



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0095-21
2. Advertiser :	Subaru (Aust) Pty Ltd
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(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(c) Driving practices
FCAI Motor Vehicle Advertising Code\2(b) Breaking the speed limit
FCAI Motor Vehicle Advertising Code\3 Motor Sport

DESCRIPTION OF ADVERTISEMENT

The advertisement begins with a father passing his Subaru Brumby on to his son who starts lip syncing to the classic 1980's love ballad "Nothing's Gonna Stop Us Now" by Starship, as he begins driving away on his first adventure as a young adult. The commercial then transitions to a green Subaru overtaking the Brumby and the man and woman in the car continuing to sing. The woman's bandana flies off out the window, and the scene transitions to a rally car whose passenger picks up the bandana as it flies past. The rally car drives in off road areas. As it turns a corner, the blue vehicle behind it becomes the focus and shows a woman driving at night in the rain with two children asleep in the back. The woman changes lanes, and a vehicle with two men becomes the focus as they drive through a quarry. The car next to them is shown to have a family and they become the focus as they enter a national park in the new 2021 Subaru Outback. They meet a man wearing a national park uniform and he gestures to his vehicle, also a Subaru. It becomes clear that the man is the boy from the beginning of the advertisement, and he still has the same car.

THE COMPLAINT



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

I've just seen on Melbourne TV a 90-second ad for the latest Subaru Outback. Although I've never owned one, I've certainly been tempted over the years. But I certainly wasn't by this ad.

I am amazed that the ad is allowed to go to air. It shows so many things that are bad, wrong, or just plain illegal. Bashing through the bush and along beaches, at speeds which sometimes have the vehicle airborne. Cut-in shots of racing drivers (who drive exactly as public on public roads shouldn't). Loud, distracting music. 'Driver' with eyes shut for considerable periods of time. Passing on a blind bend – when apparently distracted by an airborne piece of litter. Arm out of window. I mean, how many more bad images do you fit into a car ad?

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 15th April 2021 regarding the above matter. Subaru Australia believes in responsible marketing and accordingly takes its responsibilities under both the Advertiser Code of Ethics (Code of Ethics) and FCAI Code of Practice for Motor Vehicle Advertising (FCAI Advertising Code) very seriously. As such all marketing material produced by Subaru Australia is carefully vetted for compliance with these two Codes.

As we understand it, the complaint referred to in your letter of 15th April 2021 raise concerns regarding NSW Road Safety Rules.

Background

In March 2021 Subaru Australia launched a television commercial for the all new 2021 Subaru Outback. The commercial celebrates the love that Subaru customers have for the brand and features generations of Australians enjoying their adventures in various Subaru models throughout the decades. It begins with a father passing on his Subaru Brumby to his son who starts lip syncing to the classic 1980's love ballad "Nothing's Gonna Stop Us Now" by Starship, as he begins driving away on his first adventure as a young adult. The commercial then transitions to later generations of Australians, continuing to lip sync to the song as they drive their trusty Subaru. Transitions include a couple on a road trip, professional rally driver and co-driver Cody Crocker and Mark Stacey in a rally vehicle, a mother and her two children driving through the rain at night, two friends driving in a quarry and ends with a family of four entering a national park in the new 2021 Subaru Outback. A 90 second version of the advertisement ran from March 2021 nationally on broadcast television and the internet.

Submissions



Having considered the FCAI Code of Practice for Motor Vehicle Advertising General Provisions Clause 2 that requires advertisers ensure that advertisements for motor vehicles not portray unsafe driving, including speeding or other practices which would contravene road safety regulations, if they were to take place on a road or road-related, below are our responses to the specific questions raised: -

1. What assurances can the advertiser provide that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?

All vehicle filming conformed to the relevant safety regulations. Specific care was taken to always ensure compliance with the Australian Road Rules having regard to the NSW Government Road User's Handbook.

In response to the element of the complaint regarding "loud districting music", the advertisement has the song "Nothing's Gonna Stop Us Now" playing throughout the commercial to which the drivers and passengers are lip-syncing. It is abundantly clear that the music we can hear is not actually coming from inside of any of the vehicles depicted in the commercial. In the case of the rally car, there isn't actually a stereo in the vehicle from which to play music. During filming, music was played to help the actors lip-sync to the song, but it would not have been at a volume beyond what is safe and allowed and would not have been distracting for the drivers.

As far as the complaint alleges that the advertisement depicts a "Driver with eyes shut for considerable periods of time", this is patently incorrect. On a close review of the advertisement, it is self-evident that at no stage do any of the drivers have their 'eyes shut for considerable periods of time' (as alleged) during the advertisement. At most, the final driver squints as she sings and smiles but her eyes are not closed and in any event the vehicle is stationary in that scene. The camera moves from the passenger to driver side, revealing the vehicle is stopped as the driver and passenger greet the 'ranger' in the 'national park'.

In respect of the rally scene element of the advertisement, Subaru Australia relies on Section 3 of the FCAI Advertising Code which expressly permits "use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving" - see below for more information.

2. Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?

We confirm that during the filming of the advertisement, all vehicles adhered to the NSW road safety regulations and were always driven at or under the posted or legal speed limit. Where vehicles were driving over loose or unsealed surfaces, or uneven terrain, we confirm that the vehicles were driven at a suitable speed to ensure the safety of the driver, passengers, pedestrians, and filming crew.



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

There were no additional permissions over and above the normal permissions required to film a television commercial.

4. *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 broadcast nationally from March 2021.

5. *Has the advertisement been made available on the internet?*

The advertisement has been made available on the internet from March 2021.

Use of Motor Sport in Advertising Clause 3 of the FCAI Code

1. *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?*

One section of the advertisement features Cody Crocker and Mark Stacey, who are both professional rally and racing car drivers with decades of rally driving experience, simulating a rally drive. This activity is the type of activity for which a permit would normally be available in Australia. The scene was filmed at the Hampton Rally Track (NSW) which is owned by The Hills District Car Club and is available for use by their members and others.

This scene was included as rally racing is an integral part of Subaru's history in motor sport and is an aspect about the brand which generations of Australians know and are passionate about.

In including this scene in the advertisement Subaru Australia has (in part) relied on clause 3 of the FCAI Advertising Code, which expressly permits the use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving that are clearly identifiable as part of an organised motor sport activity. The vehicle in the scene is clearly depicted with racing livery and includes racing decals on the exterior of the vehicle, a roll cage in the interior, racing harnesses to secure the driver and co-driver, a racing steering wheel and stripped-down dashboard amongst other things. Put another way, it is clear the vehicle shown is a rally race vehicle and not a regular road going vehicle. The driver and co-driver are also wearing race style rally helmets and sponsored racing suits. Given the foregoing, in Subaru Australia's submission a reasonable member of the public could not reasonably mistake the scene as anything other than a rally type scene.



2. 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.

We can confirm that the simulated rally drive was filmed in a controlled environment at the Hampton Rally Track (NSW) and the vehicle was handled by a professional rally driver. The circuit in which this section of the commercial was filmed was closed to the public at the time of filming and is specifically designed for this type of activity, as can be seen by the flags and markings on the road. Full Work, Health and Safety procedures were followed during filming including the use of traffic controllers to ensure the road was safe for the vehicle to pass.

In respect of the element of the complaint alleging “speeds which sometimes had the vehicle airborne” and “passing on a blind bend,” it should be noted that these scenes are only evident in the rally part of the subject advertisement. In this scene the vehicle performing the manoeuvre is clearly a rally car on what looks to be a rally track and the drivers are clearly professionals as identified by the racing livery, their helmets, and their racing suits. In this context the average member of the public would understand that the scene is a rally simulation and that it is highly unlikely a vehicle will be travelling in the opposite direction (as would be the case on any race circuit).

Further, the co-driver in the rally vehicle has detailed instructions written in the book on his lap. He advises the driver exactly how sharp the turn will be and at what speed it should be approached. There was no risk of oncoming traffic as the scene was filmed at Hampton Rally Track, a one-way track specifically designated for this kind of motor sport activity. As per the previous paragraph, the conditions were strictly controlled to ensure the road was clear.

Regarding the complaint about the “airborne piece of litter”, this was filmed in a controlled manner to minimise the risk to the driver, co-driver and filming crew. In the scene where the headband comes off, the vehicle is stationary, and the moving background was edited in during post-production. The headband landing on the windscreen of the rally car was also edited in. The headband was tied to the passenger-side wing mirror for the co-driver to pull in during the rally drive. The co-driver did not have his arm resting out of the window during the rally drive.

Depiction of Off-Road Vehicles

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

Excluding the rally vehicle, the Subaru XV, Subaru Outback and Subaru Forester shown are depicted being driven in mild off-road settings. These models conform to the requirements of the definition of an off-road vehicle as provided in the Australian Design Rules (MC Category). They are passenger vehicles with fewer than 9 seating



positions, are all equipped with constant all-wheel drive and satisfy the following characteristics at its unladen mass on a level surface.

Breakover angle – all have a breakover angle greater than 14 degrees.

Departure angle – all have a departure angle greater than 20 degrees.

Running clearance – all have a ground clearance greater than 200mm.

Front Axle Clearance, Rear Axle Clearance or Suspension Clearance – all have front axle, rear axle and suspension clearance greater than 175mm.

It should be noted that while the Subaru XV conforms with the Australian Design Rules definition for off-road vehicles in the MC category, it has only been submitted for classification under the MA category.

2. What is the maximum number of seating positions in the vehicle/s?

Vehicles in the commercial have a maximum of 5 seats except for the rally car which has 2.

3. Does the vehicle/s have four-wheel drive/all-wheel drive?

All vehicles depicted in the advertisement are equipped with constant all-wheel drive.

Section 2 of the Advertiser Code of Ethics

In respect of the balance of the provisions of Section 2 of the Advertiser Code of Ethics, Subaru Australia notes that whilst there is no complaint in regard to breaches of these provisions, the Ad Standards Community Panel will nevertheless review the advertisement in its entirety against all of section 2. Accordingly, Subaru Australia makes the following further submissions:

Section 2.1 – Discrimination or vilification – the subject advertisement does not depict anything that would discriminate against or vilify any person or section within the community on the grounds of race, ethnicity, nationality, gender, age, sexual orientation, disability, mental illness or political belief.

Section 2.2 – Exploitative or degrading – the subject advertisement does not depict minors or employ sexual appeal in any way, shape or form.

Section 2.3 – Violence – the subject advertisement does not present or portray violence in any way, shape or form.

Section 2.4 – Sex, sexuality and nudity – the subject advertisement does not portray sex, sexuality or nudity in any way, shape or form.

Section 2.5 – Language – the subject advertisement uses appropriate language for the circumstances. The advertisement does not employ strong or obscene language.



Section 2.6 – Health and Safety – the subject advertisement does not depict material contrary to prevailing community standards on health and safety.

Section 2.7 – Advertising – the advertisement is clearly distinguishable as an advertisement for the all new MY21 Subaru Outback

Conclusion

For all the reasons set out above Subaru Australia vehemently disagrees with the complainant's assertion that the advertisement shows "many things that are bad, wrong, or just plain illegal" or that it otherwise breaches either the Code of Ethics or the FCAI Advertising Code. To the contrary the advertisement celebrates the love that generations of Australians have felt for their Subaru vehicles and has been extraordinarily well received by the Australian public as is evidenced by the many positive comments about the advertisement on both YouTube and Facebook.

The subject advertisement was filmed in a way that strictly complies with Road Safety laws and in Subaru Australia's submission the advertisement does not in any way breach either the Code of Ethics or the FCAI Advertising Code.

As such, Subaru Australia respectfully submits that the Ad Standards Community Panel should dismiss the complaint outright.

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:

- Environmental damage by "bashing" through the bush and along beaches
- Speeding, showing a vehicle becoming airborne
- Racing scenes showing driving that would not be allowed on roads
- Loud and distracting music
- A driver with their eyes closed
- Overtaking on a blind bend
- An arm out a vehicle window

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 Subaru vehicles depicted were Motor Vehicles as defined in the FCAI Code.



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

Clause 2(a): Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.

Eyes closed

The Panel noted the complainant's concern that a driver is shown driving with her eyes closed.

The Panel considered that the complainant is likely referring to a woman depicted at the end of the advertisement. On close review of the advertisement, the Panel agreed with the advertiser's assertion that the woman is squinting rather than has her eyes closed.

Overtaking on blind bend

The Panel noted the complainant's concern that the advertisement shows a person overtaking another vehicle on a blind bend.

The Panel considered that the advertisement is highly stylised and noted that the rally car overtakes another vehicle as a transition to a new scene. The Panel considered that this scene is clearly fantastical as it transitions from a scene with the ocean in the background to a forest scene where motor sports occurs. The Panel considered that most people would understand that the advertisement was not filmed on open, public streets and noted that the driving practices shown in the transitions from one scene to the next are film-making devices and are not always aligned with domestic road rules.

Vehicle becoming airborne

The Panel noted the complainant's concern that the advertisement shows a person speeding to the extent that their vehicle becomes airborne

The Panel noted that this scene was depicted during a part of the advertisement that showed a rally driving scene. The Panel considered that while the vehicle was travelling quickly and did become airborne, this action was consistent with rally-style motor sports.

The Panel considered that there is no indication that any other vehicles in the advertisement are exceeding speed limits or driving unsafely.



Clause 2(a) conclusion

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

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

Consistent with the discussion under Clause 2(a), the Panel considered that there is no indication the vehicle is driving at speeds in excess of speed limits in Australia.

Clause 2 (b) conclusion

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

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)].

An arm out a vehicle window

The Panel noted that the concern relating to a passenger having their arm out of a vehicle window may be an issue under the Australian Road Rules. The Panel noted the advertiser's response that the scarf was tied to the mirror for the passenger to get and the man did not have his arm resting out of the window during filming.

The Panel considered that the advertisement is highly stylised, noting that the scarf that the driver collects has transitioned from a previous scene. The Panel considered that the advertisement was cleverly edited and partly computer generated and an unrealistic scene that most people would understand was not filmed on open, public streets; and noted that the driving practices shown in such scenarios are not always aligned with domestic road rules.

Loud music

The Panel noted that the concern about loud music was not a specific issue under the Australian Road Rules and would not breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction. The Panel further noted that the music is not being played from any of the vehicles, rather the music is played over the top of the imagery in the advertisement.

Clause 2 (c) conclusion



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

Clause 2(e) - Advertisements for motor vehicles do not portray...deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

The Panel noted the complainant's concern that the advertisement depicts scenes of drivers "bashing" through the bush.

The Panel noted the scene which featured rally drivers dressed in racing livery driving on an unsealed road through a forest area. The Panel noted that the vehicle was being driven in a manner consistent with professional motor sports in such an arena and noted that the road appeared to be marked clearly and intended for such a purpose.

The Panel noted the scene featuring the vehicle passing through a waterway. The Panel considered that the vehicle is depicted as being driven in a controlled manner and the driving manoeuvres are not shown as being reckless or dangerous or done without due regard to the environment. The Panel considered that there was no suggestion that environmental damage, significant or otherwise, was caused by the filming of the advertisement.

The Panel considered that the advertisement did not depict the vehicles driving in a manner which could be seen to cause deliberate or significant damage to the environment.

Clause 2 (e) conclusion

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

Clause 3 - Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following: (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia. (b) Any racing or competing vehicles depicted in motor sport scenes should be in clearly identifiable racing livery."

The Panel considered that advertisers are allowed to depict scenes of motor sport in advertisements and considered that in this advertisement the scenes depicting rally drivers in a forest scene were clearly identifiable as motor sport scenes and all drivers and vehicles were clearly identified in racing livery. The Panel noted that a scene showing the vehicle becoming airborne was consistent with rally-style motor sports.

Clause 3 conclusion



The Panel determined that the advertisement did not breach clause 3 of the FCAI Code.

Conclusion

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