



Case Report

1	Case Number	0033/16
2	Advertiser	Ferrero Australia Pty Ltd (Ferrero Rocher)
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/02/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.6 - Health and Safety Unsafe behaviour
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a young boy being placed on a chair stacked with cushions so that he can see over the table. We then see the boy sitting on an adult's bike which is being held by his mum and we hear a female voiceover which says, "In this adult sized world kids need things that are just for them". We then see the boy on a smaller bike, then a girl being handed a puppy. The two children are then seen sitting at a small table being handed a Kinder Surprise by their mum.

THE COMPLAINT

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

A little girl is shown with a dog licking her face, then she goes on to eat a chocolate. This at a time when the community is warned of the dangers of "what you cook can make you crook" wherein a person barbecuing is specifically highlighted because he pats a dog and is about to cook food without washing his hands

THE ADVERTISER'S RESPONSE

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

Response from Ferrero Australia Pty Limited to Complaint Reference Number: 0033/16

1 Introduction

Ferrero Australia Pty Limited (Ferrero) thanks the Board for this opportunity to respond to Complaint Reference Number 0033/16 (Complaint).

Ferrero takes its responsibilities under the AANA Advertiser Code of Ethics (Code of Ethics) and other Codes administered by the Advertising Standards Bureau (the Codes) very seriously. Ferrero follows a specific process in approving any marketing communication for release. The Advertisement was subject to this process, including stringent reviews within Ferrero Australia by senior management personnel.

Ferrero maintains that the advertisement the subject of the complaint (Advertisement) does not breach the Code of Ethics or the AANA Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code). Ferrero notes that the AANA Code for Advertising and Marketing Communications to Children (Children's Code) is not relevant to the Advertisement as it is not an advertisement directed primarily to children. Ferrero's reasons for taking these views are set out below both in response to the specific allegations contained in the Complaint and in general responses that deal with sections of the Code of Ethics and other codes not referred to in the letter from the ASB (Bureau's Letter).

2 Alleged Breach of section 2 of the Code of Ethics

2.1 The Complaint suggests that Ferrero has breached section 2 of the Code of Ethics as it does not meet the requirements of part 2.6 which reads as follows:

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

Prevailing Community Standards is defined under the Code of Ethics as being the community standards determined by the Advertising Standards Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications.

2.2 In addition Ferrero has been invited to address all parts of section 2 of the Code of Ethics on the basis that the Board will also review the Advertisement in its entirety against all parts of section 2. Those parts of section 2 of the Code of Ethics are summarised in the Bureau's Letter as follows:

(a) 2.1 Discrimination or vilification

(b) 2.2 Exploitative and degrading

(c) 2.3 Violence

(d) 2.4 Sex, sexuality and nudity

(e) 2.5 Language

(f) 2.6 Health and safety

2.3 In order to address the applicability of all parts of section 2 of the Code of Ethics Ferrero sets out below a summary of the Advertisement:

(a) The Advertisement is a 30 second television commercial featuring a number of independent scenes following one after each other. The scenes depict a mother and her two children engaging in activities together inside and outside of their home. The final scene shows the mother providing each of her children with a KINDER® Chocolate.

(b) The Advertisement is directed to parents or guardians of children and centres around the concept that Kinder Chocolate is “made just the right size for kids”. This is on the basis that Kinder Chocolate is packaged in small sized portions designed for children. This concept is demonstrated in several scenes in the Advertisement including:

(i) a boy is lifted up onto a chair with two cushions by his mother so that he is sitting in the right position for the table;

(ii) the boy tries to ride a large bicycle where he cannot reach the pedals. He is then shown riding a smaller bicycle attached to his mother’s bicycle;

(iii) a little girl is being pulled along by a large dog and is then handed a puppy by her mother; and

(iv) the mother and her two children are shown sitting around a small child-sized table.

All of these images show actions being taken to provide children with things that are the right size for them.

(c) The Advertisement contains an image of the small girl being licked on the face by the puppy but this is a minor and incidental part of the Advertisement.

(d) Each of the outdoor activity scenes are separated from the final scene in the Advertisement that shows the mother and the two children inside their home after all of the outdoor activity sitting at a child-size table and enjoying a KINDER® Chocolate.

2.4 There is no suggestion that the little girl shown in the Advertisement being licked by a puppy has immediately gone from playing with a dog to consuming a chocolate as the outdoor activity scenes are not joined to the final scene located inside the home. The clear implication is that the mother and the two children have taken part in various outdoor activities, have returned home and have no doubt taken appropriate steps such as hand and face washing before sitting at a table to consume a snack.

2.5 The advertising strategy in the Advertisement was to feature scenes of common activities that parents and their children do together with an emphasis on healthy outdoor activities followed by the children being provided with a small child-sized snack. The call to action in the Advertisement is for parents to consider Kinder Chocolate as an appropriate child-sized

snack that could be consumed following exercise.

2.6 Ferrero Australia directs its media communication to a target of Grocery Buyers. This is shown in Appendix 1 which is the media schedule of television spots purchased for the week commencing 10 January 2016 for KINDER® Chocolate advertisements.

2.7 In considering the parts of section 2 of the Code of Ethics and their application to the Advertisement, Ferrero notes the following:

(a) Part 2.1 Discrimination or vilification – no such conduct is shown or suggested in the Advertisement.

(b) Part 2.2 Exploitative and degrading – no such conduct is shown or suggested in the Advertisement.

(c) Part 2.3 Violence – no violence is shown or suggested in the Advertisement.

(d) Part 2.4 Sex, sexuality and nudity – no such content is shown or suggested in the Advertisement.

(e) Part 2.5 Language – no inappropriate language is used in the Advertisement.

(f) Part 2.6 Health and safety – the Complaint focuses on concepts of health and safety. The complainant expresses his concern as follows:

“A little girl is shown with a dog licking her face, then she goes on to eat a chocolate. This at a time when the community is warned of the dangers of “what you cook can make you crook” wherein a person barbecuing is specifically highlighted because he pats a dog and is about to cook food without washing his hands”.

2.8 Ferrero’s response to the Complaint is as follows:

(a) the instant where a puppy licks the little girl’s face is momentary, incidental and occurs as part of normal family outdoor activities while her mother is present;

(b) the little girl does not “go on” to eat a chocolate. This is a separate scene shown at the end of various scenes of outdoor activity, each of which is separate from the others; and

(c) there is no suggestion that the little girl is eating a chocolate after playing with the puppy without washing her hands and face. As the scene showing the little girl eating the chocolate with her mother and her brother is shot indoors with the three of them already seated at a small table it clearly occurs sometime after the outdoor activity. The clear implication is that the mother has engaged in appropriate activities such as hand-washing prior to the children sitting at the table consuming a chocolate.

2.9 In Compliant Reference No 70/13 the Board considered a television advertisement that showed a dog licking the face of a small child. The Board found that the advertisement did not breach section 2.6 of the Code of Ethics and the Board’s determination included the following paragraph:

“The Board noted the advertisement is for a flea prevention product for animals and depicts a dog licking a girl’s face. The Board noted that the girl is with her parents and considered that whilst many parents might not condone animals coming in to such close contact with their children, the action of a dog licking a child’s face is common within dog-owning households. The Board considered that most members of the community would agree that the practice of a dog licking a child’s face, whilst not to be encouraged, is not of itself a breach of community standards on health and safety.”

The Board dismissed this complaint.

2.10 In Complaint Reference No 257/00 the Board considered an advertisement that featured a man and a dog playing on the ground during which the dog licked the man’s face. The Board determined that the portrayal of the man and the dog within the advertisement did not contravene Prevailing Community Standards on health and safety and that the advertisement did not breach the Code of Ethics on that or any other ground.

Summary of Response to Complaint

In summary, Ferrero submits that the Advertisement is in accordance with Prevailing Community Standards on health and safety. It does not in any way encourage or condone the consumption of food without appropriate hygienic steps such as hand washing. To the extent it depicts a child receiving an incidental lick on the face from a small puppy this would not in itself be contrary to Prevailing Community Standards on health and safety.

3 General Responses

3.1 Ferrero has been requested to provide comprehensive comments in relation to the Complaint and also to address all aspects of the advertising codes. Accordingly, in addition to the comments above, Ferrero sets out below some general comments on other Codes that have not been raised specifically in the Bureau’s Letter.

3.2 Section 2.4 of the AANA Code of Ethics states that the Children’s Code applies to Advertising or Marketing Communications to Children and that Section 2.6 of the AANA Code of Ethics does not apply to those advertisements.

3.3 The Advertisement is not an “Advertising or Marketing Communication to Children” for the following reasons:

(a) the Advertisement is directed to the demographic category “Grocery Buyers” and in particular parents or guardians of children.

(b) the Advertisement is not directed primarily to children and this conclusion is supported having regard to the objective test described in the AANA Practice Notes on the Children’s Code (Practice Notes). In the Practice Notes it is clear that relevant factors leading to the conclusion that the Advertisement is not directed primarily to children include the following:

(i) the Advertisement is directed to the demographic category “Grocery Buyers”. It is designed to encourage parents and guardians to buy an appropriate sized treat for their children rather than an adult-sized treat;

(ii) while the product is one that would be consumed by children, it is also a product that appeals to adults in the sense that parents and guardians will want to purchase appropriate child-sized treats for their children and therefore smaller specially sized chocolate treats will appeal to the adult or guardian of young children;

(iii) the Advertisement does not particularly use children's themes and characters. It is an advertisement that appeals to adults using images of children needing smaller things than would normally be required by an adult;

(iv) the Advertisement is not a story told through a child's eyes;

(v) the story line is one from an adult's perspective dealing with the needs of children (rather than what a child might itself want such as a large treat);

(vi) the Advertisement does not include animation or particular imaginative themes but is instead a series of scenes of everyday family life;

(vii) the language in the Advertisement is directed to adults;

(viii) the characters in the Advertisement are a family consisting of a mother and her two children and the interaction between the family members is clearly designed to appeal to adults; and

(ix) the call to action in the Advertisement is a call to action to parents and guardians encouraging them to buy appropriate child-sized treats for their children.

3.4 Section 2.1 of the Food & Beverages Code contains similar requirements that advertisements meet Prevailing Community Standards. Specifically, Section 2.2 of the Food & Beverages Code prohibits advertisements that undermine the importance of healthy lifestyles or the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.

3.5 Ferrero submits that the Advertisement is not contrary to Prevailing Community Standards on health nor is it contrary to Section 2.2 of the Food and Beverages Code for the following reasons:

(a) The Advertisement is directed at parents as described above as Ferrero regards parents as the appropriate decision makers in relation to the purchase of a treat product such as the KINDER® Chocolate product. This is in accordance with Ferrero's Company Action Plan for the Responsible Children's Marketing Initiative published on the Australian Food and Grocery Council website in which Ferrero states:

"Ferrero has always believed in the crucial role played by parents in educating their children to a balanced diet and a healthy lifestyle."

For this reason Ferrero directed the Advertisement at parents. Therefore the Advertisement does not in any way undermine the authority of parents but instead supports that authority and responsibility for purchasing decisions.

(b) The Advertisement depicts a specific situation in which a treat is provided to two children after they have engaged in exercise outdoors with their mother. Providing a special treat on an irregular basis to a child would not encourage or promote an inactive lifestyle or unhealthy eating habits. Indeed, the Advertisement clearly promotes an active lifestyle showing children engaged in bike riding and running outdoors. The Board has previously stated its view:

“... that there is not yet a community standard that treat foods should not be advertised at all.” (Complaint Reference No 55/10).

(c) The Advertisement does not dwell on the consumption of the KINDER® Chocolate but rather focuses on outdoor activity. The consumption of a small chocolate only occurs in the final scene after the outdoor activity. In these circumstances it is clear that consuming small treat products in moderation is not contrary to Prevailing Community Standards on health.

3.6 Even though the Advertisement is not an “Advertising or Marketing Communication to Children”, Ferrero maintains that it does in any case meet all the requirements of Section 2 of the Children’s Code (including Sections 2.2 and 2.7). In addition, the Advertisement meets the requirements set out in Section 3 of the Food & Beverages Code.

3.7 Ferrero maintains that the Advertisement is in accordance with Prevailing Community Standards on health and safety and all other requirements of the Codes referred to above.

4 Conclusion

4.1 Ferrero respectfully submits that it has established processes and procedures to ensure its compliance with the Codes identified above and maintains that no aspect of the Complaint has been made out. Ferrero also submits that the Advertisement does not breach any other aspect of the Codes that was not identified in the Bureau’s Letter. Ferrero respectfully submits to the Board that the Complaint should be dismissed for the following reasons:

(a) the Advertisement does not breach any part of section 2 of the Code of Ethics;

(b) the Advertisement does not breach any part of the Children’s Code because it is not an “Advertising or Marketing Communication for Children” within the meaning of the Children’s Code. Even if it were, the Advertisement does not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits. On the contrary the Advertisement is directed to parents and encourages vigorous outdoor exercise by the children and their parents and shows that the product displayed is to be used by providing it to children on an irregular basis as a special treat; and

(c) the Advertisement does not breach any other section of the Children’s Code, the Food & Beverages Code or the Code of Ethics.

4.2 Ferrero thanks the Board for its consideration of this Response and awaits the Board’s decision in relation to the Complaint.

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 concern that the advertisement depicts a dog licking a young girl’s face and then we see the girl eating a chocolate and that this behaviour is against Prevailing Community Standards on food safety.

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 that this television advertisement includes a scene where a young girl is given a puppy and it licks her face.

The Board noted that it had previously dismissed a similar complaint in case 0070/13 where:

“The Board noted the advertisement is for a flea prevention product for animals and depicts a dog licking a girl’s face. The Board noted that the girl is with her parents and considered that whilst many parents might not condone animals coming in to such close contact with their children, the action of a dog licking a child’s face is common within dog-owning households. The Board considered that most members of the community would agree that the practice of a dog licking a child’s face, whilst not to be encouraged, is not of itself a breach of community standards on health and safety.”

In the current advertisement the Board noted that the puppy is given to the girl by her mother and considered that it is common for excitable puppies to behave in this manner and whilst some parents might not condone animals coming in to such close contact with their children, the action of a dog licking a child’s face is not uncommon within dog-owning households.

The Board noted the complainant’s concern that after the dog licks the girl’s face we see her eating food. The Board noted that the advertisement features a montage of scenes and considered that although the food eating scene follows on from the puppy scene there is no suggestion that these activities were immediately concurrent. The Board noted the advertiser’s response that as the scene showing the girl eating chocolate is filmed indoors whilst seated at a table the implication is that she has washed her hands and face in preparation to eat. The Board noted that we do not see the girl washing her hands and face but considered that the most likely take-out of this scene is that the mother has prepared her children appropriately to eat food after their outdoor activities.

Overall the Board considered that the advertisement did not depict, encourage or condone any activities which would be in breach of 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 complaint.