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STANDARDS
BUREAU

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Case Report

1	Case Number	0144/14
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	14/05/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(e) Environmental damage

DESCRIPTION OF THE ADVERTISEMENT

The car, carrying a family, is driving along a country road. The road becomes blocked by cows. The driver then takes a detour through some gates and through a corn field, and a chemical plant, before exiting back to the road.

THE COMPLAINT

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

Suv driving in crop and breaking it down.

THE ADVERTISER'S RESPONSE

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

Your letter details a complaint with reference number 0144/14 (the complaint) in relation to an advertisement by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) featuring the All New Nissan X-TRAIL (the advertisement).

In your letter you state that the complaint raises issue under Section 2(e) of the FCAI Voluntary Code of Practice For Motor Vehicle Advertising (FCAI Code) and you ask that any response address any issues that might be regarded as falling broadly within section 2 of

the AANA Code of Ethics (AANA Code).

The complaint

The complaint focuses on the depiction of alleged environmental damage caused by the driving of the vehicle in the advertisement. The complainant claims that the advertisement shows “[an] Suv driving in crop and breaking it down.”

Nissan’s response to the complaint

Nissan takes great care when developing television commercials to ensure that they comply with the AANA Code and FCAI Code and to ensure that the commercials do not encourage any form of unsafe, illegal and reckless activity or depict scenes and behavior contrary to prevailing public standards. Nissan also takes great care to ensure that the commercials it produces do not represent any vehicle being driven in a manner that undermines the intent of the FCAI Code. Nissan strongly believes that the advertisement complies with the FCAI Code.

Purpose of the Advertisement

The advertisement was produced to showcase the All New Nissan X-TRAIL range. In the advertisement, the driver is faced with a number of fantastical and exaggerated circumstances that require him to take unconventional measures in order to reach his destination. The aim is to emphasise the vehicle’s family focus, showing that despite what’s thrown at them, the family will remain safe and comfortable. In one of these hypothetical scenarios, the driving along a path through a corn field in order to bypass a “cow road block” highlights in a light-hearted manner the vehicle’s off-road capabilities. Portraying the vehicle driving in a mild off-road environment serves to highlight its four wheel drive function whilst remaining focused on its role as a family friendly SUV.

The FCAI Code

The complaint raises issue with perceived environmental damage that falls under s.2(e) of the FCAI Code which states:

[Advertisers should ensure that advertisements for motor vehicles do not portray any of the following:

2(e) Deliberate and significant environmental damage, particularly in advertising for off-road vehicles.”

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 section 2(e). The scene in which the vehicle drives through the cornfield was produced in a manner so as to specifically avoid environmental damage. The vehicle’s path through the corn was pre-existing as though a clearing had previously been created in the field for that purpose (e.g., a tractor path used by the farmer). This allows the advertisement to depict the vehicle driving over loose, uneven terrain whilst not involving any unsafe driving or risk to the driver’s family or the environment.

Nissan does not believe that the advertisement in any way condones, depicts or encourages deliberate or significant environmental damage. At approximately the 0:09 second mark in the advertisement the vehicle knocks a small number of corn stalks in order to access the existing path. This action is justifiable in the context as the only means by which the driver can get the vehicle onto the path and avoid driving blindly (and therefore more dangerously) through an unclear field. The scene was entirely fabricated by the advertisement's production team, with the corn stalks being placed so as to give the scene an off-road feel. It is also to be expected that, whilst there is a path maintained through the corn, access would be affected by crop regrowth. The driver's action in accessing the existing path serves to minimise any potential significant damage to the corn that would have otherwise occurred were the vehicle required to flatten a path for itself.

s. 2(e) refers to deliberate and significant environmental damage.

Nissan submits that the impact on a small number of corn stalks does not constitute significant environmental damage in the form that the FCAI Code prohibits. The advertisement was filmed on private property involving a small number of corn stalks that had been placed in the scene for effect.

Further the action of the driver in crushing the corn was not deliberate, rather it was incidental to and necessary for him to gain access to the existing path.

Nissan notes that section 4 of the FCAI Code provides:

“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.”

As stated earlier, the intention of the advertisement, and particularly the scene in the cornfield, was to display the off-road capabilities of the vehicle. The All-New X-TRAIL meets the requirements for classification as an off-road vehicle in accordance with the Australian Design Rules (MC category) in that it:

Has five seating positions (with a seven seat option available, not depicted);

Has four wheel drive capability; and

Meets a sufficient number of the key “Off-road Passenger Vehicle (MC)” criteria required by the Australian Design Rules.

At all times during the advertisement, and in particular during the off-road scene, the vehicle is driven under the speed limit in a responsible manner consistent with the family focused theme of the advertisement. The scene in question was filmed on private property under controlled conditions using props to exaggerate its fantastical and humorous character. The impact on the small number of cornstalks was not deliberate and significant environmental damage; it was a valid depiction of an off-road vehicle using its capabilities to regain access to a regular road.

In light of the above, it is our strong view that the advertisement provides a legitimate depiction of the vehicle's off-road capability.

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.

Section 2.6 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. As noted earlier, the vehicle traverses a pre-existing path through the cornfield in a manner that is responsible and safe. The only point at which the vehicle "causes damage" (when it knocks down a couple of stalks of corn) is of a minor nature, incidental, contextually justified, and occurs in an appropriate and controlled manner.

Summary

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

The driving practices and choice of scenes are designed to portray the off-road capabilities of the vehicle whilst emphasising its family focused character in a light hearted and humorous manner.

Nissan firmly believes that the advertisement in no way depicts, encourages or condones deliberate and significant environmental damage.

For the reasons above, we request that the complaint be dismissed.

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

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 noted that complainants concern that the advertisement shows irresponsible driving and deliberate damage of a crop.

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

The Board considered clause 2(e) of the FCAI Code. Clause 2(e) requires that: Advertisements for motor vehicles do not portray ...deliberate and significant environmental damage, particularly in advertising for off-road vehicles.

The Board noted that the advertisement features a Nissan X-trail 4WD being driven with the family on board. The young children in the back of the car have green slime with them and milkshakes and the mother has popcorn. The car is taken on country roads, through a cornfield and through a warehouse facility where people are dressed in full bodied suits handling a similar looking green slime. The final scene shows the driver looking to the rear of the car stating that "that could've been messy" and the voiceover describes that the vehicle is "family proof."

The Board considered that the vehicle is a 4WD, designed for the purpose of driving off road when required. The Board noted that the scenes that include the vehicle being driven on the streets are controlled and within any obvious road rules.

The Board noted that the car is driven through some gates leading into a cornfield and along a pre-existing path that had been previously cleared for the purpose of driving along. The Board noted that the car did drive through a small section of some of the crop in order to gain access to the path but that the scene was fleeting and that the most likely interpretation was that the driver had done so in order to gain access to the path and that he was not deliberately trying to cause damage.

The Board noted that the result of driving through the range of scenarios depicted is to show that the vehicle is designed to handle the rough and tricky situations and that although the passengers may experience some bumps, the vehicle is more than capable of handling a range of situations comfortably.

The Board noted clause 4 of the FCAI Code in relation to the depiction of off-road vehicles 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 noted that the paths taken through country and into the cornfield is indicative of the types of terrain that would be within the capabilities of a vehicle of this nature. The Board noted that showing a 4WD driving through off road terrain is not of itself a depiction that is considered environmentally damaging and the vehicle is not shown performing activities that

would be considered illegal or deliberately irresponsible.

Based on the above, the Board determined that overall the advertisement does not depict deliberate and significant environmental damage and does not breach clause 2(e) or clause 4 of the FCAI Code.

Finding that the advertisement did not breach any other sections of the FCAI Code, the Board dismissed the complaint.