



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0205/15</b>
<b>2</b>	<b>Advertiser</b>	<b>Coca-Cola South Pacific</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet</b>
<b>5</b>	<b>Date of Determination</b>	<b>10/06/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

RCMI 1.1 - Advertising Message AFGC - Advertising Message

## DESCRIPTION OF THE ADVERTISEMENT

The Website referenced in the complaint features the animated characters known as the FANTA Crew. The Crew is a group of teenage friends bound together by their love of fun. The Website profiles each of the Crew members. The Website also displays the current FANTA favour range (including nutrition information and ingredients); offers desktop and mobile screensavers for download and streams a FANTA video featuring the Crew. The Website is available at [www.fanta.com.au](http://www.fanta.com.au).

## THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*The OPC considers the website, and its activity breaches the Responsible Children's Marketing Initiative (RCMI) because: -*

- 1. The website is an advertising and marketing communication for food/beverages (Fanta) (S1.1);*
  - 2. The website is directed primarily to children (S1.1);*
  - 3. Fanta does not represent a healthy dietary choice consistent with established scientific or Australian government standards (S1.1(a));*
  - 4. The website does not reference healthy lifestyle through messaging that encourages good dietary habits (S1.1(b)(i) or physical activity (S1.1(b)(ii)).*
- 1. The website is an advertising and marketing communication for food and/or beverages.*

*The RCMI covers “advertising and marketing communications” which include any material published or broadcast in any “medium”. The definition of “medium” includes “internet sites”, a definition which has been expanded from the RCMI’s predecessor (RCMI dated March 2011), which covered only third-party internet sites.*

*The Fanta website is, on any analysis, an “internet site”, which has been created by, or on behalf of, the advertiser. It features the Fanta logo and branding, together with Fanta bottles.*

*2. The website is directed primarily to children*

*When regard is had to the theme, visuals, and language used, the website is clearly a marketing communication directed primarily to children. We anticipate the advertiser will assert the website is directed to adolescents over the age of 13. We strongly disagree. The fun themes and cartoon characters clearly target children under 12 and the ‘Crew’ as pictured and described are clearly children under 12.*

*We note that a small disclaimer only appears at the bottom of the downloads page, requiring users to be over 13 years of age. There is no disclaimer on the home page, video page or Meet the Crew page. The disclaimer on the downloads page is in no way acting to dissuade children under 13 from using the website, nor does it counter the overall clear intention that this page be enjoyed by children, while Fanta products and branding are marketed to them. A complaint about the Fanta “Takes Like..” television advertisement (similar to the ad currently featured on the website) is the subject of a separate complaint by the OPC to the ASB.*

*3. Fanta is not a healthier choice.*

*The website features bottles of Fanta which could in no way be defined as a ‘healthier dietary choice’. Coca Cola South Pacific does not have its own definition of a ‘healthier dietary choice’ in its Company Action Plan as it states it will undertake no direct targeting of children under 12 years in any media for any brand messaging (i.e. not only advertisements featuring product).*

*For completeness, Fanta is a sugar-sweetened beverage (SSB) containing between 12-14 teaspoons of sugar per 450ml bottle. The impact of SSBs on the health of children has been well documented. The World Health Organisation (WHO) recently released updated guidelines regarding the health impacts of sugar consumption, recommending daily sugar intake be reduced to 5-10% of daily food intake. According to the Australian Dietary Guidelines produced by the National Health and Medical Research Council (NHMRC), sugar-sweetened drinks (which include sugar-sweetened soft drinks and cordials, fruit drinks, vitamin waters, energy and sports drinks) are the largest source of sugars in the Australian diet, with consumption highest in adolescents and children. The Guidelines recommend that the consumption of added sugar in the diet be limited, particularly sugar-sweetened drinks. These recommendations are based upon evidence of a probable association (Grade B evidence) between sugar-sweetened beverage consumption and an increased risk of weight gain in adults and children. They are also based upon evidence of a suggestive association (Grade C evidence) between soft drink consumption and an increased risk of dental caries in children, as well as an increased risk (from cola drinks) of reduced bone strength.*

*4. The advertisement does not promote good dietary habits or physical activity*

*Even in the case of a product that (unlike Fanta) represents a healthy dietary choice, the RCMI provides the advertiser may only promote the product to children if the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:*

*1. Good dietary habits, consistent with established scientific or government criteria; and*

*2. Physical activity.*

*The website does not in any way positively encourage good dietary habits or physical activity. The website only promotes the consumption of sugary soft drink, which the Australian*

*Dietary Guidelines state are leading contributors to excess sugar in Australian diets and should be limited. None of the 'Crew' described engage in or promote healthy eating or physical activity. Nor do the videos or images on the screen savers or wall paper available for download.*

*We ask that the Board require the advertiser to remove the Fanta website immediately.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*Thank you for your letter regarding a complaint received in relation to Coca-Cola South Pacific Pty Ltd's ("CCSP") FANTA website [www.fanta.com.au](http://www.fanta.com.au) ("Website"). We thank you for bringing this matter to our attention and respond to the points raised as follows:*

*Substantiation of any health, nutrition or ingredient claims or statements*

*The Website features the Nutrition Information and ingredients list for each of the FANTA flavours. This information reflects the information contained on the labels of 450ml FANTA bottles and is factually accurate.*

*Details of our advertising agency*

*The advertising agency that developed the advertising campaign is Ogilvy & Mather Paris.*

*Comprehensive comments in relation to the complaint*

*The complainant alleges that the Website breaches the Australian Food and Grocery Council's Responsible Children's Marketing Initiative ("RCMI") to which CCSP is a signatory. Specifically, the complainant alleges that the Website breaches the RCMI by advertising primarily directed to children a sugar sweetened sparking beverage.*

*Children are defined in the RCMI as "Persons under 12 years of age". The word "primarily" is not defined and therefore is interpreted using its dictionary definition of "in the first place". We note that this interpretation is supported in the AANA Code of Advertising and Marketing Communications to Children Practice Note.*

*CCSP submits that the Website is not primarily directed to persons under 12 years of age. Rather, it is directly primarily to teens aged between 15 – 17 years.*

*The Coca-Cola Company has always taken seriously its commitment to market responsibly, across the globe, across all advertising media, and across all of our beverages. Our company has been a leader in the area of Responsible Marketing and honouring the rights of parents and caregivers to make the appropriate choices for their children is a cornerstone of our Responsible Marketing Policy. Our company is also committed to monitoring and measuring our adherence to the Responsible Marketing Policy across all the markets we serve, and has established a Children's Review Process to help guide the Responsible Marketing Policy. We publish compliance findings within our corporate sustainability report. CCSP is absolutely committed to ensuring the Responsible Marketing Policy is implemented in Australia and this*

*commitment is reinforced by our voluntary signature of the RCMI and associated RMCi Action Plan (a copy of which is attached). It is of fundamental importance to us to be part of, and responsible to, the communities in which we operate.*

*The FANTA Crew featured on the Website, including in the video and screensavers available for download, have been drawn to represent 17 year olds. The Crew are visually depicted as older teens by their body shapes, hairstyles, wardrobe, facial expressions, body language, gestures, accessories and “tools of play” (such as beat blankets, electric guitars and skateboards) – all designed to reflect older teen culture with 15 – 17 year old appeal. The Crew members’ personal style is described on the Website: Maude is hip and arty; Tristan is street smart, Gigi is the social butterfly, Floyd is the music expert, Kimmy is the rock chick, the Lhava Twins are the surprisers and Todd is the prankster. None of these “tribes” are designed to appeal primarily to children. Rather, they are intended to be recognisable to teens as representative of the sub-cultures they encounter at high school.*

*The animation style, layout and functionality of the Website is unlike popular websites designed for children such as Moshi Monsters, Animal Jam, Webkinz, My Little Pony, ABC for Kids, etc. Similarly, the Crew is not reminiscent of popular characters featured on such sites. The Website does not include any games, virtual pets, avatars or dress up functionality, common in websites designed for children. Rather, the Website is intended to provide teens with screen savers to download to their laptops and phones, nutritional information on the FANTA flavour range and the “back story” to the FANTA Crew.*

*Animation is widely accepted as being a media that appeals to many different age groups, not only primarily to children. Many of the most popular animated television programs, including Family Guy, South Park and the Cleveland Show are consistently classified as M or above. Even The Simpsons has M classified episodes. We note that Code of Advertising and Marketing Communications to Children Practice Note acknowledges that animation is not necessarily indicative of a marketing communication directed primarily to children.*

*CCSP does not promote the Website in its above-the-line FANTA advertising. The FANTA Australia Facebook page does contain a link to the Website. Facebook’s Terms of Service requires that individuals aged under 13 must not use Facebook.*

*We submit that, considering both its content and functionality, the Website is not advertising directed primarily to children and therefore falls outside the scope of the RCMI.*

#### *Other Codes*

*Whilst we note that the complainant has not raised objections under any other advertising codes, as requested, we have also considered the complaint in light of the AANA Advertiser Code of Ethics, the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code. We comment as follows:*

*AANA Code for Advertising & Marketing Communications to Children (“Children’s Code”)*

*The Children’s Code defines “Advertising or Marketing Communications to Children” as “... Advertising ... which, having regard to the theme, visuals and language used, are directed primarily to Children ...”. The Children’s Code defines “Children” as “... persons*

*14 year old or younger ...”. The Children’s Code Practice Note provides that the Children’s Code does not apply to advertising which is directed at older children, or may be seen by children but is not directed primarily to them.*

*We submit that the Website is not directly primarily to children aged 14 years or younger and therefore falls outside of the scope of the Children’s Code. The Children’s Code Practice Note establishes that whether advertising is directed primarily to children is an objective test based on a number of factors including visual techniques, the product being advertised and the age of the characters in the advertising. As outlined above, the Website is aimed in the first instance at 15 – 17 year old teens. The FANTA product itself is enjoyed by a wide age group, some of which may be children under the supervision of parents in a family environment, however the product is not targeted to children in accordance with the Company’s Responsible Marketing Policy and the RCMI. As discussed above, the content and functionality of the Website, with its focus on the FANTA Crew, is designed to speak to teen culture with an emphasis on clothes, hairstyles and sub-cultural archetypes such as the music expert, the techie and the social butterfly. The Crew themselves are drawn to be 17 years old.*

*We note that the definition of a child/children in the Children’s Code differs from the RMCI. We understand that this difference may originate from the disparity between the states and territories in relation to the age at which children commence high school. Nevertheless, whether a child is defined as being 12 or 14 years of age or under, we submit that the Website is not primarily directed to children and therefore falls outside the scope of the Children’s Code.*

*AANA Food and Beverages Marketing and Communications Code (the “Food & Beverages Code”)*

*The Food & Beverages Code contains a number of provisions in relation to truthful, honest advertising (2.1), not undermining the importance of healthy or active lifestyles (2.2), making health claims (2.3) and advertising to children (3). We have considered each of the provisions of the Food & Beverages Code and it is CCSP’s view that the Advertisement complies with all elements of the Food & Beverages Code.*

*AANA Advertiser Code of Ethics (the “Code of Ethics”)*

*The Code of Ethics contains a number of provisions in relation to not depicting people or material in a way which is discriminatory (2.1), sexually exploitative or degrading (2.2), violent (2.3) or employs obscene language (2.5). We have considered each of the provisions of the Code of Ethics against the content of the Advertisement and it is CCSP’s view that the Advertisement does not contain any material which breaches the Code of Ethics.*

*CCSP takes its obligations in relation to responsible advertising seriously. We consider that the Website, due to the nature of its content and functionality, is not advertising directed primarily to children and therefore falls outside the scope of both the RCMI and the Children’s Code. We also consider that, when assessed against the provisions of the Food & Beverages Code and the Code of Ethics in light of prevailing community standards, the Website does not breach any of these codes’ requirements.*

## THE DETERMINATION

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the “Children’s Code”, the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code), and the AFGC Responsible Children’s Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

The Board noted the complainant's concern that the advertisement breaches the AFGC RCMI because it is directed primarily to children, and because Fanta does not represent a healthy dietary choice.

The Board viewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted the relevant requirement is that the company does not advertise food and beverage products to children under 12 in ‘media’ unless those products represent healthy dietary choices.

Medium is defined as: ‘Television, radio, print, cinema, internet sites’.

The Board noted the RCMI Initiative provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication which, having regard to the theme, visuals and language, are directed primarily to children (and are for food and/or beverage products).
2. the placement of the advertisement or marketing communication is in a medium that is directed primarily to children. (in relation to television, all C and P rated programs and other rated programs that are directed primarily to children through their themes, visuals and language); and/or
3. where Children represent 35 percent or more of the audience of the Medium.

The Board noted that it must consider whether the advertisement or marketing communication is, having regard to the theme, visuals and language used, directed primarily to children (and are for food and/or beverage products).

The Board noted the dictionary definition of ‘primarily’ is ‘in the first place’ and that to be within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children under 12.

The Board noted with regards to Point 1, that it must consider whether advertisement or marketing communication which, having regard to the theme, visuals and language used, is directed primarily to children (and are for food and/or beverage products).

The Board noted that the advertisement is featured on the advertiser’s website page for Fanta ([www.fanta.com.au](http://www.fanta.com.au)). The Board noted that the website includes video, downloads and information about the flavours of the products.

The Board considered that it must assess the content of the website in the form in which it is viewed by any person. The Board considered whether the website was directed primarily to children under 12.

The Board noted that it had considered a website for Lion (0075/14) specifically for the Yogo products. In that matter the Board considered the theme of the advertisement (playing interactive games throughout YoGo Alley), the visuals (following along with the YoGorilla) and the language used (character animation in connection with text encouraging play of the games).

The Board noted that the YoGo Alley website included interactive games that involve different themes such as dancing, racing and slalom and considered that overall the website was directed primarily to children.

In the current matter regarding the website for Fanta, the Board noted the theme of the advertisement (an information website). The Board noted that the website is brightly coloured and includes the same characters or “Fanta crew” that feature in most of the other forms of advertising material for the Fanta product. The Board noted that the website does not include interactive games, but does include material available for download such as desktop screensavers and mobile phone ringtones and wallpapers.

The Board noted that the inclusion of items that can be downloaded to phones and computers, was an activity targeted to children older than 12 years and that the absence of interactive games limited the appeal of the website overall to an audience likely to be older than 12 years. The Board then considered the visuals of the website and acknowledged the brightly coloured images and the characters that make up the Fanta crew. The Board noted the overall theme of the website was one of colour and included ‘cool’ looking characters, that would have some appeal to children but was not directed primarily to children.

As discussed in similar matters for Coca Cola (0204/15 and 0206/15) the Board agreed that the characters are presented as teenagers and that this age group would appeal to children as that is who they are aspiring to be. In this instance however, the characters are introduced in combination with descriptive text and are stationary images which in this context would appeal to children but in the Board’s view are not directed primarily to children.

The Board then considered the language of the website overall and in particular the words describing the characters. The Board noted that although the language is intended to sound ‘cool’ and ‘in trend’ the words themselves are large and complex for example, “An impulsive prankster, his style is eclectic, a mash up of all the things he likes.”

The Board noted that other language used describes the product flavours which is factual and includes nutrition information which would not appeal to young children.

The Board considered that the website had some components such as the bright colours that would have some appeal to children but overall was not directed primarily to children.

Based on the above, the Board considered that the website, having regard to theme, visuals and language used is not directed primarily to children under 12.

The Board determined that the advertisement did not meet points 2 or 3 of the RCMI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 per cent or more of the audience of the Medium.

Having determined that the marketing communication is not directed primarily to children the Board determined that the provisions of the Children’s Code did not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board considered section 2.1 of the Food Code which provides: 'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

Consistent with previous decisions, [ABC Sales and Marketing 0162/12 and ABC Sales and Marketing (Mamee) 0144/15], the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising Fanta is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular website.

Finding that the advertisement did not breach the RCMI, the Children’s Code or the Food

Code the Board dismissed the complaint.