



Case Report

1	Case Number	0112/11
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	13/04/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards
2.2 - Violence Other

DESCRIPTION OF THE ADVERTISEMENT

Infomercial style advertisement for Maxibon. A male voice over talks about how eating Maxibon can transform a man from a 'pathetic loser to biting God" in just six weeks. We see various shots of men apparently undergoing this transformation, as well as bikini clad girls admiring the results.

THE COMPLAINT

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

I am a father of three children who has spent time teaching them wrong from right and that bullying has no place in society. We have seen it on TV recently - kids getting bullied at school - and now we promote it on TV to sell ice cream. Do these people look at everything that's wrong for an idea??

THE ADVERTISER'S RESPONSE

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

From your letter I understand the Bureau is concerned the Advertisement may not comply with Section 2 of the AANA Advertiser Code of Ethics (Ethics Code).

On behalf of Nestlé I would like the Board to consider the information below in its consideration of the Complaint. I wish to state at the outset that Nestlé does not consider the Advertisement to be in breach of the Ethics Code and that none of the matters set out in section 2 of the Ethics Code are infringed by the Advertisement.

It is alleged in the Complaint the Advertisement portrays a “macho guy beating up the weak bloke”. Nestlé is unable to comment on this allegation as the Advertisement does not feature such a scene or any other scene that portrays bullying (or even violence). It follows that section 2.2 of the Ethics Code bears no relevance to the Advertisement (being the prohibition against presenting or portraying violence that is not justifiable in its context).

The object of the Advertisement was to reiterate and highlight to the target audience that MAXIBON is a substantial ice cream. To reinforce this notion the Advertisement claims in a 'tongue in cheek' and exaggerated manner that a powerful bite is required to conquer the MAXIBON. Believing its target audience to prefer advertisements that are humorous, Nestlé created the “ManChew” - a device which may be used to strengthen one’s jaw and bite – and made the Advertisement as a spoof of classic exercise equipment 'advertorials'.

It is obvious in the Advertisement the Manchew is not real and complete fantasy, for example from the scene of the talent with obviously prosthetic jaws and the depiction of the large rubber Maxibon modelled on a dog-chew toy.

The Complaint extracts the quote below from the Advertisement in support of his allegation the Advertisement portrays bullying (words in brackets added to accurately reflect the Advertisement) (Quote).

“Be transformed [in just 6 weeks] from pathetic loser to Biting God”

Nestlé respectfully submits the Quote is humorous and ironic and that on no reasonable interpretation could the Quote be said to amount to or encourage bullying.

The Complaint raises as a concern that the Advertisement promotes bullying to children. Nestlé does not see how the Advertisement could be said to promote bullying as the Advertisement does not feature bullying. The Advertisement does not mention or suggest in any way that increased jaw power could be used to intimidate or bully anyone or specifically those who are less well endowed. The Manchew concept and references to jaw strength is an obvious joke on the power of the bite needed to eat MAXIBON. Nestlé could understand the perspective of the Complaint if the “Biting God” was intimidating the “Licker” in the Advertisement, however this is simply not the case.

Having regard to the concern raised in the Complaint regarding the viewing of the Advertisement by Children, Nestlé notes to the Board:

the target audience for the Advertisement was males aged 18–25 and accordingly the media bought for the Advertisement was primarily directed at 18-29 year old males; as this target audience is difficult to reach (they tend to watch only specific programs on TV), Nestlé’s media buyer bought quite distinctive programs; and as a consequence of the length of the Advertisement (90 seconds), the Advertisement was broadcast largely during late night television owing to budgetary constraints.

In relation to any possible breach by the Advertisement of the AANA's Code for Advertising to Children (Children Code), Nestlé has considered this code and is confident the Advertisement raises no issues under this code. In any event, Nestlé submits that as the Advertisement is directed to adults and is not primarily directed to children, the Children Code does not apply to the Advertisement.

Other than the Complaint, Nestlé has not received any other complaints that the Advertisement portrays or encourages bullying (either through its consumer services toll free number, the Manchew website or otherwise).

We have considered above the Ethics Code and the Children Code. You asked that our response also address any issues arising out of the AANA's Food and Beverages Advertising and Marketing Communications Code. We have also considered this code and are confident the Advertisement raises no issues under this 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 complainants' concerns that the advertisement condones bullying. The Board also noted the use of the term ‘freakin’ and a number of images of women in bikinis.

The Board noted the exaggerated and clearly humorous intent of the advertisement to contrast people who ‘lick’ ice creams with those who will need to be able to bite into the ‘man-size’ advertised product.

The Board considered the advertisement within the context of section 2.6 of the Code which requires that advertising or marketing communications shall not depict material contrary to prevailing community standards on health and safety.

The Board considered that the advertisement was intended to be humorous and is a clear contrast between ‘lickers’ and those with ‘man jaws’ who will be able to eat the advertised product. The Board noted the reference to being a ‘pathetic loser’ in the context of being someone who licks ice creams. The Board considered that the references in the advertisement, although depicted through the concepts of the small man versus a strong powerful man, were clearly in the context of increasing jaw strength to be able to consume the product. The Board considered that the exaggerated tone and depictions did not depict any realistic or identifiable section of society (people who lick ice creams) and did not make any serious derogation of those people. The Board also considered that the advertisement did not suggest bullying of small men or boys as it was clearly in the context of ice cream consumption preference.

The Board considered that the humorous context of pitting people who lick ice creams against those who can eat the advertised product did not amount to discrimination or vilification of any people.

The Board considered that this advertisement did not depict material contrary to prevailing community standards on health and safety and was not in breach of section 2.6 of the Code.

The Board also noted the use of the word ‘freakin’ in two places in the advertisement. The Board considered whether this language was in breach of section 2.5 of the Code which requires that ‘advertising or marketing communications shall only use language which is

appropriate in the circumstances and strong or obscene language shall be avoided.’ The Board considered that the word ‘freakin’ was a generally accepted term in the community and although offensive to some people is not, in the Board’s view, strong or obscene language. The Board considered that the term was not inappropriate for a broad audience and noted that this advertisement is targeted to adult males. The Board determined that the advertisement did not breach section 2.5 of the Code.

The Board also noted that two women appear in the advertisement dressed in bikinis and cheerleader skirts and that at moments during the advertisement there is emphasis on their breasts and bottoms. The Board considered that these images were relatively brief and were used as part of the exaggerated and stereotypical images used in the advertisement to depict a ‘popular/strong man’ surrounded by adoring women. The Board considered that in the context of this advertisement the depictions were intended to be satirical and humorous. The Board determined that the images of the women did not discriminate against women and did not breach section 2.1 of the Code. The Board also considered that the brief images of the women in bikini tops and short skirts were very mildly suggestive and that the advertisement treated sex and nudity with sensitivity to the relevant audience which, as the advertiser stated, is mainly later in the evening. The Board determined that the advertisement did not breach section 2.3 of the Code.

Finding that the advertisement was not in breach of the Code, the Board dismissed the complaint.