

ARBITRATION PROCEEDING

In the Matter of Arbitration)	
)	
between)	
)	
SCREEN ACTORS GUILD, INC., et al.)	
)	OPINION AND AWARD
and)	
)	
CAMPBELL-EWALD)	
)	
<u>RE: Chevrolet "Record"</u>)	

The Undersigned was selected by the parties, Screen Actors Guild, et al. (SAG or Guild) and Campbell-Ewald (Producer) to hear and decide a claim regarding the commercial titled Chevrolet "Record" (Commercial or Project). Jennifer Vance, Esq. and Danielle Van Lier, Esq. represented SAG. Elhanan Stone, Esq. and Neil Rosolinsky, Esq. represented Producer. An evidentiary hearing was held on November 16, 2006 at SAG's Los Angeles offices. At the conclusion of the hearing the parties elected to submit final arguments in writing. The matter was initially considered fully submitted upon my receipt of the post-hearing briefs. I reopened the record for additional argument in a conference call and closed the record at the conclusion of the call.

During the course of the hearing both parties were afforded a full and complete opportunity to present evidence, to cross-examine witnesses and to develop argument. All witnesses

appearing were duly sworn. No transcript of the hearing was prepared.

ISSUES

The Issues presented for decision are:

Were the professional drivers (collectively Performers) who worked on this Project entitled to be classified as "Stunt Drivers" pursuant to the Screen Actors Guild 2003 Commercials Contract?

If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE SAG

2003 COMMERCIALS CONTRACT (CONTRACT)

6.F. Stunt performers are included in the term "principal performer" if they perform an identifiable stunt which demonstrates or illustrates a product or service or illustrates or reacts to the on or off-camera narration or commercial message. Stunt performers need not be identifiable per se; only the stunt performed need be identifiable. A vehicle driver is included in the term "principal performer" if such driver satisfies the Stunt Driving Guidelines set forth in subsection 9 of Section EE of Working Conditions (Schedule A, Part I)

Schedule A, Section EE, Subsection 9 - Stunt Driving Guidelines

When any of the following conditions occur, a vehicle driver shall qualify as a stunt performer:

- (a) when any or all wheels leave the driving surface;
- (b) When tire traction is broken, i.e. skids, slides etc.
- (c) Impaired vision – when the driver's vision is substantially impaired (including (v) Any other conditions restricting the driver's normal vision
- (d) If the speed of the vehicle is greater than normally safe for the condition of the driving surface ...
- (e) ...
- (f) ...
- (g) Whenever high speed or close proximity of any vehicle creates conditions dangerous to the driver, passenger, film crew or the vehicle;
- (h) ...
- (i) ...

STATEMENT OF RELEVANT FACTS

Producer hired six experienced drivers¹ and an experienced motorcyclist for the Commercial. The Project was filmed over two nights in San Francisco on a closed, wetted-down roadway course.

¹ Kevin Bailey (Bailey), Robin Bonacorsi (Bonacorsi), Rocky Capella (Capella), Tom Ficke (Ficke), Kevin Larson (Larson) and

Capella served as the stunt coordinator. The vehicles drove into a circle or roundabout and, in some cases, drove next to each other, but little or none of that portion made it into the 13 seconds of live driving in the final Commercial. The remaining 17 seconds of the Commercial were computer-generated.

Most of the vehicles were special and each driver was assigned one specific vehicle throughout the shoot. The lead cars were driven at 20-25 mph with the tail cars driving somewhat faster. According to Capella, the drivers were instructed to drive as close as they safely could and, for most of the side-by-side driving, the cars were staggered. According to Capella, the wet roadway was only a problem for the Vespa, which had "serious traction issues". The drivers were all paid at the Principal Performer rate, but received none of the additional compensation which would be due to them as Stunt Drivers.

DISCUSSION

Sag argues that the driving itself was qualified the Performers under the Stunt Driving Guidelines (Guidelines) because the street was slick causing the tail cars to slide, the cars were driven close to each other and close to stationary

Mike Martinez (Martinez) drove cars and Rex Reddick (Reddick) rode a Vespa motorcycle.

objects² and the windows were tinted. Further, although little of the footage that was shot remained in the final commercial, what remained was a stunt – either recognizably as such or drawn from footage that qualified as a stunt when shot.

Producer argues that the driving did not meet any of the Guidelines for Stunt driving, much less that anything which may have met the Guidelines survived into the final Commercial. If it did not appear as Stunt driving in the final commercial, there were no residuals owed. Finally, the Vespa, which appears in the final commercial, did not really support the commercial message as required in Section 6.A.³

SAG relies heavily on its contention that if there was driving which met the Guidelines during the shoot, any portion of the shoot which qualified as stunt driving and which appears in the Commercial qualifies the drivers as Principal Performers. Even assuming *arguendo* that this interpretation has been incorporated into the Contract by past practice (although not in the plain language of the Contract) the claims here fail because there is no evidence in the record that the particular seconds

² SAG also argues that the unique nature of the cars somehow contributed to this being a stunt as defined by the Guidelines, but failed to explain how this was so, although it undoubtedly made the drivers more careful and the driving more stressful.

³ The Producer at various times took inconsistent positions on this issue. However, given the findings below, it need not be, and is not, resolved in this matter.

used in the final commercial were part of that driving which qualified as stunt driving.

There was no dispute that the Vespa, ridden by Reddick, had skids and slides during the shoot which would qualify him under the Stunt guidelines in Section 9.EE.9(b). However, his performance of the qualifying stunt work was not shown by the evidence to appear in the Commercial. What survives in the Commercial are shots of the Vespa at the periphery of the cars and on an almost straight path, not the twisting in and out of the other vehicles driving the roundabout as was described at the hearing. Along with the Chevy drivers discussed below, he does not qualify for additional compensation.

Again assuming *arguendo* that the Chevy drivers qualified as Stunt drivers during at least part of the shoot, there is no evidence that what was retained in the Commercial was ever part of a stunt. The testimony of the drivers was that some of the driving reasonably might be characterized as stunt driving, but some of the driving was not. When the stunt performance is not used in the commercial⁴, the performer is entitled only to appropriate session fees and to Principal Performer working conditions.

⁴ Section 6.M. "[A driver who] ... performs a stunt for a Commercial and whose performance is not utilized in a commercial" reasonably appears to mean whose stunt performance is not utilized.

SAG submitted the very extensive stunt history of Capella, who corroborated this interpretation when he stated that he would not know⁵ if anything which occurred during the shoot qualified as a Stunt for purposes of additional compensation until the Commercial was completed.

SAG did not prove that the vehicle drivers satisfied the Guidelines in that portion of their performances which survived into the Commercial. Whatever close proximity there was in the side by side driving did not survive into the Commercial. There was no substantial or reliable evidence that the distance of the cars to each other or to any stationary object in the Commercial was closer than normal everyday driving or that they drove at a speed unsafe for the conditions. There was no evidence that the windows were unusually darkly tinted or that any of the drivers' vision was otherwise substantially impaired. There was some speculation that the tail cars slid, but it was only speculation and, even if it occurred, was not shown to be related to what can be seen in the finished Commercial.

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⁵ "and everyone there agreed with me."

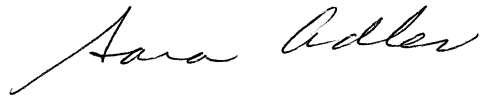
AWARD

Having carefully considered the evidence presented and the arguments made, it is the Award of the Arbitrator that:

1. The drivers in the "Chevy Record" Commercial did not qualify as Stunt Drivers. SAG's claims are denied.
2. Pursuant to the provisions of the Contract, each party is ordered to pay half of my fee.

DATED: March 26, 2007

Respectfully submitted,

A handwritten signature in cursive script that reads "Sara Adler".

Sara Adler, Arbitrator