



ADVERTISING  
STANDARDS  
BUREAU

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## Case Report

1	Case Number	0101/14
2	Advertiser	Fyna Foods Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	09/04/2014
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards  
Food and Beverage Code 2.2 - healthy lifestyle / excess consumption  
Food and Beverage Code (Children) 3.2 encourage excess consumption  
Advertising to Children Code 2.15 Food and beverages

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement appears on the website located at [wizzfizz.com.au](http://wizzfizz.com.au). It is an interactive platform that promotes Wizz Fizz confectionery items by allowing the website user to engage interactively with the Wizz Fizz brand.

### THE COMPLAINT

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

*Breach of the Australian Association of National Advertisers Food and Beverage Code (AANA Code:)*

*The website breaches the AANA Code, which applies to commercial messages in media (including the internet), and provides that advertising shall not contravene "Prevailing Community Standards". The website is a platform over which the advertiser has control, which draws the attention of the public in a manner calculated to promote a product (Wizz Fizz).*

*Children are susceptible to advertising, particularly advertising featuring fantasy, animation, games and other themes that appeal to their imagination. Marketing through websites and interactive games is of particular concern because children may not perceive the promotional or commercial nature of the communication, as they lack the experience and cognitive ability*

necessary to interpret advertising messages critically (see Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. and Dowrick, P. 'Report of the APA Task Force on Advertising and Children. Washington, DC: American Psychological Association, February 20, 2004).

Community standards are generally understood to be norms bounding acceptable conduct.

We submit the Wizz Fizz website contravenes prevailing community standards because:

1. It promotes unhealthy food items to children through beguiling interactive activities, when evidence shows this type of marketing influences their food preferences and diets.
2. The website is solely aimed at enticing young children to spend time engaging and forming positive associations with a product that is more than 90% sugar, using cute characters, games and animation.
3. One of the devices used on the website to promote product is the "Wizz Muncher" game, where kids can use the mouse to make a monster eat as many Wizz Fizz products as possible. This sends a message of normalisation of these products and promotes excessive consumption of a product, which in fact should be minimized in children's diets. This is strikingly unethical.
4. The Australian community holds high standards when it comes to protecting children, and the infiltration of kids' recreation time by commercial interests promoting unhealthy products when most Australian children fail to eat enough healthy foods, is certainly the type of conduct contemplated by the AANA Code.

When considering the scope of 'prevailing community standards', the board will be further assisted by recent research showing 83% of Australian main grocery buyers surveyed in 2012 were in favour of banning advertising of unhealthy food at times when children watch TV (Belinda Morley et al, 'Public opinion on food-related obesity prevention policy initiatives' 2012 23(2) Health Promotion Journal of Australia 86).

The website breaches the Responsible Children's Marketing Initiative (RCMI):

Further, and in the alternative, the OPC considers the website breaches the RCMI because: -

1. It is an advertising and marketing communication directed primarily to children (S1.1);
2. Wizz Fizz products do not represent healthier dietary choices consistent with established scientific or Australian government standards (S1.1(a));
3. It does not promote healthy dietary habits or physical activity.

The marketing communication is directed primarily to children

Wizz Fizz confectionary items are primarily children's products. They are depicted in the game "Wizz Muncher", which is very simple to operate and features cute monsters of huge appeal to children, and not to adults. When regard is had to the theme, visuals, and language used, the website is clearly directed primarily to children. The bright colours, jingly music, googly-eyed cartoon monsters and language used ("Wizz Muncher", "adventure", "fun") are child-oriented. The website is clearly a marketing communication directed to children. The food product advertised (Wizz Fizz) is not a healthier choice.

Wizz Fizz sherbert is understood to be more than 90% sugar and also contains significant levels of salt, while contributing essentially no valuable nutrients. the National Health and Medical Research Council (NHMRC), through the Australian Dietary Guidelines 2013 (Summary), recommends avoiding foods and drinks high in added sugars. The NHMRC Dietary Guidelines for Children and Adolescents in Australia recommends consumption of only moderate amounts of sugars and foods containing added sugars, as excessive consumption is a risk factor for obesity. Wizz Fizz products do not represent a healthier choice.

The advertisement does not promote good dietary habits or physical activity

Even in the case of a product that (unlike Wizz Fizz) represents a healthy dietary choice, the RCMI provides the advertiser may only promote the product to children if the advertising and/or marketing communication activities reference, or are in the context of, a healthy

*lifestyle, designed to appeal to the intended audience through messaging that encourages good dietary habits, consistent with established scientific or government criteria, and physical activity. The website does not reference healthy lifestyle messages as required under the RCMI. The Board has previously noted in decision 0454/11 that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, which the advertiser has failed to do in this advertisement.*

*Conclusion:*

*The advertisement promotes unhealthy products to children, in breach of provisions of the AANA Code and / or the RCMI. We request that the Board require the advertiser to remove the advertisement immediately.*

## **THE ADVERTISER'S RESPONSE**

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

### *1. INTRODUCTORY COMMENTS*

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*The current management at Fyna Foods Australia Pty Ltd ("Fyna") would like to state that – to its knowledge – this is the first complaint of this nature that has been received by the company. Fyna takes these issues seriously, and views the complaint as important and constructive feedback which it will take into account when marketing this and other products.*

### *2. EXECUTIVE SUMMARY*

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*2.1. In preparing this response, our client has considered the complaint in light of the following standards and codes:*

*2.1.1. The Australian Association of National Advertisers ("AANA") Code of Ethics (the "Code of Ethics");*

*2.1.2. The AANA Food & Beverages Advertising & Marketing Communications Code (the "Food & Beverages Advertising Code");*

*2.1.3. The AANA Code for Advertising & Marketing Communications to Children (the "Advertising to Children Code");*

*2.1.4. The Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (the "RAMC Code"); and*

*2.1.5. The Australian Food and Grocery Council Responsible Children's Marketing Initiative (the "RCMI").*

*2.2. The RAMC Code and the RCMI do not apply to the advertiser because it is not a signatory to these codes. However, the advertiser is presently considering whether to become a signatory to the RCMI, or whether to implement a Company Action Plan that implements the standards of the RCMI in part.*

*2.3. The Advertiser Code of Ethics, the Food & Beverages Advertising Code and the Advertising to Children Code clearly apply to the present circumstances. However, the advertiser contends it has not contravened prevailing community standards, and has not encouraged excessive consumption of its product.*

### *3. PREVAILING COMMUNITY STANDARDS*

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*3.1. The complaint alleges that the Wizz Fizz website contravenes "Prevailing Community*

*Standards” in various ways. Before discussing the various codes and standards specifically, the advertiser would like to make some observations regarding this concept, which is relevant to the following codes:*

*3.1.1. sections 2.1 to 2.6 of the Advertising Code;*

*3.1.2. sections 2.1 and 2.2 of the Food & Beverages Advertising Code; and*

*3.1.3 section 2.1 of the Advertising to Children Code.*

*3.2. The complaint argues that “community standards” are generally understood to be “norms bounding acceptable conduct”. The word “norms” refers to “a standard of ... behaviour that is required, desired, or designated as normal” (Complete& Unabridged Collins English Dictionary, 10th edition, 2009). The Advertising Standards Bureau has emphasised the difficulty in defining “community standards” in a changing, heterogeneous society: “The concept of “community standards” is elastic and variable over time. It is clear that “the Australian community” is not a homogenous group and that it incorporates varying levels of sensitivity, tolerance, education, maturity and understanding. See: Advertising Standards Bureau, “Determination Summary - Health and Safety in Advertising” (July 2013),*

*3.3. Moreover, the various codes each require the relevant communication to be considered not just in terms of “community standards”, but in light of \*prevailing\* community standards. “Prevailing” means “generally accepted; widespread ... most frequent or conspicuous; predominant” (Complete & Unabridged Collins English Dictionary, 10th edition, 2009).*

*3.4. The advertiser does not question the sincerity of the objections raised by the complainant, nor the fact that some sections of Australian society do share her views. However, the advertiser does not believe that the Wizz Fizz website contravenes \*prevailing\* community standards for the reasons set out below.*

*3.5 The complaint also alleges that the Wizz Fizz website contravenes prevailing community standards because (among other things) “it promotes unhealthy food items to children”. The Board has previously accepted that the promotion of a product which may have a particular nutritional composition is not, per se, something which is contrary to prevailing community standards: Retail Food Group 229/12, Muffin Break 233/12, Haribo Australia 0405/12, and Kellogg 033/14. Therefore, promoting Wizz Fizz to children is entirely consistent with prevailing community standards.*

#### *4. PROMOTION OF EXCESSIVE CONSUMPTION*

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*4.1. The complaint further alleges that the “Wizz Fizz Muncher” game promotes excessive consumption. This concept is relevant to:*

*4.1.1. section 2.2 of the Food & Beverages Advertising Code; and*

*4.1.2. section 2.15 of the Advertising to Children Code.*

*4.2. The advertiser submits that the game does not promote excessive consumption of the product because:*

*4.2.1. the game does not depict children consuming the product;*

*4.2.2. the monsters are depicted consuming Wizz Fizz logos rather than the sherbet powder itself;*

*4.2.3. the monster theme is highly unrealistic, and this element mitigates against the message as promoting unsafe or unhealthy behaviour (see by way of analogy: iSelect, 0424/11);*

*4.2.4. the promotion of a product which may have a particular nutritional composition is not, per se, encouraging or promoting an inactive lifestyle or unhealthy eating habits. (see: Haribo Australia, 0405/12);*

*4.2.5. the game does not suggest that children should be encouraged to consume excessive amounts of lollies, “but rather to participate in a fun dialogue that would likely be monitored by parents/guardians” : Haribo Australia, 0405/12.*

#### *5. THE CODE OF ETHICS*

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5.1. *The Advertising Standards Bureau has asked the Advertiser to consider all parts of Section 2 of the Code of Ethics. There is no suggestion in the Complaint that the Advertiser has breached any of the following sections of the Code of Ethics:*

- 5.1.1. *Section 2.1, regarding discrimination and vilification messages;*
- 5.1.2. *Section 2.2, regarding exploitative and degrading messages;*
- 5.1.3. *Section 2.3, regarding violence;*
- 5.1.4. *Section 2.4, regarding sex, sexuality and nudity; and*
- 5.1.5. *Section 2.5, regarding language.*

*In addition, the Advertiser cannot see any grounds for arguing that the relevant communication breaches any of these sections. Accordingly, no further consideration is given to these sections in this Response,*

5.2. *Section 2.6, of the Advertising Code states that “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”. The noun phrase “health and safety” generally refers to “[r]egulations and procedures intended to prevent accident or injury in workplaces or public environments” (see: oxforddictionaries.com) rather than the broader meaning of “health” per se. Perhaps for this reason, the Advertising Standards Board usually considers complaints under this section under the broad categories of “dangerous behaviour”, “distress” or psychological impacts” and “public health issues. While the Board typically considers the promotion of drugs, alcohol or smoking-related products under the category of “public health”, the issues raised by the complaint are not normally considered under the Advertising Code.*

5.3. *Notwithstanding the above, Section 3.1 of the Advertising Code states that “Section 2.6 of this Code shall not apply to advertisements to which AANA’s Code of Advertising & Marketing Communications to Children applies”. We consider the application of the Advertising to Children Code immediately below.*

## 6. THE ADVERTISING TO CHILDREN CODE

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6.1. *The advertiser accepts that the Wizz Fizz website constitutes “Advertising or Marketing Communications to Children”, and is therefore covered by the Advertising to Children Code.*

6.2. *After careful consideration, the advertiser does not believe that the Wizz Fizz website contravenes the Advertising to Children code. In this regard:*

6.2.1. *it does not contravene prevailing industry standards for the reasons set out in paragraphs 3.1 to 3.5 above;*

6.2.2. *it does not contain any statements that would mislead or deceive children (section 2.2);*

6.2.3. *it is not ambiguous, and fairly represents all matters (section 2.2);*

6.2.4. *it has no connection with editorial or program content that is unsuitable for children (section 2.3);*

6.2.5. *it does not portray events which depict unsafe uses of the product or unsafe situations (section 2.5, and the comments made in paragraph 4.2 above);*

6.2.6. *it does not undermine the authority, responsibility or judgment of parents or carers (section 2.7); and*

6.2.7. *it does not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits (section 2.15 and the comments made in paragraph 4.2 above and 7.3 below).*

## 7. THE FOOD & BEVERAGES ADVERTISING CODE

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7.1. *The Food & Beverages Advertising Code sets standards for food and beverage advertising for the general population in section 2, and specifically for children in section 3 of the Code. After careful consideration, the advertiser does not believe that it has contravened the Food & Beverages Advertising Code insofar as they relate to the general*

population. In particular, there is nothing in the Wizz Fizz website that:

- 7.1.1. misleads or deceives (section 2.1);
- 7.1.2. undermines the importance of healthy or active lifestyles (section 2.2);
- 7.1.3. contains health or nutrition claims (section 2.3);
- 7.1.4. makes nutritional or health-related comparisons (section 2.4);
- 7.1.5. involves claims regarding consumer taste or preferences (section 2.5)
- 7.1.6. involves claims regarding material characteristics such as taste, size, content (section 2.6);
- 7.1.7. claims that the product is a substitute for a meal, or portrays them as such (section 2.8);
- 7.2. The advertiser notes that section 2.2 of the Food & Beverages Advertising Code states that communications “shall not undermine the promotion of healthy balanced diets, or encourage what would be considered as excess consumption through the representation of product/s or portion sizes ... or by means otherwise regarded as contrary to Prevailing Community Standards”. In this regard, the complainant alleges that “marketing through websites and interactive games is of particular concern because children may not perceive the promotional or commercial nature of the communication ...”.
- 7.3. In response, the advertiser contends that:
  - 7.3.1. there is no representation to the effect that the product should be consumed instead of regular foods;
  - 7.3.2. the Wizz Fizz website does not promote excess consumption (see paragraph 4.2 above);
  - 7.3.3. despite the complainant’s concerns, marketing through interactive websites is commonplace and does not contravene prevailing community standards (see for example: Coldrock Management, 0234/12);
  - 7.3.4. websites are different from television advertising in the sense that they require the user to actively locate the content rather than having it simply shown to them. As such, website marketing messages can more easily be subjected to parental controls than television advertisements.
- 7.4. After careful consideration, the advertiser does not believe that it has breached the Food & Beverages Advertising Code insofar as they relate to children. In particular the Wizz Fizz website which:
  - 7.4.1. does not deliver content in a manner that cannot be understood by Children (section 3.1);
  - 7.4.2. does not exploit Children’s imaginations in ways which might reasonably be regarded as ... encouraging the consumption of excessive quantities of the product (section 3.2, and see the comments in paragraph 4.2 above);
  - 7.4.3. does not imply that consumption of the product will afford physical, social or psychological advantage over other children (or the converse) (section 3.3);
  - 7.4.4. does not aim to undermine (and does not undermine) the role or parents or carers in guiding diet and lifestyle choices (section 3.4);
  - 7.4.5. does not appeal to Children to urge parents to buy the product (section 3.5); or
  - 7.4.6. does not feature ingredients or Premiums that are not an integral element of the product (section 3.6).

## 8. THE RAMC CODE AND THE RCMI

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- 8.1. The RAMC Code and the RCMI are voluntary codes relating to the advertising and marketing of food and beverages to children.
- 8.2. The advertiser is not a signatory to either the RAMC Code or the RCMI. Accordingly, it is not required to observe the stated requirements.
- 8.3. The RAMC Code is designed for Quick Service Restaurants, and does not appear to be relevant to the advertiser. However, the complaint has prompted the advertiser to consider

*the following options:*

*8.3.1. becoming a signatory to the RCMI Code; or*

*8.3.2. not becoming a signatory to the RCMI Code, but implementing a Company Action Plan which complies at least in part with the standards set out in the RCMI Code.*

#### **9. CONCLUSION**

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*For the reasons set out above, the advertiser asks the Board to dismiss the complaint in its entirety.*

### **THE DETERMINATION**

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the “Children’s Code”) and the AANA Food and Beverages Advertising and Marketing Communications Code (the “Food Code”).

The Board noted the complainants concerns that the advertisement promotes unhealthy products to children and promotes excessive consumption.

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

The Board noted that the advertiser is not a signatory to the AFGC RCMI initiative and therefore the initiative does not apply.

The Board considered the definition of advertising or marketing communication. Under the Children’s Code, advertising and/or marketing communication means "...any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer, and over which the advertiser or marketer has a reasonable degree of control, and that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct."

The Board agreed that the website could be considered to draw the attention of a segment of the public to a product in a manner calculated to promote or oppose directly or indirectly that product.

The Board then considered whether the website is an advertising or marketing communication to children under 14 years of age.

The Board considered whether the advertisement is directed primarily to children (14 years or younger). The Board noted the practice note for the Food and Beverages Code which requires that “in its determination of whether any advertising or marketing communication is directed toward children, the Board will consider the advertiser’s stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.”

The Board noted that the dictionary definition of “primarily” is “in the first place” and that to

be within the Children's Code the Board must find that the advertisement is aimed in the first instance at children.

The Board noted the marketing communication is a website [www.wizzfizz.com.au](http://www.wizzfizz.com.au). The Board considered that the visuals of the website would be very attractive to children with the bright colours, animated characters, games and activities available and the advertised confectionery product (Wizz Fizz). The Board also considered the language and theme of the site. The Board noted references to Facebook (a social media intended for people 13 and over) and references to downloading party invitations and entering competitions. The Board considered that the website is attractive to older children and teenagers. The Board considered that the overall impact of the advertisement creates an environment that is very attractive to children from around the age of ten and, although likely to also be attractive to teenagers, in the Board's view the site is primarily directed to children 14 and under even though most of the children would likely be assisted in reaching the site and would be under adult supervision.

The Board then considered whether the product itself was directed to children. The definition in the Children's Code states that "product means goods, services and/or facilities which are targeted toward and have principal appeal to Children." The Board considered whether Wizz Fizz are a product which is targeted toward and has principal appeal to children. The Board considered that Wizz Fizz product is a confectionery with strong appeal to children 14 and under. In the Board's view although the Wizz Fizz product would have broad appeal to older children and teenagers in this marketing communication, the Board considered that Wizz Fizz is a product of principal appeal to children.

Having determined that the marketing communication and the product are directed primarily to children the Board determined that the provisions of the Children's Code did apply.

The Board noted the complainants concerns that the website contravenes prevailing community standards in its promotion of an unhealthy food product through the website which incorporates interactive games.

The Board noted section 2.1 of the Children's Code which provides that: "advertising or marketing communications to Children must not contravene Prevailing Community standards."

The Board noted that prevailing community standards means: "the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications to Children. Prevailing Community Standards apply to Section 2 below. The determination by the Board shall have regard to Practice Notes published by AANA and any research conducted by the Advertising Standards Bureau."

Consistent with previous decisions, (Haribo Australia 0405/12 and Muffin Break 233/12), the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising Wizz Fizz is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.



The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board noted in particular 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 Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board agreed that this website was indicative of fun and exciting website for children that does not depict any unhealthy eating choices or practices and that the games are clearly identifiable as a game and are unlikely to be interpreted by children as messaging that would encourage them to eat multiple packets of Wizz Fizz or the other confectionary items.

The Board noted that the inclusion of a Wizz Fizz Club on the website and a game where a monster catches the product is designed to appeal to a broad audience. The reality of the game is that the animated character is collecting product which equates to points.

The Board did not consider that the game is suggestive that children should be encouraged to consume excessive amounts of Wizz Fizz but rather to participate in a fun game that would likely be monitored by parents/guardians.

The Board considered that the advertising or promotion of confectionary in this advertisement does not promote excess consumption and determined that the advertisement did not breach the AANA Food Code.

Finding that the advertisement did not breach the Children’s Code or the Food Code the Board dismissed the complaint.

