicate to the driver to ensure all vision capture complied to safety standards. In that regard, all concerns were covered. At the same time, no other cast were present throughout these scenes within the vehicle in question.

Was it necessary for the advertiser to obtain any special permission/permits to undertake filming of any driving sequences depicted in the advertisement?

Yes, Rapid Media Pty Ltd obtained permission from Crown lands Management (item 1.7) for the permission to shoot at Patches Beach Ballina. In addition, the safety officer also provided a validated risk assessment for the shoot – attached item 1.6

Has the advertisement been published/broadcast in all of Australia? Are there any States/Territories where the advertisement has not been published/broadcast?

The advertisement has been published Australia-wide.

Has the advertisement been made available on the internet?

Yes, The advertisement has been made available on the internet.

What evidence can be provided to demonstrate that any scenes of motor sport or simulated motor sport are activities of a kind for which a permit would normally be available in Australia? (For example, do such scenes comply with the requirements for any of the recognised forms of motor sport governed by the National Competition Rules of the Confederation of Australian Motor Sport (such as circuit racing, drag racing, rallying, etc.) or other similar recognised body?



No. There are no demonstrated scenes of motorsport.

What evidence can be provided to demonstrate that the activities in such scenes conform to the requirements of relevant rules or regulations governing safety for competitors, officials, and spectators?

This is not applicable to this advertisement.

Do any/all vehicles portrayed being driven in an off road setting in the advertisement conform to the requirements of the definition an off road vehicle as provided in the Australian Design Rules (MC category)? If so, please outline the key criteria which are met?

Yes – The Musso is a passenger vehicle with 4 wheel drive having up to 5 seating positions including that of the driver having been designed with special features for off-road operation, consistent with the requirements of the definition for such a vehicle as provided in the Australian Design Rules (MC category).

*What is the maximum number of seating positions in the vehicle/s?
There are 5 available seats within the vehicle.*

*Does the vehicle/s have four-wheel drive/all-wheel drive?
Yes. The Vehicle has 4-wheel drive.*

THE DETERMINATION

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).

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 noted that this television advertisement features a depiction of the vehicle being used on a worksite to pull a trailer cutting to a depiction of the vehicle being driven along a beach. A voice over describes the vehicle as taking you from 'work to play'.

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 SsangYong Muso was a Motor Vehicle 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 noted the complainant's concern that the advertisement was misleading in that driving across a beach would void the warranty of the vehicle.

The Panel considered that this is not an issue which falls within the FCAI Code and was therefore not a matter that it could consider.

The Panel then noted the complainant's concern that the advertisement depicts a vehicle driving along the beach in a dangerous manner.

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

The Panel considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: '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 the examples given in the FCAI Code include: 'Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...or the apparent and deliberate loss of control of a moving motor vehicle.'

The Panel noted the advertiser's response that the advertisement does not depict illegal or reckless driving, and that a safety officer on-site ensured the vehicle was driven in a safe and controlled manner at all times..

The Panel noted that the vehicle was seen driving along the edge of waves on the beach and considered that this behaviour is not uncommon for off-road vehicles. The Panel considered that the stretch of beach appeared to be flat and the driver appeared to be driving at a reasonable speed across hard sand.

The Panel noted that Clause 4 of the FCAI Code states: "An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming



part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.”

The Panel considered that it is reasonable for an advertiser to depict the capabilities of their off-road vehicles, so long as those depictions did not show unsafe driving which would breach any Commonwealth law or the law of any State or Territory.

The Panel considered that the vehicle was not depicted driving across sand dunes or driving in an unsafe manner.

The Panel noted the scene at the start of the advertisement where the vehicle was seen entering the worksite through a tight turn.

The Panel considered that whilst there was a lot of dirt and gravel displaced by the tight turn, the markings on the ground would indicate that this is a usual turn to execute to enter the worksite.

The Panel considered that the vehicle did not appear to be travelling at unsafe speeds and did not lose traction on the loose surface.

The Panel considered that the advertisement did not portray unsafe driving which would breach the law if it were to take place on a road or road-related area.

Finding that the advertisement did not breach Cause 2(a) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.

