



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 64/06   |
| 2. Advertiser                 | Nissan Motor Co (Aust) Pty Ltd (Tilda)  |
| 3. Product                    | Vehicles  |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Discrimination or vilification Gender - section 2.1<br>Portrayal of sex/sexuality/nudity – section 2.3<br>FCAI - Driving practice that would breach the law |
| 6. Date of determination      | Tuesday, 14 March 2006  |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement features actress Kim Cattrall (an actress from an American sit-com “*Sex in the City*”) in an outdoor location answering her mobile. To the female caller’s question: “*Is this a bad time*” she replies: “*No it’s okay. I just stopped*”. The caller asks if they can have lunch and Kim replies in a breathy sexy voice: “*I don’t think I can. Honey, I just had the ride of my life. Really smooth. Good looking. Amazing body. And the size – I couldn’t take my eyes off of it. It was so much bigger than I expected.*” She then looks sideways and comments: “*I’ll call you later.*” The camera pans back to show her leaning on the bonnet of a blue Nissan Tiida, saying: “*I’m ready to go again*”. She gets into the car. At this point, we see some interior shots of the car. She is then shown to drive away from the curb.

## **THE COMPLAINT**

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

*“The woman in the advertisement was driving a car wearing high heel shoes. That is illegal in most states in Australia .”*

*“Kim Cattral... leaving the kerb from a stationary position and driving off WITHOUT HER INDICATOR LIGHT BEING ON (complainant’s emphasis).”*

*“... it’s blatant sex in the dialogue.”*

*“... insinuating sexual overtone... by the female relating to size and sexual groans of pleasure.”*

*“The ad is extremely offensive and distasteful. It is smutty and full of highly sexually suggestive innuendo.”*

*“... numerous thinly veiled sexual references.”*

*“Using women to sell cars in this way is akin to an inarticulate person masking a limited vocabulary with bad language.”*

*“... misogynistic depiction of women.”*

*“... basically soft porn.”*

*“The breathing of the female and references suggest quite overtly orgasm.”*

## **THE ADVERTISER’S RESPONSE**

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

*“Nissan believes that the viewers... would find it humorous rather than offensive. The commercial is targeted towards adults, contains no graphic images or nudity and is intended to entertain and surprise the relevant audience.”*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) first considered this advertisement under 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 Tiida “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 Tiida 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) and 2(c) were relevant in the circumstances. The Board first considered whether clause 2(a) of the Code had been breached.

In order to breach clause 2(a) of the FCAI Code, the advertisement must portray:

*“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 considered that the complaint regarding the alleged lack of use of an indicator when pulling out from the curb would breach clause 2(a) if the advertisement did in fact portray the failure to use an indicator. The Board examined the advertisement closely and concluded that, although it was difficult to see, the Tiida’s indicator was used when it was pulling away from the curb. The Board therefore determined that the advertisement did not breach clause 2(a) on the basis of failing to indicate. The Board further concluded that the advertisement did not portray any other unsafe driving in breach of clause 2(a) of the FCAI Code..

The Board then considered whether the advertisement breached clause 2(c) of the Code. In order to breach clause (2)(c) of the FCAI Code, the advertisement must portray:

*“driving practices or other actions which would, if they were to take place on a road or road-related area, breach any Commonwealth law.”*

The Board noted that there is no law prohibiting the wearing of high heel shoes while driving. Rule 297 of the Australian Road Rules requires that a driver ‘Must not drive unless the driver has proper

control of the vehicle'. However, the Board considered that the depiction of the woman driving the car did not suggest that she was not in control of the car – whether because she was wearing high heels or for any other reason. The Board did not consider that the advertisement breached clause 2(c) of the FCAI Code by depicting the driver wearing high heel shoes.

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

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

The Board noted that this advertisement plays on the woman’s role in a popular American television show: “*Sex in the City*”. The Board noted that the advertisement plays on this role by the woman using obvious sexual connotations when referring to the characteristics of the car. The Board noted that the advertisement has received an ‘M’ classification under the Commercial Television Code of Practice and can, therefore, only be shown at appropriate mature audience times. The Board was of the view that the advertisement treated sex and sexuality with sensitivity to the relevant audience and relevant programme time zone. As such, the Board determined that the advertisement did not breach the provisions of the Code relating to the portrayal of sex or sexuality.

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