



CASE REPORT

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| 1. Complaint reference number | 342/07 |
| 2. Advertiser | Suzuki Australia Pty Ltd (SX4) |
| 3. Product | Vehicles |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | FCAI - Driving practice that would breach the law |
| 6. Date of determination | Tuesday, 13 November 2007 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on two men in a big black car, parked by the side of the road in a big city, obviously in surveillance mode. As a man exits a building with a briefcase and jumps into a new Suzuki SX4 silver sedan, the black car starts to follow. The SX4 sedan enters a tunnel, with the black car following, and it is then seen exiting the tunnel as the same colour car, but it is now the SX4 2WD hatch. The men in the surveillance car are puzzled, assuming he has switched cars. The SX4 2WD hatch then drives into a railway yard, with the black car following, and as it drives behind a series of rail carriages it turns into a red AWD hatch, confusing the pursuers. The cars drive into an industrial zone then through a spillway with water splashing everywhere, and as the water clears, the red AWD is seen as an SX4 Rally car with sports racing decals. The Suzuki driver lowers his window and smiles at his pursuers who jump out of their car in frustration. A static shot of the rally car is then shown with quick cuts reversing through an AWD, 2WD and the original SX4. A male voiceover concludes "Make the switch to the four with more. Suzuki SX4."

THE COMPLAINT

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

This advertisement clearly breaches the Code as the AWD turning into a rally car implies that a normal on-road vehicle can be driven as a rally car. Furthermore, these rally scenes take place on a normal road environment and are not confined to a traditional or clear rally car environment. The implied message is that driving a Suzuki SX4 on road is like driving a rally car.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

As a worldwide leader in the automotive industry, Suzuki takes its corporate responsibilities towards motor vehicle and driving safety very seriously and would never want to encourage any person to drive in an unsafe fashion. We therefore strongly refute any allegation that the current Suzuki SX4 TV commercial is in violation of the FCAI voluntary code or that it in any way encourages people to drive their cars on road in the same manner as a rally car. Suzuki requested our advertising agency to produce a campaign which would promote the entire SX4 range and raise awareness of Suzuki's rally heritage and plans for the All-Wheel-Drive version of the SX4 to be entered in the World Rally Championship in 2008.

The concept that was created was a fantasy story loosely based on a common theme seen in Hollywood movies. A character is being tailed by two men, so in order to "lose the tail", he "magically" switches cars. In our commercial, the hero switches cars by changing from one model of the SX4 to the next, commencing with the SX4 sedan, then the 2WD hatch, then the AWD hatch and finally a rally version of the AWD SX4. The concept is clearly fantasy as we see the SX4 sedan

drive under a bridge and turn into the 2WD hatch, then it drives behind a stationery rail car in a railyard and turns into the AWD version which then drives through water in an offroad spillway and turns into the rally version of the car.

It is important to note that once the sedan switches to the 2WD hatch and it enters the railyard, the cars are not depicted driving on any roads for the rest of the commercial. This is true for the AWD hatch and its associated rally version. This is critical to the complaint at hand, as this complaint is clearly based on the complainant's incorrect assumption that the rally car depicted in the final scene of the commercial is driving on a road, when in actual fact the rally car is depicted as sliding to a halt on a flooded off-road spillway. Suzuki Australia went to great lengths in creating our SX4 commercial to clearly show when the vehicles depicted were driving on roads and when they were not.

The first section of the commercial clearly shows the cars being driven sedately, carefully and legally on roads. Then when the hatch switches to an AWD hatch, the characters in the tail vehicle can clearly be heard to say "That's an AWD" and then mention "going off road". The AWD hatch is clearly shown driving in a railyard, not on the road. It then drives on an off-road gravel surface, before finally entering an under bridge spillway, which is also clearly not a road. In order to reinforce this, the commercial finishes with a special effect that "wipes" through the 4 versions of the car shown in the commercial. This takes place on the edge of the spillway, which is clearly depicted as not being a road.

We also feel it is also important to note that at no time during the commercial has Suzuki attempted to try and depict the rally car as participating in any type of rallying event. There is no rally track, no other cars, no officials, no crowds, no starting or finishing gates. In short, we do not depict any rally action at all. We merely show a rally version of the AWD vehicle on a flooded spillway. That is all. This is not an attempt to say that on-road vehicles should be driven in the same manner as a rally car, as we are not depicting the car doing any "rally driving" whatsoever.

Suzuki Australia can confirm that all on-road scenes of driving were conducted in accord with all relevant road safety regulations under strict police supervision. All off-road driving took place on areas for which we had the proper authorisation to be driving, and all off-road driving was conducted in a safe and proper manner, well within all appropriate speed limits, under proper and appropriate safety supervision from the relevant authorities. Suzuki Australia can assure the ASB that all cars portrayed, including the "tail vehicle" were driven within legal speed limits at all times, while either on road or off-road. Special permission and permits were sought and obtained from the relevant authorities controlling the railyard, and also the vacant gravel land and spillway, on which the off-road driving sequences were filmed. Filming took place under the direct supervision of the relevant safety officers from these authorities. Also special permission was sought and obtained for all on-road driving under the direct supervision of the police.

There are no scenes of motorsport or simulated motorsport taking place in the commercial. An AWD version of the vehicle, adorned with rally stickers is shown simply coming to a halt. This could not be considered by any reasonable person to be depicting a form of motorsport.

The SX4 All-Wheel-Drive is technically classified as a compact SUV (off-road passenger vehicle MC) as it has:

- 4 wheel drive*
- A breakover angle of not less than 14 degrees*
- A departure angle of not less than 20 degrees*
- Running clearance of not less than 200mm*
- Front axle clearance, rear axle clearance or suspension clearance of not less than 175mm*

In summary, we conclude that the complaints should be dismissed on the ground that:

1) The scene in the commercial being complained about does not actually take place on a road, so it cannot be implied that we are saying a "normal on-road" vehicle can be driven as a rally car. Furthermore, the rally version of the vehicle is not a "normal on-road" vehicle but is in fact an off-road equipped 4WD version of the vehicle and it is depicted as doing something which an off-road vehicle is capable of doing safely, namely sliding to a halt on a wet spillway from a speed of approximately 25 kmh.

2) There is no such "rally scene" as alleged, but it is merely a rally version of the car sliding to a halt. This is not taking place on a "normal road environment" as claimed, but in fact is taking

place on an off-road spillway and this is clearly shown as such. Therefore we are not “implying any message whatsoever that driving a Suzuki SX4 on road is like driving a rally car”, as we are not showing an SX4 rally car driving on a road.

In summary, in the view of Suzuki Australia, the SX4 TVC merely illustrates that the car is available in 3 different models, namely sedan, 2WD hatch and 4WD; that the car is a contender for the World Rally Championships and is another vehicle which comes from Suzuki’s proud history of rallying. Suzuki Australia takes all the relevant steps, including legal advice, when developing television advertising to ensure the advertisements do not encourage illegal or unsafe driving and in this circumstance, do not present an on-road vehicle being driven in a manner that does not comply with the FCAI advertising code.

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

The Board then went on to consider the substantive provisions of the FCAI Code. The Board first considered clause 2(a) of the FCAI Code. Clause 2(a) provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following '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 carefully viewed the advertisement and considered that there was no depiction of any unsafe driving in the advertisement in particular that the images of the cars being driven in the streets was conducted at an obviously reasonable speed and there was clear use of appropriate indicators as needed. The Board considered that there was no breach of clause 2(a).

The Board also considered clause 2(b) which provides that advertisers should ensure that advertisements for motor vehicles do not portray any of the following 'People driving in speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.' The Board considered that there was no depiction of cars being driven at excessive speed.

The Board considered that clauses 2(c), (d), and (e), of the FCAI Code were not relevant to the present advertisement.

The Board considered clause 3 of the FCAI Code which permits advertisers to '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 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 Board considered that the images of the car being driven off road were consistent with the permissions in clause 3.

Finally the Board considered clause 4 of the Code which states that 'An advertisement may legitimately depict the capabilities and performance of an off-road vehicle travelling over loose or unsealed surfaces, or uneven terrain, not forming part of a road or road related area. Such advertisements should not portray unsafe driving and vehicles must not travel at a speed which would contravene the laws of the State or Territory in which the advertisement is published or broadcast, were such driving to occur on a road or road related area.'

The Board considered that the images of the AWD were clearly images of the car off road and while the car was depicted skidding in the dirt there was no suggestion that this driving was unsafe in the environment in which the car was driving nor that it was driving at excessive speed.

The Board determined that the advertisement did not breach any of the clauses of the FCAI Code and accordingly dismissed the complaints.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.