



Case Report

1	Case Number	0073/12
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	14/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement is set in a house, the morning after a party. A man walks downstairs, acknowledging a woman who acknowledges him as well. While there is a level of awkwardness between the characters, the reason for this is not stated this is highlighted by the voice-over;

“We all know that ‘after-party’ feeling full of ... complications from the night before...”
Another woman makes her way to the kitchen counter which contains mugs and the Product which is prepared and served.

THE COMPLAINT

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

The advertisement alludes to a casual sexual encounter between two people the night before. In the morning that follows the spontaneous couple are depicted as being embarrassed and awkward with one another. Nescafe 3-in-1 supposedly smooths over the awkwardness of the prior night's encounter.

The advertisement downplays the potential consequences of casual sexual encounters. It does not promote healthy sexual behaviour. It plays unnecessarily on the stereotype of young people having one night stands and in doing so subverts the idea of responsible sexual conduct.

Alludes to and glamourises promiscuity.

Alludes to and glamourises excessive alcohol consumption.

The characters in this ad although initially embarrassed by the alluded to prior activities are portrayed as being 'contemporary and cool' indicating that most young people behave this way or would like to.

I was infuriated that I had to inform my 12yo daughter that this was not normal and acceptable behaviour. Her unsolicited opinion on the ad after it had been played was "so it's ok to get drunk as long as you have a coffee in the morning!"

THE ADVERTISER'S RESPONSE

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

Nestlé has considered the Advertisement under the AANA Advertiser Code of Ethics (Code of Ethics) and specifically section 2.4 of that Code which provides that "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience."

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 consider that the Advertisement complies with those codes in all relevant aspects.

The Complaint

The specific concern raised by the complainant is that the Advertisement "alludes to and glamourises promiscuity" and "alludes to and glamourises excessive alcohol consumption." Nestlé respectfully submits that the Advertisement does neither.

Background and the Advertisement

The Nescafé 3in1 product is a combination of white coffee and sugar with a specific taste profile ie smooth and creamy without the bitterness usually associated with coffee (the Product).

The Product and associated branding and campaign focus around the "Too Easy" tag line. Too easy indicating that the product is both easy to make and easy to drink.

The Advertisement is set in a house, the morning after a party. A man walks downstairs, acknowledging a woman who acknowledges him as well. While there is a level of awkwardness between the characters, the reason for this is not stated this is highlighted by the voice-over;

"We all know that 'after-party' feeling full of ... complications from the night before..."

Another woman makes her way to the kitchen counter which contains mugs and the Product which is prepared and served.

The tone of the Advertisement is very much targeted to the specific age demographic as depicted by the characters in the Advertisement. The focus of the Advertisement is based on the consumer insight that this target market is primarily at a University age and has many 'hard' or complicating factors in their hectic lives – often trying to manage education, part time jobs and various social activities. The Product fits with this target market with the aim of simplifying at least one daily ritual – that being the preparation and drinking a morning coffee, as described by the voice-over;

"get back on track the east way with the great taste of Nescafé 3in1 – white coffee and sugar in one..."

Coffee is a beverage sold to and consumed by adults. Nestlé's new Nescafé 3in1 product is a product aimed at young adult consumers.

Alleged breach under section 2.4 of the Code of Ethics

We do not believe the Advertisement breaches section 2.4 of the Code of Ethics. This section requires specifically that any advertising or marketing materials shall treat sex, sexuality and nudity with sensitivity with regards to the relevant audience.

In line with the AANA 2012 code of Ethics Practice Note (Practice Note), we confirm that the Advertisement does not depict any images or depictions as described within the Practice Note and any reference to these images or depictions are at most an implied reference.

With respect to the complainant's allegation that the Advertisement alludes to and glamourises promiscuity and excessive alcohol consumption, it must be noted that no indication of promiscuous behaviour or excessive alcohol consumption is portrayed in the Advertisement.

To the extent that any reference to 'promiscuity and excessive alcohol consumption' could be said to be contained in the Advertisement, it is at most an inference or perception and one of many possible take out messages – each viewer will bring their own perspective to what lies behind the words unsaid as to what the "complications from the night before" were, and this portrayal is entirely consistent with all relevant sections of the Code of Ethics and prevailing community standards. Any inference to any of these behaviours would be understood by the relevant audience in the context of the advertising.

Other potential breaches of the Code of Ethics or other Relevant Codes

Given the complainant's allegation the Advertisement "alludes to and glamorises excessive alcohol consumption." while we note the complainant has provided this compliant under section 2.4 of the Code of Ethics, we have reviewed the remaining sections of the Code of Ethics and are confident the complaint does not fall within any other sections which would require response.

For completeness, we have also carefully considered the Alcohol Beverages Advertising (and Packaging) Code (ABAC), and Nestlé notes that the ABAC applies only to advertisements for alcoholic beverages. The Advertisement is for a Nescafé coffee product, not an alcoholic beverage and therefore the ABAC does not apply to the Advertisement.

Placement of the Advertisement

With reference to the requirement that any advertising and marketing communications of this nature be treated with sensitivity to the relevant audience, we refer to the Practice Note for guidance on what would constitute the relevant audience for the Advertisement. We are guided by the Practice Note that this shall be determined by the Board with regard to the media placement plan and content of the Advertisement.

We confirm the media plan for this Advertisement was developed with a specific target market in mind being University aged students years with a media 'bullseye' of 18 years of age. The campaign cantered around O-Week and activities planned within Universities.

For completeness we note the complainant viewed the Advertisement during "The Biggest Loser" on channel 10 and was aired at 7.45 pm. The target audience of this programme is adults 25 and over.

Please note the Advertisement received a "W" rating by CAD (Reference number WVF4IN4F) which allows broadcast at any time aside from during a P or C classified program. These time frames have been strictly complied with in developing the media plan. We reiterate the Product which is the subject of the Advertisement is a coffee product, and as such not appropriate for a younger age market which is reflected in the Advertisement which is not aimed at children. This was a primary consideration in media buying and placement. By relevant definition, "Prevailing Community Standards" are "the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or

Marketing Communications.” In this regard Nestlé submits that the Advertisement is entirely in line with the any appropriate community standards given the target audience and time in which the Advertisement is broadcast.

It is also relevant to note that the Advertisement has been previously shown in the UK without compliant to their Advertising Standards Authority, and we have not received any complaints of a similar nature through our customer care line in Australia since the Product launch.

We can assure you that Nestlé carefully reviews all of its advertising to ensure it is in line with all relevant laws and regulations and carefully considers whether they meet prevailing community standards. We are confident this Advertisement meets all prevailing community standards and it is for the above reasons that we respectfully disagree the Advertisement is in contravention of Section 2.4 of the Code of Ethics and can see no basis for the complaint. We respectfully request the complaint be dismissed.

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 complainants’ concerns that the advertisement makes reference to casual sexual encounters and implies that it is okay to get drunk as long as you drink coffee the next morning.

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

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Board noted that the advertisement features a group of young adults the morning after a party and that some of them appear a bit awkward with each other.

The Board considered that there could be many reasons for the implied awkwardness and that whilst a sexual encounter was one explanation there was nothing else in the advertisement to suggest that this was the reason.

The Board considered that the overall suggestion of sexual activity was extremely mild and unlikely to be considered inappropriate by most reasonable members of the community.

The Board determined that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant audience and that it did not breach Section 2.4 of the Code.

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 complainants' concerns that the advertisement treats casual sex inappropriately and considered that there is no explicit suggestion that sex has taken place or that if had taken place it was casual. The Board considered that the advertisement does not condone or encourage casual sexual encounters and does not therefore depict material contrary to Prevailing Community Standards on the health and safety aspects of sexual activity.

The Board noted that the advertisement suggests that drinking Nescafe 3 in 1 can help you "get back on track the easy way" if you have the "after-party" feeling. The Board considered that whilst it is not unreasonable to interpret these statements as being related to having drunk alcohol at the party the Board noted that there is no actual reference made to drinking alcohol and no suggestion that it is okay to consume alcohol if you are going to drink Nescafe 3-in-1. The Board considered that the advertisement did not condone or encourage excessive drinking of alcoholic beverages and did not depict material contrary to Prevailing Community Standards on the health and safety aspects of alcohol consumption.

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.