



Case Report

1	Case Number	0181/13
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	12/06/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a young woman who changes her clothing depending on the venue/function that she is attending. As her clothing changes so does the ice-cream she is eating. Some occasions it is the Magnum Pink and other times the Black.

THE COMPLAINT

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

Magnum Pink Marc De Champagne ice cream :its an alcohol ice cream contains 1% Champagne. it was advertised in prime time tv 10.15am on Gem tv 14.5.13 this is the time that children watch tv so its directed at children. it contains no age restrictions in advertisement or responsible consumption in advertisement or packaging it does not clearly state that is has 1% alcohol in its advertisements and packaging Magnum Pink Marc De Champagne ice cream is targeted at what mood are you in Magnum Pink Marc De Champagne or black.

THE ADVERTISER'S RESPONSE

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

The complaint

The complaint alleges that the advertisement is promoting alcohol to children and fails to disclose the alcohol content of the product. The complainant alleges that the advertisement was shown at 10:15am on GEM on 14 May 2013.

Response to Complaint

Our investigations have shown that no Magnum advertising activity occurred on 14 May 2013. We have received confirmation of this from both our media buyer and from Channel 9 / WIN, the operators of GEM. It also appears that the program shown at 10:15am on 14 May 2013 on GEM was "Home Shopping", a program that does not contain commercial breaks. We also note that "Home Shopping" shown at a time when most children would be at school, would not be reasonably considered as a program viewed by children.

We enclose a digital copy of programming on GEM from 10:13am to 10:16am on 14 May 2013 provided by GEM.

Notwithstanding the above, we refer to the Board's decision in 126/13 in relation to the Magnum marc de Champagne product and its primary audience. We again emphasise that the products are not children's products and the themes, visuals and language used in the advertisement are not directed at children.

We also refer to our response and the Board's decision in 126/13 in relation to the use of the name Magnum Pink marc de Champagne and the statutory position that does not require such products to be labelled with percentage alcohol content. We further point out that we believe that a reasonable consumer viewing the advertisement would be aware that an ice cream labelled as "Magnum Pink marc de Champagne" would contain some level of alcohol.

Conclusion

We note that the advertisement was not shown at the alleged time.

Even if the advertisement was shown at 10:15am on 14 May 2013 on GEM in Woollongong during "Home Shopping", given that the use of the Marc de Champagne name has been reviewed and accepted by the Board in 126/12, and the use in this instance is consistent with previous use, we do not see any basis for an allegation that the advertisement breaches prevailing community standards on health and safety or advertising to children.

We are confident that the advertisement complies with all aspects of the AANA Code of

Ethics.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (Children’s Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) and the AFGC Responsible Children’s Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

The Board noted the complainant’s concerns that the advertisement is promoting alcohol to children.

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

The Board noted that the advertisement features a young woman eating one flavour of ice-cream and viewing a glamorous event, changes her outfit and ice-cream to a more suitable one for the occasion. The tagline appears with a voice over that says “different Magnums for different moments.” The woman’s outfit and ice-cream flavour changes again to suit a different environment and eventually a fancy car that arrives to pick her up. The final tagline reads “Magnum, for pleasure seekers”.

The Board firstly considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that under the AFGC RCMI the relevant requirement is that the company does not advertise food and beverage products to children under 12 in ‘media’ unless those products represent healthy dietary choices.

Media is defined as: ‘Media means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children. In regards to television, this includes all P and C Programs; all programs where more than 50% of the audience is children under 12 years; plus those G rated programs that meet the criteria above as being designed for children.’

The Board noted the RCMI Initiative provides that advertising or marketing communication activities are captured under the RCMI Initiative if:

1. the audience of the communication activity is predominantly children; or
2. the media in which the communication activity appears is clearly directed primarily to children; or

3. the communication activities are, regardless of the audience, clearly directed primarily to children.

The Board also noted that it should consider whether the themes, visuals, language and concepts are those that are attractive to children under 12.

The Board considered the requirements of the RCMI above and determined that neither the audience, or the media where the advertisement was aired ie: Home Shopping Program was directed primarily to children and regardless of the audience, the communication activities were not clearly directed primarily to children. Based on this, the Board determined that the advertisement did not breach the provisions of the AFGC RCMI.

The Board considered the definition of advertising or marketing communications to children under the Children's Code. Advertising or marketing communication 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 the dictionary definition of "primarily" is "in the first place" and that to be within the Children's Code the Board must find that the advertisement is aimed in the first instance at children 14 years old or younger.

The Board noted that the advertisement features images of two Magnum ice-creams: Pink Marc de Champagne and Black Espresso. The Board noted that Magnum ice-creams are aimed at adult consumers and considered that in this instance the flavours of the ice-creams are clearly aimed at adults and not children.

The Board agreed that the theme, visuals and language of the advertisement being a depiction of two Magnum ice-creams in flavours aimed at an adult's palate with the images of a young woman transforming from one outfit to another dependent on the situation she is in, is not a concept that is directed at children.

Finding that the advertisement is not directed primarily at children the Board considered that the advertisement did not fall under the provisions of the Children's Code.

The Board noted that the product advertised is food and that 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 ...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.'

As noted above, the Board considered that Magnum ice-creams in Champagne and Espresso flavours are products which are of appeal to adults, not children. The Board noted the advertiser's response that the alcohol content of the champagne version of the product is well below the content considered safe for general consumption by all members of the community including children and considered that a depiction of a product named after an alcoholic beverage is not of itself a depiction which advertises alcohol to, or encourages alcohol consumption by, children.

Based on the above the Board considered that the advertisement did not breach Section 2.1 of the Food Code.

The Board noted that they had recently dismissed a similar complaint (0126/13) relating to the billboard advertisement for these ice-creams and consistent with that decision found that this advertisement did not breach the Food Code and the Board dismissed the complaint.