



Case Report

1	Case Number	0089/15
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	25/03/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving
2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows a Nissan Pulsar vehicle is seen driving in a container yard within a commercial wharf. The second part of the advertisement features a studio environment with a stationary car being displayed on a swivel and a finance offer being presented.

THE COMPLAINT

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

Not objecting just generally concerned about the safety of a vehicle driving under a sea container that is suspended by a forklift without secondary retention. The roof structure wouldn't withstand the load should it collapse it represents poor safety consideration for the driver.

The ad is completely unsafe, the car is being driven under a lifter load.. I'm sure work cover would like to see this done in real life. also the gentlemen doing the talking during the ad is not wearing any hi vis clothing.. this ad breaches work safe rules and should not have hit the air.

THE ADVERTISER'S RESPONSE

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

1. The complaint

The complaint is concerned with a scene in the advertisement in which the vehicle drives under a container as it is being lifted. In addition, the complainant is concerned that the man appearing in the advertisement is not wearing hi-visibility clothing and as a result “this ad breaches work safe rules”.

2. Nissan’s response to the complaint

Nissan takes great care when developing television commercials to ensure that they comply with the all applicable advertising standards and codes of practice including the AANA Code. To this end, great care is taken to ensure that the advertisements do not encourage any form of unsafe, illegal or reckless activity, or depict scenes or behavior contrary to prevailing community standards in relation to health and safety. Nissan also takes great care to ensure that the advertisements it produces do not represent any vehicle being driven in a manner that undermines the intent of the AANA Code. Nissan strongly believes that the advertisement complies with the AANA Code.

Purpose of the Advertisement

The advertisement was produced to showcase the excitement and capability of the Pulsar together with the availability of a competitive finance offer. In the first portion of the advertisement (running from the beginning until 7 seconds), a Pulsar vehicle is seen driving in a container yard within a commercial wharf in a series of quickly cut shots and slow motion, together with a voiceover stating “we’ve given the Pulsar more. More grunt, more excitement and more thrill than ever before”. The unconventional choice of location emphasises this sentiment and gives the advertisement a film-like action, exhibiting the Pulsar’s manoeuvrability. The second section of the advertisement (running from 7 seconds until the end) features a studio environment with a stationary car being displayed on a swivel and the finance presented by voiceover.

Compliance with the AANA Code

Your letter requires Nissan to address the advertisement’s compliance with all parts of section 2 of the AANA Code. Nissan does not believe that any issues would arise under sections 2.1 – 2.5.

The only possible relevant section of the AANA Code is section 2.6, which provides:

...

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

...

Nissan submits that the advertisement does not depict any material contrary to prevailing community standards on health or safety. The vehicle is operated in a safe and responsible manner and is not driven in a way that is reckless or unsafe. The scenes depicted in the first section of the advertisement were filmed on a weekend under controlled conditions. The container yard was not in commercial operation during the filming of the advertisement, and the only participants present were involved in the production of the advertisement. In addition, the advertisement was filmed under the guidance of safety supervisors.

The complainant has also complained that the male presenter in the advertisement is not wearing hi-visibility clothing, and as a result, the advertisement “breaches work safe rules”. Nissan notes that there are no legal or regulatory requirements compelling the use of hi-visibility clothing at work sites, nor are there any WorkSafe rules or guidelines on the subject. Nissan has been advised by WorkSafe that the use of such clothing is a matter for the operator of any given work site and forms part of its overall obligation to provide a safe working environment. It is Nissan’s strong opinion that a high visibility vest is not necessary in this advertisement given:

- 1. The container yard was not operational during the advertisement other than for the purposes of filming;*
- 2. The presenter does not appear in the scene in which the container is being lifted, and there is no other “work” being done at the site at the time of filming;*
- 3. In all scenes in which both the presenter and car are featured, the presenter is shown at a safe distance from the area in which the vehicle is being driven.*

For the reasons above, Nissan does not believe that the advertisement depicts any material contrary to prevailing community standards. The fact that various forms of this advertisement have been shown since July 2014 without any complaint demonstrates that the advertisement does not offend community standards regarding health and safety, and that viewers see the advertisement as a fictional scenario.

Revision to advertisement

While Nissan acknowledges the complainant’s concerns, it does not believe that the advertisement breaches the requirements set out in the AANA Code.

The driving practices and choice of scenes are designed to portray the excitement and manoeuvrability of the Pulsar in a safe and controlled manner. Nissan firmly believes that the advertisement does not breach any WorkSafe rules.

Despite Nissan holding the above view, we have decided to modify the advertisement to dispel any potential concern that the advertisement is contrary to prevailing community standards on health or safety. The revision we will make to the advertisement going forward is to remove the scene featuring the container being lifted (this scene being the only scene featuring work being performed).

For the reasons in this letter and factoring in Nissan’s revision to the advertisement going forward, Nissan requests that the complaint be dismissed.

THE DETERMINATION

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

The Board noted the complainant’s concern that the advertisement shows unsafe driving behaviour and the presenter not wearing safety gear when he is around a moving vehicle. The Board first analysed specific sections of the FCAI Code and their application to the advertisement.

The Board 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 Board 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 Board noted the advertisement is promoting the Nissan Pulsar driving in a container yard within a commercial wharf. The second section of the advertisement includes images of the vehicle with finance and other details being presented.

The Board noted the scenes in particular the scenes where the vehicle is being driven within the container yard.

The Board noted that it is not clear what speed the vehicle is being driven at and considered that the advertisement has been filmed in a manner to make the vehicle look as though it is moving quickly.

The Board noted that as the vehicle travels through some water, there is a splash of water up from the wheels of the vehicle but considered that this would happen regardless of the speed the vehicle was travelling and that the car wouldn't necessarily need to be going fast to make this happen.

The Board then noted the scene where the car travels underneath a shipping container that is being lifted by a forklift. The Board noted that overall impression of the advertisement is one of fantasy and excitement and that the scene of the vehicle going past the forklift is fleeting and is not the focus point of the advertisement. The Board acknowledged that this type of behaviour would not be recommended but considered that in the context of the controlled environment within the container wharf location, the portrayal was not unsafe and did not breach clause 2 (a) of the FCAI Code.

Recognising that issues related to health and safety in motor vehicle advertising fall within the provisions of the FCAI Code, the Board noted the specific concern raised regarding work safety rules about hi-vis protective clothing.

As the issue of work safety and protective clothing is not directly related to the depiction of driving and the safe operation of the vehicle, the Board agreed it was appropriate to consider this issue under Section 2.6 of the Advertiser Code of Ethics (the "Code"). Section 2.6 of the Code states: 'Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.'

The Board noted the complainants concerns that the presenter is not wearing safety gear such as a hi-vis vest to make himself more visible in and around the containers where the car is being driven.

The Board noted that the presenter is seen at the beginning of the advertisement and there is no vehicle around him although he is walking through the container area. The Board noted that at the end of the advertisement when the presenter is seen, the vehicle is coming to a stop and the man is well ahead of where the vehicle finishes.

The Board considered that the information that the man is providing is the integral part of the advertisement and not his position on the wharf and he is not in a position where he appears at risk.

The Board considered that the advertisement is not encouraging people to walk around container yards of this nature unattended, and agreed that safety would be paramount in such an environment. The Board considered that in the context of the marketing communications for a motor vehicle, the depiction of the presenter walking in the same container yard at the time a motor vehicle is being driven, did not depict material that was contrary to prevailing community standards on health and safety and did not breach section 2.6 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics on any other grounds, the Board dismissed the complaint.

