



CASE REPORT

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| 1. Complaint reference number | 426/06 |
| 2. Advertiser | Nissan Motor Co Aust Pty Ltd (350Z) |
| 3. Product | Vehicles |
| 4. Type of advertisement | Outdoor |
| 5. Nature of complaint | FCAI - Other |
| 6. Date of determination | Tuesday, 14 November 2006 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This black and white billboard depicts a car being driven on a racetrack with its four wheels off the ground and the text "Nissan 350Z. Now turns knuckles even whiter".

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The add is irresponsible and is promoting unsafe driving...a vehicle manufacture should not be promoting their car by showing it going so fast that it has left the road. This cannot be done on our roads safely - at any speed! The wording "turns knuckles even whiter" can only refer to speeding. Normal driving does not turn knuckles whiter.

This is an overt and blatant invitation to buy this high-powered car and deliberately drive it dangerously...This is an encouragement of totally stupid people BY totally stupid people to behave in an irresponsible and potentially lethal way.

THE ADVERTISER'S RESPONSE

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

As part of a world-wide leader in the field of automobile manufacturing , Nissan takes its corporate responsibilities very seriously and would never wish to encourage any person to drive in an unsafe or dangerous manner.

The 350Z is a high-performance motor vehicle , as demonstrated by the photograph in this advertisement. The photograph itself has been broadly and widely used by Nissan to advertise the 350Z for some time , and in that time , this is the first complaint Nissan has received regarding the photograph.

Nissan believes that the tagline is nothing more than the use of a well-known phrase to draw attention to the fact that the 350Z has been improved. It was certainly not intended to imply that the 350Z should be driven in a dangerous or reckless manner.

The 350Z shown in the photograph was driven by a professional driver under controlled conditions on a race track. This is made clear to any viewer by the disclaimer which appears in the bottom left corner of the advertisement.

While (the advertisement) contains a photograph of a vehicle being driven at speed , it does not in any way (having regard to the wording of the Code) display a motor vehicle being driven at excessive speed , making sudden , extreme or unnecessary changes in direction or speed , being deliberately or unnecessarily put on a collision course with another vehicle or losing control.

At all times the vehicle was driven at a safe speed having regard to the circumstances of the filming and the desired result. The speed of the vehicle on the racetrack was entirely legal having regard to the prevailing circumstances.

Nissan is firmly of the belief that the advertisement in no way depicts, encourages or condones dangerous, aggressive or reckless driving and therefore fits within the requirements and the spirit of the Code.

Nissan believes that the complaint is not justified on the grounds I have referred to in this letter.

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 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 350Z car, “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 350Z 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(a) was relevant in the circumstances.

In order to breach clause 2(a), the driving practices depicted must be:

“obviously unsafe, including reckless and menacing driving to the extent that such practices would breach any Commonwealth law”.

In making its decision, the Board referred to the Explanatory Notes to the FCAI Code. The Board referred in particular to the FCAI’s statement in the Explanatory Notes that:

”The FCAI supports a responsible approach to advertising for motor vehicles. While acknowledging the legitimate use of motor sport, fantasy, humour and self-evident exaggeration in creative ways, the FCAI asks advertisers to be mindful of the importance of road safety and to ensure that advertising for motor vehicles does not contradict or undermine efforts to achieve improved road safety outcomes in Australia.”

The Board viewed the advertisement and considered the complaints’ comments that the advertisement promoted unsafe driving.

The Board noted that the car depicted appeared to be leaving the ground (though some Board members felt that the image could have been an artistic/static image], noted the accompanying tagline and noted

the disclaimer at the bottom of the advertisement.

The Board considered whether the image of the car portrayed unsafe, reckless and/or menacing driving. It was agreed that the static image of a car above the ground did not of itself necessarily portray unsafe, reckless or menacing driving since a car leaving the ground, of itself, might not be unsafe, reckless or menacing in some circumstances.

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

However the Board noted that while it considered that the advertisement did not technically contravene the FCAI code, the image was not within the spirit of the FCAI Code as explained in the explanatory notes of the Code. In particular the use of disclaimers is discouraged by the Code's explanatory notes, though not prohibited by the Code itself. The Board was also not completely comfortable with the accompanying tagline.

The Board then considered whether the advertisement breached the AANA Code of Ethics (the Code). The Board noted that clause 2.6 of the Code does not apply to advertisements to which the FCAI Code applies. The Board considered that the advertisement did not contravene the Code on any basis.

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