



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 :	0187-20
2. Advertiser :	Stuart Alexander & Co
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Transport
5. Date of Determination	24-Jun-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AFGC - Responsible Childrens Marketing Initiative\RCMI 1.1 Advertising Message
AANA Advertising to Childrens Code\2.2 Factual presentation
AANA Advertising to Childrens Code\2.14 Food and beverages
AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive
AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims
AANA Food and Beverages Code\3.1 Misleading/urgency/price minimization
AANA Food and Beverages Code\4.1 Must comply with RCMI

DESCRIPTION OF ADVERTISEMENT

This transport advertisement for Mentos depicts pictorial graphics of a cow playing piano along with three caricatures of fruit, including a mango drinking a milkshake, a banana drinking through a straw and a strawberry with a jug of milk.

THE COMPLAINT

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

Using the cartoon characters of friendly happy fruit and a dairy cow primarily appeals to children. It's a very 'fun' graphic and the text 'made from awesome' is kid language that I doubt many adults use in common conversation.

Mentos is not a healthy option and having the visual of the fruit cartoons, smoothie and the word 'smoothies' (all which are viewed by the public as healthy options) MISLEADS children (and parents) that these lollies are good for you and contain food



from the core food groups outlined in the Australian Dietary Guidelines (fruit and dairy). Stop using core foods as this creates a 'health halo' for a product that is so far from a core food and is pure sugar.

THE ADVERTISER'S RESPONSE

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

I refer to your letter dated 10 June 2020 regarding the complaint lodged with the Ad Standards Community Panel in respect of a mentos® Smoothies billboard ad on a several buses in Sydney, commissioned by the owner of the mentos® brand, Perfetti Van Melle Group B.V. (PVM).

Stuart Alexander & Co Pty Ltd (Stuart Alexander) is the exclusive distributor of mentos® products in Australia for PVM.

Description of the advertisement

The advertisement depicts pictorial graphics of a cow playing piano along with three caricatures of fruit, including a mango drinking a milkshake, a banana drinking through a straw and a strawberry with a jug of milk. The background of the add is inspired by the product packaging design, including colourful pictorial graphics of different coloured splashes that match the colour of the mentos® dragées and reflect the different flavours of the mentos® Smoothies (ie orange for mango, yellow for banana and pink for strawberry). The advertisement also includes the following campaign slogan in white block print:

“made from awesome”

Placement of the advertisement

As set out in the Creative Media Matrix attached as Appendix B, the advertisement was only placed in the following paid media:

- (a) on the sides of buses;*
- (b) street furniture (static and digital), including bus shelters;*

retail billboards; in NSW, Victoria, Queensland, South Australia, and Western Australia.

Whether audience of programs are predominantly children



As set out in this response, the advertisement is not featured in any programs. In any case, the target audience for the advertisement is not children. The target audience for the advertisement is adults aged between 24 to 54, being the 'Main Grocery Buyer'. Attached as Appendix C is a Brief and Appendix D Brief Profile & Appendix (both dated 19 August 2019) and as Appendix E is a copy of the Media Plan for the mentos® Smoothies advertising campaign, including the bus billboard advertisement that is the subject of this complaint. The attached Brief Profile and Media Plan clearly show that the target market for the campaign, including the advertisement, is adults aged between 24 to 54 – the Media Plan in particular sets out that the buying group for all Out of Home (OOH) advertising is 'MGBwCH', being 'Main Grocery Buyer with Children' aged 24 to 54.

Substantiation of any health, nutrition or ingredient claims or statements

The advertisement does not include any health, nutrition or ingredient claims or statements.

Our response

It is the position of Stuart Alexander that the advertisement, does not breach the:

(a) AANA Code of Ethics (AANA Code of Ethics)

(b) AANA Food and Beverages Marketing and Communications Code (AANA Food Code); or

(c) AANA Code for Advertising and Marketing Communications to Children (AANA Children Code).

We submit that this is because:

(a) AANA Code of Ethics

- (i) The advertisement does not discriminate against or vilify a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief (section 2.1 of AANA Code of Ethics).*
- (ii) The advertisement does not employ any sexual appeal in any manner (section 2.2 of AANA Code of Ethics).*
- (iii) The advertisement does not present or portray violence in any manner (section 2.3 of AANA Code of Ethics).*
- (iv) The advertisement does not portray any images of sex, sexuality or nudity (section 2.4 of AANA Code of Ethics).*
- (v) The advertisement only uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium), and does not include any strong or obscene language (section 2.5 of AANA Code of Ethics).*



- (vi) The advertisement does not depict any material that is contrary to Prevailing Community Standards on health and safety (section 2.6 of AANA Code of Ethics).*
- (vii) The advertisement is clearly distinguishable as advertising, due to the nature of the content, where it is placed (buses, street furniture, and retail billboards), the theme and visuals, campaign slogan and the use of the mentos® logo (section 2.7 of AANA Code of Ethics).*

(b) AANA Food Code

Advertising or Marketing Communications for Food or Beverage Products

- (i) The advertisement is truthful, honest and not designed to mislead or deceive consumers or contravene Prevailing Community Standards. As mentioned above, the target market for the advertisement is 24 to 54 year olds, being the 'Main Grocery Buyer'. The advertisement does not make any representations or references to nutritional values or health benefits. It simply depicts pictorial representations of fruit caricatures to indicate to the target market that there are different flavoured dragées in the mentos® Smoothies product, including Mango, Banana and Strawberry dragées (section 2.1 of AANA Food Code).*
- (ii) The advertisement does not:*
 - a. undermine the importance of a healthy lifestyle, as it does not disparage healthy foods or food choices or physical exercise; or*
 - b. encourage excess consumption, as a member of the community in the target market would not take any message from the advertisement that condones excess consumption (section 2.2 of AANA Food Code).*
- (iii) The advertisement does not include any nutritional or health claims. A regular adult family shopper would not interpret anything in the advertisement as being a health or nutrition claim, as the advertisement simply depicts pictorial representations of fruit caricatures (not real fruit) to indicate the flavour of the products and a regular adult family shopper would not consider mentos® Smoothies products as being products that are predominantly made of fruit as opposed to simply being confectionery products (section 2.3 of AANA Food Code).*
- (iv) The advertisement does not contain any nutritional or health related comparisons (section 2.4 of AANA Food Code).*
- (v) The advertisement does not make any reference to consumer taste or preference tests (section 2.5 of AANA Food Code).*
- (vi) The advertisement does not include any claims relating to the size, nutrition or health benefits of mentos® Smoothies products. There are no claims in the advertisement relating to the taste or content of the products (section 2.6 of AANA Food Code).*
- (vii) The advertisement was placed on buses, street furniture, and retail billboards.. It does not appear within segments of media devoted to general and sports news and/or current affairs (section 2.7 of AANA Food Code).*
- (viii) The advertisement does not portray mentos® Smoothies products as being intended or suitable as substitutes for meals. A regular adult family shopper*



would not consider anything in the advertisement as suggesting that the products are suitable as a meal replacement (section 2.8 of AANA Food Code).

- (ix) The advertisement complies with:
- a. the AANA Code of Ethics (as set out under part (a) above); and
 - b. the AANA Children Code (as set out under part (c) below)
 - c. (section 2.9 of AANA Food Code).

Advertising Food & Beverages and Children

- (x) The advertisement is not directed primarily towards children aged 14 years or younger as:
- A. the target market for the advertisement is adults aged 24 to 54 years (as evidenced above);
 - B. mentos® products are enjoyed by consumers of all ages. It is not primarily a children's product. The product is enjoyed by many adult consumers;
 - C. the advertisement does not include any children's themes or characters – the purpose of the fruit caricatures in the advertisement is to communicate to the Main Grocery Buyer that the new mentos® smoothie roll comes with three flavours (mango, banana and strawberry) and that it is a family-friendly product, for all to enjoy;
 - D. the advertisement does not tell any stories from a child's perspective or include any uncomplicated storylines directed primarily to children;
 - E. the visuals in the advertisement are bright and colourful to reflect the branding and packaging of the mentos® Smoothies product and to attract the attention of adults of all ages, including the target market (being adults aged 24 to 54 years). Because the advertisement was placed on buses, street furniture, and retail billboards, it is intended to be visually striking to attract the attention of the target market, as they will likely only have a short amount of time to view the advertisement due to the bus usually being in motion or because they are travelling past the billboard.
 - F. as the visuals and language in the advertisement are not primarily directed to children, there is no 'call to action' directed to children

(section 3 of the AANA Food Code)

- (xi) If it was to be determined that the advertisement is directed primarily to children:
- A. the advertisement does not mislead or deceive children in relation to any nutritional or health claims as a reasonable child would not form any views towards nutritional value or health in relation to the advertisement (section 3.1 of the AANA Food Code);
 - B. it is not Stuart Alexander's intention, and it could not reasonably be regarded as being its intention, to improperly exploit children's imagination to encourage children to consume excessive quantities of mentos® Smoothies product. More importantly, a reasonable child would not be



- encouraged, from viewing the advertisement, to consume excessive quantities of mentos® Smoothies product (section 3.2 of the AANA Food Code);*
- C. the advertisement does not state nor imply that possession or use of mentos® Smoothies product will afford physical, social or psychological advantage over other children, or that non possession of mentos® Smoothies product would have the opposite effect (section 3.3 of the AANA Food Code);*
- D. the advertisement is not aimed at undermining the role of parents or carers in guiding diet and lifestyle choices (section 3.4 of the AANA Food Code);*
- E. the advertisement does not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy mentos® Smoothies product for them (section 3.5 of the AANA Food Code); and*
- F. the advertisement does not feature any premiums and only features pictorial representations of fruit as flavours, as the flavours of the mango, banana and strawberry are an integral element of the mentos® Smoothies product, which is crafted to taste like the fruits that are shown in the advertisement. The mentos® Smoothies product recipe includes reconstituted fruit juice as an ingredient (section 3.6 of the AANA Food Code).*

(c) AANA Children Code

- (i) For the reasons set out under paragraph (b)(x) above, the advertisement is not directed primarily towards children aged 14 years or younger, so the advertisement cannot be in breach of the AANA Children Code because it is not a 'Advertising or Marketing Communication to Children' (as defined in the AANA Children Code).*
- (ii) If it was to be determined that the advertisement is directed primarily to children:*
- A. the advertisement does not mislead or deceive children, is not ambiguous and accurately represents:*
- the mentos® Smoothies product, including the size of the product, which is included prominently at the bottom of the advertisement; and*
 - that the advertisement is a commercial communication rather than editorial content or other non-commercial communication, in a manner that can be clearly understood by children aged 14 years or younger (section 2.2 (a), (b) and (c) of AANA Children Code);*
- B. the advertisement does not include any prices and does not imply that the mentos® Smoothies product is immediately within reach of every family budget (section 2.2(d) of AANA Children Code);*
- C. the advertisement was placed on buses, street furniture, and retail billboards.. It is not placed in media which is in close proximity to any editorial comment or program content (section 2.3 of AANA Children Code);*
- D. the advertisement does not, in any way employ sexual appeal, include sexual imagery or state or imply that children are sexual beings or that*



- ownership or enjoyment of mentos® Smoothies product will enhance their sexuality (section 2.4 of AANA Children Code);*
- E. the advertisement does not portray images or events which depict unsafe uses of mentos® Smoothies product or unsafe situations which may encourage children to engage in dangerous activities or create an unrealistic impression in the minds of children or their parents or carers about safety. Mentos® Smoothies product has not been declared unsafe or dangerous by an authorised Australian government authority (section 2.5 of AANA Children Code);*
- F. the advertisement does not portray images or events in a way that is unduly frightening or distressing to children and does not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability (section 2.6 of AANA Children Code);*
- G. nothing in the advertisement:*
- undermines the authority, responsibility or judgment of parents or carers;*
 - contains an appeal to children to urge their parents, carers or another person to buy mentos® Smoothies product for them;*
 - states or implies that mentos® Smoothies product makes children who own or enjoy it superior to their peers; and*
 - does not state or imply that persons who buy mentos® Smoothies product are more generous than those who do not (section 2.7 of AANA Children Code);*
- H. the advertisement does not include any qualifying statements in asterisked or footnoted information (section 2.8 of AANA Children Code);*
- I. the advertisement does not include any competitions (section 2.9 of AANA Children Code);*
- J. the advertisement does not include any popular personalities or celebrities (section 2.10 of AANA Children Code);*
- K. the advertisement does not include any premiums (section 2.11 of AANA Children Code);*
- L. the advertisement does not include or relate to any alcohol products in any way (section 2.12 of AANA Children Code);*
- M. the advertisement is not intended at collecting any personal information of any person, including children, and does not make any reference to the collection of personal information in any way (section 2.13 of AANA Children Code);*
- N. as set out under paragraph (b)(ii)A above, the advertisement does not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits and as set out under part (b) above, the advertisement complies with the AANA Food Code (section 2.14 of AANA Children Code);*
- O. as set out under part (a) above, the advertisement complies with the AANA Code of Ethics (section 2.15 of AANA Children Code).*



- (i) The Australian Food and Grocery Council's Responsible Children's Marketing Initiative (RCMI) does not apply to the advertisement. The advertisement is placed on buses, street furniture, and retail billboards, and the target audience of the advertisement is adults aged between 24 to 54 years. The media owner (JCDecaux) has advised Stuart Alexander that 77% of people reached by JCDecaux's Transit network (buses) are aged 18 years or older. For this reason, the advertisement is not placed in any medium that is directed primarily to children and/or in any medium where children under 12 years of age represent more than 35 per cent or more of the audience (Section 1.1 and 1.2 of Schedule 1 and Definition of 'Placement' in section 3 of RCMI).*
- (ii) The advertisement does not include any interactive game directed primarily to children and the mentos® Smoothies product does not feature in any interactive game directed primarily to children under 12 years of age (Section 1.3 of Schedule 1 of RCMI).*
- (iii) The advertisement has not been placed in any advertising and marketing communication to children in Australian primary schools, pre schools or day care centres (Section 1.4 of Schedule 1 of RCMI).*

(e) AFCG Quick Service Restaurant Industry Code

- (i) The Australian Food and Grocery Council's Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI) does not apply to the advertisement. As noted above above under paragraph 14(d)(i), The advertisement is placed on buses, street furniture, and retail billboards, and the target audience of the advertisement is adults aged between 24 to 54 years. The media owner (JCDecaux) has advised Stuart Alexander that 77% of people reached by JCDecaux's Transit network (buses) are aged 18 years or older. . For this reason, the advertisement is not placed in any medium that is directed primarily to children and/or in any medium where children under 14 years of age represent more than 35 per cent or more of the audience (Section 1.1 and 1.2 of Schedule 1 and Definition of 'Placement' in section 3 of QSRI).*
- (ii) The advertisement does not include any interactive game directed primarily to children and the mentos® Smoothies product does not feature in any interactive game directed primarily to children under 14 years of age (Section 1.3 of Schedule 1 of QSRI).*
- (iii) The advertisement has not been placed in any advertising and marketing communication to children in Australian primary schools, pre schools or day care centres (Section 1.4 of Schedule 1 of QSRI).*
- (iv) Stuart Alexander does not give away mentos® Smoothies product or vouchers to children as awards or prizes at children's sporting events (Section 1.5 of Schedule 1 of QSRI).*
- (v) Nutritional profile information of all mentos® products, including mentos® Smoothies, are available on the www.mentos.com.au website and upon request by consumers (Section 1.6 of Schedule 1 of QSRI).*
- (vi) Nutrition profile information is provided on packaging for all mentos® products, including mentos® Smoothies, wherever possible to assist parents*



and guardians to make informed food choices for their children (Section 1.7 of Schedule 1 of QSRI).

Conclusion

For the reasons set out above, we believe that the advertisement fully complies with the AANA Code of Ethics, the AANA Food Code, AANA Children Code, AFCG RCMI and AFCG QSRI.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children's Code), the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) and the AFCG Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the RCMI).

The Panel noted the complainant's concern that the advertisement is targeted towards children and is misleading by implying that the product is a healthy choice.

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

The Panel first considered whether the advertisement complied with the RCMI. The Panel noted that the medium the subject of complaint is an outdoor advertisement featured on public transport (buses), and noted the definition of medium within the RCMI. The Panel noted that medium is defined as: Television, radio, print, cinema, internet sites. The Panel noted that as the subject of complaint is about a transport image, this does not fall within the definition of medium as per the Code and therefore the RCMI does not apply.

The Panel noted that Section 4.1 of the Food Code provides: "...Advertising or Marketing Communication for Food or Beverage Products, other than fresh fruit or vegetables, must comply with Schedule 1 of the RCMI, where applicable." Noting that the advertisement was not published or broadcast on a medium that is covered by the RCMI, the Panel determined that the advertisement did not meet the requirements for the RCMI to apply, and did not breach Section 4.1 of the Food Code.

The Panel considered whether the advertisement complied with the Children's Code. To fall within this Code, or Section 3 of the Food 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 Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Practice Note for the Food and Beverages Code which states that whether an advertisement or marketing communication is “directed primarily to children” is an objective test based on several factors including, but not limited to the combination of visual techniques, product and age of characters and actors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication “directed primarily to children.”

The Panel considered that the images of fruit and the cow together was a visual representation of the product and while the bright colours may be attractive to children, the overall image would be equally attractive to both adults and children.

The Panel considered the wording of the advertisement “Smoothies flavour” and “Made from awesome” and considered that this wording was not childlike and would not be considered directed primarily to children.

The Panel considered that the theme, visuals and language contained in the advertisement would appeal to a broad audience and were not directed primarily to children.

The Panel noted that the advertisement featured Mentos and considered that Mentos (which at one stage was primarily a breath mint) is a product that is appealing to both adults and children, and has been available for many years and is likely to be more familiar to adults. The Panel considered that the product is not of principal appeal to children.

The Panel determined that as the advertisement is not directed primarily to Children and that the advertisement was not for a product of principal appeal to children, the Children’s Code and Part 3 of the Food Code do not apply.

The Panel then considered Section 2 of the Food Code.

In particular the Panel 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 Panel noted the complainant’s concern that the advertisement is misleading and suggests that the product contains fruit.

In relation to Section 2.1 of the Code the Panel considered the Practice Note to the Food Code which provides that:



“The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

“In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

“Thus, an advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product.”

The Panel noted it had previously considered a similar issue in case 0206/15, in which: “The Board considered that the product ‘Fanta’ is well known by consumers as being an orange coloured soft drink. The Board noted that the advertiser provided information stating that the product contains ‘Orange Juice from Concentrate (2.1%)’ and that while the animation fills the bottle with orange pieces, this could equally be interpreted as a reference to the end product which is orange in colour and containing some orange concentrate. The Board agreed that the bottle is intended to show a degree of completion and that children would understand the bottle to be representing the end of the level rather than a representation of a beverage product being full of fruit. The Board considered that in the context of the product being clearly a soft drink, not a fruit juice, it is not likely to be seen as representing high fruit content.”

Similar to case 0206/15, the Panel considered that Mentos is a well-recognised brand and that most consumers would be aware that it is a confectionary that does not contain fruit – but rather is fruit flavoured.

The Panel considered that the imagery of the fruit in the advertisement is an artistic representation of the flavouring of the confectionary, and not suggestive that the fruit is an ingredient.

The Panel considered that the advertisement was not misleading or deceptive and that it was communicated in a manner appropriate to the level of understanding of the broad audience and did not breach Section 2.1 of the Food Code.



The Panel considered Section 2.3 of the Food Code which provides: ‘Advertising or Marketing Communication for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.’

The Panel considered that the depiction of fruit in the advertisement is not depiction which most members of the community would consider to be a nutritional claim about real fruit being in the product. The Panel considered that the advertisement did not breach Section 2.3 of the Food Code.

Finding that the advertisement did not breach the RCMI, AANA Children’s Code or the AANA Food Code the Panel dismissed the complaint.