



Case Report

1	Case Number	0311/12
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicles
4	Type of Advertisement / media	TV
5	Date of Determination	08/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Motor vehicles 2b Breaking the speed limit

DESCRIPTION OF THE ADVERTISEMENT

A woman opens a Nissan Murano without using a key and a voiceover asks, "What if cars didn't need keys?" We see the woman driving the car whilst the voiceover asks other questions such as what if your handbag didn't fall off the front seat when you brake and what if the seats were made from old water bottles.

In one scene the voiceover asks, "What if you could go from 0 to 100 in 2.8 seconds?" and we see a car on a racetrack accelerating away and a disclaimer appears on screen which reads, "Professional driver. Closed course."

THE COMPLAINT

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

In the commercial they show a Nissan GT-R and the voice asks the question 'What if a car could go from 0-100 in 2.8 seconds' or similar.

My understanding is that the automotive code says you can't promote speed or acceleration figures. I'm sure the ASB has banned ads before that promote speed in this way. I think an earlier Chrysler 300C ad was banned because of this same type of 0-100 claim.

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, reference 0311/12 (the complaint) in relation to advertisements by Nissan Motor Co. (Australia) Pty. Ltd. appearing in 45 second and 30 second versions that feature (among other Nissan models) the new Nissan GT-R vehicle (the advertisement).

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.

1 The complaint

The subject of the complaint is a claim made in relation to the acceleration capability of the 2012 Nissan GT-R vehicle that is featured in the advertisement. The complainant notes that this is phrased as a question, 'What if a car could go from 0-100 in 2.8 seconds' and the complainant's understanding that "the automotive code says you can't promote speed or acceleration figures". The complainant also claims that in the past, other manufacturers/distributors including Chrysler, have been banned from making such claims.

2, Nissan's response to the complaint

Nissan takes great care when developing television commercials to comply with the AANA Code and Federal Chamber of Automotive Industries Code of Practice Relating to Advertising for Motor Vehicles (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 advertisements produced 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.

Purpose of the Advertisement

The advertisement was produced as part of a new Nissan brand campaign that focuses on the theme 'Innovation That Excites'. The advertisement is aspirational, in that it identifies some of the key innovative features of certain Nissan vehicles that distinguish the brand from its competitors, as well as highlighting some of the vehicle development and technology used to set Nissan apart from the rest of the automotive industry. By asking 'what if, Nissan invites the audience to contemplate the capabilities of these vehicles, and the impact and influence that these types of changes could have on the Australian public's perception of the Nissan brand. It is designed to position the Nissan brand as a leading brand in the automotive market.

The aim of this particular advertisement is to encourage viewers to see Nissan as an industry leader in innovative new technologies, including features designed to increase comfort, the development of more environmentally responsible vehicles, and Nissan's well-known leading design and technology in the motor sport area. Its purpose, and the advertisement itself, does not encourage drivers to drive in an unsafe or unlawful manner.

Compliance with the AANA Code

Section 2 of the AANA Code currently provides:

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.

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 be assessed against the relevant provisions of the FCAI Code.

The FCAI Code

When preparing the advertisement, Nissan carefully considered its obligations under the FCAI Code. Relevantly, section 2 of the FCAI Code provides:

"Advertisers should ensure that advertisements for motor vehicles do not portray any of the following: (a) Unsafe driving, including reckless and 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".

[Examples: Vehicles travelling at excessive speed; sudden, extreme and unnecessary changes in direction and speed of a motor vehicle; deliberately and unnecessarily setting motor vehicles on a collision course; or the apparent and deliberate loss of control of a moving motor vehicle);

(b) People driving at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast. (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.

[Examples: Illegal use of hand-held mobile phones or not wearing seatbelts in a moving motor vehicle. Motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.]

Nissan maintains that the advertisement, and the section of it complained about, does meet and fully discharge Nissan's obligations under section 2 of the FCAI Code. In addition to being filmed on a closed course under controlled conditions and using a professional driver (which is discussed in further detail below), the footage of the Nissan GT-R vehicle was captured with the specific requirements of sections 2(a), 2(b) and 2(c) of the FCAI Code in mind. At no point in the advertisement is the vehicle depicted driving above the acceptable speed limits for public roads in Australia, nor is any dangerous, reckless or otherwise illegal manoeuvring featured. In fact, none of the range of Nissan vehicles depicted throughout the advertisement engages in conduct that would be considered illegal on an Australian road.

Use of Motor Sport in Advertising

When preparing the advertisement for publication, Nissan also considered section 3 of the FCAI Code. The key aspects of that section provide:

"Without limiting the general application of clause 2, advertisers may make use of scenes of motor sport; simulated motor sport; and vehicle-testing or proving in advertising, subject to the following: (a) Such scenes should be clearly identifiable as part of an organised motor sport activity, or testing or proving activity, of a type for which a permit would normally be available in Australia"

The explanatory notes to the FCAI Code state that:

"It is acknowledged that motor sport plays a crucial role in brand promotion and the development and testing of crucial technologies, many of which result in safer vehicles. Accordingly, the Code seeks to ensure that advertisers can continue to legitimately make use of motor sport in advertising, provided that care is taken to ensure that depictions of speed, racing and other forms of competitive driving are clearly identified as taking place in this context. FCAI urges also advertisers to avoid any suggestion that depictions of such vehicles participating in motor sport, or undertaking other forms of competitive driving are in any way associated with normal on-road use of motor vehicles."

Nissan maintains that the comments complained of in the advertisement are made in the context of a scene clearly identified as coming within the ambit of section 3 of the FCAI Code. The statement complained of, 'What if a car could go from 0-100 in 2.8 seconds?' is made during footage of a vehicle being tested on a race track circuit (the vehicle is shown exiting a pit lane and entering the race track) being timed by a stop-watch. It also is accompanied by the clear and prominent statement 'Professional Driver. Closed Course.' All of these aspects make it clear that the Nissan GT-R is being shown as part of a testing and proving activity. By filming this part of the advertisement in an area both visibly identifiable as a race track, and confirming this through the prominent on-screen statement 'Professional Driver. Closed Course.' Nissan believes that it has discharged its obligations under section 3(a) of the Code.

The choice to film the

Nissan GT-R in this way was also to make clear that a closed race track (rather than a public road) is the appropriate time and place to drive a Nissan GT-R from 0-100 in 2.8 seconds, and that such driving should not be undertaken during normal on-road use of the vehicle.

Further, as discussed above and in addition to the exception in clause 3 of the FCAI Code, Nissan has ensured that the Nissan GT-R vehicle featured in the advertisement does not actually drive at a speed in excess of 100km/hr in any footage depicted. This was done deliberately notwithstanding the fact that

the GT-R is capable of driving at much higher speeds because Nissan wanted to ensure that the advertisement did not portray (or encourage) driving practices which may be illegal, dangerous or reckless.

Explanatory Notes

The following statement appears at the end of the Explanatory Notes to the FCAI Code:

"In interpreting and applying the Code, FCAI asks that advertisers take into account both the explicit and the implicit messages that are conveyed by an advertisement. Advertisers should make every effort to ensure that advertisements not only comply with the formal provisions of the Code but are also consistent with the objectives and guidelines expressed in these Explanatory Notes which accompany the Code." (emphasis added).

The Nissan GT-R is Nissan's iconic supercar vehicle that is well regarded as an industry leader. It is the aspiration and inspiration for development of new and improved safety and technological features across the range of Nissan's passenger and light commercial vehicles sold in Australia. This is why Nissan chose to include a brief depiction of the vehicle, and to highlight one of its tested and proven capabilities, in its new brand campaign.

Nissan acknowledges that the Explanatory Notes also state:

"Advertisers should avoid references to the speed or acceleration capabilities of a motor vehicle (for example, "0-100 km/h in 6.5 seconds") ... " (emphasis added).

Nissan believes that this statement - which is followed by the FCAI Code's statements permitting motor sport and testing / proving activities set out above and the Explanatory Notes' reference to considering the implicit and explicit messages conveyed by an advertisement - must be read in this context.

Differences from the Chrysler advertisement

Further, Nissan notes that the Board's previous decision to which we presume the complainant refers,

100/07 DaimlerChrysler Australia/Pacific, dated 10 April 2007, was in relation to a series of factual references to the Chrysler 330C motor vehicle, including the statement '0-100kph in a low 5 seconds.' (Chrysler advertisement). The Board found that the Chrysler advertisement was in direct contravention of the Explanatory Notes and was 'against the spirit of the Code' and, therefore, the Chrysler advertisement did breach the FCAI Code.

Nissan maintains that the advertisement is very different from the Chrysler advertisement, and can be distinguished from the Chrysler advertisement on the following grounds:

(1) the Nissan GT-R is a supercar designed as a racing vehicle and is depicted as such throughout the advertisement;

(2) the acceleration statement in the advertisement is shown in the context of race track driving with a clear and prominent disclaimer clarifying this (while the Chrysler advertisement showed a vehicle driving in an underground carpark); and

(3) the Chrysler advertisement relates to an ordinary motor vehicle to which the advertiser attempts to highlight not only the 0-100kph acceleration capability, but also takes an extra step to emphasise how fast it can accelerate by claiming that it is a 'low' five seconds.

3. Summary

While Nissan acknowledges the complainant's concerns, it does not believe that the advertisement breaches the requirements set out in the FCAI Code. In Nissan's opinion, the advertisement does not depict or condone any form of dangerous, illegal or reckless driving, and falls directly within the motor sport/testing exception contained in section 3 of the FCAI Code.

Nissan firmly believes that comment complained of in the advertisement should be interpreted in the context of motor sport driving, and that the advertisement in no way encourages or condones dangerous driving or acceleration on public roads in Australia.

For the reasons above, we request that the complaint should 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 branding advertisement 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 range of Nissan vehicles shown are Motor vehicles 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 Nissan GT-R and the voice over asks the question "What if you could go from 0-100 in 2.8 seconds?"

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

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 Board noted that the advertisement includes one scene with a Nissan GT-R exiting a garage at a race track and proceeding around a portion of the track.

The Board noted that the examples given in the FCAI Code for unsafe driving include "...vehicles travelling at excessive speed; sudden extreme and unnecessary changes in direction and speed of a motor vehicle..." The Board considered the scene involving the GT-R and agreed that in this instance the vision of the race track in this scene is identifiable and a disclaimer appears on the bottom of screen that reads "professional driver. Closed course".

The Board noted that there is no verification of the actual speed of the vehicle but that the voice over is heard saying "What if you could go from 0-100 in 2.8 seconds?"

The Board noted that without verification of the speed of the vehicle it is impossible to know exactly how fast the car is moving. The Board noted that the voiceover did advertise an acceleration rate which was promoting a performance feature. The Board considered that there are roads across Australia that permit a speed limit of 100kmh and vehicles are able to drive to those speeds when conditions allow.

The Board considered that the promotion of the acceleration capabilities of a vehicle does not of itself amount to "excessive speed or sudden extreme and unnecessary changes in direction and speed of a motor vehicle"

The Board were concerned about the inclusion of references to the acceleration capabilities of any vehicle and noted that the explanatory notes of the FCAI Code provides “Advertisers should avoid references to the speed acceleration capabilities of a motor vehicle...” but did not state that advertisers “shall not” include these statements.

The Board considered that the advertisement was promoting a range of vehicles or vehicle brand and innovation rather than one particular model. The Board considered that the scenes in the advertisement depicting the Nissan GT-R are presented in a manner that is consistent with the provisions of the Code related to the use of motor sport and that the imagery was clearly identifiable as under a race track environment and that reasonable members of the community would not consider that the advertiser is encouraging or condoning dangerous driving or acceleration on public roads in Australia.

On the above basis, the Board determined that the advertisement does not depict unsafe driving that would breach any law and does not breach clause 2(a) of the FCAI Code.

The Board considered that the overall theme of the advertisement is to highlight the features and designs of the Nissan range including innovative new technologies and features designed to increase comfort and to promote the brand as a whole rather than to specifically promote one vehicle which is classed as a high performance vehicle.

Finding that the advertisement did not breach the FCAI Code, the Board dismissed the complaint.