



ADVERTISING
STANDARDS
BUREAU

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph (02) 6173 1500 | Fax (02) 6262 9833
www.adstandards.com.au
ACN 084 452 666

Case Report

1	Case Number	0202/14
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	11/06/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(c) Driving practice that would breach the law

DESCRIPTION OF THE ADVERTISEMENT

A group of House Rules contestants enter a vehicle on a construction site and slowly depart. Upon hearing the barking of a dog they stop the vehicle and let the dog in. The dog then sits in the middle seat of the second row between two of the contestants. The vehicle is then depicted driving once more.

THE COMPLAINT

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

The vehicle drives off with the dog clearly not restrained as required by law and recommended by the RSPCA.

THE ADVERTISER'S RESPONSE

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

*Advertisement Complaint: Reference 0202/14 (House Rules Promotion TVC)
Your letter details a complaint with reference number 0202/14 (the complaint) in relation to a 15 second advertisement by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) featuring the All New Nissan Pathfinder (the advertisement).*

In your letter you state that the complaint raises issues under Section 2(c) 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).

1. The complaint

The complaint focuses on the final scene of the advertisement in which a dog jumps into the back seat of the vehicle and sits in the middle seat between two other passengers. The complainant claims that the advertisement shows the vehicle driving “with the dog clearly not restrained as required by law and recommended by the RSPCA.”

2. 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 or 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 in conjunction with Channel Seven to showcase the All New Nissan Pathfinder through an association with the program House Rules. In the advertisement, a number of House Rules contestants enter the vehicle on a construction site and slowly depart. Upon hearing the barking of a dog they stop the vehicle and let the dog in to the Pathfinder. The dog then sits in the middle seat of the second row between two of the contestants. The vehicle is then depicted driving once more. These scenes are designed to emphasise the size of the vehicle as well as its passenger capacity with 7 seats. Each passenger is depicted seated comfortably and with seat belts on. The addition of the dog serves to emphasise that the vehicle is so spacious that there is even room for the family pet.

The FCAI Code

The complaint raises issue with perceived illegal driving under s.2(c) of the FCAI Code which states:

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

2(c) Driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation. ...

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(c). Prior to producing the advertisement, Nissan reviewed all relevant federal, State and territory road rules and regulations to ensure that the advertisement was fully compliant.

There are no laws or rules requiring that a dog be restrained when seated in the back seat of a vehicle. Nissan notes that there are restraint requirements when transporting an animal on the open back of a vehicle or utility vehicle, as well as rules against operating a vehicle with an animal in the driver’s lap. However as neither of these circumstances is depicted in the advertisement they are not relevant.

In addition, and whilst not specifically raised in the complaint, it is submitted that the advertisement does not depict any unsafe driving that would breach section 2(a) of the FCAI Code. As mentioned earlier Nissan takes road safety very seriously and this extends to the safety and wellbeing of any animal occupants of the vehicle. In the advertisement the dog is calm and satisfied, seated in a controlled position between two other occupants and is not in any way interfering with the driver or her capacity to control the vehicle. During the scene in

which the dog appears, the vehicle is driving at a very slow speed in an appropriate manner that would not in any way distress the dog or threaten its safety.

In light of the above, it is our strong view that the advertisement does not depict driving practices that breach any federal, State or territory road rules or regulations nor any unsafe driving practices.

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 the dog is at all times satisfied and comfortable in its seat. In addition there is no risk of the dog in any way interfering with the driver's control of the vehicle.

Nissan notes that the complaint refers to the recommendations of the RSPCA. On its website the RSPCA notes that it does not have a specific policy regarding dog restraints but provides a number of potential benefits of their application in certain circumstances. These include preventing the dog jumping out of the window of the vehicle, reducing the potential of the dog to distract the driver and preventing the dog from being flung about the cabin of the vehicle in the instance of a collision. In the context of the advertisement these concerns do not arise. The windows are closed, and the dog is at all times well behaved and seated away from the windows between two other occupants who could control its movement. It is not positioned anywhere near the driver so there is no risk of distraction. The vehicle is being driven in a safe and controlled manner on a work site without other traffic, so that no risks of collision are depicted or implied.

Based on the above Nissan does not believe that the advertisement depicts anything contrary to prevailing community standards.

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 size and spaciousness of the vehicle in a safe and controlled manner. Nissan firmly believes that the advertisement does not breach any federal, state or territory law in its depiction of the dog in the vehicle.

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) and the Advertiser Code of Ethics (the Code).

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

The Board noted the complainant's concerns that the advertisement depicts a dog in a vehicle that is not restrained which is a breach of the law and recommendations of the RSPCA.

The Board considered clause 2(c) of the FCAI Code. Clause 2(c) requires that:

Advertisements for motor vehicles do not portray ... driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation

The Board noted that this advertisement features a Nissan Pathfinder (7 seater) being filled by contestants from the television program House Rules on a construction site. The vehicle is slowly driven away. The contestants hear the barking of a dog they stop the vehicle and let the dog in. The dog then sits in the middle seat of the second row between two of the contestants. The vehicle is then depicted driving away again.

The Board noted that dog restraint laws for each state and territory vary and that there are restraint requirements when transporting an animal on the open back of a vehicle or utility vehicle, as well as rules against operating a vehicle with an animal in the driver's lap. The Board noted that there is a strong recommendation to have dogs restrained in order to avoid unnecessary harm, however it is not a specific requirement by law.

The Board noted that in the current advertisement, the dog is sitting in the middle seat of the second row of the vehicle and is not distracting the driver at any time and that in the advertisement they are depicted driving in a building site or landscaping place at slow speed and not on open roads.

Based on the above, the Board determined that overall the advertisement does not depict unsafe or illegal driving and does not breach clause 2(c) of the FCAI Code.

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