



Case Report

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| 1 | Case Number | 0124/13 |
| 2 | Advertiser | Ssangyong Motors Australia |
| 3 | Product | Vehicle |
| 4 | Type of Advertisement / media | TV |
| 5 | Date of Determination | 01/05/2013 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

A man is standing on the back of a Ssangyong Ute summarising the vehicle's features. There is scenery moving in the background, suggestive of the car in motion, but when the camera pulls back we see the car is stationary and is in front of a green screen.

THE COMPLAINT

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

Ad is distasteful considering 2 young lives lost in East Gippsland today whilst travelling in the back of a ute from one night club to another. This is an illegal act and is not setting a good example to the community.

THE ADVERTISER'S RESPONSE

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

We refer to the email received by our office on 4 April 2013 in relation to the above complaint regarding our television advertisements of the SsangYong Actyon "Tradie" SUV ("the Advertisements"). It is noted that there are two Advertisements, one being a 15 second advertisement and the other being a 30 second advertisement. Our response contained herein relates to both the Advertisements.

Firstly, it should be known that Ssangyong Automotive Australia Pty Ltd (trading as Ssangyong Motors Australia) (“Ssangyong Motors”) takes its responsibility as an advertiser very seriously and makes extensive efforts to understand and respond appropriately to community concerns and issues. Specifically, Ssangyong Motors has a stringent internal review and approval process for all advertisements, including obtaining legal advice.

Ssangyong Motors does not encourage anyone to drive in a reckless or unsafe manner or in a manner contrary to prevailing driving and road related laws. Accordingly, we respectfully disagree with the complainant’s characterisation of the Advertisements as glamorising an illegal act and of not setting a good example to the community.

We have considered the complaint and the Advertisements in light of the provisions of the AANA Code of Ethics (“the AANA Code”) and the Voluntary Code of Practice of Motor Vehicle Advertising set by the Federal Chamber of Automotive Industries (“the FCAI Code”).

We submit that the Advertisements do not breach the AANA Code or the FCAI Code on the grounds set out below.

Provision 2.7 of the AANA Code provides that advertisements for motor vehicles must comply with the FCAI Code. We note that the Advertisements do not contain any material relevant to any other section of the AANA Code.

Provision 2(c) of the FCAI Code provides that advertisements for motor vehicles shall 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 seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]”

Ssangyong Motors is proud of its increasing penetration into the Australian market and has enjoyed the position of being a relative ‘new-comer’ in an established and thriving marketplace. Advertising employed by Ssangyong Motors seeks to emphasise the great value of its vehicle line and often uses humour and satire to do so.

In the Advertisements, Ssangyong Motors employs satire, humour and hyperbole in order to emphasise the price competitiveness of its vehicle. In the modern world of commerce and advertising, advertisers often use special effects to promote their products and services and thereby to attain a competitive advantage. This is in addition to assertions they make in relation to the features and attributes that their products and services purportedly contain.

In the Advertisements, Ssangyong Motors uses special effects within the recording studio by using a “screen” with pre-recorded moving scenery and imaging and superimposing in front of the said screen the vehicle the subject of the Advertisements with the protagonist standing at the back of it. The vehicle is therefore not actually in motion at any point. It is only by

virtue of the scenery and imaging on the screen that the impression is given that the vehicle is in motion and not in the studio. This special effect is used while the voiceover is promoting the features of the vehicle (i.e. the bluetooth, the dual airbags, the turbo diesel engine and other features). After summarising the vehicle's impressive features, the protagonist (who is standing on the back of the stationary vehicle within the studio) then says in frustration (as it becomes clear he is in the studio) "Can't we just show them the price?". In the 30 second advertisement he actually says "We don't need all this. Can't we just show them the price?"

Clearly, Ssangyong Motors is employing hyperbole to illustrate that notwithstanding the extensive range of features its vehicle carries and notwithstanding the lengths they have gone to in using special effects to advertise their vehicle, it is the price of the vehicle that is in fact one of its major attractions and the special effects are not really required.

We note that the Board has previously considered issues relating to unrealistic and 'make-believe' depictions in motor vehicle advertising in its decision in Case Number 0303/12. That complaint regarded a Honda Civic Hatch advertisement where the vehicle changes lanes without indicating. The Board ruled that in light of the unrealistic nature of the overall theme of the advertisement, the vehicle had not been portrayed using driving practices that would breach the law.

We also note the Toyota advertisement (the subject of Case Number 0084/12) which was also considered by the Board. In that advertisement, the advertiser clearly employed self-evident exaggeration to promote its product and the Board dismissed the complaint in acknowledgement that advertisers may make "legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles".

Therefore, we are of the view that similar considerations should apply here.

Finally, we submit that the Advertisements are clearly not suggesting to the viewer that a motor vehicle ought to be driven in violation of road rules. Instead, we consider that the use of satire and self-evident exaggeration is entertaining and that a reasonable viewer would understand that the advertisement's objective is not portraying illegal driving practices or in any way glorifying the same.

For the above reasons we submit that the Advertisements are not in breach of the AANA Code or the FCAI Code. If you require any further assistance or information please do not hesitate to contact me.

THE DETERMINATION

The Advertising Standards Board (Board) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Advertising for Motor Vehicles Voluntary Code of Practice (the FCAI Code) and the AANA Advertiser Code of Ethics (the "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 Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Ssangyong Ute in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that 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 Board determined that the Ssangyong Ute is a motor vehicle as defined in the FCAI Code.

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

The Board noted the complainant's concerns that the advertisement depicts a man riding on the back of a Ute and that this is illegal and inappropriate.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that: 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. Motor cyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion]."

The Board noted that the advertisement features a static Ssangyong Ute with a male actor standing in the tray promoting the product whilst scenery flashes past on the green screen behind him. A minority of the Board expressed some concern that in the opening scenes of the advertisement it is not immediately clear that the car is placed in front of a green screen however the majority of the Board were satisfied that most members of the community would recognise the unreal nature of the moving scenery and considered that the final scenes of the advertisement do make it very clear that the Ute is not traveling but is stationary in a studio.

The Board acknowledged that if a person were to stand in the back of a moving Ute it would be dangerous however the Board considered that the advertisement does not condone this practice and does not encourage copy-cat behaviour from members of the community.

On the above basis, the Board determined that the advertisement does not depict a driving practice that would breach any law and does not breach clause 2(c) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code the Board dismissed the

complaint.