



Case Report

1	Case Number	0286/13
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	TV
5	Date of Determination	28/08/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

FCAI Motor Vehicles 2(a) Unsafe driving

DESCRIPTION OF THE ADVERTISEMENT

This modified version of the Nissan advertisement depicts a car traveling to hospital with an apparently pregnant women panting as though in labour. When they arrive at hospital the man looks at his watch and smiles. The woman removes her fake pregnancy bump and the man comments that if she were about to give birth they could get to the hospital in time.

THE COMPLAINT

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

I just think literally speeding through city streets depicts the wrong message, especially to the younger generation (I'm 40 but far from a prude) they hoon around enough as it is. An ad that encourages it for fun does not sit well.

I would like to see this ad removed until it can be re-presented in a more acceptable manner without giving people the Impression it is OK to speed and deceive people.

The ad is antisocial and supports inconsiderate and dangerous driving. I see from your complaints page this has been supposedly dealt with and has neither been modified or withdrawn. I have seen this ad on numerous occasions and can't see any improvement. My complaint is that it makes braking the law appealing it shows speeding down narrow lanes.

Parking in front of main doors to the hospital all for a time trial.

THE ADVERTISER'S RESPONSE

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

Advertisement Complaint: Reference 0286/13 (Nissan Pulsar Hatch TVC – Second Modified Version)

We refer to your letters dated 1 August 2013 and 8 August 2013.

Background

Your letters detail complaints with reference number 0286/13 (the complaints) in relation to an advertisement by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) that features the Nissan Pulsar Hatch SSS.

As you would be aware from previous correspondence, Nissan aired a Pulsar SSS Hatch television advertisement (the original TVC) that was the subject of complaints with reference numbers 0195/13 (TV), 0203/13 (Pay TV), 0204/13 (Cinema) and 0205/13 (Internet), (the original complaints). The Advertising Standards Board (the Board) upheld the original complaints in relation to the original TVC in its Determinations dated 27 June 2013. Nissan applied for independent review of the Determinations in relation to the original TVC on the basis that there was a substantial flaw in the Board's Determinations (having regard to the provisions of the Code) in finding that the original TVC breached clause 2(a) of the FCAI Code of Practice Relating to Advertising for Motor Vehicles (the FCAI Code). The independent reviewer affirmed the Board's Determinations.

In response to the Determinations, Nissan modified the TVC to seek to address the concerns expressed by the Board (the second TVC).

The second TVC included the following amendments:

the volume of the engine noise was lowered;

the words "quick, quick, quick" and "go, go, go" were removed from the female voiceover;

the squeaking noise that could be heard when the vehicle comes to a stop outside the hospital was removed; and

a prominent on-screen statement was added stating "Filmed under controlled conditions. Driving shown adheres to all road safety regulations".

The second TVC attracted a number of complaints which were given reference number (0230/13) (the second complaints), and Nissan was asked to respond to the second complaints.

Nissan maintained its position that in light of the significant modifications made to the

original TVC, the second TVC was compliant with the provisions of the FCAI Code. However in its Determination, the Board upheld the second complaints.

In response to the Board's Determination on the second complaints, Nissan made significant further modifications to the TVC (the third TVC), including:

the removal of the words "10.24. Personal best" from the male character's script at the end of the TVC;

the removal of the "beep" sound of the male character's stopwatch upon arrival at the hospital;

the length of the footage was reduced to allow the remaining footage of the vehicle driving to be slowed down (despite the fact that the original footage was actually filmed below the applicable speed limit);

the following driving shots were removed completely:

shot of the vehicle turning into an alleyway; and

the initial shot of the car driving by the camera in the alleyway; and

all sound effects of the vehicle's engine revving were removed.

The new complaints

The complaints that are the subject of this letter relate to the third TVC and have been given complaint reference number (0286/13) (the new complaints).

The new complaints focus on the driving depicted in the advertisement, referring to the speed and manner of driving in which the characters are perceived to be driving. You have categorised the complaints under section 2(a) of the Federal Chamber of Automotive Industries Code of Practice Relating to Advertising for Motor Vehicles (FCAI Code) – Unsafe Driving.

Nissan's response to the complaints in relation to the third TVC

Nissan refers to and repeats its previous submissions (attached) regarding the purpose of the television advertisement in its original form and maintains its view that it is compliant with both the FCAI Code and the Australian Association of National Advertisers Code of Conduct.

The new complaints include claims that the advertisement shows speeding and "flaunting [of] the law". Nissan maintains that all driving depicted was in strict accordance with applicable road rules. In meeting Nissan's obligations under section 2(a) of the FCAI Code, the advertisement contains no instances of speeding, swerving, unnecessary changes in direction or instances of driving which put either the drivers of the vehicle or the public in any danger.

Similarly, and whilst not specifically categorised as such, the advertisement does not breach section 2(b) of the FCAI Code as the vehicle is driving well within the legal speed limits at all times during the advertisement. At all times when the vehicle accelerates, the acceleration

and speed are all within the limits of the law.

Nissan notes the following comments of the Board in its Determinations regarding the second TVC that speeding can be implied from the overall concept of the TVC:

“[the second TVC] retains the concept of racing against the clock and considered that consistent with its original determination the suggestion of a driver trying to beat his own time is a depiction which is not appropriate for a vehicle being driven on public roads and is unsafe”.

In response to this concern Nissan has removed the line “10.24, personal best” in the third TVC as well as the “beep” from the male character’s stopwatch and replaced it with the line “if we ever decide to have a baby we’ll get there easy”. This change of wording removes any possible imputation of racing against the clock or attempting to beat an earlier time and instead suggests (lightheartedly) that the Pulsar Hatch SSS provides an effective and efficient means of getting to the hospital in a time of emergency.

Nissan also noted the Board’s comments in the Determinations on the second TVC that:

“despite the amendments [to the second TVC] made by the advertiser there is still an audio indicator of speed, and this accompanied by the visual footage of the car being driven down narrow streets is still suggestive of a vehicle driving in a manner which is not appropriate for the urban environment depicted.”

Notwithstanding the fact that both the original and second TVC only ever featured the vehicle travelling at or beneath the applicable speed limits, Nissan has slowed down the footage in the third TVC and removed all engine noise from the soundtrack. This action has ensured that nothing in the TVC could possibly give rise to the impression or suggestion that the vehicle is at any time speeding or is being driven in an unsafe manner.

Further, Nissan maintains that the third TVC does not depict any driving practices that breach any Commonwealth, State or Territory road safety rules or traffic regulations. Both passengers are restrained by their seatbelts and as mentioned above the vehicle is never driven erratically and does not create a hazard for itself or any other road users. Whilst there is nothing unlawful involved in driving along narrow streets where the road rules permit, in response to the Board’s comments above, various shots of the vehicle travelling down an alleyway have been removed from the third TVC.

In consideration of the above, Nissan is concerned by comments made in the new complaints such as “I see from your complaints page this has been supposedly dealt with and has neither been modified or withdrawn. I have seen this ad on numerous occasions and can’t see any improvement”. Taken together the significant modifications to the third TVC have specifically addressed the concerns raised by the ASB in its previous Determinations and ensure that there is no actual or implied suggestion of speeding or any unsafe driving depicted. Nissan believes that the third TVC, when viewed independently and distinctly from the previous versions of the advertisement, does not show or give the impression unlawful or unsafe driving.

Summary

In response to the Board's Determinations regarding the first and second TVC, Nissan has made significant changes to the third TVC in order to address the specific issues raised by the Board. While Nissan acknowledges the complainants' concerns with the advertisement, we firmly believe that the third TVC does not breach the FCAI Code. It simply does not depict or give the impression of unlawful or unsafe driving.

For the reasons above, we request that the complaints 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).

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 determined that the material draws the attention of the public or a segment of it to a product being a Nissan Pulsar Hatch in a manner calculated to promote that product. The Board considered that in line with previous decisions around the scope of the FCAI Code, the marketing communication is an advertisement as defined by the FCAI Code. The Board also considered whether the 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 Pulsar Hatch shown in the advertisement was a 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 complainants' concerns that the advertisement depicts a vehicle being driven at high speeds and in an unsafe and reckless manner, specifically down a narrow lane, it uses a woman's fake pregnancy as an excuse to show this dangerous driving, and that the vehicle is parked in front of a hospital.

The Board considered clause 2(a) of the FCAI Code. Clause 2(a) requires that: Advertisements for motor vehicles do not portray ...unsafe driving, including reckless or menacing driving that would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, if such driving were to occur on a road or road-related area, regardless of where the driving is depicted in the advertisement.' The Code

provides the following as examples, “Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle...”

The Board noted that the advertisement is the second modified version of two recently upheld advertisements (case references 0195/13 and 0230/13) and that it depicts a man driving his pregnant partner through a suburban environment before coming to a stop outside a hospital where the man checks his watch. The Board noted that in response to this, the woman removes a fake pregnancy pouch and the man comments that if they ever decide to have a baby they will get to the hospital easy.

The Board noted that in its reasoning for upholding the original version of the advertisement (0195/13) it had stated that “in the driving scenes the audio includes the female passenger encouraging the driver to drive faster (“Go, go go!”) and we can hear sounds of high engine revs which is suggestive of the vehicle moving quickly. The Board also noted that when the car comes to a halt outside the hospital we can hear the tyres squealing. The Board noted that we do not see what speed the car is driving at however the Board considered that these audio effects in conjunction with the visual images of the vehicle driving in a manner which suggests they are in a hurry are suggestive of driving which is not appropriate for the urban environment depicted and is unsafe and reckless”.

The Board noted that in the first modified version of the advertisement (0230/13) the advertiser had “removed the audio of the woman encouraging the man to drive faster, the volume of the engine noise has been lowered and the tyre squealing when the car comes to a stop outside the hospital has been removed. The Board considered that despite the amendments made by the advertiser there is still an audio indicator of speed, and this accompanied by the visual footage of the car being driven down narrow streets is still suggestive of a vehicle driving in a manner which is not appropriate for the urban environment depicted”.

The Board noted that in this second modified version of the advertisement that the footage of the vehicle driving through narrow streets had been noticeably slowed down and the audio toned down. A minority of the Board considered that the depiction of the car driving through the alley way is still suggestive of the vehicle traveling at speed however the majority of the Board considered that the vehicle does not appear to be driving in a manner which is inappropriate or unsafe for the urban environment depicted.

The Board noted that in its determination against the original upheld version of the advertisement, the Board had noted that “the man’s comment that the time it took them to drive to the hospital is their “personal best” is strongly suggestive of having driven the route on a number of occasions in hope of doing it faster each time. The Board noted that the explanatory notes for the FCAI Code “...urges also advertisers to avoid any suggestion that depictions of.... competitive driving are in any way associated with normal on-road use of motor vehicles” and considered that the suggestion of a driver timing a route and trying to beat his own time is not appropriate and is a depiction of driving which is unsafe.”

The Board noted that in the first modified version of the advertisement the overall theme of the advertisement retains the concept of racing against the clock and considered that consistent with its original determination the suggestion of a driver trying to beat his own time is a depiction which is not appropriate for a vehicle being driven on public roads and is unsafe.

The Board noted that in this second modified version of the advertisement the man does not comment on the time but says that they will be able to get to the hospital easily if ever they needed to. The Board considered that this depiction is not suggestive of the driver trying to beat any previous times nor a suggestion of extreme speed.

Based on the above the Board determined that in this instance the advertisement does not depict unsafe driving and does not breach clause 2(a) of the FCAI Code.

The Board considered 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 the complainants’ concerns that that it is not appropriate to fake pregnancy in order to drive in a reckless manner. The Board noted that in the advertisement the vehicle is shown parking at the entrance to a hospital’s emergency department and that the writing on the road indicates that where the vehicle parked is a “drop off” zone.

Consistent with its previous determinations in case references 0195/13 and 0230/13, the Board noted that the use of a fake pregnancy is not of itself a breach of the Code however a minority of the Board considered that the depiction of a couple using a fake pregnancy as an excuse to park outside the entrance to an emergency department is not appropriate as the space could be needed by someone in a real emergency.

The majority of the Board however considered that the advertisement is clearly filmed under controlled conditions and that whilst it is morally questionable as to whether using a fake pregnancy in order to drive to the hospital and park in a premium spot outside it is acceptable, the couple are shown to return immediately to their vehicle which indicates they are leaving. The Board considered that the advertisement does not depict any material which would be contrary to community standards on health and safety.

Based on the above the Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the FCAI Code or the Code of Ethics, the Board dismissed the complaints.