



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0112-20
2. Advertiser :	Nissan Motor Co. (Australia) Pty Ltd
3. Product :	Vehicle
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	25-Mar-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

FCAI Motor Vehicle Advertising Code\2(a) Unsafe driving
FCAI Motor Vehicle Advertising Code\2(e) Environmental damage

DESCRIPTION OF ADVERTISEMENT

This TV on demand advertisement features a man stopped at an intersection looking both ways down the road. He sees a mud-covered mountain bike rider emerge from the bush ahead of him. He nods and drives his vehicle along the track. A voice over says, "The all new Nissan Nivara N-Treck Warrior with Apple car play and hill start assist. Take the hard way".

THE COMPLAINT

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

The safety implications are obvious for any person riding a bicycle or walking on this track, the driver does not show any consideration for who or what may be on the track and the ad shows damage being done to the environment due to the excessive speed the vehicle is doing. As this is obviously not a vehicle track and the driver has seen a bicycle come out of this track the implication is that this vehicle can be driven anywhere the driver desires without any care for people or any recognition of basic driving safety .



THE ADVERTISER'S RESPONSE

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

1. Purpose of the Advertisement

The advertisement was produced to showcase the power, utility and features of the new Nissan Navara N-TREK Warrior (N-TREK Warrior), an off-road vehicle. The advertisement depicts a man choosing to 'take the hard way' by driving down a difficult 4WD off road track a mountain biker has just struggled on. He chooses this route to showcase the capability and performance of the N-TREK Warrior for 4WD off-road driving.

2. The complaint

The complaint alleges that:

'the driver does not show any consideration for who or what may be on the track'

'the ad shows damage being done to the environment due to the excessive speed the vehicle is doing.'

'[the track] is obviously not a vehicle track and the driver has seen a bicycle come out of this track the implication is that this vehicle can be driven anywhere the driver desires without any care for people or any recognition of basic driving safety.'

3. Nissan's response to the complaint

Your letter requires Nissan to address the advertisement's compliance with section 2 of the AANA Code. Nissan does not believe that any issues arise under sections 2.1, 2.2, 2.3, 2.4 and 2.5, and that only section 2.6 may be relevant to the complaint.

Your letter also requires Nissan to address the advertisement's compliance with clauses 2, 3 and 4 of the FCAI code.

3.1 The AANA Code - Section 2.6

Section 2.6 of the AANA Code provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

Nissan does not believe that the advertisement depicts any material contrary to prevailing community standards on health or safety. The vehicle is operated in a safe and responsible manner for a vehicle of that type, being a rugged 4x4 utility vehicle capable of traversing challenging 4WD terrain. The vehicle is driven in a controlled manner with the driver obeying the road rules at all times. The advertisement shows the driver coming to a complete stop, he looks left and right before he decides which direction to go. He sees the mountain bike rider ahead of him. The mountain bike rider and driver acknowledge each other, once the rider passes the vehicle, the driver drives onto the 4WD track at a safe speed.



Nissan takes great care and effort to ensure that our 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. In addition, Nissan does not condone unsafe driving practices that may put humans or animals at risk.

3.3 The FCAI Code – Clauses 2, 3 and 4

The advertisement depicts the off-roading capabilities and performance of the N-TREK Warrior as an “off-road vehicle” in accordance with clause 4 of the FCAI Code.

The driver is a 4WD expert with over 40 years’ experience. The advertisement was filmed under controlled conditions on private property (owned by the expert driver) using 4WD tracks. There is no reckless or menacing driving, excessive speed or unsafe driving practices depicted in the advertisement. At all times, the driver drives at a safe speed in a controlled way for 4WD driving on 4WD tracks.

As supported by the behind the scenes video, the advertisement does not portray or depict any driving practices that would breach any relevant Commonwealth, State or Territory laws if it was to take place on a road or road related areas.

The driver of the vehicle is wearing a seatbelt at all times, he stops and checks before crossing to the loose/unsealed surface on the 4WD track. At no time is it suggested or insinuated that multiple mountain bikers are in the vicinity in the advertisement. The driver makes careful eye contact with the pedestrian/cyclist and waits for him to pass before driving on. The driver drives down the 4WD track with utmost care and with a large production crew to ensure that no pedestrians, cyclists or other motorists present on the track.

In respect to clause 2(e) of the FCAI Code, Nissan does not believe that the advertisement in any way condones, portrays or encourages deliberate or significant environmental damage. When preparing the advertisement, Nissan carefully considered the requirements of the FCAI Code and maintains that the advertisement meets and fully discharges Nissan’s obligations under clause 2(e).

As the behind the scenes videos show, the N-TREK Warrior is at all times driven on private 4WD tracks at a reasonable speed without driving over any vegetation. The path that the vehicle travels on is a path that is specifically designed for off-road vehicles, with minimal to no vegetation in its way.

The vehicle continues on the path, carefully avoiding vegetation, driving through a body of water that was appropriate for a vehicle of its size, and finishes on an inclined, rocky outcrop, taking care to go slower on the incline. Nissan therefore strongly denies that the vehicle damages the environment due to the “excessive speed”, as raised by the complaint.

Nissan was careful throughout the entire filming of the advertisement to ensure that negligible impact to the environment was caused using the private road on private



property. Although Nissan believes that no damage to vegetation or the environment occurred throughout our filming process, if any damage did occur, Nissan do not consider this damage to be deliberate and significant damage, but minimal and incidental disturbance.

Nissan does not believe that Clause 3 of the FCAI Code applies to this advertisement as the advertisement does not show any motor sport racing or competing.

4. Summary

Nissan takes great care when developing new advertisements to ensure that they comply with all applicable advertising standards and codes of practice, including the FCAI Code and the AANA Code. In particular, Nissan takes matters of environmental preservation and road safety very seriously, as evidenced by our global leadership in zero-emissions mobility, as well as having safety technology in our cars such as our Intelligent Hill Side Assist technology included in the N-Trek Warrior.

Nissan strongly believes that the advertisement complies with both the AANA Code and the FCAI Code. The advertisement legitimately depicts the capabilities and performance of the N-Trek Warrior as an off road vehicle. At all times the driver obeyed the road rules and engaged in safe driving. Further, Nissan believes that the advertisement does not in any way portray deliberate or significant environmental damage, or in any way encourage unsustainable or irresponsible behaviours in relation to the environment. This is due to the careful way in which we have planned and filmed scenes to ensure minimal environmental impact.

For the reasons above, Nissan does not believe that the advertisement breaches either the FCAI Code or the AANA Code and accordingly requests that the complaint be dismissed.

We look forward to receiving the results of the Board's determination.

THE DETERMINATION

The Ad Standards Community Panel (Panel) was required to determine whether the material before it was in breach of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (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 Panel considered whether the 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 Panel determined that the Mitsubishi Triton was a Motor Vehicle as defined in the FCAI Code.

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

The Panel noted the complainant's concern that the advertisement:

- Depicts the driver not showing any consideration to others who may be on the track
- Depicts a vehicle travelling at excessive speed
- Shows damage being done to the environment

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

The Panel 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 Panel noted the complainant's concern that the driver was travelling at excessive speed down a bike track which would be unsafe for other cyclists.

The Panel noted the advertiser's response that the vehicle was shown on a 4WD track and drives at a safe speed in a controlled way.

The Panel considered that the driver is stopped safely at the intersection when he sees the cyclist come off the track. The Panel considered that he is able to see the cyclist from some distance, and it does not appear as though the cyclist has crested a hill.

The Panel considered that the sound of the engine revving as the driver goes forward adds to the impression of speed, however the actual speed that the driver is going is reasonable and controlled.

The Panel considered that the driver is seen approaching the track from an elevated position and the indication is that he would be able to see if there were any additional cyclists.

The Panel considered that the track the vehicle is shown driving on appears wide, and looks more like a vehicle track than a bike track.



The Panel considered that the overall impression of the advertisement is that the driver was driving at a reasonable speed and in a controlled manner on a four-wheel-drive track.

The Panel considered that the advertisement did not depict the vehicle engaging in unsafe driving or menacing driving which would be likely to breach relevant Commonwealth Law were it to occur on a road or road related area.

The Panel considered that the advertisement did not breach Clause 2(a) of the FCAI Code.

The Panel considered Clause 2(e) of the FCAI Code which requires that advertisements for motor vehicles do not portray “deliberate and significant environmental damage, particularly in advertising for off-road vehicles.”

The Panel noted the complainant’s concern that the advertisement shows damage being done to the environment due to the excessive speed of the vehicle.

The Panel noted the advertiser’s response that the advertisement was driven on a private 4WD track at reasonable speed without driving over vegetation and that no deliberate and significant damage occurred.

The Panel considered it had considered a similar complaint in case 0408/14 where: “The Board noted the Isuzu D-Max is shown driving over sand and through streams and considered that driving vehicles with off road capabilities over these terrains is not uncommon and does not necessarily contribute to environmental damage. The Board noted that some people may consider that environmental damage can be caused by any incursions by people in vehicles into wild/environmental areas however the Board considered that the vehicle is shown to be driven in a cautious manner which is not intentionally damaging to the environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.”

The Panel noted that in the current advertisement the vehicle was being driven in a manner consistent with off-road recreational use of SUV vehicles, and that the advertisement depicted the vehicle’s abilities in off-road conditions.

The Panel considered that the vehicle was driven on a track, not through general bushland, and was not seen driving in a manner which would cause significant environmental damage.

The Panel considered that the vehicle is depicted as being driven in a controlled manner and the driving manoeuvres are not shown as being reckless or dangerous or done without due regard to the environment.

The Panel considered that the advertisement did not depict the vehicle driving in a manner which could be seen to cause deliberate or significant damage to the



environment and determined that the advertisement did not breach Clause 2(e) of the FCAI Code.

The Panel noted Clause 4 of the FCAI code states “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 Panel considered that the advertisement depicts the capabilities and performance of an off-road vehicle travelling over terrain not forming part of a road or road related area and did not portray unsafe driving. The Panel also considered that the vehicle appeared to be being driven at an appropriate speed and not at a speed which would contravene relevant laws if the driving were to occur on a road or road related area. The Panel found that the driving in the advertisement was consistent with Clause 4 of the Code.

Finding that the advertisement did not breach Cause 2(a) or Clause 2(e) of the FCAI Code or any other section of the FCAI Code, the Panel dismissed the complaint.