



Case Report

1	Case Number	0379/13
2	Advertiser	Nissan Motor Co (Aust) Pty Ltd
3	Product	Vehicle
4	Type of Advertisement / media	Pay TV
5	Date of Determination	13/11/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.1 - Discrimination or Vilification Physical Characteristics

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features scenes where the youngest child of a family is treated as an underdog by his siblings: his sister puts make-up on him, his brother bounces a ball against his bed when he is trying to sleep and he misses out on food and drink which his siblings have got to first. We then see him climbing in to a Nissan Pathfinder, sitting in his child seat, putting on headphones and watching something on a screen.

The text on screen reads, "Built for the whole family. Including the underdog".

THE COMPLAINT

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

The ad refers to the child being left out or not important because he is a redhead (different from the other children in the 'family', that becomes very apparent and that he is the "underdog" which the add proclaims that Nissan is "for the underdog", so when the child gets in the car he is considered important only because he is in the Nissan. it's very obviously against redhead people! It's not good to portray redheaded children (people) in this light, there is enough bullying and Discrimination as it is! Let alone being classed as an

"underdog" because of hair colour.

THE ADVERTISER'S RESPONSE

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

Your letters detail complaints with reference numbers 0372/13 and 0379/13 (the complaints) in relation to an advertisement by Nissan Motor Co. (Australia) Pty. Ltd. (Nissan) for its new model Pathfinder that has appeared on free-to-air television and on Foxtel (the advertisement).

In your letter you state that the complaints raise issues under section 2.1 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.

Nissan's response to the complaints

Nissan takes great care when developing its advertisements to ensure that they comply with the AANA Code and Federal Chamber of Automotive Industries Code of Practice Relating to Advertising for Motor Vehicles and all other relevant regulations.

Nissan believes firmly that the complaints should be dismissed. In summary, this is because:

The issues raised by the complainants (alleged discrimination against people with red hair) are not covered by section 2.1 of the AANA Code. Section 2.1 only prohibits the portrayal of people or depiction of material "in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief". It does not list discrimination based on "physical characteristics" (such as red hair) as a prohibited item.

Even if the Board took the view that physical characteristics fell within section 2.1 of the AANA Code (which we would strongly disagree with), Nissan firmly believes that the child featured in the advertisements has not been discriminated against or vilified on the basis of having red hair.

I have expanded on these points in more detail below.

The issues raised by the complainants are not covered by the AANA Code

As outlined above, the AANA Code contains no prohibition at all regarding the depiction of

people with particular physical characteristics (such as red hair) in advertising. The section of the AANA Code under which the advertisement has been cited is section 2.1 and this clearly and specifically itemises the characteristics and attributes in respect of which discrimination and vilification is prohibited in advertising. These items are “race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief”.

The complaints, which relate to treatment of people with red hair, clearly do not fall within this section. The only possible characteristic listed in section 2.1 that could apply to the complaints is age. We note though that the child’s age is not the focus of the complaints, and even if it was, Nissan strongly believes that the advertisement does not “discriminate against” or “vilify” younger children. Rather, the advertisement displays a typical family dynamic in which the youngest child often misses out due to the intervention of older siblings. We do not believe this is age discrimination. Finally, it goes without saying that having red hair is not a “disability” – and to classify people with red hair in this way would obviously be both inappropriate and disrespectful.

For these reasons, Nissan firmly believes that the AANA Code does not apply to the complaints, and that it would be unfair to uphold a complaint in relation to a ground that does not exist in the AANA Code. If there was a finding to the contrary, we would be extremely surprised and disappointed as we believe that advertisers should be able to rely on the wording and guidance of the AANA Code in developing their advertisements.

The advertisement does not contain any discriminatory or vilifying material

As outlined above, even if the AANA Code was considered to apply to the complaint (which we strongly dispute), Nissan does not believe that the advertisement is one that vilifies or discriminates against people with red hair.

The advertisement tells a light-hearted story about the youngest child in a large family. It is filled with observed family moments that anyone who has grown up with brothers and sisters can relate to. The casting brief for the lead character was for a boy, eight years old, able to convey a range of emotions in an advertisement with no dialogue — no easy feat for such a young performer. After looking at several possible candidates, the child chosen for the advertisement was chosen based on his acting ability, which Nissan felt was wonderful. Actors to play his parents and older siblings were subsequently cast to look like believable members of his family.

We believe that the storyline of the advertisement is relevant and resonates with many Australian households that have more than one child, where the youngest child is often playing catch up with the older siblings, receiving hand me downs and generally having to struggle for attention. The end of the advertisement shows the boy enjoying his own space in the all-new Nissan Pathfinder – to show that with the Nissan Pathfinder no-one in the family misses out (irrespective of where they sit in the family hierarchy).

In our view, the advertisement neither focuses on the fact that the child has red hair, nor does

it suggest in any way that the child is somehow being overlooked because of his hair colour. The advertisement refers to the child as the “underdog” because of his position in the family structure, not due to his having red hair. Nissan also does not consider that the use of the word “underdog” is insulting in any way, and in fact, Australians are often more inclined to support the “underdog” (rather than the “tall poppy”).

Summary

While Nissan acknowledges the complainants’ concerns, it believes that the complaints relate to matters that are not covered by the AANA Code. Even if the AANA Code did apply to vilification or discrimination based on physical characteristics (we believe it doesn’t), the advertisement does not depict or condone discrimination against people with red hair.

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”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement is discriminatory in its depiction of a ginger haired child as an underdog, could lead to bullying of red haired children.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that the advertisement features the youngest child of a family being treated as the underdog by his siblings before climbing in to his seat in the Nissan Pathfinder, putting on headphones and enjoying watching something on a screen.

The Board noted the complainant’s concerns that the advertisement suggests that the boy is

an underdog because he has ginger hair. The Board noted that the boy in the advertisement does have ginger hair but that each of the family members have hair that is Auburn or similar in colour to that of the young boy. In the Board's view the way the boy is treated by his siblings is consistent with how the youngest child of a family can be treated by their older siblings due to their position as the youngest member of the family and not a reflection of his hair colour.

The Board noted that it had previously considered complaints relating to discrimination based on the portrayal of someone with red hair in case reference 0089/13 – Guys Grooming.

In this matter the Board considered a poster that depicts a young man holding a fully clothed young girl in a pool. The tag line is "Ranga's Do Get Lucky. \$25 off this month for all rangas!"

In the matter above, the Board considered that "that the image and text are in no way derogatory or negative toward people with a particular hair colour and that the picture portrays the young man as a strong and heroic youth as he holds the young woman in the water rather than less masculine or less capable than a man with hair of any other colour."

The Board considered that in the current advertisement the young boy is clearly being 'picked on' as a reflection of sibling rivalry based on his age, rather than a direct attack on him due to the colour of his hair. In the Board's view there is not a depiction of any negative consequence or reference to having red hair and there is no discrimination or vilification on the basis of physical appearance.

The Board noted that the final scenes show the boy rewarded and happy with the inclusion of an in car entertainment system that he could control and use for himself. The Board considered that the advertisement does not condone or encourage discriminatory treatment of people with red hair and that the advertisement does not portray negative stereotypes of redheads.

The Board noted that it had also considered the same advertisement on TV (ref: 372/13) and dismissed this matter.

Based on the above the Board determined that, in this instance, that the advertisement did not depict any material that discriminated against or vilified any person or section of society and did not breach Section 2.1 of the Code.

Further finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaints.

