



## **CASE REPORT**

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|-------------------------------|----------------------------|
| 1. Complaint reference number | 362/09                     |
| 2. Advertiser                 | Nissan Motor Co (Aust) P/L |
| 3. Product                    | Vehicles                   |
| 4. Type of advertisement      | TV                         |
| 5. Nature of complaint        | FCAI - Speeding            |
| 6. Date of determination      | Wednesday, 26 August 2009  |
| 7. DETERMINATION              | Dismissed                  |

### ***DESCRIPTION OF THE ADVERTISEMENT***

TV Advertisement depicting a silver Nissan Maxima sedan driving along an ocean road. The ad then cuts to the same vehicle driving down a one-way street, in a city, during peak hour traffic. The vehicle is in a one-way street and stops at a pedestrian crossing. The ad depicts a close-up of the car's interior. The vehicle then turns right and two other cars move in beside the first car. There are then three lanes of traffic.

### **THE COMPLAINT**

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

*Because the ad depicts 3 cars all of which seem to be disobeying road rules and if what is done in the ad is done in reality then it could result in a crash. One pulls out from the curb with out indication. The main car in the ad pulls straight out in front of the 3rd vehicle also without indication.*

### **THE ADVERTISER'S RESPONSE**

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

*The TVC is one of two that we have produced. As you will see:*

- 1. The 3 vehicles are clearly driving down a one-way street – to imply that “the ad depicts 3 cars all of which seem to be disobeying road rules” would seem way off the mark*
- 2. The complainant claims that “one (vehicle) pulls out from the curb without indication”. Assuming he/she is referring to the vehicle to the left of screen, the vehicle was already on the carriageway and can only be seen driving in a straight line (i.e. no indication is required).*
- 3. As you will see, the vehicle on the right (I assume this is the vehicle the complainant refers to as “the third vehicle”), is hardly cut-off by the middle vehicle (“the main car?”) – a slight deviation at best.*

### **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 noted the complainant's concerns that the advertisement depicted the breaching of road laws by three of the vehicles in the advertisement.

The Board then analysed specific sections of the FCAI Code and their application to the advertisement. The Board identified that clauses 2(a), 2(b), 2(c) were relevant in the circumstances. The Board had to consider whether those clauses of the Code had been breached.

The Board first considered whether clause 2(a) of the FCAI Code had been breached. In order to breach clause 2(a) of the FCAI Code, the driving practices depicted must be:

*“unsafe driving, including reckless and menacing driving that would breach any Commonwealth law.... if such driving were to occur on a road or road related area...”*

The Board noted the response provided by the advertiser and formed the view that clause 2(a) had not been breached. The Board noted that the image of the car was in controlled circumstances, and that there were no indications, such as revving engines or skidding tyres, that the car was being driven unsafely. The Board considered that the image of the cars turning right and merging with another car was conducted in a manner that did not appear unsafe or illegal.

The Board considered that the depiction of the cars in the advertisement did not suggest illegal, unsafe driving or reckless and menacing driving that would breach any law. The Board considered that the advertisement did not depict driving that was unsafe.

The Board then considered whether clause 2(b) of the FCAI Code had been breached. In order to breach clause 2(b), the driving practices must depict:

*“people driving at speeds in excess of the speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.”*

The Board formed the view that clause 2(b) had not been breached and that the depictions of the car did not suggest excessive speed.

The Board then considered whether clause 2(c) of the FCAI Code had been breached. In order to breach clause 2(c), the driving practices depicted must:

*“...if they were to take place on a road or road related area, breach any Commonwealth law....”*

The Board considered that there was no suggestion or depiction of any driving practices that would be illegal. On the above basis, the Board determined that the material before it did not constitute an advertisement in breach of clause 2(c) of the FCAI Code. The Board therefore dismissed the complaints.

Finding that the advertisement did not breach the Code of Ethics or FCAI Code on other grounds, the Board dismissed the complaint.