



CASE REPORT

1. Complaint reference number 205/07
2. Advertiser Nissan Motor Co Aust Pty Ltd (350Z - Speed Hump)
3. Product Vehicles
4. Type of advertisement Outdoor
5. Nature of complaint FCAI - Other
6. Date of determination Tuesday, 10 July 2007
7. DETERMINATION Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This outdoor advertisement depicts an orange Nissan 350Z with the words "Speed Hump" in large letters above it. Under the image are the words "The new Nissan 350Z. Now with a 230kw Power Bulge".

THE COMPLAINT

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

This poster promotes speeding and draws attention to the speed capabilities of a powerful vehicle. It provides factual reference to the capability of the Nissan 350Z (for example, its 230KW power bulge). This poster promotes speeding and aggressive or reckless driving behaviour as a result of utilising the powerful 230KW power bulge.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

For the reasons set out below, Nissan maintains that the poster complained of complies with the Code and that the complaint should be dismissed.

In 2007, Nissan released a new model of its very well-known 350Z sports car. The new model was fitted with the latest generation of Nissan's award-winning VQ series engine, the VQ35HR. To accommodate this new engine, Nissan changed the front bonnet of the car and incorporated a raised design inspired by the iconic 240Z, the first of the line of sports cars of which the 350Z is the latest model. Nissan has since sought to advertise its new sports car by drawing attention to a unique design feature, the raised "hump" or "bulge" in the bonnet, and the new, powerful engine.

Nissan's market research shows that the target customer for a 350Z is highly motivated by exterior styling. In that a key styling differentiator of the new 350Z (especially over its predecessor) is the bulge or "hump" in its bonnet, the primary focus of the advertising campaign for the launch of the new model 350Z was on communicating that "hump". The addition of the word "speed" was simply to enhance the communication impact of this feature as "speed hump" is an easily understood and recognisable term associated with driving a vehicle. Interestingly, from a functional perspective, a "speed hump" actually exists to deter speeding in a vehicle. Moreover, the design feature referred to adds nothing to the performance characteristics of the vehicle. In line with the primary focus of the 350Z advertising campaign, the expression "now with a 230kw power bulge" indicates that the car now has a 230kW engine, again by reference to the design feature and in a way that is likely to appeal to prospective purchasers of the car.

Nissan submits that the use of a picture of a static motor vehicle in conjunction with the above

statements does nothing more than indicate the facts of the situation – Nissan now has a redesigned sports car with a powerful engine. As a result, the poster does not “depict, encourage or condone dangerous, illegal, aggressive or reckless driving”. In the poster, which, importantly, uses as its main feature, a picture of the 350Z without a driver, Nissan has avoided “explicitly or implicitly drawing attention to the acceleration or speed capabilities of a vehicle” The poster only refers to the power of the engine of the 350Z. In so doing, Nissan has only made “factual references to the capabilities of the motor vehicle” (in this case, the kilowatt power of the engine), in a manner that Nissan maintains “is consistent with the provisions of the Code”. Nissan would like to make it clear that a reference to the power of a vehicle does not amount to a reference to the speed capabilities of that vehicle (as alleged in the complaint), as a vehicle’s power rating does not of itself equate to its acceleration or speed capabilities.

Nissan submits that use of the expressions “speed hump” and “power bulge” constitute “legitimate use of...humour...in...creative ways in advertising motor vehicles”. The expressions have been used in an acceptable and responsible fashion in an advertisement for a high-performance motor vehicle. Accordingly, they have not been used “in any way to contradict, circumvent or undermine the provisions of the Code.”

The complainant alleges that the poster “promotes speeding”. For the reasons set out above, Nissan submits that it does not – the poster responsibly advertises a high performance motor vehicle by reference to certain of its characteristics in compliance with the Code. Like the picture of the car being static, nothing in the poster encourages consumers to speed. The complainant alleges that the poster “draws attention to the speed capabilities of a powerful vehicle”. Nissan submits that this is not the case. No reference in the poster, explicit or implied, is made to acceleration or how fast the car can go - only to power – and then in accordance with the provisions of the Code.

Nissan has used “speed hump”, an easily recognisable motoring term, to draw attention to an equally recognisable design feature of the 350Z vehicle, again in a way that is likely to appeal to prospective purchasers of the car. Nissan considers that with the explanations provided, any inference that such use constitutes a reference to any “speed capabilities” of the vehicle is mistaken.

The complainant appears concerned that the poster “provides factual reference to the capability of the Nissan 350Z (for example, its 230 kW power bulge)”. Nissan submits that a reference to the power bulge itself does not constitute a reference to any “capability” of the 350Z, only to a design feature. If the complainant is concerned with a reference to the power of the car, then, for the reasons set out above, Nissan submits that any such reference is within the ambit of the Code

The complainant alleges that “This poster promotes speeding and aggressive or reckless driving behaviour as a result of utilising the powerful 230kW power bulge”. Factually, this allegation is incorrect – the power bulge cannot, of itself, be “powerful” because it is only a design feature of the 350Z. If the complainant means that the poster promotes speeding and aggressive or reckless driving behaviour as a result of a reference to the powerful 230kW engine, then again, Nissan submits he is mistaken as Nissan maintains that any reference to the power of the car is entirely within the ambit of the Code. Finally, if the complaint is really that the poster “promotes speeding and aggressive or reckless driving behaviour” then, for the reasons set out above, Nissan submits that this is not the case.

The advertisement shows the vehicle at rest without a driver; it therefore does not depict any driving and so conforms to Clause 2(a) of the Code. As the advertisement depicts a stationary vehicle without a driver; it therefore does not breach Clause 2(b) of the Code.

Nissan believes that the above demonstrate the advertisement’s compliance with clause 2 of the Code, in particular, clauses 2(a) and 2(b).

Nissan believes that the complaint is not justified on the grounds referred to in this letter and should therefore 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”). The Board determined that the material before it was

an “advertisement for a motor vehicle” and therefore that the FCAI Code applied.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement. The Board noted that the advertisement is a print advertisement and that there is a still image of a vehicle in the advertisement. The Board noted that the only text in the advertisement were the words 'speed hump' which the Board considered referred to the bump in the bonnet of the car and was a play on words in that 'speed hump' is something that motorists would be used to encountering on roads. The advertisement also included a reference to the power of the car - 230kw. The Board considered the explanatory provisions of the Car Code which state that 'Other factual references to the capabilities of the motor vehicle (for example...kilowatt powerof the engine) are acceptable provided that they are presented in a manner that is consistent with the provisions of the Code.'

The Board considered that the advertisement did not portray any unsafe driving and that clause 2(a) was not relevant in the circumstances. The Board also considered that the advertisement did not promote or suggest unsafe driving.

The Board then considered whether the advertisement portrayed people driving in excess of speed limits under clause 2(b) of the Code. The Board considered that the advertisement intended to indicate to potential purchasers that the vehicle has significant power and that it would be able to be driven at speed. However the Board determined that the advertisement did not portray or suggest that the vehicle would or should be driven at speeds in excess of speed limits.

Finding that the advertisement did not breach the Car Code on any grounds, the Board dismissed the complaint.