



**Ad Standards** Community Panel  
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Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0292-20</b>
<b>2. Advertiser :</b>	<b>Frucor Suntory Australia Pty Limited</b>
<b>3. Product :</b>	<b>Food/Bev Groceries</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Other</b>
<b>5. Date of Determination</b>	<b>7-Oct-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.4 Sex/sexuality/nudity  
AANA Code of Ethics\2.5 Language

### DESCRIPTION OF ADVERTISEMENT

This YouTube advertisement features a young man standing in a pink fantasy landscape, the words 'THE PROCRASTINATION PLACE' are on a flying banner being pulled by a dragon in the sky. The man asks, "hey, what just happened?". An anthropomorphised pickle in a chefs hat is holding a fry pan with a tortilla floating above it. He responds, "you've been procrastinating with lots of food porn, and regular porn."

The man responds, "no, no I haven't".

A hand holding an energy drink appears out of a swirling green vortex and a voice says, "you've got stuff to do".

The man drinks the energy drink.

The hand holding the drink coming out of the vortex is shown, with the text and voice over, "Make it happen".

### THE COMPLAINT

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

*This advertisement talks about a person looking at "Real Porn", and played as a YouTube ad in the middle of a Covid-19 press conference on the ABC News Australia*



*Channel on our smart TV - at 4:30pm. This discussion of adult-only material is not appropriate for anyone who isn't an adult. Upon searching for this ad I found a complaint had already been made, yet was dismissed (Case Number 0148-20). However the reasons for dismissal do not suffice for many reasons, such as:*

*1) The assessment of the ad focused on the phrase "food porn" as the primary content to be assessed, with dismissive reference for the far more problematic reference to "REAL porn" which follows right after. It's reasoning was that it "isn't the focus", which is problematic for a number of reasons, these 2 in particular:*

*Firstly, there is sufficient prominence and focus for concern. There are 2 characters in this ad, the man who has 2 lines, and the pickle who has 1. So in a 15 second ad with 3 lines of dialogue, the pickle's only line is "you've been watching too much food porn... and REAL porn!". After 'food porn', there is a pause, and the camera immediately zooms in for emphasis and dramatic effect, before saying "and REAL porn", which is then followed by another awkward pause to let the words simmer and be processed by the viewer, before the man finally responds. So not only is there sufficient prominence and focus, it's positioned as the 'punchline', and the memorable take away from the ad.*

*Secondly, 'focus' is not the only measure of risk and impact when assessing standard in advertising. Profanity may only be 1 word, yet it carries significance in advertising even if it's only used once.*

*2) The assessment said that "The Panel considered that the word pornography of itself is not explicit". Firstly, the issue is not simply the use of the word porn as if it were profanity, but the reference to a man looking at real porn to the point of procrastination, all as a point of humour. You don't need to explicitly show someone viewing pornography to model it to viewers (including children), referencing a man doing it models an example of it in itself. In the same way that sexual references are considering in movies, not just sex scenes.*

*Secondly, the panel needs to recognise that 'pornography' and 'porn' function differently in our language with underlying connotations that communicate different things. The casual word 'porn' used in punchline of the ad is not a neutral, objective or 'formal' reference to pornography, but one that exemplifies its casual use to anyone (including children) who are viewing the ad.*

*3) The assessment said that V Energy Drink is a product targeted at 18-44 year olds and so they are the relevant audience - with the problematic implication being it can only breach standards if it can be deemed inappropriate for 18-44 year olds, as if they are the only people who will see the ad. This played on a news channel in a clip about a Covid-19 press conference, which isn't a child-restricted video or channel. Additionally, it played at 4:30pm, a time when children are likely to be home to witness such ads. To top it off, the whole visual atmosphere at the ad is childlike, with bright colours, fantasy concepts and stop-motion animation. So it captures the attention of children. In spite of this, the assessment only decided that "the language and tone of the Advertisement is not of a childlike nature, and does not feature scenarios which are aimed at or are appealing to children".*



4) *The assessment said that "No sexual imagery is used in the Advertisement, which is presented in a light-hearted, humorous and fun way." If 'imagery' is to mean literal visual depictions, then there is no accusation about any imagery, but about the words, tone and focus, so this is beside the point. If 'imagery' is to mean what is conjured through things such as words, tone and focus - then there is inevitably imagery of the description of someone looking at real porn to the point of procrastination. This is the same principle why sexual references are considered in movies, not only sex scenes. Words, tone and focus are all significant when assessing whether something is appropriate. Also, the fact that something is presented in a light-hearted, humorous and fun way is not evidence that it must therefore be appropriate, but in fact those things can amplify the problem in packaging adult content in a way that engages younger viewers.*

*The assessment also said "The Advertisement is in no way insensitive, inappropriate or sexually suggestive" It objectively is sexually suggestive - the punchline of the whole ad is literally a (sexual) suggestion that the protagonist has been looking at too much 'real porn' to be productive. That is the punchline of the ad.*

*The assessment also says "The Advertisement attempts to engage the target audience, in a humorous way, on a common life occurrence, being that of procrastination, and does not use sexual imagery to further its message." Using sexual references to further its message of procrastination is EXACTLY what it does. The 'common life occurrence' it seeks to engage the audience with is procrastinating not generally, but specifically by looking at too much 'food porn' and 'real porn'. That is the point of relating to the target audience, and so is well and truly used to further the message from a general vague notion of 'procrastination'.*

*So in summary, regardless of who they are trying to engage, 18-44 year olds are not the only people who will see this content. Children, including those under 14, will be exposed to this content which is sexually suggestive, is given prominence and focus, and is in a visually childlike context that will grab the attention of younger viewers.*

## **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 complaint made in connection with the V energy drink advertisement which includes a reference to 'food porn' and 'real porn' when the actor finds himself in a fantasy land called 'the procrastination place' (Advertisement). We thank you for the opportunity to provide a response to this complaint.*

*Background – the V energy drink advertising campaign*

*The Advertisement is part of a broader campaign that takes a light-hearted look at the way people procrastinate using the internet, and seeks to position the V energy drink as the solution to get a consumer out of 'the procrastination place' and focused on what they need to do. The execution in this Advertisement in particular makes light of*



*the time people waste on the internet watching various cooking and baking content, which is commonly referred to as 'food porn'. 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 complaint has been addressed by reference to all relevant advertising codes, including the AANA Code of Ethics (AANA Code of Ethics) and the AANA Food and Beverages Marketing and Communications Code (AANA Food Code).*

*Having considered the Advertisement and the complaint, as well as the requirements of the AANA Code of Ethics and the AANA Food Code, Frucor respectfully submits that the Advertisement does not in any way contravene the AANA Code of Ethics or the AANA Food Code.*

*Please note that the complaint has not been assessed by reference to the:*

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

*Application of the AANA Code of Advertising and Marketing Communications to Children*

*Frucor submits that the AANA Code of Advertising and Marketing Communications to Children does not apply to the Advertisement for the following reasons:*

- the AANA Code of Advertising and Marketing Communications to Children applies to advertisements directed primarily at children;*
- a 'child' for the purposes of the AANA Code of Advertising and Marketing Communications to Children is a person 14 years old or younger;*
- social media settings have been applied to the advertisement so that the advertisement can only be seen on social media accounts that are verified as belonging to consumers over the age of 18 whom have signed into their account. Children aged under 18 years will not see the advertisement on their social media accounts;*
- the target audience for advertising of the V energy drink is adults between the ages of 18 and 44 years;*
- the language and tone of the Advertisement is not of a childlike nature, and does not feature scenarios which are aimed at or are appealing to children; 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.*

*The complaint addresses the time at which the Advertisement was shown and the programming during which the Advertisement was shown. Such a complaint is distinct from the content of the Advertisement and is not sufficient to invoke the AANA Code of Advertising and Marketing Communications to Children. Further, Frucor reiterates the social media settings of the advertisement – if an adult consumer has signed into a social media account, the advertisement will be targeted to that adult consumer, not children.*

*The complaint also claims that the Advertisement is presented in a ‘visibly childlike context’ and ‘captures the attention of children’. The AANA Code of Advertising and Marketing Communications to Children is 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 can be classed as reminiscent of childhood, or a dream like state, which is appropriate given the plot of the advertisement is concerned with the procrastination place, a dream-like state. Use of this visual technique and the language used, as far as it uses adult concepts, is not sufficient to invoke the AANA Code of Advertising and Marketing Communications to Children.*

*The fact that the Advertisement may appear on a consumer’s social media account during the day is immaterial to the consideration of whether the Advertisement has breached the relevant advertising codes, the AANA Code of Ethics and the AANA Food Code which, in Frucor’s opinion, it has not.*

#### *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.*

*The Advertisement does not contravene section 2.3 of the AANA Code of Ethics as the Advertisement 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 complainant raised a concern with the use of the phrase 'real porn' in the Advertisement. The term 'real porn' is not an adult only phrase, it is merely a descriptive phrase. The use of the phrase does not promote pornography, nor is pornography shown in the Advertisement. Even though the phrase 'real porn' is used, it attempts to convey a humorous point and is a minor part of the Advertisement. This Advertisement does not focus on pornography but focuses on 'food porn' as the explanation for why the protagonist in the Advertisement is procrastinating, with the resultant need to drink V energy drink to get him out of the procrastination place. The prominence and focus of the Advertisement is the V energy drink, which, in Frucor's opinion, would be acknowledged by the vast majority of the target audience, being adults between the ages of 18 and 44 years.*

*It was also claimed in the complaint that the protagonist was looking at real porn to the point of procrastination. This is not a correct interpretation of the Advertisement. The protagonist is clearly dismissive of the suggestion that he has been viewing real porn. Dismissing the idea of the protagonist watching real porn is a tool used to promote humour in the Advertisement, which the target audience may, or may not find, amusing. Such a view will be subjective. What is objective, based on the correct interpretation of the Advertisement is that the Advertisement in no way promotes 'real porn' or images relating to 'real porn' and, Frucor believes, such an interpretation would not be adopted by the vast majority of the target audience.*

*The complaint further states that "[y]ou don't need to explicitly show someone viewing pornography to model it to viewers (including children), referencing a man doing it models an example of it in itself." The Advertisement in no way shows or implies that the protagonist has viewed or modelled real porn. Such an interpretation misconstrues the explicit message and subtext of the Advertisement. The protagonist clearly states that he has not been watching real porn and so it cannot be, and is not, via watching real porn that the protagonist has ended up in the 'procrastination place'. Frucor takes its responsibilities to comply with community standards in its advertising seriously and ensures that its advertisements comply with prevailing community standards in respect of the portrayal of sex and sexuality. It is Frucor's position that it is not an objectively reasonable view of the Advertisement, particularly amongst the target audience, that the Advertisement promotes pornography or models the act of watching pornography and promotes such acts to viewers.*

*The complaint states that the "casual word 'porn' used in the punchline of the ad is not a neutral, objective or 'formal' reference to pornography, but one that exemplifies its casual use to anyone (including children) who are viewing the ad." We are unclear as to the exact meaning of this sentence, but Frucor does submit that the use of the word 'porn' is used in a casual way to highlight the humorous outcome of consuming too much food porn, that is, procrastination, the solution to which is the consumption of the V energy drink, and not to exemplify or promote pornography.*



*The complainant also asserts that there is “inevitable imagery of the description of someone looking at real porn to the point of procrastination” and the advertisement “objectively is sexually suggestive”. There are no pornographic images or references to pornography used in the Advertisement. The use of the phrase ‘real porn’ is used as a descriptor. It does not and cannot objectively be construed as being a reference to pornography. While Frucor accepts that the complainant is entitled to hold a subjective opinion that the advertisement is sexually suggestive, Frucor submits that, on an objective basis and considering the target audience as well as the Prevailing Community Standards, the vast majority of the target audience and the community would not agree that the Advertisement is sexually suggestive nor that the Advertisement portrays the protagonist as being in a procrastination place due to the fact that he has been “looking at too much ‘real porn’ to be productive.”*

*The Advertisement in no way encourages or promotes pornography and does not breach the Code of Ethics in respect of this section 2.4.*

*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 complaint equates the use of the phrase ‘real porn’ with profanity. The term ‘real porn’ is not a profanity – it is merely a label and as such, it does not breach any prohibitions with respect to language imposed under the AANA Code of Ethics. Frucor submits that the vast majority of consumers, including the vast majority of the target audience, would not accept that the word ‘real porn’ was a profanity. Additionally, it is incorrect to say profanity carries significance in advertising. There is not evidence to support this opinion, nor can this statement be said to be accurate without considering the context of each marketing communication in which a profanity is used. Frucor submits that an advertisement cannot be defined by the use of one word, it is the context and the subtext in an advertisement that is important, particularly subtext, which can be difficult for children to discern, and in the case of the Advertisement, the use of the word ‘porn’ does not carry significant weight in the context of the Advertisement and the message it communicates. The Advertisement does not breach the AANA Code of Ethics in respect of this section 2.5.*

*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.*

*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 not appear within segments of media devoted to general and sports news and/or current affairs, nor rely on the endorsement or use of a recognised 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 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. 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.*

## **THE DETERMINATION**

### **FRUCOR**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement contains themes and language inappropriate for an audience which may include children.

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

The Panel noted that the complainant made reference to several aspects of a determination made for the same advertisement on a different medium in case 0148-20. The Panel noted that several of the complainant's comments related to the Advertiser Response in that case, and not the Determination Comments of the Panel.

The Panel 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 Panel considered whether the advertisement contained sex, sexuality or nudity.

The Panel considered whether the images depicted sex. The Panel noted the dictionary definition of sex most relevant to this section of the Code of Ethics is 'sexual intercourse; sexually stimulating or suggestive behaviour.' (Macquarie Dictionary 2006).

The Panel considered that the advertisement suggests that the man has been procrastinating using 'real porn' and that this is a reference to sexually stimulating behaviour. The Panel considered that the advertisement refers to sex.

The Panel considered whether the advertisement featured sexuality. The Panel noted the definition of sexuality includes 'sexual character, the physical fact of being either male or female; The state or fact of being heterosexual, homosexual or bisexual; sexual preference or orientation; one's capacity to experience and express sexual desire; the recognition or emphasising of sexual matters'. The Panel noted that the use of male or female actors in an advertisement is not of itself a depiction of sexuality.



The Panel considered that the reference to ‘real porn’ in the advertisement is a recognition of sexual matters. The Panel considered that the advertisement did include sexuality.

The Panel considered whether the advertisement contained nudity and noted that the dictionary definition of nudity includes ‘something nude or naked’, and that nude and naked are defined to be ‘unclothed and includes something ‘without clothing or covering’. The Panel considered that the Code is intended for the Panel to consider the concept of nudity, and that partial nudity is factor when considering whether an advertisement contains nudity.

The Panel noted that the man in the advertisement was fully clothed. The Panel considered that the puppet character is standing behind a rock so that only the top half of its body is visible. The Panel considered that the advertisement does not contain nudity.

The Panel then considered whether the advertisement treated the issue of sexuality with sensitivity to the relevant audience.

The Panel considered the meaning of ‘sensitive’ and noted that the definition of sensitive in this context can be explained as indicating that ‘if you are sensitive to other people's needs, problems, or feelings, you show understanding and awareness of them.’  
(<https://www.collinsdictionary.com/dictionary/english/sensitive>)

The Panel considered that the requirement to consider whether sexual suggestion is ‘sensitive to the relevant audience’ requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement –how subtle sexual suggestion is or might be is relevant to the Panel considering how children, and other sections of the community, might consider the advertisement.

The Panel noted that the complainant indicated that they had viewed the advertisement while watching a news clip on YouTube. The Panel considered that the audience for this medium would be predominately adult and teenagers, and supervised children.

The Panel noted that it had recently considered a similar issue in case 0021-20, in which:

*“The Panel considered that the word pornography of itself is not explicit and the use of the word, without any actual depiction of that type of content, is not a breach of the Code. The Panel acknowledged that some members of the community would prefer that this word not be used on television where children can hear it, but considered that the actual content of the advertisement is not sexually explicit and did treat the issue of sex, sexuality and nudity with sensitivity to the relevant broad audience which would include children.”*



The Panel noted that while the advertisement refers to a man watching pornography to the point of procrastination, this reference itself does not promote or encourage the viewing of pornography but rather is a statement relevant to that person. The Panel considered that a reference to watching pornography is not itself inappropriate.

Consistent with the previous determination, the Panel considered that the use of the word 'porn' in the current advertisement was not explicit. The Panel considered that the advertisement did not depict or explain the meaning of the word and that the overall advertisement was not sexually explicit, or inappropriate for the relevant audience viewing YouTube.

The Panel considered that the advertisement did treat sex, sexuality and nudity with sensitivity to the relevant broad audience and did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.5 of the Code. Section 2.5 of the Code states: "Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided".

The Panel noted the complainant's concerns that the reference to "porn" is inappropriate.

The Panel considered that the word porn itself is not explicit and the use of the word, without any actual depiction of that type of content, is not a breach of the Code.

The Panel acknowledged that some members of the community would prefer that this word not be used where children can hear it, but considered that the use of the word itself was not inappropriate in the circumstances, or strong or obscene.

The Panel determined that the advertisement did not breach Section 2.5 of the Code.

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