



Case Report

1	Case Number	0058/11
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	09/03/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

MILO cereal advertisement depicts a child eating a bowl of cereal in his home, taking his helmet and riding his bike onto the farms where grains are grown. The young boy passes the farmers saying thank you to them for growing the grains used to make MILO cereal.

THE COMPLAINT

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

During the advertisement it showed a male person riding a quad bike without wearing a helmet as required by the Quad Bike manufacturers recommendations, instructions and warning signs on the Quad Bike, and is in breach of the Occupational Safety and Health Act, Section 2 (c) of the FCAI code

http://www.fcai.com.au/library/publication/1250483030_document_amended_code_-_final_-_oct_07.pdf provides for compliance with this specifically, and also Section 2.6 and 2.7 in the AANA Advertiser Code of Ethics.

An Appendix to the Commercial Television Industry Code of Practice provides for compliance with the FCAI code on this matter.

I request you cause this Milo Breakfast food advert to cease broadcasting in Western Australia and I request the name and contact details of the male actor on the Quad Bike and the director of the advert so enforcement action may be taken directly with those persons responsible.

THE ADVERTISER'S RESPONSE

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

The primary reason for concern identified by the complainant is that the Advertisement shows a person riding a quad bike without a helmet. In relation to the codes administered by the Advertising Standards Board (ASB), the complaint refers to section 2 of the AANA Advertiser Code of Ethics (Ethics Code) and specifically:

Section 2.6 of the Ethics Code, which provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety"; and

section 2.7 of the Ethics Code, which provides that, relevantly, "Advertising or Marketing Communications for motor vehicles shall comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles" (FCAI Code).

CPA has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Marketing and Communications Code and considers that the Advertisement complies with those codes in all relevant aspects.

In relation to section 2.6 of the Ethics Code, the definition of "Prevailing Community Standards" is "the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to Advertising or Marketing Communications". In this regard, CPA submits that the Advertisement is entirely in line with the community standards and expectations that would reasonably apply to a communication of this nature.

The primary focus of the Advertisement is the young boy who eats his MILO cereal for breakfast and then rides his bicycle onto farms to thank the farmers for growing the grains used to make MILO cereal. The Advertisement depicts the boy following appropriate safety steps by clearly taking his helmet and wearing it whilst riding his bicycle. This is consistent with modern community expectations as to appropriate bicycle safety.

*The reference to the farmer on the quad bike, which the complaint refers to, is short and contextual to the main focus of the Advertisement. CPA's intention in the Advertisement was to depict farmers in real-life situations on their properties, including the prevailing practice of farmers wearing hats, not helmets, when riding quad bikes on their farms. The image of the farmer on the quad bike in the Advertisement is consistent with the images of real farmers in commercial television programs such as Channel Nine's *The Farmer Wants a Wife*, which show farmers riding quad bikes on their properties wearing hats, not helmets. The Advertisement typifies the standard practice of many farmers and in CPA's view, does not fall short of community expectations in this regard.*

The fact that a higher standard has been advocated does not mean that the current practice is contrary to prevailing community standards. Having said that, although CPA considers that the Advertisement complies with the codes administered by the ASB, CPA acknowledges that some organisations recommend that farmers wear helmets whilst riding quad bikes on their properties.

As CPA prides itself on its compliance with the highest safety standards, it has made the decision to modify the Advertisement in light of these best practice recommendations. The Advertisement will screen in a revised format from Sunday 27 February with the farmer wearing a helmet whilst riding the quad bike.

Finally, in respect of section 2.7 of the Code, CPA notes that the FCAI Code applies only to advertisements for motor vehicles. The Advertisement is for MILO cereal, not a motor vehicle and therefore the FCAI Code does not apply to the Advertisement.

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 that the advertisement is for a food not a vehicle and therefore the FCAI Code does not apply to this advertisement.

The Board noted the complainant’s concern that the advertisement shows a man riding a quad bike without a helmet which is an unsafe practice.

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

The Board considered whether the advertisement was in breach of 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 advertiser’s response that the intention of the advertisement was to show farmers in their natural environment undertaking their normal duties.

The Board noted the advertiser has modified the advertisement to show the farmer riding the quad bike and wearing a helmet.

The Board considered that the depiction of the man on the quad bike was a depiction of a man on his own property driving the vehicle in a safe manner. The Board noted that although the wearing of helmets by farmers on quad bikes is strongly recommended, there is no law requiring them to do so. In this situation the Board considered that the depiction was not unsafe.

Based on the above, the Board determined that the advertisement did not depict material contrary to prevailing community standards on health and safety and 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.

