



Case Report

1	Case Number	0146/15
2	Advertiser	Peters
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	13/05/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code (Children) 3.5 pester power
Advertising to Children Code 2.01 Community Standards
Advertising to Children Code 2.07 Parental Authority

DESCRIPTION OF THE ADVERTISEMENT

Peters Fandangles Ice Cream Website.

THE COMPLAINT

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

We believe the website breaches the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Advertising and Marketing Communications Code because it is a communication directed primarily to children of Fandangles ice creams which do not represent healthy dietary choices consistent with established scientific standards and it does not promote healthy dietary habits or physical activity.

The free game is a simple game fashioned on the popular game "bejeweled blitz" and is very easy for children to play. There are no age barriers to playing the game. The website itself is very inviting for children engaging them through scrolling and images of marshmallows with faces and flying saucer cookies complete with space creature pilots wobbling as the mouse hovers over the page.

Other games can be unlocked after the purchase of product to obtain a code. This would encourage children to pester their parents to buy these products. Fandangles ice creams are not healthy dietary choices as they receive 2.5 stars in the Health Star Rating Scheme and do

not qualify as a healthy food according to the Food Standard 1.2.7 – Nutrition, Health and Related Claims. They contain over 20% sugar and the World Health Organisation and the Australian Dietary Guidelines recommend we should limit our consumption of added sugars. This website contravenes prevailing community standards by promoting unhealthy food to children. It engages children in an activity which is primarily aimed at marketing unhealthy product to them in the guise of a fun activity. Children would not recognise this form of marketing because of its sophisticated technique but they could potentially be highly exposed to it due to its activity-based format.

THE ADVERTISER'S RESPONSE

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

We wish to confirm that Peters Ice Cream takes its advertising and communications obligations very seriously and thank you for allowing us the opportunity to respond. It is the submission of Peters Ice Cream that the Fandangles Website (www.fandangles.com.au) and its related Apps are not likely to be considered as being directed to children or predominantly directed to children and that the present complaint should be dismissed and no further action taken. In this regard, we make the following points

1. Background

The Ice Cream category is one that consumers have a strong emotional connection to and 'fun' plays an important role in communicating to consumers. Peters Fandangles is a new ice cream brand which was launched to appeal to consumers of all ages and was developed in the style of Cadbury Marvellous Creations and Nestle Wonka brands.

2. The Content of the Website/App

The Fandangles website has been developed to the brief of an ice cream for families or adults pre-kids, with a focus on the main grocery buyer 25 – 35 years old. The purpose of the website was to provide a place for people to gain nutritional information, information on flavours and to interact with the brand.

3. Supporting Data

The most frequent shopper of the Fandangles brand is women (25-35). With these women controlling \$132 billion worth of household spending, it is critical we speak to and engage with her.

Women are major users of mobiles in Australia, with approximately 93% owning a smartphone and 51% owning a tablet - well above the average. These women use their mobiles and tablets for a broad range of functions – to streamline their lives (calendar, maps, banking, etc.) but also to utilise the much important 'me time'. They want to connect with brands more than other demographics and use their mobiles and tablets to read reviews, research products and engage with brands.

Gaming through apps and websites is increasingly popular with women, and many brands in Australia have taken advantage of this. Games need to be positive, simple to understand, socially connected and not require a huge time investment. Games should be built to be played with one hand, tapping into the insight that women often play games when multitasking. One of the top 5 applications on smart phones for women in this age group was Candy Crush, which has been the inspiration behind the games on the Fandangles website.

4. Access to the games.

In addressing the concern around forced purchase to unlock games, each of the games available on the Fandangles website are free to download as individual apps on the iTunes Store without the need for a code to unlock.

5. Nutritional Status of Fandangles

The range of Fandangles is made with reduced fat ice cream, contains no artificial colours and is between 87 – 91 calories per serve.

These products are also classified as Amber rated as per the following; NSW Canteen Association – Fresh Tastes @ School, Victorian State Government Department of Education & Early Childhood Development – Healthy Canteens, Queensland State Government Department of Education & Arts – Smart Choices Healthy Food and Drink Supply Strategy for Queensland Schools, South Australian State Government Department of Education and Child Development – Right Bite Policy. Choc Shmallow and Caramel Popcorn are also classified for the Western Australian School Canteen Association – Star Choice™ Food Registration Program.

6. Section 2 of the Advertiser Code of Ethics

Peters Ice Cream contends that the website does not breach any parts of the Section 2 of the AANA Code of Ethics as follows;

2.1 - Discrimination or vilification

2.2 - Exploitative or degrading

2.3 - Violence

2.4 - Sex, sexuality and nudity

2.5 - Language

2.6 - Health and Safety

Peters Ice Cream appreciates the board's careful consideration of this complaint.

THE DETERMINATION

The Advertising Standards Board (“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 complainant’s concerns that the advertisement is promoting an unhealthy food choice to children and would encourage children to pester their parents to purchase the product to be able to access more of the website.

The Board noted that the advertiser is not a signatory of the Australian Food and Grocery Council’s Responsible Children’s Marketing Initiative (RCMI) and therefore the provisions of the RCMI do not apply in this instance.

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

The Board considered whether the Children’s Code applied.

The Board considered the definition of advertising or marketing communication. Under the Children's Code, Advertising or Marketing Communications to Children means "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product." The Board noted that Children are defined as "...persons 14 years old or younger" and Product is defined as "...goods, services and/or facilities which are targeted toward and have principal appeal to Children."

The Board noted the current promotion is the website for Fandangles at www.fandangles.com.au The Board noted the website includes tabs for the HOME page, FLAVOURS page, NUTRITION, GAMES AND CONTACT pages. The Board noted that complainant refers to the website as a whole but in particular the games page.

The Board noted the overall theme of the website and considered that the various tabs provided different overall impressions and would be considered separately.

The Board first considered the HOME page. A minority of the Board considered that the combination of the colours, the animated food characters and the product names did amount to a depiction that was of directed primarily to children under 14 years of age. The majority of the Board however, felt that although there was a large appeal to children, the ice-creams themselves, the colours and concepts were not limited to children and that there would be considerable appeal also to adults. Based on this, the Board considered that the HOME page was of appeal to both children and adults equally and therefore was not of directed primarily to children.

The Board noted the animated characters created from food items on the FLAVOURS page. The Board considered that consistent with its recent determination in case 0463/14 whilst animation has become more sophisticated over the years the use of animation does not necessarily mean it is directed primarily to children.

In the Board's view the style of animation and the website setting in this instance would be of appeal to children and adults alike. The Board noted the language and considered that the humorous nature of the text regarding each flavour is intended to amuse and is far-fetched enough to appeal to a broad audience and not just children. The Board acknowledged that the advertisement would be of appeal to all ages and considered that the overall theme, visuals and language are in this instance not directed primarily to children.

The Board then considered the NUTRITION page. The Board noted the nutrition page includes ingredient lists for the product and nutritional information. The Board considered that the amount of text and technical data was clearly intended to provide the main grocery buyer with factual information about the product and was not directed primarily to children.

The Board considered the CONTACT page. Similar to the nutrition page mentioned above, the Board noted the contact page includes corporate information to provide the reader with

more information about the product and the company. The Board considered that the amount of text and technical data was clearly intended to provide the main grocery buyer with factual information about the product and was not of principal appeal to children.

Finally, the Board considered the GAMES tab. The Board noted the availability of one free game that could be played immediately. The Board noted the 'Fiesta game' and agreed that the game itself was likened to 'candy crush' and 'Tetris' and other games that are commonly played on electronic devices. The Board noted the other games were unable to be played unless a special code was obtained and entered from ice cream products. The Board noted the advertiser's response that the game is targeted to adults (particularly women) who like to play the game while completing other tasks or 'multitasking.' A minority of the Board considered that the games page was directed to adults and children equally. The majority of the Board however, considered that the concept of the games tab and the associated games is to attract children to the website or a component of it at least and that overall the colour and music and simplicity of the game was in the Board's view directed primarily to children.

The Board then considered whether the advertisement meets the definition of Product. The Board noted the advertised product is the entire range of flavoured ice-creams and considered that whilst these products may appeal to adults in the Board's view they are products targeted towards, and of principal appeal to, children.

Finding that the advertisement is directed primarily to Children and is for Product the Board considered the advertisement against the Children's Code.

The Board first considered Section 2.7(b) of the Children's Code which provides: "Advertising or Marketing Communications to Children must not contain an appeal to children to urge their parents, carers of another person to buy a Product for them."

The Board considered specifically the need for a special code to unlock games on the website where the code is only available from the product themselves. The Board noted that in most cases a child would be accessing the website under the supervision of an adult and that the purchase of product for the purpose of obtaining a code is a decision that can be made by the adult present. The Board considered that the locked status of these games would mean that children may urge their parents to buy the ice-creams so that they can continue playing however the Board considered that accessing the website on a computer or electronic device meant that there would be access to other games that did not require such a code and therefore the parent or carer would remain the decision maker about whether or not to buy the product. It was the view of the Board that overall the need for a code to unlock games on a website was not a specific appeal to children to urge parents to buy the product and did not breach section 2.7(b) of the Code.

The Board considered Section 2.14 (a) of the Children's Code which provides: "Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits".

The Board noted the complainant's concern that the advertised product is unhealthy. The Board considered that the advertisement does not encourage excess consumption of the product and noted that it has consistently determined that an advertisement for a food or beverage product, regardless of its nutritional value, does not of itself promote unhealthy eating habits.

The Board considered that the website did not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits.

The Board determined that the advertisement did not breach Section 2.14 (a) of the Children's Code.

The Board then considered Section 2.14 (b) of the Children's Code which provides: "Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code."

The Board considered section 2.1 of the Food Code which provides: 'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

The Board noted it has consistently determined that an advertisement for a food or beverage which has high fat, kilojoule and/or salt levels does not in itself breach prevailing community standards.

The Board noted the complainant's concern that advertising unhealthy foods to children is not consistent with prevailing community standards. The Board noted the advertiser's response that the advertised product is classified as Amber rated by the NSW Canteen Association as well as similar organisations in other states. The Board considered that whilst there is community concern about the advertising of unhealthy food products to children in the Board's view this concern does not amount to a community standard that advertising a food of a particular nutrition profile to children should be prohibited. The Board noted that products such as Fandangles are legally allowed to be advertised and considered that in this instance the content of the advertisement does not breach any of the provisions of the Food Code.

Based on the above the Board considered that the advertisement was not misleading and did not contravene prevailing community standards on healthy eating.

The Board determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Children's Code or the Food Code the Board dismissed the complaints.