



## Case Report

1	Case Number	0190/17
2	Advertiser	Bulla Dairy Foods
3	Product	Food and Beverages
4	Type of Advertisement / media	Billboard
5	Date of Determination	10/05/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption  
Food and Beverage Code (Children) 3.2 encourage excess consumption  
Food and Beverage Code (Children) 3.3 peer advantage  
Advertising to Children Code 2.14 Food and beverages

### DESCRIPTION OF THE ADVERTISEMENT

This billboard advertisement features an image of young children holding up Bulla ice-creams with the text, "unfakeable fun" above them and three pack shots to their left showing the different flavours available (Custard Tart, Fairy Bread, Cookies & Cream).

### THE COMPLAINT

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

*This ad is blatantly targeted at children. The colourful images, child-like text, product itself and the image of the child gleefully looking at the ice cream and licking his lips would greatly appeal to children and exploit their imaginations encouraging them to pester their parents into purchasing. Pester power has shown to undermine the role of parents in guiding diet and lifestyle choices, and this billboard is definitely aimed at children's powerful pester ability.*

*The childlike text 'unfakeable fun' is a misleading claim, as it suggests to the child that they need this ice cream to have fun. The image of two children having fun together coupled with the text implies that this product will improve your psychological well-being compared to*

*those children whom do not have this product.*

*This ad undermines the importance of healthy or active lifestyles as it features high fat and high sugar ice creams that are not a nutritionally balanced and there is no reference to physical activity. Furthermore it promotes excessive consumption as despite there being only two children in the image, three ice creams are being held up by their little hands, suggesting that one of them is eating two ice creams at one time! Also three large images of the ice cream boxes appear on the ad, which encourages children to pester their parents for more than one ice cream.*

*The billboard was located at a spot where children would frequent – i.e. train station and school bus stop, again adding to the evidence that this ad is targeted at children.*

*Childhood obesity is a major issue in Australia and advertisements such as this one that blatantly targets children is just plain wrong and needs to be stopped. I believe that this ad has breached the AANA Food & Beverages Advertising & Marketing Communications Code and the Code for Advertising & Marketing Communications to Children on many points and needs to be taken down immediately.*

## **THE ADVERTISER'S RESPONSE**

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

*We refer to your letter.*

### *1. Context*

*Bulla Dairy Foods (Bulla) is one of Australia's largest family-owned dairy producers, with over 100 years of experience producing dairy products that uphold its values of 'quality, taste and tradition.' Bulla takes very seriously its obligation to advertise its products in a fair and responsible way, taking into consideration high community standards and expectations. It appreciates the greater social responsibility it has in relation to advertising and marketing products that may appeal to children.*

*Consistent with this position, Bulla ensures that all of its advertising and marketing material, including the 'unfakeable fun' billboard advertisement in question (advertisement), is carefully reviewed in light of these community expectations as well as applicable laws and industry codes.*

*The advertisement is wholly consistent with community expectations and applicable Codes.*

### *2. The advertisement*

*The advertisement is a billboard that features:*

- a static image of three ice-creams which appear to be held by three children (who are out of focus) in a 'three musketeers' pose;*

- *the words 'unfakeable fun' to the left of the graphic; and*
- *a smaller image of the three different product packages for the three different flavours of ice-cream.*

*Although only the faces of two children are visible in the advertisement, it is clear that the third ice-cream is being held by a third child, as the two ice-creams on the right of the billboard are being held in the right hand.*

*The billboard is a 'screen shot' from a TV commercial which can be viewed at:  
<https://www.youtube.com/watch?v=Z6-kFXRDKZU&index=18&list=PL1aLj0cIQ6sikM-RsPtV-EbfceFamqUPA>*

*Multiple medium sized billboards are located along the Eastern seaboard.*

### *3. The complaint*

*The complaint alleges, among other things, that:*

- *the advertisement 'would greatly appeal to children and exploit their imaginations encouraging them to pester their parents into purchasing';*
- *'the childlike text "unfakeable fun" is a misleading claim, as it suggests to the child that they need this ice cream to have fun'; and*
- *'the image of two children having fun together coupled with the text implies that this product will improve your psychological well-being compared to those children whom do not have this product'*
- *the ad 'undermines the importance of healthy or active lifestyles as it features high fat and high sugar ice creams that are not a nutritionally balanced and there is no reference activity'*
- *'promotes excessive consumption as despite there being only two children in the image, three ice creams are being held up by their little hands, suggesting that one of them is eating two ice-creams at one time. '*

### *4. Issues with the complaint*

*The complaint amounts to a vague and generalised attack on the nature of Bulla's products and its right to advertise and promote those products. Bulla rejects the complaint in the strongest terms.*

*A number of the allegations are self-evidently unmaintainable. For instance, the suggestion that the advertisement conveys that consumption of the products is needed in order to have fun, or will improve a child's 'psychological well-being' relative to other children, bear no relation to the content of the advertisement and, with respect, are simply not capable of being maintained or substantiated.*

*Bulla's response to the balance of the allegations follows by reference to the Code of Ethics and the Code of Advertising and Marketing Communications to Children. The advertisement*

*is wholly compliant with these Codes.*

*5. The advertisement complies with all relevant Codes*

*Code of Ethics*

*The advertisement meets prevailing community standards as defined within the Code of Ethics and with reference to recent determinations by the Advertising Standards Board (Board).*

*In particular, previous decisions of the Board (such as Hungry Jacks 282/11, Mars 208/11, Fyna Foods 0101/14 and Nestle 0262/15) have repeatedly found that the promotion of a product which may have a particular nutritional composition is not, per se, contrary to prevailing community standards or undermining the importance of a healthy or active lifestyle. The Board has determined that there is no community standard that prohibits advertising of food of a particular nutritional profile to children (Peters 0465/14) and that advertising a product on a billboard which will be viewed by children is not something which is contrary to prevailing community standards (Yum Restaurants International 0382/15).*

*It is therefore not necessary to address in any further detail the allegations in the complaint regarding the nutritional profile of the products. It suffices to note that:*

- Bulla does not accept the allegations regarding the nutritional characteristics of the product; and*
- in any event, no health or nutritional claims of any kind are made in the advertisement.*

*For completeness, we note that the advertisement is compliant with the other provisions of the Code of Ethics referenced in your letter, and could not on any interpretation be seen to:*

- portray people or depict material in a way which discriminates or vilifies a person or section of the community (2.1);*
- employ sexual appeal in a manner which is exploitative and degrading or insensitive to the relevant audience (2.2 and 2.4);*
- present or portray violence (2.3); or*
- contain strong or obscene language (2.5).*

*Code of Advertising and Marketing Communications to Children*

*Although the advertisement is marketed to appeal to consumers of all ages, Bulla considers that the Code of Advertising and Marketing Communications to Children is relevant given the contents and location of the advertisement.*

*The complaint states that the advertisement would 'encourage [children] to pester their parents into purchasing' the product which would 'undermine the role of parents in guiding diet and lifestyle choices.' Bulla disagrees that there is any explicit or implicit appeal contained in the advertisement to children to urge parents to buy the product for them. The*

*advertisement only depicts the faces of two children which are out of focus with the second child being largely obscured by the product. It is unclear to Bulla how this advertisement could undermine the authority, responsibility and judgment of parents or carers in breach of s 2.7 of the Code.*

*The advertisement is not misleading, not ambiguous and accurately represents the product, including its size. Further, we also note that the price is not mentioned in the advertisement and there is no implication that the product is immediately within reach of every family budget (2.2). The advertisement has not been placed amongst editorial comment or program content (2.3). It could not be said that the advertisement employs sexual appeal or imagery (2.4) nor does it portray images that are unsafe (2.5), unduly frightening or demeaning (2.6).*

*For all of these reasons, the advertisement is entirely consistent with the Code.*

#### *Food and Beverage Advertising and Marketing Communications Code*

*The advertisement is again wholly compliant with the content of this Code. The advertisement is accurate, not misleading, and entirely consistent with community standards.*

*Bulla understands and appreciates the importance of healthy and active lifestyles as well as balanced diets. The advertisement does not make any health or nutritional claim or claims relating to material characteristics such as taste, size, content, nutrition and health benefits or that it is a suitable substitute for meals (2.3 and 2.6). It similarly does not contain a nutritional or health related comparison (2.4) or make reference to consumer taste or preference tests in any way (2.5).*

*In any event, the Board 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 (Peters 0463/14).*

#### *Australian Food and Grocery Council Responsible Children's Marketing Initiative & the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children*

*While Bulla is not a signatory to these initiatives at present, Bulla acts in accordance with and promotes these objectives.*

#### *6. Concluding remarks*

*Bulla is an Australian owned and operated business which values deeply its place in the local community and its responsibilities to the community, including in the way it advertises its products. The advertisement reflects this mindset, and (as is evident from the above) is wholly consistent with relevant Codes and other requirements.*

*In the event that any further information is required, we would be happy to provide it. Bulla otherwise appreciates the opportunity to respond to the complaint, and trust that the above matters satisfactory conclude the matter.*

## **THE DETERMINATION**

The Advertising Standards Board (“the 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 targets children and encourages them to pester their parents for a product which is unhealthy, undermines the importance of a healthy diet and lifestyle, depicts and encourages excess consumption, implies the product will improve your well-being compared to a child who does not have the product, and is misleading as it suggests that the advertised product is required in order to have fun.

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

The Board noted that the advertiser is not a signatory to the AFGC Responsible Childrens Marketing Initiative and therefore the Initiative does not apply.

The Board considered whether the Children’s Code applied.

The Board considered the definition of advertising or marketing communication to children. 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 considered whether this Billboard advertisement is an advertising or marketing communication directed primarily to children under 14 years of age. 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. The Board noted the marketing communication is a Billboard advertisement. The Board noted that while the placement of the Billboard outside means it would be visible to a broad audience which would include children, Billboards are not of themselves a medium directed primarily to children.

The Board then considered the content of the advertisement itself. The Board noted the theme of the advertisement, a promotion of ice-cream products available to purchase from Bulla. The Board noted the names of the three varieties of Bulla ice-creams depicted and considered that while Fairy Bread is a food product directed primarily at children and therefore the Fairy Bread flavoured variety would be appealing to children, in the Board’s view Custard Tart and Cookies & Cream are both flavours which would be of appeal to people of all ages and are not primarily for children.

The Board noted that the advertisement features an image of two children, each holding an ice-cream, with a third hand visible, also holding an ice-cream and considered that featuring children in an advertisement does not necessarily mean that the advertisement is directed primarily to children.

The Board also noted that the product being promoted is a pack of 6 ice-creams, not a single ice-cream. The Board considered that the promotion of a bulk purchase is generally associated with a call to action to the main grocery buyer.

The Board noted the language used in the advertisement, ‘unfakeable fun’, and considered that while the word ‘fun’ is a simple word which would be understood by most young children who can read, in the Board’s view the word ‘unfakeable’ is a more complex word and less likely to be understood by young children. Overall the Board considered that the phrase, “unfakeable fun” is not a phrase directed primarily at children but rather at the main grocery buyer to entice them to buy the product for their family.

Overall the Board considered that although the advertisement would be appealing to children, in its view the advertisement is not directed primarily to children.

Having determined that the marketing communication is not directed primarily to children the Board determined that the provisions of the Children’s Code did not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board considered Section 2.1 of the Food Code which states: '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 the Practice Note to Section 2.1 of the Food Code which provides:

“The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful or 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 be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.”

The Board noted the complainant’s concern that the advertisement is misleading to children as it suggests that you need to purchase the product in order to have fun.

The Board noted the tagline of the advertisement, ‘unfakeable fun’ and considered that the word ‘unfakeable’ is not an easy word for children to understand and while the word ‘fun’ would be easily understood by children, in the Board’s view although ice-creams would be seen as fun to children the concept of only having fun if this particular ice-cream is purchased is a not a concept children would be likely to take from this advertisement. The Board noted the advertisement is promoting ice-cream, a product legally allowed to be advertised, and considered that most reasonable people viewing the advertisement would not interpret the advertisement as suggesting that fun is only dependent on the purchase of the ice-cream advertised.

The Board considered that the advertisement was not misleading or deceptive and determined that the advertisement did not breach Section 2.1 of the Food Code.

The Board noted Section 2.2 which states: “the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to 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 that the advertisement depicts the faces of two children holding ice-creams in front of them and considered that this depiction does not of itself undermine the importance of an active lifestyle.

The Board considered that, consistent with previous decisions (Peters 0463/14, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Board noted the Practice Note to Section 2.2 of the Food Code which provides: ‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board noted that as well as the children holding an ice-cream each the advertisement also depicts three different packs of ice-creams, each a different flavour. The Board noted that although the packs each contain six individual ice-creams the Board considered that ice-creams are often sold in bulk packs and there is no call to action in the advertisement that you should eat all six, or more. The Board noted that advertisers are free to use images of their products in their advertising and considered that the children in the advertisement are each holding one ice-cream and in the Board’s view there is no suggestion of excess consumption on behalf of the children, and no suggestion on how many, or how often, ice-creams should be consumed.

Overall the Board considered that the advertisement did not encourage excess consumption and did not breach prevailing community standards on the consumption of food or beverage products.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

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



