



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0111/19
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Outdoor
5	Date of Determination	17/04/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement promotes the Maximus sports drink which is presented as a visual image in the middle of the advertisement. To the left of the image of the sports drink is the tag line "SHE'S LATE", presented in capital letters. To the right of the image of the sports drink is the tag line "SWEAT HAPPENS", also presented in capital letters.

THE COMPLAINT

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

Don't need suggestive things like that on posters. Extremely hurtful to people who can not get pregnant or have had miscarriages. How do I explain the suggestive nature of the poster to my 10 year old daughter who says why is he worried the girl will miss the bus it's silly so poster definitely has a more adult message

THE ADVERTISER'S RESPONSE

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





Complaint Reference Number: 0111/19

We refer to the complaint made in connection with the Maximus sports drink advertisement featured at an outdoor bus stop in Victoria which includes the line “She’s late. 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 (i.e. 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.

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).

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 at 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.

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 although we note the complainant referred to the tagline used in the Advertisement, "she's late" as being "extremely hurtful to people who can not get pregnant or have had miscarriages" and therefore suggestive and inappropriate.

No sexual imagery is used in the Advertisement, which is presented in a light-hearted, humorous and fun way. The Advertisement is in no way insensitive, inappropriate or sexually suggestive, especially having regard to the relevant target audience, which is male adults aged 18 to 39 years. The Advertisement presents to the target audience,



in a humorous way, a common life occurrence, that a female friend or partner may be late. That could be late for a meeting or late for a bus. Even if (which is not admitted) the reference could be construed as being a reference to a possible pregnancy, this may make a member of the target audience sweat and need to replace fluids via the consumption of a large volume Maximus sports drink.

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

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 Code of Ethics (the "Code").

The Panel noted the complainant's concern that the advertisement is sexually suggestive.



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

The Panel noted the billboard advertisement features the text "She's late. Sweat happens". An image of a beverage product is also depicted.

The Panel noted the complainant's concern that the advertisement is hurtful to people who are unable to have children or have had miscarriages. The Panel noted although some members of the community may find this text to be particularly concerning due to their own personal experience, this is not an issue that breaches one of the issues mentioned in the Code and the Panel is unable to consider the complaint on that basis

The Panel 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 Panel noted the complainant's concern that the advertisement features a reference to a person being concerned that a woman in his life is pregnant and that this reference is inappropriate for children to view.

The Panel considered that the phrase may be interpreted by some members of the community to be a reference to a possible pregnancy, however considered that most children will not understand the reference and are more likely to instinctively assume that a woman is late for the bus/train, or an event.

The Panel considered that the reference is not clearly in relation to pregnancy, and noted that in the context of the advertisement the scenario is presented as being uncomfortable or causing someone to sweat, and is not presenting the scenario that could only be in a sexual context.

The Panel considered that the reference itself, 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.

Finding that the advertisement did not breach the Code on any other grounds, the Panel dismissed the complaints.

