



Case Report

1	Case Number	0071/13
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	13/03/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement shows a child visiting a monkey enclosure in a zoo while holding a Le Snak. He is on the outside of a wire fence and there is a moat between him and a group of monkeys. In reaction to a screech from the monkey, he startles and his cracker goes flying into the enclosure, which is then picked up by the monkey. The monkey climbs across a tree to come and sit just inside the wire fence. After looking like he is going to hand the cracker back, the monkey shakes its head and in response, the child holds out the Le Snak so that the monkey can dip the cracker in the cheese dip. The monkey consumes the cracker and dip supporting the voice over of “you can’t have one without Le other.”

THE COMPLAINT

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

My protest and discomfort at the commercial arises from being a retired school teacher who over many years has taken children on excursion to zoos and animal parks. One of our key warnings to children was always to keep all body parts outside the enclosures on the basis that wild animal behaviours are always unpredictable and dangerous. The majority of animals’ parks normally display warning signs for people to keep body parts outside the fences of enclosures as well.

On viewing the commercial, my first response was to realise that said commercial evoked a high risk of children emulating the behaviour of the child in the commercial. Not all children

are monitored by accompanying adults at all times when visiting such places and there have been enough examples over the years of incidents occurring when children have leaned into enclosures and accidents and injuries have happened as a result.

THE ADVERTISER'S RESPONSE

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

Nature of Complaint

The primary reason for concern identified by the complainant is that the Advertisement allegedly depicts behaviour of a child in a zoo (feeding a monkey) of which "there is a high risk of [other] children emulating."

In relation to the codes administered by the Advertising Standards Board (ASB), the complaint refers to 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".

Prior Complaint

We note that the ASB considered this same Advertisement in 2003 (reference 35/03) for very similar reasons and, in that instance, dismissed the complaint. While we draw your attention to this, Nestlé acknowledges that the ASB must consider the complaint against prevailing community standards.

Nestlé Response

Nestlé 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.

We also note that the Advertisement has finished its current run on television.

Description of Advertisement

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Section 2.6 of the Ethics Code

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, Nestlé submits that the Advertisement is entirely in line with the community standards and expectations that would reasonably apply to a communication of this nature and that, due to the very manner in which the Advertisement has been set up, there is no risk of children emulating what they have seen in the Advertisement.

Community standards allow for obvious and apparent exaggeration in advertising. In the Advertisement, while it shows an everyday activity of visiting a zoo, the fictitious and exaggerated scenario is clear and is unlikely to be achievable in real life.

It is well known that zoos take the safety and welfare of both visitors and their animals seriously and this includes the existence of appropriate barriers, moats and enclosures to ensure that visitors and animals do not come into contact with each other. The opening shoot clearly sets up this environment – taking time to show that there is a fence and water between the zoo visitors and the monkeys. At no time during the Advertisement does the child enter the enclosure or breach the designated safety area.

The next part of the Advertisement is the exaggerated scenario – the monkey being able to use a tree in its enclosure to come close to the child. It is safe to assume that the modern design of enclosures at zoos in Australia would not include such fixtures placed close to barriers due to the risk of animals escaping their enclosures and for safety reasons. It would certainly be the expectation of any zoo visitor that they could not have such contact with zoo animals. There is also a reasonable expectation that there would be appropriate parental supervision in place and adequate warning signs in a zoo environment regarding not feeding the animals or entering enclosures.

The exaggerated or hyperbolic scenario depicted in the Advertisement does nothing to undermine this common understanding and highlights the fact that it is obviously not an achievable feat for a child to be able to feed a monkey in a zoo. For these reasons, it is not expected that children (or even adults) would either try to emulate or more to the point, be able to emulate this behaviour.

On the basis of the above, we respectfully submit that we have not contravened Section 2 of the code.

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 depicts and encourages the unsafe practice of hand feeding a zoo animal.

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 the advertisement features a young boy dropping his Le Snak biscuit in to a monkey enclosure at the zoo where it is picked up by a monkey who encourages the boy to share the dip.

The Board noted that it had previously dismissed a complaint about this advertisement in 2003 (35/03). The Board noted that since 2003 there has been a greater emphasis in the community on health and safety in public areas.

The Board noted that the overall tone of the advertisement is humorous and fanciful and considered that whilst children may think it would be cute to try and share a snack with a monkey the Board noted that it would not be possible for a child to do this given the security measures taken by zoos to ensure visitors do not come in to contact with the animals.

The Board noted that the overall message of the advertisement is that cheese and biscuits go well together and considered that whilst depicting a child hand feeding a zoo animal is not behaviour which should be encouraged or condoned, in this instance the Board considered that the advertisement depicts an unlikely situation which would be very difficult to copy.

Based on the above the Board considered that the advertisement did not depict material which was contrary to prevailing community standards on health and safety at zoos.

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.