



## CASE REPORT

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| 1. Complaint reference number | 449/08  |
| 2. Advertiser                 | Suzuki Australia Pty Limited                                      |
| 3. Product                    | Vehicles  |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | FCAI - Driving practice that would breach the law<br>FCAI - Other |
| 6. Date of determination      | Wednesday, 12 November 2008                                       |
| 7. DETERMINATION              | Dismissed   |

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for Suzuki Grand Vitara shows the vehicle being driven in a variety of conditions, including mountainous country, on a beach, over a river crossing and in snow. The advertisement lists the features of the vehicle as does the voice over.

## THE COMPLAINT

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

*The vehicle can be seen where the following offences are depicted. These are offences in NSW where the advertisement was broadcast. As such, the ad breaches Sections 2 (a) and 2 (c) of the Code of Practice for Motor Vehicle Advertising:*

*1 The vehicle is seen being driven on the wrong side of the road. (Rule 130 Keeping to the left on a multi-lane road)It is not overtaking another vehicle. It cannot be a two-lane highway, because there is a cliff/mountain on one side and a lake on the other. If it were overtaking another vehicle, the right indicator should be on, which it is not. This would constitute another offence.*

*2 It appears the dark haired girl is not wearing a seat-belt*

*3 The vehicle is shown being driven with the fog-lights on. Several of these scenes are in bright daylight. It is an offence to use fog-lights unless there is fog and if the lights are likely to dazzle another driver ARR-219*

*4 The vehicle is seen doing wheel-spins and 4-wheel drifts. At best this would be negligent driving, at worst, reckless. It is definitely driving without proper control of a vehicle and is an offence under Rule 297, Driver to have proper control of a vehicle, of the Road Rules 2008, as is driving negligently an offence under Section 42 of the Road Transport (Safety and Traffic Management) Act; Negligent, furious or reckless driving.*

*Please note, the code does not excuse this behaviour because of the following clauses.*

### **4. DEPICTION OF OFF-ROAD VEHICLES**

*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.*

OR

*FCAI acknowledges that advertisers may make legitimate use of fantasy, humour and self-evident exaggeration in creative ways in advertising for motor vehicles. However, such devices should not be used in any way to contradict, circumvent or undermine the provisions of the Code.*

## **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 Grand Vitara TV commercial is in violation of the FCAI voluntary code or that it in any way encourages people to drive their cars in a reckless, negligent or unsafe manner.*

*The Suzuki Grand Vitara TV commercial was developed by the Head Office of Suzuki Motor Corporation (SMC) in Japan, and as such, is being screened throughout the world by various Suzuki distributors, including Suzuki Australia Pty Limited (SAPL). SMC have very strict guidelines in place regarding the depiction of any unsafe driving practices and their approval was obviously gained prior to the distribution of the TV commercials to worldwide distributors.*

*The initial concept was created around a "Freedom" theme, supported by an original music track, also based on the "freedom" theme. Subsequent cut-downs of the original concept concentrate on "fuel efficiency" and "safety" as their key messages. The commercials were always designed to show the Grand Vitara as a "Worldwide" available vehicle with scenes including Venice, Rome and New York, Asia and New Zealand. The majority of the commercial was shot overseas, and clearly identifies "Overseas Model Shown". It can also be easily noted that the Grand Vitara is a left-hand-drive vehicle, as used in many international markets.*

*Suzuki Motor Corporation has gone to great lengths to clearly show the Grand Vitara is a very safe vehicle to be driven off-road, in many different off-road environments, in addition to its on-road capabilities.*

*In regard to the specific issues raised by the ASB, we hereby provide our responses as below:*

*1. What assurances can the advertiser provide that any driving depicted in the advertisement would conform to relevant road safety regulations, were it to occur on road or road-related area?*

*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.*

*2. Can the advertiser confirm that any vehicles portrayed in the advertisement were driven within legal speed limits at all times?*

*Yes Suzuki Australia can assure the ASB that all cars portrayed, were driven within legal speed limits at all times, while either on road or off-road.*

*3. Was it necessary for the advertiser to obtain any special permission/permits to undertake filming of any driving sequences depicted in the advertisement?*

*Yes special permission and permits were sought and obtained from the relevant authorities. Also special permission was sought and obtained for all on-road driving under the direct supervision of the police.*

*4. Has the advertisement being published/broadcast in all of Australia? Are there any States/Territories where the advertisement has not been published/broadcast?*

*The advertisement in question has been broadcast in all states and territories of Australia. It is also being broadcast in many overseas countries.*

5. *Has the advertisement been made available on the internet?*

*The advertisement has been made available on the Internet.*

#### *Depiction of Off-Road Vehicles*

*The FCAI Code provides that advertisers may legitimately depict the capabilities and performance of 'off road vehicles' travelling over loose or unsealed surfaces, or uneven terrain, provided that such scenes do not involve unsafe driving and that such vehicles do not exceed speed limits.*

*It is noted that for the purposes of the FCAI Code an 'off road vehicle' is taken to be a passenger vehicle, having up to 9 seating positions including that of the driver, having been designed with special features for off-road operation, consistent with the requirements of the definition of such a vehicle as provided in the Australian Design Rules (MC category). An off-road vehicle will normally have four-wheel drive.*

1. *Do any/all vehicles portrayed being driven in an off road setting in the advertisement conform to the requirements of the definition of an off road vehicle as provided in the Australian Design Rules (MC category)? If so, please outline the key criteria which are met? [1]*

*The Suzuki Grand Vitara is classified as a compact SUV (off-road passenger vehicle) as it has:*

- 4 mode 4 X 4 system transmitting power to all 4 wheels at all times*
- 4H Lock for serious off-roading, 4L Lock for extreme surface conditions*
- 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*

2. *What is the maximum number of seating positions in the vehicle/s?*

*There are seating positions for 5 adults in the Grand Vitara*

3. *Does the vehicle/s have four-wheel drive/all-wheel drive?*

*The Suzuki Grand Vitara does have four-wheel drive.(see 1. Above)*

#### *Reasons for Concern:*

1. *The vehicle is not being driven on the wrong side of the road.*

*In many countries, vehicles (particularly left hand drive) are driven on the right hand side of the carriageway. "Overseas Model Shown" is clearly highlighted in the advertisement.*

2. *Suzuki can confirm that seat belts were worn at all times during all driving shoots.*

3. *The commercial shooting took place in many varied climatic conditions in overseas areas. In some locations very significant rain, fog, snow and winds were encountered. In some locations, particularly mountainous areas, it was necessary to have fog lights on for safety reasons, and in particular, those areas where foggy conditions were intermittent. Significant post-production enhancements were undertaken to "brighten up" much of the footage.*

4. *The vehicle was driven safely at all times within legal speed limits, while either off or on road and under proper control.*

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

1) *The commercial is clearly focused on the "freedom" message of the Grand Vitara. It clearly depicts the vehicle as being an "overseas" vehicle, with the majority of the commercial being filmed overseas where left hand drive vehicles drive on the right side of the road.*

2) *All on road and off road driving was done within legal speed limits.*

3) *Fog lights were only used on-road in environments where fog or intermittent fog was present.*

4) *In off-road scenes, the vehicle was driven safely and within a legal speed at all times. It was driven off-road to demonstrate that it has off road capability as it is a 4WD vehicle.*

*Suzuki Motor Corporation and Suzuki Australia take 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 the vehicle being driven in a manner that does not comply with the FCAI advertising code.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”) and the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (the "FCAI Code").

The Board noted that this was an advertisement for a motor vehicle and accordingly considered the application of the FCAI Code. The Board carefully viewed the advertisement in relation to the issues raised by the complainant.

In regard to the complainant's concern that the vehicle is being driven on the wrong side of the road, the Board noted the advertiser response that an overseas model is depicted and that the advertisement features text indicating "overseas model shown". The Board noted that the FCAI Code has been developed to apply to advertisements that raise issues concerning road safety and vehicle occupant protection and that the FCAI Code does not enable the Board to prohibit images of a vehicle driving on the right-hand side of the road when the footage is provided for an Australian company by an overseas parent company, provided that there is no unsafe driving depicted. The Board therefore concluded that this matter is outside the scope of the FCAI Code and not relevant for its determination. The Board considered that the broadcast image does not raise any other issues of road safety or vehicle occupant protection.

The complainant was also concerned the advertisement depicted a passenger not wearing a seat-belt. The Board did not find that any driver or passenger was seen to be not wearing a seat-belt.

In regard to the use of fog-lights in the advertisement, the Board noted the Australian Road Rules provide that "[t]he 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 the complainant's concern that the fog lights were depicted in scenes of bright daylight. The Board also noted the advertiser response regarding the varied conditions during filming of the advertisement and the use of post-production tools to enhance the brightness of the images shown. The Board also noted the scenes in the advertisement did not depict other vehicles in the vicinity. The Board considered that the depiction of fog lights in the circumstances shown in this advertisement did not raise an issue of road safety or vehicle occupant protection and therefore concluded that the matter was outside the scope of the FCAI Code. The Board also noted that it did not consider that the depiction of lights in the advertisement was contrary to the Australian Road Rules regarding dazzling of other road users, as no other road users were shown in the advertisement.

In regard to the complainant's concerns that the vehicle was depicted doing wheel-spins and 4-wheel drifts, the Board noted that the FCAI Code allows an advertisement to 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. The Board did not consider the advertisement depicted any unsafe driving or speeding that could be regarded as contrary to the FCAI Code.

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