



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0083-21
2. Advertiser :	Suzuki Australia Pty Limited
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	28-Apr-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(c) Driving practices

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man riding a car like it is a motorcycle.

THE COMPLAINT

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

The FCAI Code under Explanatory Notes - Clause 2(a) Unsafe Driving states:

"The FCAI acknowledges 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 provisions of the FCAI Code."

This advertisement clearly shows a man driving a car, on top of the vehicle, on a public road.

2. GENERAL PROVISIONS

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



(a) Unsafe driving, including reckless and 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.

[Examples: Vehicles 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; or the apparent and deliberate loss of control of a moving motor vehicle.]

AND

(c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet while the motorcycle is in motion.]

The behaviour depicted breaches many of the Australian Road Rules, but in particular, the behaviour is in breach of the laws pertaining to the use of Seat-Belts and the Rules for persons travelling in or on vehicles.

264 Wearing of seatbelts by drivers

(1) The driver of a motor vehicle that is moving, or is stationary but not parked, must comply with this rule if the driver's seating position is fitted with a seatbelt.

Offence provision.

Note Driver is defined in rule 16, and motor vehicle and park are defined in the dictionary.

(2) The driver must wear the seatbelt properly adjusted and fastened unless the driver is:

(a) reversing the vehicle; or

(b) exempt from wearing a seatbelt under rule 267.

Note Rule 267 provides exemptions from wearing seatbelts.

We ask that the advertisement be immediately banned from broadcast in Australia

The Australian Road Rules are clear and unequivocal:

268 How persons must travel in or on a motor vehicle

(1) A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods.



Offence provision.

Note Motor vehicle is defined in the dictionary.

(2) A person must not travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods unless:

(a) the part is enclosed; and

(b) he or she occupies a seating position that is suitable for the size and weight of the person and that is fitted with a seatbelt.

Offence provision.

Note1 Enclosed is defined in subrule (7).

Note 2 Rule 265 deals with the wearing of seatbelts by passengers 16 years old or older, and rule 266 deals with the wearing of seatbelts by passengers under 16 years old.

(3) A person must not travel in or on a motor vehicle with any part of the person's body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal:

(a) for changing direction to the right in accordance with rule 50; or

(b) for stopping or slowing in accordance with rule 55.

Offence provision.

Note Window is defined in the dictionary.

(4) The driver of a motor vehicle (except a bus) must not drive with a passenger if any part of the passenger's body is outside a window or door of the vehicle.

Rules for persons travelling in or on vehicles Part 16

260 Australian Road Rules – February 2009 version

(4A) The driver of a motor vehicle must not drive with a passenger in or on a part of the vehicle that is not a part designed primarily for the carriage of passengers or goods.

Offence provision.

(4B) The driver of a motor vehicle must not drive with a passenger in or on a part of the vehicle that is a part designed primarily for the carriage of goods unless:

(a) the part is enclosed; or

(b) the person occupies a seating position that is suitable for the size and weight of the person and that is fitted with a seatbelt.

Offence provision.

Note Rule 265 deals with the wearing of seatbelts by passengers 16 years old or older, and rule 266 deals with the wearing of seatbelts by passengers under 16 years old.



(5) This rule does not apply to a person who is:

(a) in or on a police or emergency vehicle; or

(b) on a motor bike; or

(c) engaged in the door-to-door delivery or collection of goods, or in the collection of waste or garbage, in or on a motor vehicle that is not travelling over 25 kilometres per hour.

Note Emergency vehicle, motor bike, and police vehicle are defined in the dictionary.

(6) This rule also does not apply to a person if:

(a) the person is exempt from this rule under another law of this jurisdiction and is complying with the conditions (if any) of the exemption; or

(b) the vehicle is exempt from this rule under another law of this jurisdiction.

(7) For this rule:

enclosed, for a part of a vehicle, means enclosed by:

(a) the structure of the vehicle; or

(b) a canopy, cage or other device fitted to the vehicle that is approved, for the Australian Road Rules, under another law of this jurisdiction.

It must be noted that the ASB has already established a precedent regarding "supposed" humour and banned the VW ad (quote): A Volkswagen TV ad that boasted its new model was "too powerful for TV" has been taken off air for breaking the road rules. The ad interspersed scenes of the Amarok V6 ute driving, with shots of a "director" planning shots that wouldn't be allowed under Australian advertising standards.

<https://www.crikey.com.au/2018/11/02/too-powerful-for-tv-volkswagen-ad-breaches-tv-advertising-code/>

Around 1200 Australians are killed and ten times that number are seriously injured each year on our roads. Additionally, apart from the pain, grief and suffering, Road Trauma costs Australia over \$30 billion per annum.

Road Trauma is not a joke and it's extremely disappointing that advertisers need to be constantly reminded of this fact.

THE ADVERTISER'S RESPONSE

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



Please see below the response by Suzuki Australia Pty Ltd (Suzuki) to complaint number 008321 lodged against Suzuki's "Motorbike of Cars" television commercial (TVC).

The complaint relates to a broadcast of the TVC that took place on free to air television on 26 March 2021.

Description of advertisement

The TVC is part of Suzuki's broad "For Fun Sake" brand campaign, which is running across various media highlighting Suzuki's range of vehicles. Suzuki's brand heritage is built on a long history of providing excellent quality, fun, affordable vehicles to customers, including motorcycles, off-road/4x4 vehicles, and passenger vehicles such as the Swift, and the TVC refers to that heritage. The TVC is a fantasy that depicts a gigantic, out-of-scale motorcyclist riding a motorcycle through a gorgeous country road then on a coastal road, with a very excited look on his face as he turns into various corners. The motorcycle is the shape of a Suzuki Swift. The voiceover throughout the TVC makes reference to motorbikes being the most fun one can have on two wheels, and doubling that feeling (by driving a Suzuki Swift which has four wheels). The giant motorcyclist then rides off into the sunset.

The giant motorcyclist depicted is clearly not a real human being, or at least is clearly not depicted in realistic proportions. The giant motorcyclist's hands are so large they entirely envelope the vehicle's side mirrors which he uses as handlebars, and his hips are so wide that he is able to straddle the entire width of the vehicle as he would if riding a motorcycle. In other words, the entire TVC is massively out of scale in the manner of a dream sequence that places the hero vehicle into the scale you would expect if it were the size of a motorcycle being ridden by a human being.

Advertiser's response

The TVC is clearly, entirely couched in fantasy and self-evident exaggeration, which even the complainant concedes is entirely acceptable and commonplace in Australian advertising. Suzuki strongly contends that road safety is of paramount importance and takes its obligations as a manufacturer very seriously. However, Suzuki similarly strongly contends that a fantastical dream sequence that marries up Suzuki's motorcycle and car manufacturing heritage in the manner portrayed in the TVC does not breach the road rules as raised by the complainant in this case, or any others. It is obvious that the intention of the fantasy inherent in the TVC is not simply to circumvent the road rules and Suzuki rejects any such interpretation strongly.

Simply, there are no overt depictions of breaches of any road rules shown in the TVC. The Suzuki Swift is shown at all times travelling at a safe speed, within the road lines and in control at all times.

The overriding message of the TVC is clearly the connection between the rush and joy of riding a motorcycle on winding roads, and the rush and joy of driving the Suzuki



Swift which can be obtained if one who loves motorcycles was inclined to purchase a four-wheeled vehicle.

The complainant seems confused as to how to categorise or assess the TVC, in that he has complained that the TVC does not show the giant motorcyclist wearing a seat belt. It is not clear how or why the giant motorcyclist riding atop a motorcycle shaped like a Suzuki Swift would wear a seat belt, or how that would be conveyed, since motorcyclists do not need to (and could not) wear seat belts. The giant is not 'driving' the vehicle – he is not at any time shown driving the vehicle as if it is a car. He is not at any time shown sitting in the vehicle as if it is a car. He is riding it like a motorcycle, because that is the nature of the creative message and the brand campaign being depicted here. The appropriate treatment of the vehicle for the purposes of making a determination against the relevant advertising codes is thus whether or not he is compliant with rules applicable to motorcyclists, and he is wearing the appropriate safety gear as required, including an approved helmet.

The reference made by the complainant to the recent determination by AdStandards pertaining to a VW Amarok TVC is, respectfully, very much off the mark and should be rejected. Firstly AdStandards is not bound by precedent as you are already well aware, and secondly the structure and content of the respective TVCs/campaigns is entirely different.

Firstly, the scale of the giant in the TVC is so obviously and clearly ridiculous that it could never be seen or reasonably interpreted as being indicative of a real person riding on the roof of a vehicle. A human being cannot and would not ever be able to straddle the vehicle in the manner shown. Suzuki contends that if the complainant's logic was to be followed, no depictions of fantasy or exaggeration would be allowed in Australian motor vehicle advertising.

For completeness, Suzuki has also considered the applicable provisions of the AANA Code of Ethics and contends that there is nothing depicted in the TVC that would breach the AANA Code. Again, the fantastical and illusory nature of the TVC is entirely in the realm of the absurd, such that nothing depicted in the TVC could possibly amount to a breach, most notably of the prevailing community standards on health and safety. Giants are firmly in the realm of children's storybooks and do not occupy the 'real world' and do not appear in the normal 'community'. In short, a normal man cannot ride on the roof of a car in the way the giant rides the Suzuki Swift like a motorcycle.

The TVC was only aired during adult programming, meaning it was not shown to any young audiences that, arguably being more easily led and prone to reckless behaviour, may have somehow misconstrued the TVC or the clearly out-of-scale proportions of the TVC and been encouraged to try and see if they could straddle the roof of a vehicle in the manner portrayed. While Suzuki rejects any interpretation of the TVC that argues that the TVC would lead to that behaviour, Suzuki contends that the audience for the TVC would clearly and absolutely understand the fantasy nature of the TVC and the message being conveyed.



Given that the TVC does not breach the FCAI Code or the AANA Code of Ethics, Suzuki looks forward to confirmation that AdStandards has dismissed the complaint.

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).

The Panel noted the complainant's concerns that the advertisement depicts unsafe driving and unsafe driving practices.

Is this an advertisement for a motor vehicle?

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 Suzuki vehicle depicted 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 that the complainant had specifically referred to Clause 2(a) in their complaint. Clause 2(a) refers to unsafe driving. The Panel considered that the man is not driving the vehicle and therefore this provision of the Code did not apply.

Clause 2(c) - Advertisements for motor vehicles do not portray ...driving practices or other actions which would if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation. (examples: illegal use of hand-held mobile phones or not wearing seat belts in a moving motor vehicle)].

The Panel noted that the complainant had specifically referred to two sections of the Australian Road Rules.

Rule 264 - Wearing of seatbelts by drivers

The Panel noted the motorcycle riders are not required to wear a seatbelt and noted that the man in the advertisement is riding the Suzuki vehicle as if it was a motorcycle. The Panel considered that the man is clearly not driving the vehicle and considered that the requirement for a seatbelt in this instance does not apply.

Rule 268 - How persons must travel in or on a motor vehicle



The Panel noted that Australian Road Rule 268 does specify that “A person must not travel in or on a motor vehicle with any part of the person’s body outside a window or door of the vehicle”. The Panel further noted section 5 of that provision which states that “This rule does not apply to a person who is...(b) on a motor bike...”

The Panel again noted that the man is riding the Suzuki vehicle as if it was a motorcycle, and noted the advertiser’s response that that is the nature of the creative message and the brand campaign being depicted.

The Panel considered that the advertisement is highly stylised and exaggerated and considered that the advertisement was clearly computer generated and an unrealistic scene that most people would understand was not filmed on open, public streets.

The Panel noted that the driving practices shown in such exaggerated scenarios are not always aligned with domestic road rules, however noted the advertiser’s response that while unrealistic, the Suzuki Swift is shown at all times travelling at a safe speed, within the road lines and in control at all times.

The Panel noted that the complainant had referred to a precedent case in their submission. The Panel considered their comments in case 0457-18:

“The Panel considered that while the advertisement does attempt to use humour and avoid breaching the FCAI Code by cutting away from the footage of the vehicle, the vehicle is still depicted as starting to overtake the trains. The Panel considered that although the advertisement had fantastical elements, the depiction of the vehicle starting to overtake the roadtrains was a realistic scenario that would constitute unsafe and reckless driving. Further, the depiction of the driver choosing to leave the road and overtake both trucks on the shoulder of the road depicts driving which is reckless and would breach road rules. “

In the current advertisement, the Panel considered that the depiction of the man riding a car as if it was a motorcycle is entirely unrealistic and impossible. The Panel noted that the man in the advertisement is disproportionately large, his hands enveloping the vehicle’s side mirrors his hips so wide that he is able to straddle the entire width of the vehicle. The Panel considered that the case referred to by the complainant was not an adequate precedent when considering the current advertisement.

Overall the Panel considered that the level of fantasy, humour and self-evident exaggeration in the advertisement was to a degree that clause 2(c) of the FCAI Code was not breached.

Clause 2 (c) conclusion

The Panel determined that the advertisement did not breach clause 2(c) of the FCAI Code.



Conclusion

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