



Case Report

1	Case Number	0251/17
2	Advertiser	Frucor Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Poster
5	Date of Determination	07/06/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.4 - Sex/sexuality/nudity S/S/N - sexualisation of children

DESCRIPTION OF THE ADVERTISEMENT

The 'Sparkling OH!' advertisements that are the subject of the complaints feature images of real, un-doctored fruits – either two lemons, two mangos or two raspberries – and an image of a Sparkling OH! drink with the tag lines: *not as guilty as it looks and 'only 2g Sugar'.

THE COMPLAINT

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

The poster is of two large lemons that easily look like two female breasts and as you get closer to the poster the tag line states 'not as guilty as it looks' as you realise they are lemons when you get up close. I found this represent the sexualisation of women and all the more disappointing that it is outside a university and 100 metres from a child care centre.

This is a sexualised image with no logical connection between the product and the image. It perpetuates sexist attitudes to women. I don't want to see it nor do I want my children exposed to it.

Manipulating a picture of lemons so they obviously look like a pair of women's perky breasts and a side view of oranges made to look like the side view of a pair of breasts.

Vulgar, disrespectful advertising and offensive to women and children, especially as one bus shelter is close to McDonalds and is used regularly by children... Really is that the best today's Ad execs can do! This advert is completely distasteful and just adds fuel to the problem we already have in Australia with the disrespect for women.

Fruit stylised as female breasts was a poor ad format and inappropriate for public viewing.

It is overly sexualised for the type of ad. It seems excessive that fruit needs to be made into some sexual object for the company to sell their product. There is no need to make a connection to women's breasts to a fizzy drink. It is offensive, degrading to women, and it is being placed in public areas, such as bus stops where children are being exposed to. I am very offended by this ad.

These images are clearly meant to look like female sexual parts such as breasts. Associating the viewing of these images as something to be guilty about is, at best, childish and puerile, at worst sexist and misogynistic. They are highly offensive and suggestive.

The imagery used in the advertisement is intentionally sexist and suggestive. It's extremely inappropriate, unnecessary and has nothing to do with sparkling water.

Objectification and trivialisation of women. I am concerned that this ad sends a message to both young men and women that supports male hegemony in society.

Blatantly sexist towards women please google their Facebook Page to see ad "sparkling oh Facebook" you will see the lemon ad I'm talking about. Hit the comments no one is happy visiting there sight. Children at this bus stop it's also passed by primary school children it's not 1970! Very inappropriate for 2017. I would like to see it removed. These are very large billboards on a busy road. Not on I say.

I would like to register a complaint about Oh Fruit Drinks' gratuitously sexual (breasts) use of a pair of mangoes/ lemons with apparent nipples - they're puerile and clearly intended to be sexual, despite the text assuring the viewer that it's the viewer seeing the sexual content and that the advertiser's intent was quite innocent. I hope you can review this ad which regularly annoys me at the Macquarie Uni railway station. Thank you.

*This clearly goes against the code of ethics, * section 2.1 as it depicts gender in a derogatory way*

** section 2.2 as it uses sexual appeal in a manner which degrades men and women*

** section 2.4 as it uses sexuality and nudity to the audience*

This advertising is using sex to sell. Lemons are provocatively positioned to look like breasts, berries as testicles. These are school bus shelters. Youth are bombarded with over sexualisation. There are better ways we can market to youth and adults rather than using body parts which the majority of people use. The advertisements do not depict other body parts, just the sexual ones. It is designed to provoke a giggle or attention. Its not needed.

how old can you get ? how retro ugly insulting can smut get, this sort of advertising is so 1970s dirt australia masculine dirty that women complained about decades ago and you have the audacity to do this again. the ads are near schools and colleges. many women would find these ads offensive and sexist. why are there no ads of lemons suggesting penises or other things? it would still be unacceptable as sexual suggestion is not needed if the product is that good, the product should speak for itself and that tells me its deliberate mind control abuse. its rude, its discriminating, it insulting and brainwashing and abusive and will lead to demonic sexual and littering and dirty behaviour of 1970s that ruined this world.

get rid of it of these dirty ads that are offensive.

get rid of the ad or else there will be trouble!

I want this company banned in australia and told to clean up their ads and stop this dirty display of scamming scummy smut.

people don't want the smut of the past only the good.

The copy reads "not as guilty as it looks".

To have breasts does not mean guilt? What does the slogan suggest?

The photos of the fruit (are still clearly fruit) but are inappropriate as they are a cheap play at mimicking breasts.

It's soooooo derogatory to women!!!!

I object to it in particular because of its placement, at a bus stop that is used by children & in the vicinity of a kindergarten, primary & secondary school. The advertisement relies on porn innuendo's, using images to look like breasts to get people's attention, & turning it on the observer that it is "guilt" thinking that they're looking at breasts, which they shouldn't be, to equate with their beverage being not as "guilty" ie: not as "naughty" to consume as it seems. I think that not only is it lazy & sleazy advertising, using the suggestion of women's breasts as a disembodied consumable product, but inappropriate for a public area, but also a traffic hazard as it is designed to get those driving past to keep looking at the lemons/breasts until they get close enough to read the caption.

https://www.facebook.com/pg/SparklingOHAustralia/posts/?ref=page_internal

The advertisement is disgusting and indecent. I was shocked upon seeing it as it is lewd and suggestive. A little boy pointed and asked his mum "Are those boobies?". It is extremely suggestive, especially when you read the caption of it being "naughty" - it makes it apparent that the ad is trying to objectify and sexualise women, as well as depict an image of breasts without using actual breasts. It disturbs me that this kind of advertising is allowed to be in

public places where school children roam (the bus stop is at a park), and young children. I fail to understand the need for replicating breasts and at first glance, one would actually think that these were women's breasts. I am happy to provide a photo so you can see how suggestive and objectifying the advertisement is. I would like a response to what action will be taken against the company for such a disgusting, offensive, and low-class poster.

This sexual image is not appropriate for children in the public domain.

THE ADVERTISER'S RESPONSE

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

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.

*The 'Sparkling OH!' advertisements that are the subject of the complaints feature images of real, un-doctored fruits – either two lemons, two mangos or two raspberries – and an image of a Sparkling OH! drink with the tag lines: *not as guilty as it looks and "only 2g Sugar" (collectively, "Advertisements").*

We note that some of the Complaints described the Advertisement as "lewd and suggestive", that it "is trying to objectify and sexualise women", that it used "images... to get people's attention", it "depicted body parts", it is "exploiting women's breasts", and that it is "puerile".

The target demographic for the 'Sparkling OH!' drinks are adults between the ages of 18 to 35 years old. The Advertisements are intended to be light hearted, cheeky and humorous, designed to connect with those audiences, particularly in the 18-22 year age range that enjoy a soft drink flavour, but have that niggle that they should be making more healthy choices. The Advertisements feature pictorial representations of real un-doctored fruit to emphasise the fact that the drinks do in fact contain real fruit juice, fruit, being the hero of the Advertisements. The adcept of fruits behaving badly is cheeky and ironic i.e. how bad can fruit be – especially as the drinks taste like a regular soft drink but contain only 2g of sugar.

The Advertisements have been placed in locations where people are more likely to be thinking about buying a drink, and only at sites well removed from schools and places of worship, but more commonly in areas where 18 to 22 year olds frequent, for example, at a university.

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 and the AANA Food Code.

Please note that we have not assessed the Complaints by reference to the:

- *AANA Code for Advertising and Marketing Communications to Children, as the Advertisement are not targeted to children (please see our explanation below); or*
- *Australian Food and Grocery Council Responsible Children's Marketing Initiative, as the Advertisement is not targeted to children; or*
- *Australian Quick Service Restaurant Industry Code, as Frucor is not a signatory to this initiative.*

AANA Code of Advertising and Marketing Communications to Children

We submit that the AANA Code of Advertising and Marketing Communications to Children does not apply for the following reasons:

- *A "Child" for the purposes of the AANA Code of Advertising and Marketing Communications to Children is a person 14 years old or younger;*
- *the average consumer of 'Sparkling OH!' is between 18 to 35 years old and the Advertisements are targeted to 18 to 22 year olds;*
- *the language and tone of the Advertisements are not of a childlike nature, and features artwork that an adult may find humorous or light-hearted.*

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 or designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and is communicated in a manner which is appropriate to the level of understanding of the target audience of the Advertisements with an accurate presentation of all information including any references to nutritional values or health benefits.

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 contain a nutritional claim of "only 2g of sugar" and meet the requirements of the Australia New Zealand Food Standards Code and accordingly, the Advertisements do not contravene Section 2.3 of the AANA Food Code;

2.4 The Advertisements do not include any 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 does not appear within segments of media devoted to general and sports news and/or current affairs using sporting, news or current affairs personalities, live or animated as part of the Advertisements, and accordingly, the Advertisements do not contravene Section 2.7 of the AANA Food Code;

2.8 The Advertisements do not portray 'Sparkling OH!' 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.

AANA Code of Ethics

We submit, having regard to Section 2 of the AANA Code of Ethics that:

2.1 The Advertisements contain images of un-doctored fruit. They do not portray people or depict material in a way which discriminates against or violates 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 Advertisements do not contravene Section 2.1 of the Code;

*2.2 One of the complaints states that one of the Advertisement depicts "two oranges, with pointy things" and included the words "*not as naughty as it looks". This is inaccurate, oranges were not used in the Advertisements and were not doctored (rather, the fruits used were lemons, mangos and raspberries and the word "naughty" is not used). The Sparkling OH! drinks are less "guilty" than one might think as compared to a regular soft drink as it contains less than 2grams of sugar per can and the drinks are flavoured with real fruit juice. Some of the complaints described the Advertisements as "lewd and suggestive", that it "is trying to objectify and sexualise women", that it used "images... to get people"s attention", it "depicted body parts", it is "exploiting women"s breasts", and that it is "puerile". The Advertisements use images of real and un-doctored fruit in a fun and cheeky way and to communicate that the drink is flavoured with real fruit juice. The images of the fruit are intended to be taken in a light-hearted and free-spirited manner and in not in a way exploitative or degrading of any individual or group of people, and accordingly, the Advertisements do not contravene Section 2.2 of the Code;*

2.3 the Advertisements do not contain any violent graphics or imagery, and accordingly, the Advertisement does not contravene Section 2.3 of the Code;

2.4 Some of the Complaints refer to the Advertisements as "lewd and suggestive", that it "is trying to objectify and sexualise women", that it used "images... to get people's attention", it "depicted body parts", it is "exploiting women's breasts", and that it is "puerile". Whilst we acknowledge that the fruits featured in the Advertisements are intended to allude to certain male and female body parts, the Advertisements are intended to be light hearted - it is clear that the pictures are of fruit and the images are un-doctored and the Advertisements communicate that the drinks are made with real fruit juice. No men, women or minors, are featured in the Advertisements and the Advertisements do not treat sex, sexuality and nudity with insensitivity to the relevant audience, and accordingly, the Advertisements do not contravene Section 2.4 of the AANA Code of Ethics;

2.5 the Advertisements do not feature any strong or obscene language or language which is inappropriate for the relevant audience and medium, and accordingly, the Advertisements do not contravene Section 2.5 of the Code;

2.6 the Advertisements do not depict any material which is contrary to Prevailing Community Standards on health and safety, including any unsafe practices or images, and accordingly, the Advertisements do not contravene Section 2.6 of the Code; and

2.6 the Advertisements are clearly distinguishable as such to the relevant audience, and accordingly, the Advertisements do not contravene Section 2.7 of the Code.

We note that clause 3 of the AANA Code of Ethics does not apply to the Advertisements.

On the basis of the above, we do not consider that the Advertisement contravene the AANA Code of Ethics, 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 Section 2 of the AANA Code of Ethics (the "Code").

The Board noted the complainant's concerns that the advertisement is sexist and derogatory toward women.

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

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray 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 Board noted this poster advertisement features two lemons at the top of the poster with the nipple pointing toward the front. The lemons are close together with some liquid droplets on them. At the bottom of the poster there is a can of drink called "sparkling oh!" It has a tagline *not as guilty as it looks.

The Board noted the complainant's concerns that the image is designed to look like breasts and that the poster is offensive and degrading to women.

The Board noted the Practice Note to the Code and in particular Section 2.1 which describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups. The types of behaviour are:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule

The Board noted that the image is clearly intended to look like a pair of breasts. The Board considered that the positioning of the lemons together and the placement of the lemon ends toward the front was a depiction that was undeniably designed to suggest breasts. The Board noted that overall impression in connection with the words “not as guilty as it looks,” strengthened the innuendo.

The Board noted the advertiser's response that the advertisement is intended to be light hearted, cheeky and humorous and designed to connect with an audience within the 18-22 year age range who enjoy soft drink but may feel that they should be having a healthier alternative. The Board noted the advertiser mentions the inclusion of the fruit is to draw attention to the fact that the beverage product contains real fruit.

In the Board's view, the fruit is presented in a manner that makes them suggestive of breasts however at the same time the fruit is clearly identifiable as fruit. In this case lemons. The Board noted that the use of fruit in this way did not humiliate or ridicule women and did not treat women unfairly.

The Board considered that the cheeky nature of the image was sufficient enough that it did lessen the impact of the image and did not amount to a depiction that discriminates or vilifies a section of the community on account of gender and did not breach section 2.1 of the Code.

The Board then considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience”.

The Board noted that the text on the poster was affirmation that the impression that the viewer would get from the image, ie that the lemons were suggestive of breasts was in fact the impression that was intended. The Board noted the double entendre relating to the reduced calories of the beverage and how people sometimes feel guilty about drinking soft drinks.

The Board noted that although the overall suggestion was of a pair of breasts, the actual image itself was clearly lemons. The Board noted that the Code does not permitted images that are highly sexually suggestive and inappropriate for the relevant audience, particularly where the depiction is not relevant to the product or service being advertised.

The Board noted that the poster appeared in bus shelters and that this was a medium that would likely be seen by children but that the image was not overtly sexual. The Board considered that the use of fruit in a suggestive way was in this instance humorous, was relevant to the product being a fruit flavoured beverage and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.