



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0148/11</b>
<b>2</b>	<b>Advertiser</b>	<b>Suzuki Australia Pty Limited</b>
<b>3</b>	<b>Product</b>	<b>Vehicles</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Pay TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>11/05/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Motor vehicles	Driving practice that would breach the law
Motor vehicles	Unsafe driving

### DESCRIPTION OF THE ADVERTISEMENT

A Suzuki Kizashi is shown driving on various roads whilst a male voice over talks about its specifications.

### THE COMPLAINT

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

*The vehicle featured*

*1 Has no front plate*

*2 Appears to have no rear plate*

*3 Is being driven on the wrong side of the road and double lines*

*4 Is actually being driven across double yellow lines (see photos attached)*

*Of course the film is sped up through the curves to give the impression of speed. But that's difficult to prove. Is this considered "subliminal" advertising. It's difficult to know if the ad was made overseas which of course excuses any illegal behaviour. But the driver is sitting on the right hand side of the vehicle. In any event we claim it breaches 2 (a) and 2 (c) of the Code.*

### **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.]*

*(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 ADVERTISER'S RESPONSE**

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

*Suzuki Australia Pty Ltd confirms that the driving scenes in the advertisement in question (attached) were filmed overseas, where there is no requirement for a front numberplate. We confirm that a rear numberplate is fitted.*

*It is filmed on right hand drive roads in a left hand drive vehicle. The interior shot was filmed in Australia, hence the driver being on the right hand side in that scene only.*

*The vehicle is not depicted driving in an unsafe or reckless fashion and complies with all relevant laws.*

## **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).

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 Suzuki Kizashi 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 Suzuki Kizashi was 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 features a car with no number plates being driven on the wrong side of the road and across double yellow lines, and that the footage has been fast forwarded to give the impression of speeding.

The Board noted the complainant's concern that the vehicle has no number plates and is being driven on the wrong side of the road. The Board noted Practice Note 6 to the FCAI Code which states: "The Board will not consider complaints which relate solely to: (a) The use of images produced overseas which may depict...left-hand drive vehicles travelling on the right-hand side of the road, when the footage is provided for an Australian company by its overseas parent company."

The Board also noted Practice Note 6 to the FCAI code which states the issue of number plates being displayed is "...outside the scope of the FCAI Voluntary Code of Practice for Motor Vehicle Advertising..."

The Board noted that the advertisement states 'overseas model shown'. The Board noted the advertiser's response which confirmed that the advertisement is footage which was shot overseas. The Board noted that the advertisement was shot overseas with a left hand drive vehicle but that the interior footage was shot in Australian on a right hand drive vehicle. The Board considered that this could be confusing on a close look from viewers. However the board considered that the overall impression is of an overseas vehicle and footage. On this basis the Board determined that the Practice Note applied and the Board did not consider the issues of number plate display or driving on the incorrect side of the road.

The Board noted however that the complainant raised other issues about the advertisement.

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

The Board 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 Board noted that the advertisement shows a Suzuki Kizashi being driven along winding roads and that the complainant had provided still shots which showed that in one scene the car has a wheel crossing over the double yellow line. The Board considered that this scene, when viewed in the context of the advertisement being shown at normal speed was very brief and that if the advertisement were to be viewed in its normal context most viewers would not notice the car crossing the line. The Board considered that the advertisement did not portray unsafe driving.

On the above basis, the Board determined that the advertisement does not breach clause 2(a) of the FCAI Code.

The Board considered clause 2(b) of the Code which requires that advertisements not depict 'people driving at speeds in excess of speed limits in the relevant jurisdiction in Australian in which the advertisement is published or broadcast.'

The Board considered the footage of the car's speed and noted that in one instance the footage appears to have been speeded up. The Board considered that most viewers would recognise that it is the footage and not the car which is speeding up, and noted that the car is being driven in a controlled manner throughout the advertisement.

On the above basis, the Board determined that the advertisement does not breach clause 2(b) of the FCAI Code.

The Board noted that there is no depiction in the advertisement of any driving practices or other actions which would breach any law and that the advertisement did not breach clause 2(c) of the FCAI Code.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.