



## Case Report

1	Case Number	0266/15
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/07/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

Two tradies are packing up after work when a truck carrying a giant pipe drives by with one of its tie down chains loose, dragging along the road. Sensing danger the two tradies take off after the truck in their pickup with the intention to alarm the driver. However, before they can safely notify the driver, the giant pipe comes loose and falls off the truck bed right in front of them. With no time or option to avoid the pipe, the driver confidently drives the pickup straight in to the giant pipe and out the other end. After coming to a stop they realise the truck driver hasn't noticed and is driving off in to the distance. So, they decide to hook up the giant pipe to their pickup and tow it back to the truck.

### THE COMPLAINT

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

*This ad portrays unnecessary risky and dangerous driving which should not be encouraged, and therefore should be removed.*

*Load restraint is a continuing focus of police and road agency enforcement across Australia, and to trivialise this subject for the benefit of a TV Commercial popularises this issue, perhaps to a point which may attract some sort of similar 'stunt' type activity. In addition, those directly affected by road trauma which has related to load restraint would find this issue offensive, in the wider context of road safety. Of note, is that between 2012 & 14, heavy vehicle fatal crashes fell 14%, and associated deaths 24% in NSW, courtesy of effective*

*police and road agency enforcement, amongst other factors.*

## **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 0266/15 (the complaint) in relation to a 30 second advertisement by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) featuring the All-New Nissan NP300 Navara vehicle (the advertisement).*

*In your letter you state that the complaint raises issues under section 2(c) of the Federal Chamber of Automotive Industries Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Code).*

### *1. Purpose of the Advertisement*

*The advertisement was produced to showcase the power, utility and features, and new look of the NP300 Navara. The advertisement depicts a fantastical scene in which two construction labourers notice that a chain restraint of a passing truck carrying a large pipe has come loose and commence pursuit in the NP300 Navara in order to warn the apparently oblivious driver. At a later point all of the other restraints holding the pipe to the truck's trailer spontaneously break resulting in the pipe rolling off the truck and onto the road. The two labourers are unable to manoeuvre in time and are compelled to drive through the pipe, which they successfully direct off the road and to a safe stop through the use of the NP300 Navara's power.*

### *2. The complaint*

*The complainant alleges that the pipe was not restrained properly, and the complaint includes the following statements:*

*“to trivialize this subject for the benefit of a TV Commercial popularizes this issue, perhaps to a point which may attract some sort of similar ‘stunt’ type activity”;* and that

*“those directly affected by road trauma which has related to load restraint would find this issue offensive, in the wider context of road safety”.*

### *3. Nissan's response to the complaint*

*Your letter requires Nissan to address the advertisement's compliance with section 2(c) of the FCAI Code. This section obliges advertisers to ensure that advertisements for motor vehicles do not portray unsafe driving, including speeding or other practices which would contravene road safety regulations.*

*Nissan takes great care when developing each of its television advertisements to ensure that they comply with all applicable advertising standards and codes of practice including the FCAI Code and the AANA Code. We take great care and effort to ensure that the advertisements do not encourage any form of unsafe, illegal or reckless activity, or depict*

*scenes or behaviour contrary to prevailing community standards in relation to health and safety.*

*In the development of the advertisement, Nissan undertook significant research into the road rules, regulations and legislation of each state and territory of Australia (the Acts) to make certain that the scenes depicted in the advertisement were compliant. This included obtaining internal and external legal advice to check maximum load allowances for vehicles and trailers, mandatory signage and flags, as well as compliance with other road safety laws. As can be seen by the many straps securing the pipe to the trailer of the truck, specific attention was given to the restraint and harnessing requirements for vehicles bearing heavy loads.*

*Nissan notes that none of the Acts prescribe specific methods or minimum requirements for load restraint. Instead, the Acts provide the following general requirements:*

- that loads are not placed on a vehicle in a way that makes the vehicle unstable or unsafe;*
- that the load is appropriately secured so that it is unlikely to fall off the vehicle;*
- an appropriate method of restraint must be applied to hold the load in place; and*
- the load must not be placed on the vehicle in a manner that is hanging or projecting from the vehicle.*

*Contrary to the comments in the complaint, the pipe depicted in the advertisement is securely fastened and restrained to the truck's trailer in accordance with these requirements.*

*From the 0:02 to 0:03 second point of the advertisement, the truck is shown driving with the pipe secured to its trailer by 8 straps at regular intervals along the pipe. This is depicted again at 0:11 seconds where the straps are seen to break. As a result, it is clear that the driver of the truck had acted in a manner consistent with legal obligations as set out in the Acts in relation to restraining the load.*

*In addition, the truck is depicted driving at the appropriate speeds and adorned with the necessary signage to advise other road users of its status as a heavy load bearing vehicle. Consequently it is clear that, but for the incident, the driver had done all things reasonably necessary to ensure that the pipe remained appropriately fixed to the truck.*

*The fact the pipe ultimately rolls off the truck does not give rise to a breach of clause 2(c) of the Code. There has been no "act" or "driving" practice that has breached a road safety law. There has just been an accident clearly depicted in a fantastical way – which is evidenced by the way in which the straps all fall away simultaneously – which has been 'set up' for dramatic effect in the context of the advertisement's fictional scenario.*

*Nissan rejects the complainant's claim that it has "trivialize(d) this subject for the benefit of a TV Commercial popularizes this issue, perhaps to a point which may attract some sort of similar 'stunt' type activity". To the contrary, by depicting the many straps securing the pipe, Nissan has gone to great lengths to encourage proper load restraint. The straps snap simultaneously for dramatic effect to set up the fictional scenario in the advertisement where the labourers "come to the rescue" with their NP300 Navara; and Nissan strongly believes that viewers would see the advertisement in this way. The fictional and comedic scenario is*

*reinforced by the labourer saying to the driver of the truck “yeah, hey mate, I think you might have dropped something?”*

*Rather than discouraging road safety, the entire focus of the advertisement is the efforts that are made to ensure that the pipe is transported safely. This is reinforced by the straps shown to secure the pipe, the labourers calling the driver to alert him to the danger, and the two construction labourers pursuing the truck due to their concern that, due to one of the restraints coming loose, the load may no longer be secure.*

*For completeness, Nissan would also like to point out that the pipe and its restraints were computer-generated special effects. As such, there was no danger in the filming of this advertisement.*

*In light of the above, Nissan strongly believes that the advertisement complies with the requirements of the various Acts.*

### *Summary*

*Nissan takes road safety very seriously. As a result, every care is taken to ensure that its advertisements abide by prevailing community standards and do not depict any driving that may be deemed unsafe, reckless or irresponsible. The advertisement was filmed in controlled conditions and in full compliance with the Acts. While Nissan acknowledges the complainant’s concerns, it does not believe that the advertisement in any way trivialises road safety and trauma. Nissan does not view that the advertisement in any way encourages or condones failure to restrain loads nor popularises the issue in a manner that could be replicated.*

*The incident in which the pipe falls off the truck is due to a fantastical and inexplicable breaking of its restraints; not because of a breach of the Acts or failure to restrain it to the truck in the first place.*

*For the reasons above, Nissan does not believe that the advertisement breaches the FCAI Code and accordingly requests 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).

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. The Board concluded that the material is an advertisement as defined by the FCAI Code.

The Board then considered 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 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 load improperly restrained on the back of a vehicle resulting in it coming loose and falling on the road.

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

The Board considered clause 2(c) of the FCAI Code which requires that advertisements for motor vehicles should not depict '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 the advertisement features a Nissan Navara driving through a giant pipe which has fallen off the back of a truck before towing it alongside the truck driver and telling him he has dropped something.

The Board noted the complainant's concern that the load is improperly restrained. The Board noted that when the truck initially drives past we can see and hear a chain rattling loose. The Board noted it is not possible to ascertain whether the chain has come loose because of human error or for any other reason and considered that the men's reactions to seeing the load now improperly secured is strongly suggestive of this not being an ideal situation. The Board considered that the whole concept of the advertisement – the Nissan Navara driving through the giant pipe when it falls on the road, and the vehicle being able to tow the pipe at speed – is fanciful and cinematic.

The Board acknowledged that insecurely fastening loads is a health and safety risk but considered in this advertisement the danger of not having a secure load is clearly highlighted and there is no suggestion that this issue is being trivialised. The Board noted that the men in the Nissan Navara act swiftly to save the situation and alert the truck driver to the problem. The Board noted that the depiction is fantasy and cinematic and that overall it would not be possible to copy. The Board considered that the safety issue is clearly depicted as being undesirable and dangerous for a load to not be securely tied and that on balance, the advertisement does not encourage or condone copycat behaviour: either by not securing a load safely or by driving through equipment which has fallen off a truck.

The Board considered that overall the advertisement does not portray any driving which is unsafe or which is reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory.

The Board determined that the advertisement did not breach Clause 2(c) of the FCAI Code. Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.

