



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0219-22</b>
<b>2. Advertiser :</b>	<b>Nissan Motor Co. (Australia) Pty Ltd</b>
<b>3. Product :</b>	<b>Vehicle</b>
<b>4. Type of Advertisement/Media :</b>	<b>Email</b>
<b>5. Date of Determination</b>	<b>28-Sep-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Environmental Code\1 Truthful and Factual  
AANA Environmental Code\2 Genuine Environmental Benefit

### DESCRIPTION OF ADVERTISEMENT

This email advertisement features the heading, "Celebrating World Electric Vehicle Day" and a picture of the vehicle.

The text of the email includes: "In honour of the third annual World Electric Vehicle Day, we thought we'd take this opportunity to update you on some of the initiatives Nissan is proud to be a part of to help create a more sustainable driving future. New MY23 LEAF The 100% electric Nissan LEAF, the world's first mass-market EV, has been updated with key styling and technology updates designed to make motoring with zero tailpipe emissions even more appealing."

The email includes a still image from a video, which links to a webpage of fast facts about the vehicle and a video.

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*Nissan claims the Leaf has zero CO2 emissions. This is demonstrably false because the EV cannot move without charging the battery and the majority of power used to recharge EV batteries comes from the state grid which is predominantly generated by coal-fired or gas-fired power plants.*



## THE ADVERTISER'S RESPONSE

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

*Your letter requires Nissan to address the advertisement's compliance with section 2 of the AANA Code of Ethics. Nissan does not believe that any issues arise under sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 or 2.7.*

*Your letter also requires Nissan to address the advertisement's compliance with the Environmental Code.*

### 3.1 Environmental Code

*Nissan does not claim or represent in the advertisement that the LEAF has zero emissions.*

*In the advertisement, Nissan expressly and clearly sets out that the LEAF has zero tailpipe emissions as follows:*

*"New MY23 LEAF*

*The 100% electric Nissan LEAF, the world's first mass-market EV, has been updated with key styling and technology updates designed to make motoring with zero tailpipe emissions even more appealing."*

*Nissan is confident that the statement in the advertisement that the LEAF has "zero tailpipe emissions" is accurate, clear and specific. The advertisement does not in any way mislead or overstate the environmental benefit of the LEAF nor does it imply that the LEAF has zero lifecycle or power generation emissions. The use of the word "tailpipe" makes it clear that the 'zero emissions' claim relates only to exhaust emissions. This claim is correct and consistent with the government mandated fuel consumption label affixed to every Nissan LEAF which shows that the vehicle produces 0 grams of Co2 per kilometer (g/km).*

*Whilst the advertisement does not refer to the environmental benefits associated with having zero tailpipe emissions, Nissan can substantiate that this feature of EVs does provide genuine environmental benefits. Not only do standard motor vehicle exhausts produce greenhouse gases that contribute to climate change, but air pollutant emissions, including carbon monoxide, nitrogen oxides, particulate matter, and volatile organic compounds, are known to cause smog which has significant adverse impacts on the health of humans, animals and plants. Vehicles with zero tailpipe emissions, such as the Nissan LEAF, are an effective tool for reducing air pollution.*

### 4 Summary

*Nissan takes great care when developing advertisements to ensure that they comply with all applicable advertising standards and codes of practice, including the Environmental Code.*



*Nissan strongly believes that the advertisement complies with the Environmental Code. Nissan maintains that the advertisement is accurate, clear and specific in respect to an environmental benefit of the LEAF and has ensured compliance with our obligations under the Environmental Code.*

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

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

1.

<https://www.greenvehicleguide.gov.au/pages/UnderstandingEmissions/VehicleEmissions>

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Environmental Claims in Advertising and Marketing Code (the Environmental Code).

The Panel noted the complainants' concerns that the product advertised is not zero emissions as there are emissions used in charging the vehicle.

The Panel viewed the advertisement and noted the advertiser's response.

### **Is an environmental claim being made?**

The Panel considered whether the advertisement made an Environmental Claim.

The Environment Code applies to 'Environmental Claims' in advertising and marketing communications.

The Code defines Environmental Claims as "any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment".

The Panel noted that the advertisement includes the words, "zero tailpipe emissions". The Panel considered that zero tailpipe emissions is a claim that the vehicle being promoted has a lesser negative impact on the environment than other vehicles. The Panel considered that this was an environmental claim.

**1 a) Environmental Claims in Advertising or Marketing Communication...shall not be misleading or deceptive or be likely to mislead or deceive**



The Panel noted that the Practice Note for this Section includes:

*“It is not intended that legal tests be applied to determine whether advertisements are misleading or deceptive, or likely to mislead or deceive, in the areas of concern to this Code. Instead, consideration will be given as to whether the average consumer in the target market would be likely to be misled or deceived by the material.*

*Factors to consider include:*

- An advertisement may be misleading or deceptive directly or by implication or through emphasis, comparisons, contrasts or omissions. It does not matter whether the advertisement actually misled anyone, or whether the advertiser intended to mislead – if the advertisement is likely to mislead or deceive there will be a breach of the Code.*
- The target market or likely audience of the advertising or marketing communication should be carefully considered when making environmental claims. Therefore all advertising should be clear, unambiguous and balanced, and the use of technical or scientific jargon carefully considered.”*

The Panel considered that the advertisement did not state that the vehicle had zero emissions overall, and the claim was limited to zero tailpipe emissions.

The Panel noted substantiation provided by the advertiser that the vehicle produces zero tailpipe emissions.

The Panel considered that most members of the community would understand that the environmental claim is a reference to tailpipe emissions, and not to the charging of the vehicle.

The Panel considered that this understanding meant that the average consumer in the target market would not be likely to be misled or deceived by the material.

### **Section 1 a) conclusion**

The Panel determined that the advertisement did not breach Section 1 a) of the Environmental Code.

### **2 b) Environmental Claims must...not overstate the claim expressly or by implication**

The Panel noted that the Practice Note for this Section includes:

*“Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute.”*



Consistent with the determination above, the Panel considered that the advertisement did not overstate the claim expressly or by implication.

**Section 2 b) conclusion**

The Panel determined that the advertisement did not breach Section 2 b) of the Environmental Code.

**Conclusion**

Finding that the advertisement did not breach the Environmental Code on any other grounds the Panel dismissed the complaint.