



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0148-20
2. Advertiser :	Frucor Suntory Australia Pty Limited
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	13-May-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity
AANA Code of Ethics\2.5 Language

DESCRIPTION OF ADVERTISEMENT

This TV on Demand advertisement features a young man standing in a pink fantasy landscape, the words 'THE PROCRASTINATION PLACE' are on a flying banner being pulled by a dragon in the sky. The man asks, "hey, what just happened?". An anthropomorphised pickle in a chefs hat is holding a fry pan with a tortilla floating above it. He responds, "you've been procrastinating with lots of food porn, and regular porn."

The man responds, "no, no I haven't".

A hand holding an energy drink appears out of a swirling green vortex and a voice says, "you've got stuff to do".

The man drinks the energy drink.

The hand holding the drink coming out of the vortex is shown, with the text and voice over, "Make it happen".

THE COMPLAINT

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

Talking about porn in a ad made for all ages seems crass, in a world of overt sexualisation I have had enough of this content permeating everything . This is at a family time for a pg rated show.



The use of the word porn is not appropriate for my children to hear while watching catch up episodes of lego masters and modern family.

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 advertisement which includes a reference to “food porn” when the actor finds himself in a fantasy land called “The Procrastination Place” (Advertisement). We thank you for the opportunity to provide a response to this complaint.

Background – the V energy drink advertising campaign

The Advertisement is part of a broader campaign that takes a light-hearted look at the way people procrastinate using the internet, and seeks to position the V energy drink as the solution to get a consumer out of “The Procrastination Place” and focused on what they need to do. The execution in this Advertisement in particular makes light of the time people waste on the internet watching various cooking and baking content, which is commonly referred to as “food porn”. The Advertisement is targeted at an audience aged between 18 and 44 years.

Response to issues raised in the complaints

Frucor 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 complaints 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 complaints, 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 complaints 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 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 V energy drink are adults between the ages of 18 and 44 years;*
- the Advertisement is targeted at adults between the ages of 18 and 44 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.

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 adults aged 18 to 44 years. The Advertisement attempts to engage the target audience, in a humorous way, on a common life occurrence, being that of procrastination, and does not use sexual imagery to further its message. The use of



the word “food porn” is in no way sexually suggestive. It is a term that is commonly used in today’s parlance and reasonable consumers, including the target audience, understand the term and its use to define food that is presented in enticing and sometimes artistic ways.

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. Although there is a reference to “real porn” in the Advertisement, it is not the focus of the Advertisement, is not used inappropriately and indeed, it is used as a counterpoint to highlight that procrastination has come from the indulgence of the actor in “food porn”.

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 and don't take themselves too seriously.

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 V energy 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 V energy 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 Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that:

- The advertisement is sexualised and inappropriate for family viewing
- The use of the word 'porn' is inappropriate for children to hear

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



The Panel noted the complainants' concerns that the advertisement is sexualised and inappropriate for family viewing.

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 considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered whether the images depicted sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is 'sexual intercourse; sexually stimulating or suggestive behaviour.' (Macquarie Dictionary 2006).

The Panel considered that the advertisement suggests that the man has been procrastinating using 'real porn' and that this is a reference to sexually stimulating behaviour. The Panel considered that the advertisement references sex.

The Panel considered whether the advertisement featured sexuality. The Panel noted the definition of sexuality includes 'sexual character, the physical fact of being either male or female; The state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one's capacity to experience and express sexual desire; the recognition or emphasising of sexual matters'. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.

The Panel considered that the reference to 'real porn' in the advertisement is a recognition of sexual matters. The Panel considered that the advertisement did include sexuality.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes 'something nude or naked', and that nude and naked are defined to be 'unclothed and includes something 'without clothing or covering'. The Panel considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is a factor when considering whether an advertisement contains nudity.

The Panel noted that the man in the advertisement was fully clothed. The Panel considered that the puppet character is standing behind a rock so that only the top half of its body is visible. The Panel considered that the advertisement does not contain nudity.

The Panel then considered whether the advertisement treated the issue of sexuality with sensitivity to the relevant audience.

The Panel considered the meaning of 'sensitive' and noted that the definition of sensitive in this context can be explained as indicating that 'if you



are sensitive to other people's needs, problems, or feelings, you show understanding and awareness of them.' (<https://www.collinsdictionary.com/dictionary/english/sensitive>)

The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' is a concept requiring them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement – the concept of how subtle sexual suggestion is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted the advertiser's response that the advertisement was targeted at adults, and the target audience would understand that the use of the words 'food porn' were not sexually suggestive.

The Panel considered that the complainants indicated that they had viewed the advertisement whilst streaming Modern Family and Lego Masters and that the audience for these shows would likely be families and include children.

The Panel noted that it had recently considered a similar issue in case 0021-20, in which:

"The Panel considered that the word pornography of itself is not explicit and the use of the word, without any actual depiction of that type of content, is not a breach of the Code. The Panel acknowledged that some members of the community would prefer that this word not be used on television where children can hear it, but considered that the actual content of the advertisement is not sexually explicit and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children."

Consistent with the previous determination, the Panel considered that the use of the word 'porn' in the current advertisement was not explicit. The Panel considered that the advertisement did not depict or explain the meaning of the word and that the overall advertisement was not sexually explicit, or inappropriate for the broad audience.

The Panel considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Panel noted the complainants' concerns that the use of the word 'porn' is inappropriate for children to hear.



The Panel considered that the word porn of itself is not explicit and the use of the word, without any actual depiction of that type of content, is not a breach of the Code.

The Panel acknowledged that some members of the community would prefer that this word not be used on television where children can hear it, but considered that the use of the word in itself is not inappropriate in the circumstances, or strong or obscene.

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

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