



## Case Report

1	Case Number	0171/15
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Billboard
5	Date of Determination	13/05/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards  
Advertising to Children Code 2.10 Popular personalities  
2.6 - Health and Safety Within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement is promoting V energy drinks in conjunction with the heroes from the current Marvel Avengers movie.

### THE COMPLAINT

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

*We believe the V energy drink outdoor ads are advertising to children and breach the AANA codes as V is not a drink that is suitable for children.*

*There is plenty of evidence that the cartoon characters, the Avengers, are characters that children will relate to and their use in an ad would be considered advertising to children. We are able to send through two examples of why we consider the characters to be characters that appeal to children. The Myer catalogue 1-26 April 2015 has a cover picture of Avengers dress ups for young children (under 5 years). The catalogue also includes Avengers toys, children's clothes for 3-16 year olds featuring Avengers' characters and children's books including a "factivity collection". As well, we have an ad from a suburban Sydney newspaper which advertises a Captain America Meet and Greet activity at the local shopping centre as well as the chance to win an Avenger show bag during the school holidays. This is clearly aimed at school age children and clearly links these cartoon characters with primary school aged children. Images can be sent through on request. This evidence shows there is no*

*question that these characters do appeal to children and are very recognisable by the 3-12 year age group.*

*V energy drink should not be advertised to children as it is not an appropriate drink for children and by advertising it to children, Frucor is promoting unhealthy drinking.*

*The ad breaches the code because it promotes unhealthy drinking habits (clause 2.14 AANA Code for Advertising & Marketing Communications to Children) by using popular personalities that appeal to children.*

*We also ask Frucor to show responsibility by signing the Responsible Children's Marketing Initiative.*

*All images to support this complaint can be supplied on request.*

## **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 further Complaints made in connection with the 'V Energy Drink – Marvel Avengers Co-promotion' and brand Advertisements appearing at Kings Cross Station in NSW (collectively, the Advertisements) and thank you for the opportunity to provide a response. This response should be read in conjunction with our previous responses, as it deals with the same subject matter.*

*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.*

*We submit that the Advertisements do not fall within the definition of 'Advertising and Marketing to Children'. Accordingly, the AANA Code of Advertising and Marketing for Children does not apply to the Advertisements.*

*Please note that we have not assessed the Complaint by reference to the 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.*

*We have also not assessed the Complaint referring to the Myer catalogue, as the catalogue did not feature Frucor or V Energy drink branding, nor did Frucor endorse or approve such advertising, including in relation to products which are directed to or have principal appeal to children.*

*AANA Code of Advertising and Marketing Communications to Children*

*We note that the AANA Code for Advertising and Marketing Communications to Children does not apply to the Advertisements, for the same reasons as set out in our previous response, including that the Advertisements do not fall within the definition under that Code of 'Advertising or Marketing Communications to Children', being:*

*'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product'*

*'Product' is defined as:*

*'goods, services and/or facilities which are targeted toward and have principal appeal to Children'*

*In addition, and as noted in our previous response to complaints, 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 rated M;*
- V Energy Drink includes statements on all packaging/labels that it is 'not suitable for children' (given the presence of caffeine);*
- the average consumer and purchaser of a V Energy Drink is between 18-35 years old. 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;*
- the Avengers Age of Ultron movie is not targeted to or suitable for children – it is rated M which is for mature audiences over 15 years of age, as the nature of the content of the movie, the storyline and the visual and graphic elements, mean that it is not suitable for audiences under 15, consistent with the classification given to 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.*

*We note one Complainant states that "it is 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". We re-iterate that all product packaging and labels have prominently displayed a warning that V Energy Drink is 'not suitable for children' and that the products contain caffeine.*

*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.*

*The brand tagline, 'the massive hit that improves you a bit' is advertising puffery or humour and is not a health claim or likely to mislead consumers about possible gains due to the consumption of the product.*

*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 three billboards displayed together. One billboard features only the Avengers characters. One billboard features the V-energy cans of drink with the characters on the cans and the third billboard features on the text “The massive hit that improves you a bit.” The Board noted the complainant’s concerns that the advertisement is encouraging children to buy this drink because of the appeal of the characters and that the drink 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 billboard advertisement.

The Board noted that the images appear at a railway station and that this would mean that it is likely to be viewed by a broad audience that would include children.

The Board agreed that the characters featured in the advertisement are characters that children would be familiar with but acknowledged that the movie The Avengers is not primarily directed to children as the movie appeals to an older audience as well 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.

The Board noted that the advertisement’s reference to “improves you a bit” is advertising puffery or humour and is not of the specificity needed to be a health claim or likely to mislead consumers about possible gains purely due to the consumption of the beverage. 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.