

Case Report

1	Case Number	0010/14
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Transport
5	Date of Determination	29/01/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This advertisement is placed on the back of taxis and features the text “Manic Lane changing energy with 0% Sugar” alongside an image of three different cans of V energy drinks.

THE COMPLAINT

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

The ad is obviously targeting motorists and to suggest that these high caffeine 'energy' drinks give you energy to drive and change lanes in a 'manic' fashion or even to perhaps make light of the driving style of taxis as 'manic' is inappropriate. Radical lane changing and otherwise swerving is cited as one of the deadly sins on our roads. The young target audience of these soft drinks are a high risk group for bad road behaviour.

The last thing we should be doing on Australian roads is encouraging reckless or speedy driving. We want our death toll to be low and yet there is this stupid ad! It defies reason and good sense. Roads should be safe not a playground for idiots who drink energy drinks just so they can play with other people's lives on the roads. This ad sends the message that dangerous driving is accepted and encouraged. The culture on our roads should be to carefully and courteously watch for all other users and pedestrians and in turn nurture life; not turn driving into a crazy sport.

THE ADVERTISER'S RESPONSE

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

Frucor is committed to conducting all of its advertising and promotions to the highest standards, and any complaints made in relation to its advertising are taken very seriously.

The Advertisement forms part of an outdoor advertising campaign to support the launch of Frucor Beverages Australia's (Frucor) new V 0% Sugar product which is available in three different variants, V 0% Sugar- Citrus Fusion, Blood Orange Burst and Tropical Rush. The creative campaign was created to reinforce the fact that, although the products do not contain sugar, they still provide energy.

We note the complainant states that the Advertisement encourages reckless or speedy driving, and also that it sends the message that dangerous driving is accepted and encouraged, in breach of Section 2.6 of the AANA Code of Ethics (Ethics Code). In addition we note that you have invited us to comment on any sections of the AANA Food and

Beverages Advertisement and Marketing Communications Code (Food Code) and the AANA Code for Advertising and Marketing Communications to Children (Code for Advertising to Children).

Having considered the Advertisement, the complaint, and the requirements of the Ethics Code, the Food Code and the Code for Advertising to Children (together the Codes), we respectfully submit that the Advertisement does not in any way contravene the Codes.

We submit, having regard to Section 2 of the Ethics Code that, sections 2.1 to 2.5 of the Ethics Code are not relevant to the Advertisement as the Advertisement;

- . does not refer to or identify any person or section of the community and therefore the Advertisement could not be construed as vilifying or discriminatory;*
- . could not be construed as being sexual in nature;*
- . does not present or portray violence;*
- . does not contain sex, sexuality or nudity; and*

- . does not use strong or obscene language.

With regard to Section 2.6 of the Ethics Code, we note it requires that “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”. We submit the following:

- . *the Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images. Provided it is done safely and in compliance with road rules, lane changing, whether done with “Manic energy” or otherwise, is permissible;*
- . *the text of the Advertisement “Manic Lane changing energy with 0% Sugar” does not encourage, nor does it promote, reckless behaviour. The reference to “Manic lane changing” is a description for the level of energy provided by the product and a metaphor for the energy benefit provided by V 0% Sugar. It is not a call to action or an instruction to change lanes manically, nor is it a recommendation on driving behaviour;*
- . *the Advertisement does not in any way portray or encourage:*
 - o unsafe driving in breach of Commonwealth or State or Territory laws;*
 - o people driving at speeds in excess of prevailing speed limits: or*
 - o driving practices in breach of Commonwealth or State or Territory laws;*
- . *having regard to the Ethics Code Practice Note, we note that none of the examples provide in the Practice Note apply to the Advertisement.*

On the basis of the above, we do not consider that the Advertisement contravenes the Ethics Code, having regard to Section 2.6 of the Ethics Code or otherwise.

The Advertisement is promoting the Product which is not “targeted toward”, nor does it have “principal appeal” to, children, and accordingly, the Code for Advertising to Children does not apply to the Advertisement. We therefore make no further comment in that regard.

We submit, having regard to Section 2 of the Food Code that, sections 2.2 to 2.6 of the Ethics Code are not relevant to the Advertisement as the Advertisement;

- *does not undermine the importance of a healthy lifestyle, nor the promotion of a healthy balanced diet, and does not encourage excess consumption of any kind;*
- *does not contain health or nutritional claims;*
- *does not contain nutritional or health related comparisons;*
- *does not make reference to consumer taste or preference tests;*
- *does not make any inaccurate claims regarding taste, size, content, nutrition and health benefits that are not applicable to the Product;*
- *does not involve any person;*
- *does not portray the Product as a meal substitute.*

We note section 2.1 of the Food Code has a similar reference to ‘Prevailing Community Standards’ as that raised by 2.6 of the Ethics Code, and therefore address it here.

With regard to Section 2.1 of the Food Code, we note it requires that “Advertising or Marketing Communications for Food or Beverage Products 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”. We submit the following:

- *The Advertisement does not make any inaccurate representations, or representations that are likely to mislead or deceive the target audience. The message that is intended to be communicated by the advertisement (i.e. to reinforce that the 0% Sugar product delivers on energy) does so in an obviously humorous, over-exaggerated way.*
- *The Advertisement does not contravene the Prevailing Community Standards for those reasons set out above when addressing section 2.6 of the Ethics Code.*
- *There are no references in the Advertisement to nutritional or health benefits that make it necessary to address the understanding of the target audience.*

On the basis of the above, we do not consider that the Advertisement contravenes the Food Code, having regard to Section 2.1 of the Food Code or otherwise.

On the basis of the above, we do not consider that the Advertisement contravenes the Codes. It is has, however, always been part of our proposed advertising for the Advertisement to cease on 31 January 2014, and we intend to end the campaign at that time.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement encourages reckless driving.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement was seen on the back of a taxi and features the text, “Manic lane changing energy” alongside an image of three different flavours of V Energy drinks.

The Board noted that whilst the imagery of the advertisement (cans of V energy drinks) is not suggestive of driving in the Board’s view the location of the advertisement on the back of a taxi does mean that a link between the advertised text and driving practices is not unlikely. The Board considered however that the message of “manic lane changing energy” is not strongly suggestive of unsafe driving. Following considerable discussion the Board noted its concerns about the context of the placement of this advertisement on the back of a taxi but considered that overall the content did not create a sufficiently strong link encouraging unsafe driving practices.

The Board considered that in this instance the advertisement does not encourage reckless driving and does not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board

dismissed the complaints.