



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0160/19
2	Advertiser	Suzuki Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/06/2019
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
FCAI Motor Vehicles 2(e) Environmental damage

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens with a futuristic scene showing a driverless car and a voiceover stating "It is predicted that by 2035 all cars will be driverless, but until then...". The scenery then transforms to the present day and shows a Suzuki Vitara 4x4 vehicle driving in an off road setting by an adult male. The voiceover shifts from futuristic to excited and states "party time". Different drivers are shown enjoying the features of different Suzuki vehicles including, in the case of the Suzuki Vitara 4x4, its 4WD capabilities in muddy terrain. The tagline for the Advertisement is "For Fun Sake".

THE COMPLAINT

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

The voluntary code of practice for motor vehicle advertising of the Federal Chamber of





Automotive industries seems to suggest that this kind of advertising is not conducive to good driving practice. The code features, among other things, the following:

... 'use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers....should be avoided.'[Our emphasis]

... 'Advertisers should ensure that advertisements for motor vehicles do not portray...deliberate and significant environmental damage, particularly in advertising for off-road vehicles.'

The Suzuki ad clearly and explicitly violates the first of these. Even on a loose interpretation of light heartedness, the vision of the car careering backwards and plunging through a waterway violates the second: not to mention the frequent admonitions in the code against encouragement of unsafe driving. Finally, the voice over in the commercial obviously suggests that in some obscure way responsible driving is not 'fun'. I put it to you that this commercial violates the spirit and the letter of the Code.

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 29 May 2019 regarding a complaint received by Ad Standards in relation to a television advertisement by Suzuki Australia Pty Limited (Suzuki)

We have considered the complaint and, for the reasons outlined below, submit that the complaint should be dismissed

For your reference, we enclose a digital copy of the 30 second and 15 second versions of the advertisement (collectively, the Advertisement). A copy of the scripts are also attached at Annexure A.

The Advertisement promotes the Suzuki brand and range of vehicles. The Advertisement opens with a futuristic scene showing a driverless car and a voiceover stating "It is predicted that by 2035 all cars will be driverless, but until then....". The scenery then transforms to the present day and shows a Suzuki Vitara 4x4 vehicle driving in an off road setting by an adult male. The voiceover shifts from futuristic to excited and states "party time". Different drivers are shown enjoying the features of different Suzuki vehicles including, in the case of the Suzuki Vitara 4x4, its 4WD capabilities in muddy terrain. The tagline for the Advertisement is "For Fun Sake".

1. *Response to Ad Standards' inquiries*



1.1 Please see below our responses to your specific questions, followed by our submissions in response to the issues raised in the complaints:

(a) The Advertisement was filmed under controlled, closed road conditions. All vehicles were driven safely and in a controlled manner at all times.

(b) All vehicles were driven within legal speed limits at all times.

(c) No special permissions or permits were required to undertake filming of any driving sequences depicted in the Advertisement.

(d) The Advertisement has been broadcast on free to air television across all metropolitan markets across Australia excluding Brisbane, as well as all regional markets (excluding Queensland).

(e) In addition to being broadcast on television, the Advertisement is running as a pre-roll video on Catch Up TV platforms/YouTube.

(f) The Advertisement does not depict any motor sport, simulated motor sport or vehicle testing or proving.

(g) In respect of the Suzuki Vitara 4x4 vehicle (which is the only vehicle shown in an off-road setting):

(i) the vehicle conforms to the requirements of the definition of an off road vehicle as provided in the Australian Design Rules (MC category). In addition to having all-wheel drive, the vehicle has hill descent control, a feature only required for off road driving.

(ii) the maximum number of seating positions is four.

(iii) the vehicle has four-wheel drive capability.

2. Submissions in response to complaints

2.1 The complaint alleges that the Advertisement:

(a) depicts a car "careering through water and mud, and mindlessly circling a suburban roundabout"; and

(b) suggests "in some obscure way [that] responsible driving is not fun".

2.2 Ad Standards has identified clauses 2(a) and 2(e) of the FCAI Motor Vehicles Advertising Code (the FCAI Code) as potentially relevant provisions.

(a) Clause 2(a) of the FCAI Code provides that Advertisers should ensure that advertisements for motor vehicles do not portray "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 whether the driving is depicted in the advertisement."

(b) Clause 2(e) of the FCAI Code provides that Advertisers should ensure that advertisements for motor vehicles do not portray "deliberate and significant environmental damage, particularly in advertising for off-road vehicles".

Submissions concerning Clause 2(a) - unsafe driving

2.3 The FCAI Code includes, as examples of what would likely contravene clause 2(a), "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."

2.4 Suzuki submits that the Advertisement does not portray unsafe, reckless or menacing driving that would breach any applicable laws or regulations dealing with road safety or traffic regulation. In particular, we note:

(a) all vehicles were driven within the legal speed limit at all times during filming and in accordance with applicable road rules.

(b) The "off road" scenes depict a Suzuki Vitara 4x4, a vehicle designed for the purpose of driving off-road, travelling through muddy terrain in the outback. There are no other cars, traffic, pedestrians or people featured in the off road scenes. These scenes were filmed within applicable speed limits in order to highlight the off road capability of the vehicle. The final scene of the 30s version shows an aerial shot of the Suzuki Vitara 4x4 driving in a large semi-circle. Again, this is shown in a controlled manner within applicable speed limits.

(c) The Advertisement uses music and visual effects to create a sense of fun and enjoyment, but does not depict spin outs, burn outs, speeding or any other form of reckless driving. There is no screeching of tyres, long drifting periods or other effects to suggest that any of the vehicles are being driven unsafely, recklessly or in a menacing manner.

(d) The Advertisement includes an aerial scene of a Suzuki vehicle being driven around a suburban roundabout. The vehicle is being driven within applicable speed limits and in accordance with applicable road rules. No other vehicles or pedestrians are shown in that scene.

2.5 The Advertisement uses music and the tagline "For Fun Sake" to convey a sense of fun and enjoyment, but there is nothing in the Advertisement to suggest that any of the vehicles should be used in an unsafe, reckless or menacing manner, or that responsible driving is not "fun" as alleged by the complainant.

2.6 For the reasons outlined above, we submit that the Advertisement does not portray any material in contravention of clause 2(a) of the FCAI Code. For completeness, we note the complainant has highlighted the use of an on screen statement that reads "filmed under safe and controlled conditions" and suggests that this is a contravention of the FCAI Code. In this regard, we note:

(a) the use of an on screen statement to convey to consumers that off road driving scenes are filmed in safe and controlled conditions is not, of itself, a breach of the FCAI Code.

(b) Suzuki is mindful of the FCAI's guidance that disclaimers cannot be used to justify material that would otherwise contravene the FCAI Code.

(c) Suzuki submits that no contravention of the FCAI Code has occurred in the first place (for the various reasons outlined in these submissions) and the purpose of the on screen statement is not to justify the inclusion of material that otherwise breaches the FCAI Code.

Submissions concerning Clause 2(e) - significant and deliberate environmental damage

2.7 Suzuki submits that the Advertisement does not portray any vehicle causing deliberate and significant damage to the environment for the following reasons:

(a) the Suzuki Vitara 4x4 is shown in an outback setting being driven through



muddy terrain in order to demonstrate the off road capability of the vehicle.

(b) driving vehicles with off road capability through muddy terrain is not uncommon and does not necessarily contribute to environmental damage. While the Advertisement clearly shows mud and water being splashed onto the car, no plants, animals or other aspects of the environment were deliberately damaged during filming.

(c) to the extent that the scenes involved any disruption to the environment (which we submit it did not), such disruption is minimal and superficial and cannot reasonably be described as "deliberate and significant environmental damage" as prescribed by section 2(e).

2.8 Further, we submit that the Advertisement does not contravene any other provision of the FCAI Code for the following reasons:

(a) there is no indication of the speed that any of the vehicles are being driving at or of the speed limits of the roads that the vehicles are driving on (eg there is no footage of a speedometer reading or reference to any speed limit being exceeded). Accordingly, the Advertisement does not depict excessive speeding in contravention of clause 2(b) of the FCAI Code.

(b) all drivers are shown wearing a seatbelt and in control of their vehicle. There is no footage of any driver using a mobile phone or other handheld device. Accordingly, we submit that the Advertisement does not portray any driving practices or other actions that would breach any applicable laws or regulations in contravention of clause 2(c) of the FCAI Code.

(c) all drivers are alert at all times. There is no suggestion that any of them are fatigued or under the influence of drugs or alcohol in contravention of clause 2(d) of the FCAI Code.

3. Code of Ethics

3.1 For completeness, we further submit that the Advertisement fully complies with Section 2 of the AANA Code of Ethics. Below is a short summary of our submissions regarding the provisions of Section 2 of the Code.

2.1 - Advertising or Marketing shall not portray people or depict material in a way which discriminates or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The Advertisement does not depict any material that is problematic for the purposes of section 2.1.

2.2 - Advertising or Marketing Communications shall not employ sexual appeal:

(a) where images of Minors, or people who appear to be Minors, are used; or (b) in a manner which is exploitative and degrading of any individual or group of people.

The Advertisement does not employ sexual appeal.



2.3 - Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Advertisement does not present or portray violence.

2.4 - Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Advertisement does not make any reference to sex or nudity.

2.5 - Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

The Advertisement does not include any inappropriate, strong or obscene language.

2.6 - Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

Please refer to our detailed submissions above regarding compliance with the FCAI Code.

2.7 - Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience.

Any reasonable viewer will have no doubt as to the advertising nature of this content.

Conclusion

In view of the above, we consider the complaint should be dismissed.

Thank you for taking the time to consider our response. We look forward to receiving your determination in this matter.

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 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 models depicted in the advertisement were 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 there are two versions of this television advertisement.

A 30 second version of the advertisement shows a small car driving along a suburban street where all the houses look very similar; a yellow vehicle driving through a muddy terrain going over bumps and then driving on a dirt terrain; a woman circling a roundabout; several aerial shots of various vehicles travelling along a sealed road; a man attempting to open a red vehicle's door as it moves forward; the yellow vehicle again driving through a muddy terrain going over bumps, then reversing through a mud puddle; a silver vehicle travelling along a dirt road; and a yellow vehicle turning near the edge of a drop off.

A 15 second version of the advertisement shows a small car driving along a suburban street where all the houses look very similar; a yellow vehicle driving through a muddy terrain going over bumps; a man attempting to open a red vehicle's door as it moves forward; a woman circling a roundabout; a yellow vehicle turning near the edge of a drop off; and a silver vehicle travelling along a dirt road.

The Panel noted that both versions of the advertisement end with the tagline "For fun's sake". . .

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 complainant's concerns that the advertisement depicts a vehicle careening through water and mud, depicts a vehicle circling a suburban roundabout, and concern that the tagline of the advertisement, "For fun's sake", implies that responsible driving is not "fun".

The Panel first considered the scene of the woman circling a roundabout, which appears in both versions of the advertisement.

The Panel considered the implication/suggestion that she is driving around the roundabout multiple times for fun and considered that if that was shown it would be likely to be unsafe. However the Panel considered that although the woman is shown to be on a roundabout, there is no clear depiction that she is going around multiple times. The Panel considered that that woman may be using the roundabout to perform a u-turn.

The Panel noted that there is no regulation determining the number of times a driver is legally able to circle a roundabout. The Panel considered that this scene is unlikely to be considered by most members of the community to be a depiction of unsafe driving.

The Panel then considered a scene showing a yellow vehicle driving through a muddy terrain going over bumps, which appears in both advertisements.

The Panel noted that the vehicle's front wheels do leave the road surface, and considered that this may have been a demonstration of the 4WD capabilities of the vehicle.

However, the Panel considered that the depiction of the vehicle going over the large bump at a speed which caused its' wheels to leave the road was a depiction which would constitute unsafe driving if it were to take place on a road or road related area.

The Panel considered a scene showing a yellow vehicle reversing through a mud puddle, which appears in the 30 second advertisement.

The Panel considered that the vehicle does not appear to be reversing at speed, and considered that reversing a vehicle through a puddle is not a breach of driving



regulations. The Panel noted that the vehicle is in a rural area and would therefore have a clear view of whether there are any other vehicles approaching. The Panel considered that this scene is unlikely to be considered by most members of the community to be a depiction of unsafe driving.

The Panel considered a scene showing a yellow vehicle turning near the edge of a drop off.

The Panel noted the advertiser's response that the vehicle is driving in a large semi-circle and that it is shown in a controlled manner within applicable speed limits.

The Panel considered that the vehicle appears to be driving at speed, and noted that although it may be driving within applicable speed limits, it still appears to be driving faster than appropriate given the conditions. The Panel considered that the scene appears to show the vehicle turning near the edge of a cliff or large drop off.

The Panel considered that this scene was fleeting and that it was not possible to tell how controlled the turn was. The Panel considered that the depiction of the turn performed towards the edge of a large drop off was one that most members of the community would consider to be reckless driving.

The Panel noted the advertisement featured the disclaimer "Filmed under safe and controlled conditions".

The Panel noted the guidance note in the FCAI Code which states "In particular, it is noted that use of disclaimers indicating that a particular scene or advertisement was produced under controlled conditions; using expert drivers; that viewers should not attempt to emulate the driving depicted; or expressed in other similar terms, should be avoided. Such disclaimers cannot in any way be used to justify the inclusion of material which otherwise does not comply with the provisions of the Code."

The Panel noted the complainant's concern that the advertisement violates this note.

The Panel noted that the use of an on screen statement to convey to viewers that off road driving scenes are filmed in safe and controlled conditions is not, of itself, a breach of the FCAI Code.

The Panel noted the complainant's concern that the tagline of the advertisement, "For fun's sake", implies that responsible driving is not "fun".

The Panel considered the tagline "For fun's sake". The Panel noted the advertiser's response that the tagline is used to convey a sense of enjoyment. The Panel considered that the tagline evokes enjoyment of the vehicle, but is not of itself a depiction which encourages or condones unsafe driving.



Overall, the Panel found that the advertisement did breach section 2(a) of the FCAI Code, in the use of a scene showing a vehicle with its' wheel off the ground and a scene showing a vehicle performing a fast turn near a large drop off.

The Panel considered Clause 2(e) of the FCAI Code which requires that 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 violates this section of the Code.

The Panel considered it had previously dismissed a similar advertisement for Isuzu in case 0408/14 where:

"The Board noted the Isuzu D-Max is shown driving over sand and through streams and considered that driving vehicles with off road capabilities over these terrains is not uncommon and does not necessarily contribute to environmental damage. The Board noted that some people may consider that environmental damage can be caused by any incursions by people in vehicles into wild/environmental areas however the Board considered that the vehicle is shown to be driven in a cautious manner which is not intentionally damaging to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code."

The Panel noted that in the current advertisement the vehicles were being driven in a manner consistent with off-road recreational use of SUV vehicles, and that the advertisement depicted the vehicles' abilities in off-road conditions.

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 noted the advertiser's response that no environmental damage, significant or otherwise, was caused by the filming of the advertisement.

The Panel considered that the advertisement did not depict the vehicle driving in a manner which could be seen to cause deliberate or significant damage to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.

Finding that the advertisement did breach Cause 2(a) of the FCAI Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION



Thank you for the opportunity to respond to your determination in this matter. Suzuki Australia takes its obligations under the FCAI and other advertising codes very seriously and acknowledges the potential influence that TVC advertising may have on consumers. While it was never our intention to portray any unsafe driving at any point during production of this TVC, we acknowledge the Panel's findings and propose to edit both the 30 and 15 second TVCs to remove the scenes highlighted as depicting unsafe driving.