



Case Report

1	Case Number	0165/11
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	25/05/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

Male voice over describes powerful tradies and we see various tradies performing tasks which highlight their strength: one throws a lawnmower over a fence, another uses a leaf blower to dry his hair and another bends a metal rod over his knees. We then see the new Nissan Navara Tradie which is described as the most powerful tradie there is.

THE COMPLAINT

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

This ad is totally irresponsible to show a person blowing their hair with a garden blower. This contravenes Occupational Health and Safety guidelines and is a VERY dangerous practice. The air velocity from the end of the nozzle is around 300 k/hr and this sort of stupidity CAN cause blindness due to particles being picked up and blown into the eyes. It should be noted that this can be a sack-able offence with some companies. Showing this can encourage younger kids to think this sort of activity is OK and it certainly is NOT. As an ex TAFE teacher I am very aware of safety and this advertisement should be removed and replaced by something that is not so irresponsible. I am not opposed to humour but what is shown now is not funny just totally irresponsible. I recommend that you talk to Nissan with the view to advertise in a more sensible way.

THE ADVERTISER'S RESPONSE

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

In your letter you state that the complaint raises issues under Section 2 of the AANA Code of Ethics (AANA Code) and you ask that any response address any issues that might be regarded as falling broadly within section 2 of the AANA Code.

The complaint

The subject of the complaint is Nissan's 30 second Navara ST-X TVC which features footage of fictitious characters, 'Mick' and 'Geoff' as well as other 'tradies' promoting the Nissan Navara ST-X as Australia's Most Powerful Tradie (Powerful Tradie Campaign). This particular advertisement features a man throwing a lawnmower over a fence, and another using a leaf blower to blow dry his hair. The complainant is concerned that these particular events in the advertisement may contravene occupational health and safety guidelines.

Nissan's response to the complaint

Purpose of the Advertisement

The advertisement was produced as part of the Powerful Tradie Campaign, and it aims to cement in viewers' minds that the Nissan Navara ST-X is Australia's Most Powerful Tradie. It was produced after the 'Australia's Most Powerful Tradie' promotion, which invited Australian tradespeople to film or photograph themselves performing a 'Power Move'. The promotion and its background are discussed in more detail below.

The aim of the advertisement was to link the competition and the Nissan Navara's position in the market, taking a light-hearted, humorous approach. The 'Power Moves' depicted by the talent in the advertisement are meant to be a stretch of the reality of people's competition entries. For example, throwing a lawnmower and bending a straight copper rod into the shape of a pretzel are quite fanciful aims for the average person. In keeping with the 'Powerful Tradie' theme, the advertisement was developed and filmed with the purpose of ensuring that the subject matter is seen as farcical.

Compliance with the AANA Code

Section 2 of the AANA Code currently provides:

2.1 Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.

2.2 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

2.3 Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone.

2.4 Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies.

2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances and strong or obscene language shall be avoided.

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

2.7 *Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles and section 2.6 of this Code shall not apply to advertising or marketing communications to which the Federal Chamber of Automotive Industries Code of Practice applies.*

2.8 *Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code.*

The nature of the complaint means that the relevant section of the AANA Code is section 2.6, which states that “advertising or marketing communications shall not depict material contrary to Prevailing Community Standards on health and safety.”

We note that, as this is an advertisement for a motor vehicle, section 2.7 of the AANA Code provides that section 2.6 does not apply, and that alternately, the advertisement must comply with the FCAI Code.

To determine whether the advertisement complies with the AANA Code, it must ordinarily be assessed against the relevant provisions of the FCAI Code. In this particular instance, given that the FCAI Code is principally concerned with the nature in which motor vehicles are presented in advertising, we note that there are no provisions under the FCAI Code that would preclude Nissan from producing and running the advertisement in its current form. However, to demonstrate Nissan’s bona fide intentions to resolve this matter as effectively as possible, Nissan will still consider the words of section 2.6 as they appear, namely that advertisements “shall not depict material contrary to Prevailing Community Standards on health and safety”.

Community Standards on Health and Safety

Powerful Tradie Campaign

The Powerful Tradie Campaign was launched in 2010 and seeks to portray the Nissan Navara range of utility vehicles in a light-hearted and humorous way. The title ‘Australia’s Most Powerful Tradie’ was chosen to reflect the Nissan Navara ST-X being the most powerful utility vehicle on the Australian market in terms of engine capacity, torque, and towing capacity, and of the Navara range in general being well equipped to handle tough driving situations. Instead of following the traditional path of showing the vehicle’s capacity in certain driving situations, the Powerful Tradie Campaign seeks to draw humorous and fanciful analogies between the Navara vehicle and ‘everyday’ situations that ‘powerful’ Australian tradespeople may find themselves in.

This campaign saw the introduction of fictitious tradesmen ‘Mick’ and ‘Geoff’ who provide a comic representation of quintessential Australian tradesmen. It is clear at all times, through their behaviour and vernacular, that they are not to be taken too seriously. Their larrikinish nature sets the tone for the footage featured in the advertisements that comprise the Powerful Tradie Campaign.

A key component of the Powerful Tradie Campaign in 2010 was a promotion that invited tradespeople to film a ‘Power Move’, playing on the humorous and over-the-top themes presented in the television and radio commercials produced as part of the Powerful Tradie Campaign.

As part of this promotion, a short film was developed specifically outlining potential issues around occupational health and safety laws. This film was presented in the same jovial theme that is the crux of the Powerful Tradie Campaign, and it was placed on the promotional website. Every entrant was required to view this guidance film before an entry could be submitted. Nissan provides a copy of this guidance film in support of its assertion that Nissan does, in fact, take an active interest and concern in the health and safety of the Australian community.

The Advertisement

Nissan acknowledges the complainant's concerns, but does not believe that the advertisement depicts material that is contrary to the prevailing community standards in relation to health and safety.

In Nissan's opinion, the depiction of both the lawn mower being thrown over the fence, and leaf blower being used to dry a man's hair, are fanciful, incredulous examples that reinforce the over-the-top stereotype of Mick and Geoff and of Australia's Most Powerful Tradie, the Nissan Navara. The 'Power Moves' featured in the TVC each feature on screen for less than five seconds each, and in total, comprise only one third of the length of the advertisement. Neither the lawn mower nor the leaf blower have been shown in a real life application (e.g. to cut grass or to blow away fallen leaves). Nissan does not believe that the general public would genuinely misinterpret the advertisement as anything other than a humorous link between the 'power' of the Nissan Navara and the 'power' of the tradesmen featured.

In particular, Nissan refers to the Board's decision 46/08 in which a similar complaint regarding the fanciful use of a leaf blower was dismissed. While Nissan understands that the Board is not bound by its previous decisions, Nissan notes the Board's comments that: "The Board considered that the depicted use of the leaf blower was not ideal but was unlikely to lead to copycat behaviour given the context of its use in the advertisement (i.e. shoeing away flies). The Board considered that there was a low risk of copycat behaviour and a low risk of harm to anyone who did turn the blower (which blows air) onto their face for a short time."

(emphasis added).

Nissan believes that the examples complained of here are directly analogous to the subject matter of decision 46/08.

Nissan takes great care when developing television commercials to comply with the AANA Code and FCAI Code and to ensure that the commercials do not encourage any form of unsafe, illegal or reckless activity (including unsafe, illegal or reckless driving). Nissan also takes great care to ensure that the commercials do not present any vehicle being driven in a manner that undermines the intent of the FCAI Code. In Nissan's opinion, the advertisement fulfils these goals and obligations.

Nissan firmly believes that the advertisement is meant to be interpreted in a humorous, light hearted way, and that the advertisement in no way encourages or condones dangerous behaviour in Australian homes or on Australian worksites.

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).

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 Board decided that the material in question was published or broadcast in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia.

The Board determined that the material draws the attention of the public or a segment of it to a product being a Nissan Navara in a manner calculated to promote that product. Having concluded that the material was an advertisement as defined by the FCAI Code, the Board then needed to determine whether that 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 Board determined that the Nissan Navara was a Motor vehicle as defined in the FCAI Code.

The Board determined that although the material before it was an advertisement for a motor vehicle, the provisions of the FCAI Code only cover driving safety and practices. The Board noted the FCAI Code Motor Vehicle Practice Note which provides direction as to how complaints about motor vehicles advertisements are to be assessed. As the complaint concerns an activity not related to driving or road safety the FCAI Code does not apply and the Board can consider the application of section 2.6 of the Code of Ethics.

The Advertising Standards Board ("Board") then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concern that the advertisement depicts an unsafe practice of using a garden blower to dry a person's hair.

The Board reviewed the advertisement and noted the advertiser's response.

The Board considered whether the advertisement was in breach of Section 2.6 of 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 that the advertisement features an adult turning a garden blower toward his face and head to seemingly dry his hair. The Board noted that the campaign seeks to draw humorous and fanciful analogies between the Navara vehicle and 'everyday' situations that 'powerful' Australian trades people may find themselves in but that all of the situations depicted are exaggerated and show "larger than life" tradesmen.

The Board considered that the depicted use of the leaf blower was not ideal but was exaggerated and unlikely to lead to copycat behavior given the context of its use in the advertisement (i.e.: drying hair). The Board considered that the advertisement is not endorsing this message or type of behavior.

Based on the above, the Board determined that the advertisement did not depict material 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 Code on other grounds, the Board dismissed the complaint.