



**ADVERTISING
STANDARDS
BOARD**

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Case Report

1	Case Number	0289/17
2	Advertiser	Fruco Beverages Australia
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	12/07/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

- 2.1 - Discrimination or Vilification Gender
- 2.4 - Sex/sexuality/nudity S/S/N - general

DESCRIPTION OF THE ADVERTISEMENT

This Facebook advertisement features an image of two lemons and the text, "not as guilty as it looks" as well as an image of a can of Sparkling Oh! lemon flavoured drink.

THE COMPLAINT

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

Depicting breasts with lemons - sexualising and dehumanising women and girls.

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!' advertisement appearing on Facebook that is the subject of a complaint

*features an image of real, un-doctored lemon fruit – and an image of a Sparkling OH! drink with the tag lines: *not as guilty as it looks and "only 2g Sugar" (collectively, "Advertisement").*

We note that the Complaint described the Advertisement as "sexualising and dehumanising women and girls".

The target demographic for the 'Sparkling OH!' drinks are adults between the ages of 18 to 35 years old. The Advertisement is 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 Advertisement features pictorial representations of real un-doctored lemon 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.

As requested, we have addressed the Complaint 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 Advertisement and the Complaint, and the requirements of the AANA Code of Ethics and the AANA Food Code, we respectfully submit that the Advertisement does not in any way contravene the AANA Code of Ethics and the AANA Food Code. Further the Advertisement complies with the Facebook Advertising Guidelines.

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

- AANA Code for Advertising and Marketing Communications to Children, as the Advertisement is 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 Advertisement is 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;*
- Facebook users must be at least 13 years of age.*

AANA Food Code

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

Clause 2:

2.1 the Advertisement is 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 Advertisement with an accurate presentation of all information including any references to nutritional values or health benefits.

Accordingly, the Advertisement does not contravene Section 2.1 of the AANA Food Code;

2.2 The Advertisement does 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 Advertisement does not contravene Section 2.2 of the AANA Food Code;

2.3 The Advertisement contains a nutritional claim of "only 2g of sugar" and meet the requirements of the Australia New Zealand Food Standards Code and accordingly, the Advertisement does not contravene Section 2.3 of the AANA Food Code;

2.4 The Advertisement does not include any health related comparisons, and accordingly, the Advertisement does not contravene Section 2.4 of the AANA Food Code;

2.5 The Advertisement does not make reference to consumer taste or preference tests, nor use any scientific terms to falsely ascribe validity to advertising claims, and accordingly, the Advertisement does not contravene Section 2.5 of the AANA Food Code;

2.6 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, and accordingly, the Advertisement does not contravene Section 2.6 of the AANA Food Code;

2.7 The Advertisement 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 Advertisement, and accordingly, the Advertisement does not contravene Section 2.7 of the AANA Food Code;

2.8 The Advertisement does not portray 'Sparkling OH!' as a substitute for meals, and accordingly, the Advertisement does not contravene Section 2.8 of the AANA Food Code;

2.9 The Advertisement complies with the AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children is not relevant, and accordingly, the Advertisement does 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 Advertisement, as the Advertisement is not

targeted to Children.

On the basis of the above, we do not consider that the Advertisement contravenes 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 Advertisement contains images of un-doctored fruit. It does 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 Advertisement does not contravene Section 2.1 of the Code;

2.2 The Complaint states that it is "sexualising and dehumanising women and girls". 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 dehumanising, exploitative or degrading of any individual or group of people, and accordingly, the Advertisement does not contravene Section 2.2 of the Code;

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

2.4 The Complaint refers to the Advertisements as "sexualising and dehumanising women and girls". Whilst we acknowledge that the fruit featured in the Advertisement is intended to allude to certain female body parts, the Advertisement is intended to be light hearted - it is clear that the pictures are of fruit and the images are un-doctored and the Advertisement communicates 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 Advertisement does not contravene Section 2.4 of the AANA Code of Ethics;

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

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

2.6 the Advertisement is clearly distinguishable as such to the relevant audience, and accordingly, the Advertisement does not contravene Section 2.7 of the Code.

We note that clause 3 of the AANA Code of Ethics does not apply to the 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 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 dehumanises women and girls.

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 Facebook advertisement features two lemons with the nipple pointing toward the front, a can of drink called “sparkling oh!” and the tagline *not as guilty as it looks.

The Board noted it had recently dismissed a similar complaint about the same image when used in poster format (0251/17) where:

“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.”

Consistent with its previous determination the Board considered that the use of fruit in a manner which is suggestive of a woman’s breasts, but is still clearly identifiable as fruit, did not humiliate or ridicule women and did not treat women unfairly.

The Board determined that the advertisement 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 the text of the advertisement regarding feeling guilty and considered that whilst this could relate to people sometimes feeling guilty about drinking soft drinks, in the Board’s view it is also a double entendre relating to the impression that the viewer could get from the image, i.e. that the lemons were suggestive of breasts.

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 permit 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 considered that in this instance a depiction of lemons was relevant to the advertised product – a lemon flavoured beverage.

The Board noted that the advertisement appeared on Facebook and considered that the audience of Facebook is people aged over 13 years. The Board considered that the image was not overly sexualised, the use of fruit in a suggestive way was in this instance humorous, and overall the image was relevant to the product being advertised.

Consistent with its previous determination in case 0251/17, the Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of Facebook.

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.