



**ADVERTISING
STANDARDS
BOARD**

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Case Report

1	Case Number	0099/15
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	11/03/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This audio advertisement was aired on Spotify and features a male voiceover saying that “every man wants a bit more size” and “who hasn’t tried stretching it to make it look bigger or even whipping out the measuring tape and sizing it up” before clarifying that he is talking about hand size and being able to wrap your hand around a huge one litre bottle of Maximus. The voiceover then explains that by sending in photos of you holding a bottle of Maximus you could win a trip to Las Vegas.

THE COMPLAINT

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

First of all the nature of the advertisement is rather intrusive as there is no way to avoid being exposed to it. Furthermore it uses blatantly suggestive language claiming that all men are insecure of the size of their penises. This is highly sexist, offensive and frankly in poor taste. It is also inappropriate as there is no way to prevent my younger siblings from being exposed to this inappropriate content. Maximus' website offered no means to complain about the advertisement or voice any concerns.

THE ADVERTISER’S RESPONSE

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

Background – the MAXIMUS Can You Handle it? campaign

Each of the Advertisements are part of a larger Campaign (which includes a series of other advertisements), each reflecting the value that MAXIMUS offers through the size of the bottle and the amount of liquid within it (1litre) (particularly when compared with other sports drinks that offer 600ml bottles). The tone of each of the Advertisements is intended to be playful, cheeky and savvy.

MAXIMUS is a relatively new product in the sports drink market, and the main point of difference for the brand is that it is offered as a 1L size bottle at the same or similar price to the usual 600mL competitor brand bottles. Each of the Advertisements are intended to emphasize the substantial size of the bottle, which given its size, cannot be fully gripped with one hand when drinking as opposed to competitor brand bottles which are smaller in size.

The Campaign is supported by a game of skill promotion, in which entrants are encouraged to take a picture of themselves wrapping their hand around a Maximus bottle leading to a physical connection with the product to demonstrate the size of MAXIMUS. The “best Maximus hand” is the hand which is judged by the promoter to best reflect the MAXIMUS brand, including the following characteristics: size of the entrant’s hand (the distance from the tip of the thumb to the tip of the middle finger when wrapped around the Maximus bottle) and the extent to which the hand possesses the Maximus “X factor”. Because the MAXIMUS brand is promoted as being about approaching things in different ways to its competitors, the winner of the game of skill promotion will be someone who has the Maximus “X factor”, that is who demonstrates “out of the box” thinking.

The winner will win a trip for themselves and three of their friends to Las Vegas, to stay at the “Palm Spring resort” for 5 days.

The Campaign is being run across a number of media, including Twitter, Instagram, YouTube, Facebook and via a private entry platform at www.icanhandleit.com.au.

Response to issues raised in the complaints

We have addressed the complaints by reference to all relevant advertising Codes, including the AANA Code of Ethics (AANA Code of Ethics) and the AANA Food & Beverages Advertising and Marketing Communications Code (AANA Food Code).

Having considered each of the Advertisements and the complaints, and the requirements of the AANA Code of Ethics and the AANA Food Code, we respectfully submit that the Advertisements do not in any way contravene the AANA Code of Ethics or the AANA Food Code.

Please note that we have not assessed the complaints by reference to the AANA Code of Marketing and Advertising to Children as none of the Advertisements are targeted to children or be reference to the Australian Food and Grocery Council Responsible Children's Marketing Initiative or the Australian Quick Service Restaurant Industry Code, as Frucor is

not a signatory to these initiatives.

AANA Code of Ethics

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

Clause 2:

2.1 None of the Advertisements 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, and accordingly none of the Advertisements not contravene Section 2.1 of the AANA Code of Ethics;

We note that the complainant in Advertisement 4 indicates that the advertisement is claiming that "all men are insecure of the size of their penises. This is highly sexist, offensive and frankly in poor taste". Advertisement 4 is not offensive or sexist and does not, nor is it intended for men to make them feel insecure about the size of their penises – the claim that "everyone wants more size" is clearly directed to the size of the bottle and the fact that purchasers want large bottles representing more value for money, with MAXIMUS being in a larger 1L bottle (compared with competitors 600ml bottles).

2.2 None of the Advertisements employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people, none of them objectify or demoralise any person or group of persons and there are no identifying individuals that appear in the Advertisements, and accordingly, the Advertisements do not contravene Section 2.2 of the AANA Code of Ethics;

2.3 None of the Advertisements not contain any violent graphics or imagery, and accordingly, none of the Advertisements do not contravene Section 2.3 of the AANA Code of Ethics;

2.4 We note the complainant in respect of Advertisement 1 claims that Advertisement 1 "trivialises rape". We strongly disagree. There is nothing in Advertisement 1 which relates to, or expressly refers to or implies rape. Advertisement 1 does not in any way imply rape, or that rape is acceptable or makes rape seem less serious than it actually is. Advertisement 1 runs for 15 seconds on Facebook and depicts two hands in a shower scene. The scene portrays one hand showering and on hearing another hand approaching, the first hand places his hand around the MAXIMUS drink firmly to claim it. It does not feature any imagery of men or women in sexually suggestive ways. Notwithstanding this, without admission, we have removed it from all advertising media.

We note that the complainant in respect of Advertisement 2 claims that it "explicitly implies masturbation". We strongly disagree. The tone of the Advertisement is colloquial and conversational, in which the viewer is challenged to attempt to handle the full width of the bottle ""CAN YOU HANDLE IT?" emphasizes merely the substantial size of the bottle. It does not portray any sexual conduct or imagery which might be regarded as sexual in nature. Further, the image of the bottle has not been manipulated in any way to suggest a phallic shape, and the hand is strongly gripping the bottle in the usual manner one would adopt to drink.

We note that the complainant in respect of Advertisement 3 also claims that it "explicitly implies masturbation". We acknowledge that some viewers may make that implication, however there are no identifying individuals or body parts shown in this Advertisement. The intention of the Advertisement is to indicate that the user must "prepare" before gripping a bottle of MAXIMUS size.

We note that the complainants in respect of Advertisement 4, 5 and 6 claim that the advertisements are "extremely suggestive and offensive" and "offensive". We strongly disagree for those reasons set out above. The overall impression of each of these Advertisements is that the 1L MAXIMUS bottle is so large that it cannot be fully gripped with one hand.

We also note that each of the Advertisements (with the exception of the billboard Advertisement 2) appear only on advertising media having an age restriction. In particular:

- Facebook users must be over the age of 13 to have a Facebook account.*
- Spotify users must be 18 or older or be 13 or older and have parent/guardian consent to the terms*

Accordingly, we submit that none of the Advertisements contravene Section 2.4 of the Code;

2.5 Each of the Advertisements features language which is innocuous, and none of them 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 AANA Code of Ethics; and

2.6 None of the Advertisements depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images, and accordingly, the Advertisements do not contravene Section 2.6 of the AANA Code of Ethics.

We note that clause 3 of the AANA Code of Ethics does not apply to the Advertisement. On the basis of the above, we do not consider that any of the Advertisements contravene the AANA Code of Ethics, having regard to Sections 2 and 3 of the Code or otherwise.

AANA Food Code

We submit, having regard to Section 2 of the AANA Food Code that:

Clause 2:

2.1 Each of the Advertisements is truthful and honest, and none of them are, or are designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards. Each is communicated in a manner which is appropriate to the level of understanding of the target audience of the Advertisements with an accurate presentation of all information including any references to nutritional values or health benefits. Accordingly, none of the Advertisements contravene Section 2.1 of the AANA Food Code;

2.2 None of the Advertisements undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered

as excess consumption through the representation of product or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards, and accordingly, the Advertisements do not contravene Section 2.2 of the AANA Food Code;

2.3 None of the Advertisements contain any health or nutrition claims. They do not make any direct or indirect reference to health benefits or nutrition and do not imply that drinking MAXIMUS will benefit your health or nutritional needs in any way, and accordingly, the Advertisements do not contravene Section 2.3 of the AANA Food Code;

2.4 None of the Advertisements include any health related comparisons, and accordingly, the Advertisements do not contravene Section 2.4 of the AANA Food Code;

2.5 None of the Advertisements make reference to consumer taste or preference tests, nor use any scientific terms to falsely ascribe validity to advertising claims, and accordingly, the Advertisements do not contravene Section 2.5 of the AANA Food Code;

2.6 None of the Advertisements make reference to taste, size, content, nutrition and health benefits which are non-specific to the promoted product or inaccurate in all such representations, and accordingly, the Advertisements do not contravene Section 2.6 of the AANA Food Code;

2.7 None of the Advertisements appear within segments of media devoted to general and sports news and/or current affairs, and accordingly, the Advertisements do not contravene Section 2.6 of the AANA Food Code;

2.8 None of the Advertisements portray MAXIMUS as a substitute for meals, and accordingly, the Advertisements do not contravene Section 2.8 of the AANA Food Code;

2.9 Each of the Advertisements comply with the AANA Code of Ethics. The AANA Code for Advertising and Marketing Communications to Children is not relevant, and accordingly, the Advertisements do not contravene Section 2.9 of the AANA Food Code. We note that clause 3 of the AANA Food Code does not apply to the Advertisements, as the Advertisements are not targeted to Children.

On the basis of the above, we do not consider that any of the Advertisements contravene the AANA Food Code, having regard to Sections 2 and 3 of the Code or otherwise.

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 uses sexually suggestive language and is not appropriate.

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 this Spotify advertisement was heard over the internet and features a male voiceover saying that "every man wants a bit more size" and "who hasn't tried stretching it to make it look bigger or even whipping out the measuring tape and sizing it up" before clarifying that he is talking about hand size and being able to wrap your hand around a huge one litre bottle of Maximus.

The Board noted the complainant's concern regarding the sexual innuendo and considered that whilst the opening comments of the advertisement are suggestive of men wanting a larger penis the advertisement soon makes it clear that it is referring to hand size.

The Board noted the audience of Spotify which is targeted at adults and requires children under 18 to obtain parental consent prior to use. The Board considered that in the context of the adult audience the sexual innuendo in the advertisement is not inappropriate in the context of a promotion of a competition for having hands big enough to hold a large bottle.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

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