



Case Report

1	Case Number	0262/15
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/07/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement shows a variety of people taking a break from their activities to eat a Kit Kat. In one scene we see a woman resting against a tree. She is wearing running clothing and the voiceover describes her actions as, “an ‘everyone thinks I’m running’ break”.

THE COMPLAINT

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

The advertisement seems to encourage people to stop running (exercising) and eat their unhealthy product. If people do struggle with weight which many do in Australia is this the message that we should be giving out to the bulk of the population.

THE ADVERTISER’S RESPONSE

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

The Advertisement embodies the core positioning of the KIT KAT brand: Have a Break, Have a KIT KAT. It shows a variety of people taking a break during their day – and the fun and light-hearted manner in which people can celebrate taking a break.

The scene of the Advertisement that has concerned the complainant depicts a woman who has been out running (as evidenced by the location, presence of other runners and running attire) who has chosen to take her break under a tree and have a KIT KAT. The concern in the Complaint is that this “seems to encourage people to stop running (exercising) and eat their unhealthy product.”

In Nestlé’s view, this is not a reasonable interpretation to place on the Advertisement. The Advertisement is clearly intended to be a light-hearted take on ‘breaks’, and there is no suggestion that people are encouraged to choose between consumption of the product and exercise or avoid exercise at all. In fact, the runner’s facial expressions clearly indicate that she is being sneaky with taking a break from her run, reinforcing this is not her everyday behaviour.

We refer the ASB to its decision on Section 2.2 of the Food and Beverages Code in the McDonald’s Blazing Omelette advertisement (0463/12).

The ASB has noted in a number of decisions to date that promotion of a product with a particular nutritional composition is not contrary to a healthy lifestyle. The runner is seen during her break with a single KIT KAT finger, which is not excessive and less than the recommended serve size.

The Advertisement does not disparage exercise or undermine the importance of a healthy or active lifestyle. We acknowledge the public health concern expressed in the Complaint, however the Advertisement itself is addressed to “all those who take a break” and is based on the very notion that what is depicted in the Advertisement is a break from what the person depicted would usually be doing.

As such, it is taking the Advertisement out of context to suggest that it is contrary to the Food and Beverages Code or prevailing community standards on health and safety. Accordingly, we respectfully submit that the Complaint should be dismissed.

THE DETERMINATION

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the “Food Code”) or the AANA Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement encourages people to eat unhealthy food instead of taking part in exercise.

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

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

The Board noted in particular 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 considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11, Fyna Foods 0101/14), the 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 then considered section 2.2 of the Food Code and noted the Practice Note to section 2.2 which states:

The Board will not apply a legal test, but consider material subject to complaint as follows:

(1) In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise. Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.

The Board noted in particular the types of physical activity shown eg riding a tandem bike and running, and noted that the people carrying out these activities are looking to utilise the opportunity for a break rather than exerting themselves. The Board considered that these scenes were light hearted and intended to show a fun side to exercise and did not suggest that people should always look to take a break from exercise. The Board considered that the advertisement was not disparaging of physical activity and the average consumer would not consider the message to be a negative one or one that is discouraging physical activity.

(2) 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 the advertisement features various scenarios where different people take a break from their daily routine to eat a KitKat, regardless of what they were in the middle of doing.

The Board noted that the KitKats shown are all the standard single serving size and considered that the target audience of adult consumers would be unlikely to consider that the advertisement is promoting consumption of more than one KitKat or that you should eat a KitKat every time you take a break.

The Board considered that the advertising or promotion of confectionary in this advertisement does not promote excess consumption and determined that the advertisement did not breach the AANA Food Code.

The Board considered section 2.9 of the Food Code which states that Advertising or Marketing Communications for Food and/or Beverage Products must comply with the

AANA the Code of Ethics.

The Board therefore considered Section 2.6 of the Code which states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the complainant’s concern that the advertisement encourages people to stop running and eat a chocolate bar instead.

The Board noted the scene featuring a female runner sitting against a tree and eating a KitKat. The Board noted the accompanying voiceover describes the woman’s actions as, “an ‘everyone thinks I’m running’ break”. The Board noted the woman is wearing sports clothing consistent with running and considered the most likely interpretation of this scene is the woman is taking a break from a run rather than avoiding running altogether. The Board considered that the advertisement did not depict, encourage or condone eating a chocolate bar rather than participating in physical activities.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

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