



CASE REPORT

1. Complaint reference number	300/03
2. Advertiser	Nissan Motor Co (Australia) Pty Ltd (X-Trail)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 14 October 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a young geeky looking man wearing a navy sports tracksuit and white glasses jumping up and down on a pogo stick on the concrete pavement in his backyard. A blue fibro house is behind the young man. The scene is accompanied by a lively musical soundtrack and a voice over which states “There are sports....”

The scene then changes to a visual of another man in his backyard wearing an all white tennis short suit with white knee length socks, glasses and sweat bands around his wrists and forehead. A clothesline and tree are in the background. The man is enthusiastically hitting a tennis ball on a totem tennis pole that is planted into the grass.

The voice over then states “And there are extreme sports” as the ad cuts to a series of four split second visual scenes. The first scene is of motor-cross bike riders riding over sand dunes. The second scene is of a person flying off a jet ski into the air. The third scene is of a vast desert area with a person shown taking off on a wind rider. And the fourth scene is of a quad runner flying high into the air over a dirt track.

The voice over then continues, “Just like there are compact four wheel drives”. The scene then cuts to a visual of a silver Nissan four wheel drive (“4WD”) coming out from behind some huge rocks on a dirt area. The voice over continues “And there’s the Nissan X-Trail” as the visual scene is of the Nissan 4WD driving across the terrain sweeping grey dust into the air as it turns a bend.

The following voiceover is heard over the rest of the advertisement’s visual scene: “With the latest generation 2.5 litre engine for extreme all round performance on or off road. The X-Trail. Only Nissan takes the compact 4WD to the extreme”. The visual scene that is shown whilst this voice over is heard begins with the camera angle cutting to the inside of the 4WD to show the dashboard features and then cuts to above the front of the 4WD as it drives along the desert expanse. The camera angle then cuts back to the inside of the 4WD and films the gear shift and the instrument display before it cuts back to the outside of the 4WD as it drives through a body of water with the water splashing up each side of the 4WD. The camera then cuts to the front of the 4WD as it climbs up over a rocky area and then back to the side of the 4WD as it continues over several mounds of dirt and/or rocks and tufts of dry grass on the desert ground. The 4WD is then shown driving along the desert area and the tyre tracks are visible in the ground. The scene then fades to black and the silver Nissan logo appears with the words “SHIFT the future” written in red text underneath.

THE COMPLAINT

Comments which the complainant/s made included the following:

“[The Nissan 4WD was shown] at top speed, flat out over rocks, through water, smashing up and through sand dunes etc”

“We believe that these types of ads irresponsibly teach teenagers and new drivers to be hoons/vandals/car thieves, to get hold of a similar vehicle and imitate these abnormally theatric demonstrations.”

THE ADVERTISER’S RESPONSE

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

“The TVC does show the X-Trail travelling over rocks, through water and over sand. Indeed, these are normal and common uses for 4WD’s... at no stage is the X-Trail shown smashing up sand dunes...nor for that matter is the X-Trail shown at top speed. The scenes featured in the video show it travelling at a normal (that is, moderate) speed.

“Nissan Australia strenuously denies any allegation that the TVC encourages people, let alone teenagers or new drivers to be hoons/vandals/car thieves or for that matter to break the law in any other matter... Nissan Australia takes pride in its reputation of standing in the Australian market place and would never expressly or implicitly condone any such activities”.

“The TVC demonstrates the X-Trail driving on the surfaces that one would expect to encounter in an off-road environment and does so without giving foundation to any of the concerns expressed by [the complainant].

THE DETERMINATION

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (“the Code”).

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 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 X-Trail “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 Nissan X-Trail 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 then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clause 2(g) was relevant in the circumstances.

In relation to clause 2(g) of the FCAI Code, the Board was not convinced that the depiction represented “deliberate environmental damage, particularly while advertising off-road motor vehicles”. In any event, the Board had to determine whether such damage was “significant” within the

meaning of clause 2(g) or not.

The Board determined that the material did not represent “significant” environmental damage on the basis that it depicts a four wheel drive vehicle driving over gravel, sand, rocks and through water. The advertisement does not depict any overt destruction of the environment.

The Board noted that there is a need for manufacturers of four wheel drive vehicles to demonstrate a vehicle’s off road abilities and clearly, this advertisement does so without demonstrating significant destruction or harm to the environment.

On the above basis, the Board held that the material before it did not constitute an advertisement for a motor vehicle in breach of clause 2(g) of the FCAI Code. The Board dismissed the complaint.