



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

May 1, 2014

Shawn Church  
State of Arizona

Re: *Nissan North America, Inc., File No. 122 3010, Docket No. C-4454*

Dear Mr. Church:

Thank you for commenting on the Federal Trade Commission's proposed consent agreement in the above-referenced proceeding. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it serious consideration.

In your comment, you state that you believe that the Nissan Frontier "Hill Climb" commercial was not deceptive. Although we recognize that some consumers may not have been deceived, it is well established that an advertisement that misleads a significant minority of reasonable consumers constitutes a deceptive practice under the Federal Trade Commission Act. Here, the Commission's investigation concluded that consumers could reasonably interpret the advertisement as representing that the pick-up truck was capable of performing the depicted feat, when, in fact, it was not. It is well established that an advertisement may not use a deceptively altered demonstration as supposed proof of a material product quality.

Your comment also notes that the Hill Climb ad included a "fictionalization" on-screen disclaimer. This disclaimer, however, appears for only a few seconds in small lettering in the bottom-right corner of the screen, and disappears before the Nissan Frontier even arrives on screen. As such, consumers would likely not see it. In any event, consumers would not necessarily take this ambiguous disclaimer to mean that the Nissan Frontier could not actually perform the feat depicted in the advertisement.

Finally, you express concern in your comment that the Commission's order against Nissan will hinder creativity and innovation in advertising. Please note, however, that Part I of the Nissan order provides that "nothing in this order shall be deemed to preclude the use of any production techniques that do not misrepresent a material quality or feature of the advertised product." Thus, under the order, Nissan is specifically permitted to use special effects or other creative advertising techniques, as long as those techniques are not employed in a deceptive manner.

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources, and we thank you again for your comment.

By direction of the Commission, Commissioner McSweeney not participating.

Donald S. Clark  
Secretary