



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0228-21
2. Advertiser :	Frucor Suntory Australia Pty Limited
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	25-Aug-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\4.1 Must comply with RCMI
AFGC - Responsible Childrens Marketing Initiative\RCMI 1.1 Advertising Message
AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.3 Violence

DESCRIPTION OF ADVERTISEMENT

This animated television advertisement depicts four bugs in a van driving and singing along to "Wake me up before you go-go" by Wham!. A butterfly splatters on the windscreen and the bugs become silent and the vehicle stops. One says "that's unfortunate" and uses the windscreen wipers to clear the butterfly. They group begins singing again as they drive.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

I can not believe the Vee Drinks Corporation are allowed to sell SUGAR laden energy drinks to our grandchildren while they sit and watch the Olympic Games - a family show!. These cartoons look exactly like something you would see playing on ABCkids or Toy Story. Australia is in the middle of a child obesity crisis and the last thing they need is more brainwashing to think they need to be pepped up instead of going outside and playing a sport. I am APPALLED that this is allowed to be on air and I have seen it played a GREAT number of times.



The ad may have insect characters as the driver and occupants of the car, who also happen to be drinking at the time when they hit another insect, just laugh and drive on after the accident.

This is very distressing to anyone who has lost someone in a car accident, has lost someone to an accident where the driver has not stopped and rendered assistance, or lost someone to a drunk driver.

This appears to be targeted at children. I have 2 children 7 and 9 years old that love this advertisement. When it appears on television, they stop what they are doing and watch the TV and say 'I love this ad'. I have heard this from other parents also. It promotes an energy drink that is clearly unhealthy for adults, let alone children.

As a sufferer of PTSD related to a child fatality being struck by a road vehicle, I find the depiction of a character is struck by the vehicle and the flippant use of the scene. It deeply concerns me each time it is shown and I also have concerns the seemingly innocent advertisement may have on next of kin family members.

In the tv ad, when a butterfly hits the van windscreen, the viewer is shown the creature's splattered body in close-up, with one human-like eye still looking around - thus we can presume it was still conscious and aware - with its guts spread across the glass, and its abdomen torn in two halves, connected only by green viscera. The characters inside then use the windscreen wipers, smearing the still-living creature's innards across the audience's view.

This ad is objectionable as it not only depicts, but places close to camera a still-living animal, injured and dismembered, which with a (human, not insect) eye blinking and looking around, is obviously aware of its circumstances.

The add is ok in general, but my grandchildren get so upset when the butterfly spluttering happens, I have to try and get to the tv remote before they see the add now. The music gets their attention unfortunately, it's just horrible seeing their reaction and having to explain the lack of sympathy in the add. I have to add, I'm discussed by this as well

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 portrays cartoon bugs consuming V energy drinks while undertaking a road trip (Advertisement). We thank you for the opportunity to provide a response to these complaints.

Background – the V energy drink advertising campaign



The Advertisement is part of a campaign to position the V energy drink brand as a beverage which aligns with a fun and relaxed lifestyle. The Advertisement targets adults who like to enjoy time with family and friends and have balance in their life, particularly in current times when life is increasingly hectic and stressful. The execution in this Advertisement in particular promotes this time to share with family and friends through the imagery of a road trip. The Advertisement is targeted at an audience aged between 18 and 44 years.

Response to issues raised in the complaint

Frucor is committed to conducting all advertising and promotions to the highest standards and takes seriously any complaints made in relation to advertising and promotions.

As requested, the complaints have been addressed by reference to all relevant advertising codes and initiatives, including the AANA Code of Ethics (AANA Code of Ethics), the AANA Food and Beverages Advertising Code (AANA Food Code), the AANA Code for Advertising and Marketing Communications to Children (AANA Children's Marketing Code), the Australian Food and Grocery Council Responsible Children's Marketing Initiative (Children's Marketing Initiative) and the Australian Quick Serve Restaurant Industry Code for Responsible Advertising and Marketing to Children (QSR Industry Code).

Having considered the Advertisement and the complaints, as well as the requirements of the AANA Code of Ethics, the AANA Food Code, the AANA Children's Marketing Code, the Children's Marketing Initiative and the QSR Industry Code, Frucor respectfully submits that the Advertisement does not in any way contravene the AANA Code of Ethics, the AANA Food Code, the AANA Children's Marketing Code, the Children's Marketing Initiative or the QSR Industry Code.

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.



In respect of section 2.3 of the AANA Code of Ethics, although the Advertisement does portray a bug being killed by colliding with the windshield of the car, this frame in the Advertisement cannot, in Frucor's opinion, be reasonably classed as violent imagery. Therefore, the Advertisement does not contravene section 2.3 of the AANA Code of Ethics as it 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.

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.

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. Although the Advertisement does depict bugs signing and drinking V energy drinks in a vehicle, the vehicle is being driven in a safe manner and so, on a reasonable view of the Advertisement, it is not contrary to prevailing community standards on safe driving.

The Advertisement does not contravene section 2.7 of the AANA Code of Ethics as the Advertisement is clearly distinguishable as an 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 presented in a light-hearted, humorous way designed to engage the target audience and does not attempt to present factual information, in particular in relation to the health, nutrition and ingredient components of the V energy drink.

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, although appearing within the Olympic broadcast, does not use or rely on the endorsement of a recognised sporting 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 Children's Marketing Code (nor the Children's Marketing Initiative and the QSR Industry Code) applies (please see further detail below), 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, Frucor does 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.

Application of the AANA Code of Advertising and Marketing Communications to Children, the Australian Food and Grocery Council Responsible Children's Marketing Initiative and the Australian Quick Serve Restaurant Industry Code for Responsible Advertising and Marketing to Children

Frucor submits that the AANA Children's Marketing Code, the Children's Marketing Initiative and the QSR Industry Code do not apply to the Advertisement for the following reasons:

- the AANA Children's Marketing Code, the Children's Marketing Initiative and the QSR Industry Code apply to advertisements directed primarily at children;*



- a 'child' for the purposes of the AANA Children's Marketing Code and the QSR Industry Code is a person 14 years old or younger and for the purposes of the Children's Marketing Initiative a person under the age of 12 years;
- the target audience for advertising of the V energy drink is adults between the ages of 18 and 44 years; 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, or is presented in media where children will represent 35% or more of the audience of the media. One complaint states that the Advertisement was screened during the Olympics broadcast. While true, Frucor's Media Buyer has confirmed that, in the time during which the Advertisement was shown, 7% of the audience comprised children, which is well below the 35% threshold. A further complaint point to the fact that the Advertisement was shown during a broadcast of "Who Wants to be a Millionaire" and another complaint states that the Advertisement was shown at 11.11pm. Neither "Who Wants to be a Millionaire" or a program broadcast at 11.11pm are shows that are targeted or directed to children.

Frucor takes great care to ensure that advertisements are not targeted at children. In respect of this Advertisement, spot lists were manually checked prior to sending bookings to vendors and all briefs to vendors highlighted the exclusion of children's programming for any replacement spots or top ups. Additionally, prior to launch, Frucor's Media Buyer checked the schedule and cancelled or moved any spots relating to children. On the Friday prior to the launch of the Advertisement spot lists were checked again and any children's related programs that were in the lists were moved.

While the complaints address the time at which the Advertisement was shown and the programming during which the Advertisement was shown, such complaint is distinct from the content of the Advertisement and is not sufficient to invoke either the AANA Children's Marketing Code, the Children's Marketing Initiative or the QSR Industry Code, given that children will not represent 35% or more of the audience of the Advertisement. Further, one of the complaints also claims that the Advertisement is a "children's cartoon" and is "exactly like something you would see playing on ABCKids or Toy Story". The AANA Children's Marketing Code, the Children's Marketing Initiative and the QSR Industry Code are not intended to apply to advertisements simply because the advertisements may be seen by children. As set out above, the Advertisement is not aimed primarily at children. It is an advertisement that appeals to adults, particularly the target audience, and a tool to achieve this appeal is the use of imagery that is fun and entertaining and relevant to the target audience. Use of this visual technique and the language used is not sufficient to invoke the AANA Children's Marketing Code, the Children's Marketing Initiative or the QSR Industry Code.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing



Communications Code (the Food Code), the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the AFGC RCMI), and the AANA Code of Ethics (the Code).

The Panel noted the complainants' concern that the advertisement:

- promotes an energy drink to children as the themes, visuals and language used primarily target children
- primarily targets children and promotes an unhealthy food product
- depicts violence which is inappropriate.

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

The Panel noted that the product advertised is a promotion for a beverage product and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply.

Food Code Section 4.1 - 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.

The Panel noted that RCMI refers to the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council and noted that the RCMI is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

Is this advertisement directed primarily to Children?

The Panel considered the definition of advertising or marketing communications to children within the RCMI. The definition states that 'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.' Under this initiative children means "persons under the age of 12 years of age."

The Panel noted the RCMI provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication is, having regard to the theme, visuals and language used, are directed primarily to children (and are for food and/or beverage products) or
2. The placement of the advertisement or marketing communication is in a medium that is directed primarily to children, i.e.:
 - a. in relation to television, all C and P rated programs and other rated programs that are directed primarily to children through their themes, visuals and language; and/or



b. where children represent 35 percent or more of the audience of the Medium.

Point 1: Is the content of the advertisement directed primarily to children?

With regards to point 1, the Panel considered the theme, content and visuals of the advertisement. The Panel noted the dictionary definition of “primarily” is “in the first place” and that to be within the AFGC RCMI the Panel must find that the advertisement is aimed in the first instance at children under 12.

Is the theme of the advertisement directed primarily to children?

The Panel considered the theme of the advertisement is four people on a trip together and that there is no suggestion that it is a family rather than four adults. The Panel noted that the product being advertised is an energy drink that would be predominately attractive to adults. The Panel considered that the theme of the advertisement would be mainly attractive to adults and was not directed primarily to children under 12.

Is the language of the advertisement directed primarily to children?

The Panel considered that the song used in the advertisement is a 1980’s song and would be most recognisable to adults. However the Panel considered that the song is upbeat and would likely be attractive to children as well. The Panel considered that overall the language used in the advertisement would be equally attractive to both children and adults and was not directed primarily to children under 12.

Are the visuals of the advertisement directed primarily to children?

The Panel considered that the advertisement is animated and featured anthropomorphised insects. The Panel considered that the use of animation would attract the attention of children, however considered that animation is not itself a deciding factor in determining whether the visuals of the advertisement are directed primarily to children. The Panel noted that the insects appear to be on a road trip in a combi van and that such a theme would be more likely to be attractive to adults than children, particularly when considering the nostalgic aspect of the combi van. The Panel considered that the visuals in the advertisement were equally attractive to both adults and children and were not directed primarily to children under 12.

Is the content of the advertisement overall directed primarily to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is directed primarily to children. The Panel considered that the overall advertisement would be attractive to children, particularly through the use of animation. The Panel also considered that the theme of a road trip in a combi van would be one which was primarily appealing to adults. The Panel considered that the



advertisement, through themes, visuals and language, was attractive to both adults and children but not directed in the first instance to children under 12.

Point 2: Is the advertisement in a medium that is directed primarily to children?

The Panel noted the advertiser's response and evidence that the advertisement had not played in programming with an audience of over 35% children.

The Panel noted the advertiser's response regarding the audience of the advertisement. The Panel considered that the majority of programs that the advertisement appeared in would be directed primarily to adults or families, and were not targeted directly to children under 12.

Overall, the Panel considered that the advertisement did not have an audience of over 35% children under 12, and, as discussed above, the themes, visuals and language of the shows the advertisement was played in were not targeted directly to children under 12.

Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are not directed primarily to children the Panel determined that the advertisement was not directed primarily to children under 12.

AFGC RCMI Conclusion

Finding that the advertisement did not meet points 1 or 2 of the Initiative the Panel considered that the Core Principles of the RCMI did not apply to this advertisement.

Food Code Conclusion

As the RCMI does not apply to this advertisement, the Panel determined that the advertisement did not breach Section 4.1 of the Food Code.

AANA Code of Ethics - Section 2.3 Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Panel noted the Practice Note for this section of the Code which states "*Graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children. More leeway is permitted where the depiction is stylised rather than realistic. However, advertisers should exercise caution when using cartoon violence as a cartoon style may be attractive to children.*"

Does the advertisement contain violence?



The Panel considered that while the four insects in the vehicle are highly anthropomorphized, the butterfly does not appear to be and presents as a normal insect colliding with a windscreen.

The Panel considered that most members of the community would not find a bug impacting with a windscreen, an event that any driver is familiar with, to be violent.

Section 2.3 conclusion

In the Panel's view the advertisement did not portray violence and did not breach Section 2.3 of the Code.

Conclusion

Finding that the advertisement did not breach the Food Code or the Code of Ethics the Panel dismissed the complaints.