



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0136/15</b>
<b>2</b>	<b>Advertiser</b>	<b>Frucor Beverages Australia</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Outdoor</b>
<b>5</b>	<b>Date of Determination</b>	<b>29/04/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

2.6 - Health and Safety Within prevailing Community Standards

## DESCRIPTION OF THE ADVERTISEMENT

Bollard covers that look like energy drink cans displaying Marvel Avengers superheroes characters.

## THE COMPLAINT

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

*I think it's wrong that they are allowed to use superheroes who are very appealing to young kids to promote their drink which would probably cause kidney or liver failure to young kids if they drank enough. Where does it end.*

*Has specific appeal to small children due to cartoon characters and small size of the can. V energy website states consumption not recommended for children. Concerned promotion is misleading for consumers who may assume children's drink. This places children in real danger as the drinks can be harmful. Disclaimers aren't enough to protect kids whose guardians won't or can't read the tin. My son wanted one. He is 6.*

## 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 Complaints made in connection with the 'V Energy Drink – Marvel Avengers Co-promotion' Advertisements appearing in Coles and Woolworths catalogues and on outdoor bollards and packaging (collectively, the Advertisements) and 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. As requested, 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 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 Complaint by reference to the:*

- AANA Code for Advertising and Marketing Communications to Children, as the Advertisement is not targeted to children (see our explanation below); or*
- Australian Food and Grocery Council Responsible Children's Marketing Initiative or the Australian Quick Service Restaurant Industry Code, as Frucor are not a signatory to these initiatives.*

*Further, for the purposes of preparing this response, we have not addressed the part of the complaint which refers to the packaging, as packaging falls outside the scope of the AANA Codes.*

*AANA Code of Advertising and Marketing Communications to Children*

*We note that the Complainants addressed concerns around "characters which are popular with young children, and could encourage children who drink these drinks" and "advertising an adult energy drink to children with cartoon characters is offensive and inappropriate". We submit that the AANA Code of Advertising and Marketing Communications to Children does not apply for the following reasons:*

- the Advertisements are not targeted to or directed at children, they are part of a broad campaign which involves a licensing arrangement between Frucor Beverages And Marvel's Avengers Age of Ultron movie franchise;*
- the language of the Advertisements are not directed to children, including a clear call to action intended for adults "Win the ultimate New York Marvel experience" which includes prizes which only adults can accept (or appreciate);*
- the catalogues which form part of the Advertisements are not intended to be read or understood by children, but are targeted at adult consumers;*
- the Avengers properties and merchandise do not feature on any products or Advertisements which are or are intended to target children, the small can size is part of a limited edition promotion;*
- V Energy Drink includes statements on all packaging/labels that it is "not suitable for children" (given the presence of caffeine);*
- the average consumer of V Energy Drink is between 18-35 years old;*
- the Avengers Age of Ultron movie is not targeted to or suitable for children – it is currently awaiting classification, however, given the nature of the content of the movie, the storyline and the visual and graphic elements, it is expected (and intended) to reach audiences of over 15 and rated M, consistent with the previous Avengers movie;*
- all games and associated competitions with the overall campaign are restricted to entrants of aged 15 or over.*

*AANA Code of Ethics*

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

*Clause 2:*

*2.1 the Advertisements do 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, the Advertisement does not contravene Section 2.1 of the AANA Code of Ethics;*

*2.2 the Advertisements do not employ sexual appeal, and accordingly, the Advertisements do not contravene Section 2.2 of the AANA Code of Ethics;*

*2.3 the Advertisements do not present or portray any violence which is not justifiable in the context of the product advertised, and accordingly, the Advertisements do not contravene Section 2.3 of the AANA Code of Ethics;*

*2.4 the Advertisements are not in any way sexually suggestive, and accordingly, the Advertisements do not contravene Section 2.4 of the AANA Code of Ethics;*

*2.5 the Advertisements do not feature language which is inappropriate in the circumstances and is not inappropriate for the relevant audience and medium, and accordingly, the Advertisements do not contravene Section 2.5 of the AANA Code of Ethics; and*

*2.6 the Advertisements do not depict any material which is contrary to Prevailing Community Standards on health and safety, and accordingly, the Advertisements do not contravene Section 2.6 of the AANA Code of Ethics.*

*On the basis of the above, we do not consider that 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 the Advertisements are truthful and honest, are not designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and are communicated in a manner which is appropriate to the level of understanding of the target audience of the Advertisements.*

*We note one Complainant referred to the Advertisements as "misleading for consumers who may assume [it is a] children's drink". As stated above, the target market for V Energy Drink is between 18-35 year olds. Further, the Avengers movie is a very popular franchise targeted towards an older audience. 88% of the audience of the previous Avengers movie was aged 18 years and older. Further, although the Avengers Age of Altron movie has not yet been classified, it is expected that it will be classified as M which is recommended for an audience of 15 years or over (consistent with the classification of the previous Avengers movie which was also M). The entry criteria for all games and associated competitions which are referred to in the Advertisements are restricted to persons of 15 years or older. Most people are familiar with V Energy Drinks and that they contain caffeine and are not recommended for children and such messaging is included on all packaging in a clear and prominent manner. Similarly, an ordinary consumer would be aware of the Avengers movie and understand that it to be a movie not suitable for children.*

*Accordingly, the Advertisements do not contravene Section 2.1 of the AANA Food Code;*

*2.2 the Advertisements do not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonable 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 the Advertisements do 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 by*

*drinking V it 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 The Advertisements do not include any implied or explicit health related comparisons, and accordingly, the Advertisements do not contravene Section 2.4 of the AANA Food Code;*

*2.5 The Advertisements do not 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 The Advertisements do 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, and accordingly, the Advertisements do not contravene Section 2.6 of the AANA Food Code;*

*2.7 The Advertisements do not 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 The Advertisements do not portray V as a substitute for meals, and accordingly, the Advertisements do not contravene Section 2.8 of the AANA Food Code;*

*2.9 The Advertisements comply with the AANA Code of Ethics and 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 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 (“the Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the “Food Code”) or Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement is using characters that are popular with young children to encourage them to drink this product.

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 noted that the product advertised is food and therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply.

In particular the Board considered Section 2.1 of the Food Code which provides:

“Advertising or marketing communications for food or beverage products ... shall not be or be designed to otherwise contravene prevailing community standards.....”

The Board noted the advertisement features images of the cans of drink (V energy drink) with pictures of the Avenger characters on the cans. The image is designed to cover the bollards outside of the store and includes the “4 limited edition tag.”

The Board noted the complainant’s concerns that the advertisement is encouraging children to buy this drink which is not suitable for children.

The Board noted that the product is legally allowed to be advertised, and that the product is

not intended for children. The Board noted that energy drinks are generally understood to be a product that contains caffeine.

The Board noted the advertiser's response that the product does include a required warning statement and stated that the average consumer of this product is aged between 18-35 years. The Board noted that it cannot comment on the labelling aspects of the product, but only the promotion as it appears on the outdoor advertisement.

The Board noted that the image appears outside of the supermarket where the product is available for purchase. The Board noted that the likely audience for this promotion is slightly broader than the similar case considered in supermarket catalogues (0135/15) and it would also include children who may be shopping with the main grocery buyer.

The Board agreed that the characters appearing in the advertisement are characters that children would be familiar with but acknowledged that the movie *The Avengers* and associated marketing promotions are not primarily directed to children as the movie appeals to an older audience and is rated M which means: recommended for mature audiences, and teenagers aged 15 years and over.

The Board considered that the promotion of a product with cartoon characters is not of itself 'contrary to prevailing community standards.' The Board considered that some children would be attracted to the product because of the advertising and would be likely to ask parents to purchase the product for them. However the Board considered that marketing a product in a way that is attractive to a broad audience is not of itself contrary to prevailing community standards. In the case of the current advertisement the Board considered that using images of popular cartoon characters which are attractive to both adults and children is not contrary to prevailing community standards.

Based on the above the Board considered that the advertisement does not contravene prevailing community standards and determined that the advertisement did not breach Section 2.1 of the Food Code.

The Board then considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Board noted that the product is an "energy drink" which is a caffeinated beverage. The Board noted that these types of beverages have specific labelling and compositional requirements as outlined in the Food Standards Code – Standard 2.6.4. The Board noted that the labelling requirement for these beverages includes the need for a warning statement stating that the product is "not suitable for children." And that it would therefore be accurate to consider that the product advertised is a product that is not suitable for children.

The Board noted potential community concern about marketing a product that is not suitable for children in a manner which would be attractive to children.

A minority of the Board considered that it is contrary to prevailing community standards on health and safety to market a product that is unsuitable for children using well recognised cartoon characters that are attractive to children.

The majority of the Board considered that the choice of product was an unfortunate one to use in conjunction with *The Avengers* characters as such characters are indeed attractive to children – albeit also attractive to an adult audience, particularly in association with an M rated movie. The majority of the Board considered however that in this instance the labelling of the product does indicate to parents that the product is not suitable for children and considered that the marketing did not breach current prevailing community standards on health and safety.

Based on the above, the Board determined that the advertisement did not depict any material which is contrary to Prevailing Community Standards on health and safety, and accordingly,

did not contravene Section 2.6 of the AANA Code of Ethics.

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