



## Case Report

1	Case Number	0400/15
2	Advertiser	Suzuki Australia Pty Limited
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	14/10/2015
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

There are three versions of this television advertisement for Suzuki; a thirty second version and two fifteen second versions featuring footage from the longer thirty second version. In each version we see Suzuki vehicles being driven in various locations showcasing both the interior and exterior of the vehicles. In some scenes the fog lights are on, in others just the daytime driving lights.

### THE COMPLAINT

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

*It is increasingly fashionable to drive illegally with front fog lights on inappropriately and this problem is not helped by advertising vehicles breaking the same law.*

### THE ADVERTISER'S RESPONSE

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

- I hereby confirm the following regarding 1. Complaint reference number: 0400/15,*
- 1. The entire commercial was filmed in Victoria.*
  - 2. For most of the TVC, only Daytime running lights are used. I confirm that Fog lights were*

*used only in conditions of fog.*

*3. I confirm that throughout the entire TVC all road regulations were followed.*

*I confirm that this commercial does not breach the FCAI code of practice for Motor Vehicle advertising Section 2(c) - Driving practice that would breach the law.*

## **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 Vitara, in a manner calculated to promote that product. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered 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 Vitara 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 depicts a vehicle being driven with its fog lights on during the day which is illegal under Australian Road Rules.

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

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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.'

The Board noted that the advertisement features various Suzuki Vitaras being driven in

different locations at different times, and in some scenes the fog lights are on.

The Board noted that clause 217(1) of the Australian Road Rules (February 2012) refers to the use of fog lights and states that “The driver of a vehicle fitted with front fog lights or rear fog lights must not operate the fog light unless the driver is driving in fog or other hazardous weather conditions causing reduced visibility.”

The Board noted that the Road Rules are very prescriptive in relation to the use of fog lights and considered that the conditions shown in the advertisement while the vehicle is being driven are a range of situations including broad daylight.

The Board noted the scenes in the advertisement where the fog lights are used and considered that whilst it appears in one of the scenes that night is falling and therefore normal driving lights would be required, in the Board’s view there was no depiction of the vehicle being driven in hazardous, foggy or any other conditions where visibility was reduced.

The Board noted it had previously considered upheld a complaint against a similar advertisement for a motor vehicle in case 0464/12 where:

“The Board considered however that as the vehicle was portrayed as driving in clear conditions, there was no need to include the use of fog lights as a feature.”

Consistent with this previous determination the Board noted that the use of fog lights in clear driving conditions is contrary to the provisions of the Road Rules and considered therefore the advertisement does portray a driving practice that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did breach Clause 2(c) of the FCAI Code.

Finding that the advertisement did breach the FCAI Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Suzuki Australia agrees to edit these TV commercials and remove all scenes whereby the fog lights have been used as requested by the Advertising Standards Bureau. The new TV commercials will then be aired accordingly.

However, Suzuki Australia maintains that these TV commercials do not breach the FCAI code of practice for Motor Vehicle Advertising Section 2 (c). Suzuki Australia places an upmost priority on safety when filming TV commercials and always uses professional precision drivers. It is always these drivers discretion to use fog lights based on the conditions being driven in and on these occasions the drivers deemed the conditions appropriate for fog light use to increase visibility and safety.

Suzuki Australia believe that the charter of the ASB is to ensure advertising is reflective of expected community standards so is disappointed to have a complaint upheld when in fact only one complaint by one individual was received by the ASB from the general public. We strongly believe this TV commercial is within expected community standards and in no way depicts any unsafe driving.

