



## CASE REPORT

1. Complaint reference number	62/05
2. Advertiser	Nissan Motor Co (Aust) Pty Ltd (Maxima)
3. Product	Vehicles
4. Type of advertisement	Print
5. Nature of complaint	FCAI - Speeding
6. Date of determination	Tuesday, 12 April 2005
7. DETERMINATION	Dismissed

**DESCRIPTION OF THE ADVERTISEMENT** This print advertisement features a picture of the new Nissan Maxima on a country road. The text in the advertisement reads “Careful. It goes from zero to demerit points with effortless ease ... it won’t just carry you away, it could carry you straight to the Magistrates’ Court.” **THE COMPLAINT** Comments which the complainant/s made included the following:

*“I thought there were standards in car advertising which prohibited the glorification of speed or the use of speed as a inducement to buy.”(sic)*

**THE ADVERTISER’S RESPONSE** Comments which the advertiser made in response to the complaint/s included the following:

*“Nowhere in the Advertisement are unsafe or illegal driving practices depicted or portrayed.”*

*“There is nothing to indicate that the vehicle in the photograph is speeding or otherwise being driven unsafely.”*

*“... the text does not encourage the reader to exceed the speed limit – on the contrary, it clearly cautions and admonishes the reader from engaging in illegal conduct.”*

**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 which came into effect on 1 July 2004 (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 in all of Australia or in a substantial section of Australia for payment or valuable consideration given that it was being published in print media 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 Maxima “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 Maxima 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 clauses 2 (a), 2(b) and 2(c) were relevant in the circumstances. The Board had to consider whether these 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 formed the view clause 2(a) had not been breached. The Board was of the view that there were no overt indications in the advertisement that the motor vehicle was involved in any unsafe driving, including reckless or menacing driving that would breach any relevant law. The Board noted and accepted the advertiser’s comments that there is nothing in the advertisement to indicate that the vehicle is speeding or otherwise being driven unsafely. The Board then considered whether the advertisement breached clause 2(b) of the FCAI Code. In order for clause 2(b) to be breached, 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 noted that there was no overt indication in the advertisement that the vehicle was speeding. The Board noted the advertiser’s comment that the advertisement warns against the possible consequences of speeding. 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 formed the view that clause 2(c) had not been breached. Similar to clause 2(a), the Board formed the view that there were no overt indications that the motor vehicle was undertaking any driving practices that would be in breach of any law.

On the above basis, the Board confirmed its view and held that the material before it did not constitute an advertisement in breach of clauses 2(a), 2(b) or 2(c) of the FCAI Code. The Board therefore dismissed the complaint.