



Ad Standards Community Panel
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Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0093/19
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Billboard
5	Date of Determination	03/04/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement features the text "Watching a sex scene with your parents. Sweat happens" followed by an image of the beverage.

THE COMPLAINT

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

The caption is based on an explicit reference to "watching a sex scene with your parents". That's offensive in itself however the location of the billboard is an area with significantly higher than average proportion of the population being families with children (easily observable and confirmed by census data). Section 2.4 of the AANA Code of Ethics.

This ad is wrong on so many levels:

1. The ad is clearly directed at children as inferred in the text - we all know how bad energy drinks are for children because of the sugar and rubbish they contain. My



understanding of advertising rules is that energy drink advertising is not allowed to be targeted at children.

2. the ad is normalising behaviour 'watching a sex scene with your parents' which is clearly inappropriate and suggestive on multiple levels.

3. I assume the ad implies watching a sex scene on a screen and not in real life, which furthermore infers to energy drinks to be consumed on the couch - and not in the accepted context of activity and sports.

4. It can also be interpreted as promoting/normalising incest and pedophilia

The subliminal messaging and not so subliminal messaging in this ad is appalling and has no place in a society that values the mental, emotional and physical health and wellbeing of our children.

THE ADVERTISER'S RESPONSE

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

We refer to the complaint made in connection with the Maximus sports drink advertisement featured on a billboard in the Sydney metropolitan area which includes the line "Watching a sex scene with your parents - sweat happens" (Advertisement). We thank you for the opportunity to provide a response to this complaint.

Background – the Maximus sports drink advertising campaign

The Advertisement is part of a larger campaign, including a digital media campaign, reflecting the positioning of the Maximus sports drink as the drink of choice for life's awkward and uncomfortable moments (ie moments when "sweat happens"), targeted particularly at males aged between 18 and 39 years. The observations in each advertisement are intended to be light-hearted, humorous and memorable, particularly insofar as they depict situations in which an adult male might feel uncomfortable, causing him to sweat, thereby promoting Maximus as a means of replacing fluid which is lost through sweating. In the case of the Advertisement, it refers to (but does not depict) a scene where a young adult male may find himself viewing a program with his parents, in which a "sex scene" appears on screen. It refers to that being a situation in which the adult male might feel uncomfortable and sweat. Importantly, the "sex scene" is neither depicted nor described in the Advertisement.

Response to issues raised in the complaint

Frucor Suntory is committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to our



advertising and promotions.

As requested, we have addressed the complaint by reference to all relevant advertising codes, including the AANA Code of Ethics (AANA Code of Ethics) and the AANA Food and Beverages Marketing and Communications Code (AANA Food Code).

We note that the complainant expressed concerns in respect of the Advertisement, stating that:

- "The ad is normalising behaviour 'watching a sex scene with your parents' which is clearly inappropriate and suggestive on multiple levels";*
- "It can also be interpreted as promoting/normalising incest and pedophilia (sic)"; and*
- "The subliminal messaging and not so subliminal messaging in this ad is appalling and has no place in a society that values the mental, emotional and physical health and wellbeing of our children".*

Having considered the Advertisement and the complaint, as well as the requirements of the AANA Code of Ethics and the AANA Food Code, we respectfully submit that the Advertisement does not in any way contravene the AANA Code of Ethics or the AANA Food Code.

Please note that we have not assessed the complaint by reference to the:

- AANA Code for Advertising and Marketing Communications to Children as the Advertisement is not targeted at children (please see our explanation below); or*
- Australian Food and Grocery Council Responsible Children's Marketing Initiative, as the Advertisement is not targeted at children; or*
- Australian Quick Service Restaurant Industry Code, as Frucor Suntory is not a signatory to this initiative.*

Application of the AANA Code of Advertising and Marketing Communications to Children

We submit that the AANA Code of Advertising and Marketing Communications to Children does not apply to the Advertisement for the following reasons:

- A "child" for the purposes of the AANA Code of Advertising and Marketing Communications to Children is a person 14 years old or younger;*
- the target audience for advertising of our Maximus brand is male adults between the ages of 18 and 39 years;*
- as stated in the Campaign Brief, the Advertisement is targeted to male adults between the ages of 18 and 39 years;*
- the language and tone of the Advertisement is not of a childlike nature, and does not feature scenarios which are aimed at or are appealing to children; and*
- the Advertisement is not directed or targeted to children and has not been placed in media which is specifically directed or targeted to children.*



AANA Code of Ethics

We submit, having regard to section 2 of the AANA Code of Ethics, that the Advertisement does not contravene the AANA Code of Ethics.

The Advertisement does not contravene section 2.1 of the AANA Code of Ethics as the Advertisement does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The Advertisement does not contravene section 2.2 of the AANA Code of Ethics as the Advertisement does not employ sexual appeal in a way which is exploitative or degrading of any individual or group of people and there is no debasement or abuse of any person or group of people, including the family unit.

The Advertisement does not contravene section 2.3 of the AANA Code of Ethics as the Advertisement does not contain any violent graphics or imagery.

The Advertisement does not contravene section 2.4 of the AANA Code of Ethics as the Advertisement is not sexually suggestive, there is no nudity, nor is it inappropriate or insensitive having regard to the relevant audience. We note the complainant referred to the tagline used in the Advertisement, 'watching a sex scene with your parents' as 'clearly inappropriate and suggestive on multiple levels'. The Advertisement is in no way inappropriate or sexually suggestive to the relevant audience, the tagline is intended to reference the act of viewing a film or other media in which a "sex scene" appears. No sexual imagery is used in the Advertisement. The Advertisement is presented in a light-hearted, humorous and fun way and is not inappropriate for the relevant audience, which is male adults aged 18 to 39 years.

We note that the complaint in respect of the Advertisement is that the Advertisement is 'promoting/normalising incest and pedophilia (sic)'. We strongly disagree. There is nothing in the Advertisement which relates to, or expressly refers to or implies, incest or paedophilia. The Advertisement does not in any way imply that incest or paedophilia is acceptable. The Advertisement adopts the words 'watching a sex scene with your parents', invoking the imagery of watching a fictional scene from a fictional television show or movie with one's parents. It does not feature any imagery of men, women and children in sexually suggestive positions.

We also note that the complainant claims that the Advertisement is 'appalling and has no place in a society that values the mental, emotional and physical health and wellbeing of our children'. We strongly disagree for the reasons set out above. The overall impression of the Advertisement is that the Maximus sports drink is tailor



made for situations which may make people sweat, whether that sweat is induced from physical activity or from an uncomfortable situation. There is nothing explicit or implicit in the Advertisement that undermines or de-values the mental, emotional and physical health and wellbeing of children.

The Advertisement does not contravene section 2.5 of the AANA Code of Ethics as the Advertisement features language which is innocuous and it does not feature strong or obscene language or language which is inappropriate for the relevant audience and medium.

The Advertisement does not contravene section 2.6 of the AANA Code of Ethics as the Advertisement does not depict any material which is contrary to prevailing community standards on health and safety, including any unsafe practices or images.

We note that clauses 3.1 and 3.2 of the AANA Code of Ethics do not apply to the Advertisement.

On the basis of the above, we do not consider that the Advertisement contravenes the AANA Code of Ethics, having regard to sections 2 of that code or otherwise.

Application of the AANA Food Code

We submit that, having regard to section 2 of the AANA Food Code, the Advertisement does not contravene the AANA Food Code.

The Advertisement does not contravene section 2.1 of the AANA Food Code. The Advertisement is truthful and honest, is not, nor is it designed to be, misleading or deceptive or otherwise contravene prevailing community standards. The Advertisement is communicated in a manner which is appropriate to the level of understanding of the target audience with an accurate presentation of information.

The Advertisement is intended to be a light-hearted, tongue-in-cheek campaign designed to connect with the target audience, consumers who enjoy life to the full and don't take themselves too seriously. The Advertisement is part of a broader campaign that uses various taglines designed to promote this light-hearted approach.

The Advertisement does not contravene section 2.2 of the AANA Food Code. Specifically, the Advertisement does not undermine the importance of healthy or active lifestyles or the promotion of healthy balanced diets. The Advertisement does not encourage what would reasonably be considered excessive consumption through the representation of the product or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.



The Advertisement does not contravene section 2.3 of the AANA Food Code. The Advertisement does not contain any health or nutrition claims. It does not make any direct or indirect reference to health benefits or nutrition and it does not imply that drinking a Maximus sports drink will benefit your health or meet a consumer's nutritional needs in any way.

The Advertisement does not contravene section 2.4 of the AANA Food Code as the Advertisement does not include any health related comparisons.

The Advertisement does not contravene section 2.5 of the AANA Food Code as the Advertisement does not make reference to consumer taste or preference tests, nor use any scientific terms to falsely ascribe validity to advertising claims.

The Advertisement does not contravene section 2.6 of the AANA Food Code as the Advertisement does not make reference to taste, size, content, nutrition and health benefits which are non-specific to the promoted product or inaccurate in all such representations.

The Advertisement does not contravene section 2.7 of the AANA Food Code as the Advertisement not appear within segments of media devoted to general and sports news and/or current affairs, nor rely on the endorsement or use of a recognised personality.

The Advertisement does not contravene section 2.8 of the AANA Food Code as the Advertisement does not portray the Maximus sports drink as a substitute for meals.

The Advertisement complies with the AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children is not relevant, and accordingly, the Advertisement does not contravene section 2.9 of the AANA Food Code. Clause 3 of the AANA Food Code does not apply to the Advertisement, as the Advertisement is not targeted at children.

On the basis of the above, we do not consider that the Advertisement contravenes the AANA Food Code, or any other Code, having regard to sections 2 and 3 of the AANA Food Code or otherwise

THE DETERMINATION

The Ad Standards Community Panel (the "Panel") considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code"), and the AANA Code of Ethics (the "Code").

The Panel noted the complainants' concerns that the advertisement undermines a healthy diet and lifestyle, is targeted towards children, and contains a sexual



reference.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the advertiser is not a signatory of the Australian Food and Grocery Council's Responsible Children's Marketing Initiative (AFGC RCMI) therefore this Initiative does not apply.

The Panel noted a complainant's concern that the advertisement is directed to children, and the complainant's understanding that energy drink advertising is not allowed to be targeted to children. The Panel noted that the beverage product is a sports drink, not an energy drink, and there is no provision under the AANA Food Code or the AANA Children's Code that specifically references sports drinks.

The Panel noted the billboard advertisement features the text "Watching a sex scene with your parents. Sweat happens". An image of a beverage product is also depicted.

The Panel considered whether the advertisement complied with all relevant provisions of the Food Code.

The Panel considered Section 2.2 which states: "the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered 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."

The Panel noted the complainants' concern that the advertisement promotes consuming the beverage while sitting on the couch, which undermines the promotion of healthy balanced diets and a healthy lifestyle.

The Panel noted that the advertisement shows a bottle of the beverage, and that the size/amount of the beverage is not visible. The Panel noted that the beverage is typically only available in 1L sizes. The Panel considered that the product has a screw top, and therefore does not need to be consumed at one time.

The Panel considered that there is no imagery or text in the advertisement which is advocating for an unhealthy or inactive lifestyle, and noted that there is nothing to promote consuming the product in one go.

The Panel considered that the depiction of a single bottle of drink, without any promotion of extra bottles or any pressure to buy more was a depiction which most members of the community would not consider undermines the promotion of healthy balanced diets or a healthy lifestyle, nor encourage excess consumption.



The Panel noted that the advertising of sports drinks is not of itself a depiction which breaches Prevailing Community Standards.

The Panel determined that the advertisement did not breach Section 2.2 of the Food Code.

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

The Panel noted the complainants’ concern that the advertisement features a sexual reference which is offensive and inappropriate for a broad audience.

The Panel considered that the phrase references a scenario which many members of the community are likely to understand as viewing a sex scene as part of a movie or television program and would likely understand to be uncomfortable for a child (including adults) to watch with parents.

The Panel noted the Practice Note for Section 2.4 which states: “The use of the word “sex” does not, of itself, make an advertisement unacceptable. However, such advertisements must not contain images that are highly sexualised. “

The Panel considered that the reference to such a scenario without any other descriptors, images or themes did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience and did not breach Section 2.4 of the Code.

The Panel noted a complainant’s concern that the advertisement promotes/normalises incest and paedophilia, and considered that this interpretation of the advertisement is highly unlikely to be shared by the broader community.

Finding that the advertisement did not breach the AANA Food Code or the AANA Code of Ethics, the Panel dismissed the complaints.

