



Case Report

1	Case Number	0316/14
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Billboard
5	Date of Determination	27/08/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement the subject of the complaint was an outdoor billboard which depicts a parked red Nissan JUKE against a white background with the tagline “Watch Out Fun Police”.

THE COMPLAINT

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

The vehicle is shown in breach of road rules and road safety standards as its windows are completely black. It condones and encourages illegal window tinting, clearly implying it will help them evade police. Window tinting is illegal because it is unsafe, prevents safe driving (with eye contact) and prevents witnesses and police identifying the driver and occupants.

THE ADVERTISER’S RESPONSE

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

In your letter you state that the complaint raises an issue under Section 2(c) – Driving practices that would breach the law – 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 depiction of the window tint of the Nissan JUKE on the billboard.

The complainant states that:

“The vehicle is shown in breach of road rules and road safety standards as its windows are completely black. It condones and encourages illegal window tinting, clearly implying it will help them evade police. Window tinting is illegal because it is unsafe, prevents safe driving (with eye contact) and prevents witnesses and police identifying the driver and occupants.”

1. *Nissan’s response to the complaint*

Nissan takes great care when developing its commercials, including billboards, to ensure that they comply with the AANA Code and FCAI Code and to ensure that they do not encourage any form of unsafe, illegal and 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 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 advertising material ran in five Australian capital cities and was designed to create further awareness of the Nissan JUKE.

With the Nissan JUKE being positioned in the market as a funky fun compact vehicle with urban attitude appealing to a youthful audience, the reference to “fun police” is a reference to the colloquial term referring to people who do not allow any fun, not the police force.

The FCAI Code

The complaint raises issue with perceived driving practices that would breach the law under section 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.

In considering the complaint, 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).

No windows of the Nissan JUKE depicted are completely blackened. An inspection of the accompanying image will reveal that head rests and internal pillars are visible through the windows.

Nissan takes safety seriously and would not encourage illegal window tinting or promote "unsafe driving, or prevent safe driving (with eye contact) and prevent witnesses and police identifying the driver and occupants".

The image was used on outdoor billboards, which if viewed from a distance and/or at night with illuminated lighting may have created a perception of the windows being darker than they in fact are.

Nissan does not believe that the advertisement in any way condones, depicts or encourages illegal window tinting or any implication that window tinting will help evade police.

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.

Section 2.6 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 driver safety.

1. 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. Nissan firmly believes that the advertisement in no way depicts, encourages or condones:

· a breach of any road rules and/or road safety standards through the window tinting of the JUKE in the advertisement; or

· illegal window tinting or an implication that the window tinting will help the JUKE's drivers evade police; or

· window tinting that would be illegal and therefore unsafe or which would prevent safe driving (with eye contact) or prevent witnesses and police identifying the driver

*and occupants of a particular JUKE.
For the reasons above, we request that the complaint be dismissed.*

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.

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 material draws the attention of the public or a segment of it to a product being a Nissan Juke in a manner calculated to promote that product. The Board determined that the Nissan Juke 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 an image of a Nissan Juke with blacked out windows which is illegal.

The Board then 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 laws regarding tinting windows of vehicles vary between each State and Territory. The Board noted that the complainant had viewed this advertisement in NSW and noted the RTA Vehicle Standards Information on Windscreens and window tinting in that State (http://www.rms.nsw.gov.au/registration/downloads/vsi/vsi03_rev3.pdf) specify:

"Since 1 August 1994, NSW law has required that newly tinted side and rear windows maintain a VLT (Visible Light Transmission) of at least 35%....No film at all permitted on the lower part of the windscreen. Minimum 75% VLT."

The Board noted the complainant's concern that the windows of the Nissan Juke in this advertisement are completely black. The Board noted the advertiser's response that although

the windows may appear to be dark, depending on the conditions in which the advertisement is viewed the vehicle depicted in the advertisement does not have blackened windows.

The Board noted upon reviewing the advertisement that it is possible to see the interior of the Nissan Juke and considered that the windows do not appear to be darkened through illegal tinting. The Board considered that overall the advertisement did not depict, condone or encourage the illegal practice of blacked out windows in motor vehicles.

The Board noted the accompanying text to the advertisement which reads, "Watch out fun police" and considered that this reference to "fun police" is not a reference to unsafe driving or things that would break the law but is a reference to it being a fun car. The Board noted that the phrase is open to interpretation and considered that the most likely interpretation of this phrase is as a reference to people who don't like to have fun rather than a reference to law enforcement officers.

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 complaints.