



CASE REPORT

1. Complaint reference number	423/03
2. Advertiser	Nissan Motor Company (Aust) Pty Ltd (Patrol 4WD)
3. Product	Vehicles
4. Type of advertisement	TV
5. Nature of complaint	FCAI - Other
6. Date of determination	Tuesday, 9 December 2003
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The material reviewed by the Board opens with a visual of a Nissan Patrol on a white surface being rotated before the camera as the voice-over highlights various attributes of the vehicle.

THE COMPLAINT

Comments which the complainant/s made included the following:

"I believe current regulations (at least in NSW) define that a bull bar fitted to a vehicle must not have items protruding forward of the bull-bar. The currently advertised Nissan Patrol 4WD has this item, as well as driving lights, fitted as standard during the current sale promotion."

THE ADVERTISER'S RESPONSE

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

"The driving lights fitted to the Nissan Patrol wagon bulbar do not protrude past the front extremity of the bulbar and have been designed to ensure ADR compliance and meet NSW RTA guidelines for protrusions from the front of vehicles. The relevant ADR 42/03 (General Safety Requirements) covers external protrusions, whilst RTA Vehicle Inspectors Bulletin 05 contains further detail including specific guidelines for spot lights."

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.

The Board determined that the material draws the attention of the public or a segment of it to a

“product” being a Nissan Patrol “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 Patrol 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(c) might be relevant in the circumstances.

In order for clause 2 (c) to be breached, the driving practices described in this clause must take place “on a road or road-related area”.

In relation to clause 2(c) of the FCAI Code, the Board first considered whether the driving depicted took place on a “road” as defined by the FCAI Code. The definition provides as follows:

“Road: means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”

The Board considered that since the vehicle was displayed at all times during the commercial against a plain white background, the surface on which the vehicle was depicted could not possibly be considered to be a “Road”.

This being said, the Board considered the Advertiser’s response that the vehicle in fact complied with all RTA Guidelines and ADR safety requirements. Accordingly, the Board found further that the vehicle was demonstrated in a responsible way without showing negligent, dangerous or reckless driving conduct.

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