



Case Report

1	Case Number	0098/16
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Promo Material
5	Date of Determination	23/03/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

2.1 - Discrimination or Vilification Race

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement was a photo wall advertisement which consisted of a large white banner which displayed a large image of the Maximus sports drink, aside the slogan "I Survived Australia Day" and an arrow pointing to a blank white space. Passers-by on their way to work had an opportunity to have their picture taken next to the arrow and slogan. On the other side of the photo wall was the slogan "BIG AUS DAY? BIG RECOVERY" in large upper case letters with a picture of the Maximus sports drink. At each Location, Promotional staff handed out free 1L "green and gold" Maximus beverages accompanied by bacon and egg rolls.

THE COMPLAINT

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

This advertisement is directly referencing Survival Day (<http://www.sbs.com.au/news/article/2016/01/26/january-26-australia-day-survival-day-or-invasion-day>), on January 26th, an Indigenous term used to commemorate surviving colonisation. As such, it is extremely callous advertising, and using the hurt and pain of others for advertising gain.

The following words on their facebook page: "Struggling? Grab your FREE "Day After Australia Day" Recovery Kit from Southern Cross Station. Keep a look out for us on Wednesday morning from 7am - 11am."

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 relation to the 'Maximus – I Survived Australia Day' (Advertisement) which featured between 6-9am on the day after Australia Day (27 January 2016) at 3 locations, namely, Parramatta Centenary Square in New South Wales, Southern Cross Station in Victoria and Queen Street Mall in Queensland (Locations). We thank you for the opportunity to provide a response.

We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion.

Having considered the Advertisement and the Complaint, and the requirements of the AANA Code of Ethics (Code of Ethics) and the AANA Food Code (Food Code), collectively, the Codes, we respectfully submit that the Advertisement does not in any way contravene the Codes.

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The Advertisement was targeted at adults and was part of a wider campaign that aimed to promote hydration after Australia Day celebrations. As part of the wider campaign, Maximus launched an Australian themed "green and gold" pack of sports drinks for sale at various retailers across Australia during the month of January 2016. Throughout the month of January, Maximus advertised the sports drinks by reference to "Big Night, Big Recovery" and "Grab one for the Morning After" in retail outlets and "Struggling? Grab your FREE Day after Australia Day Recovery Kit...." on social media, to tie into the typically big Australia Day celebrations. The campaign has ended and the Advertisement is no longer advertised or promoted.

We submit, having regard to the Complaint and Section 2 of the Code of Ethics that:

2.1 We note that the Complainant alleged that the "Advertisement is directly referencing Survival Day on January 26th, an Indigenous term used to commemorate surviving colonization...." We submit that the Advertisement does not and is not intended to directly or indirectly reference Survival Day. The Advertisement was intended to target those persons who had partied too hard on Australia Day and needed a hydration pick-me-up the day after celebrations. While we regret that the Complainant was offended by the Advertisement, 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 contain any language or references which are intended to humiliate, intimidate, incite hatred, contempt or ridicule against any race, ethnicity, nationality or political belief. Accordingly, the Advertisement does not contravene Section 2.1 of the Code of Ethics;

2.2 the Advertisement does not employ sexual appeal, and accordingly, the Advertisement does not contravene Section 2.2 of the Code of Ethics;

2.3 the Advertisement does not contain any violent graphics or imagery, and accordingly, the Advertisement does not contravene Section 2.3 of the Code of Ethics;

2.4 the Advertisement is not in any way sexually suggestive, and accordingly, the Advertisement does not contravene Section 2.4 of the Code of Ethics;

2.5 the Advertisement does not feature strong or obscene language or language which is inappropriate for the relevant audience and medium, and accordingly, the Advertisement does not contravene Section 2.5 of the Code of Ethics; and

2.6 the Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images, and accordingly, the Advertisement does not contravene Section 2.6 of the Code of Ethics.

On the basis of the above, we do not consider that the Advertisement contravenes the Code of Ethics, having regard to Section 2 of the Code of Ethics, nor does it contravene any section of the Food 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 directly references surviving Australia Day, which the complainant views as callous advertising - seeing it as a play on ‘survival day’, an Indigenous term used to commemorate surviving colonisation - therefore using the hurt and pain of others for advertising gain.

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

The Board noted the advertisement is a photo wall advertisement of a large white banner with a large image of the Maximus sports drink, and the slogan "I Survived Australia Day". On the other side of the photo wall was the slogan "BIG AUS DAY? BIG RECOVERY" with a picture of the Maximus sports drink.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Board noted that the advertisement encourages people to recover with a Maximus sports drink.

The Board noted the complainant's concerns that the advertisement references survival day as an Indigenous term. The Board acknowledged that Australia Day is referred to as survival day by some and therefore appreciates that some people may be upset at the use of this terminology. The Board noted however that there was no reference to Indigenous people or culture in the advertisement.

The Board considered the advertisement is a reference to people having a public holiday on Australia Day, overindulging and needing the product to recover.

The Board did not consider there were any racial overtones in the advertisement.

The Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.