



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0301/18
2	Advertiser	McCain Australia and New Zealand
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/07/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety Unsafe behaviour

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a young boy finding ways to shake a packet of frozen fries. He puts them in a bike basket and rides over cobblestones, uses a paint shaker, and puts them in a dryer in a laundromat.

THE COMPLAINT

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

One part of this commercial shows the boy in front of a tumble drier using it to tumble (shake) his fries. This is not something which should be promoted to children - a tumble dry is a dangerous place and not a toy. Placing plastic in this appliance could create a fire risk. Laundry machines are not toys. This ad is directly marketed towards children with no view to their safety

THE ADVERTISER'S RESPONSE

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



McCain's response to Complaint 0301/18 outlined in Ad Standards' letter dated 26 June 2018

We refer to your letter of 26 June 2018 (your letter) in respect of the Complaint made to Ad Standards regarding the Shake Shake frozen potato television commercial (Advertisement). You requested our company's response by 3 July 2018; we are grateful for the extension of time granted permitting our company to respond by 4 July 2018.

1. FURTHER INFORMATION REQUESTED

We enclose with this response, copies of the further information requested in your letter, namely:

- (a) A description of the Advertisement (see section 2.2 below);*
- (b) A copy of the script of the Advertisement (See Annexure A);*
- (c) Details of the CAD reference numbers G5W79FOA and G5W73FOA and CAD rating "G";*
- (d) Details of McCain's advertising agency (Cummins & Partners) and media buyer (Carat Australia);*
- (e) Digital copy of the Advertisement;*
- (f) Comprehensive comments in relation to the Complaint (see sections 2.3 to 2.6 below).*

2. RESPONSE TO THE COMPLAINT

2.1 Background

The Complaint raises issues under section 2.6 of the AANA Advertiser Code of Ethics (Ethics Code). Section 2.6 of the Code states:

Advertising or Marketing Communication shall not depict material contrary to Prevailing Community Standards on health and safety.

Prevailing Community Standards is defined under the Ethics Code as follows:

Prevailing Community Standards means the community standards determined by the Ad Standards Community Panel as those prevailing at the relevant time in relation to Advertising or Marketing Communications. Prevailing Community Standards apply to clauses 2.1 – 2.6 below. The determination by the Community Panel shall have regard to Practice Notes published by AANA and any research conducted by Ad Standards.

Specifically, the Complaint identifies that the reason for the complaint was a health and safety concern in advertising to children.

McCain takes its legal obligations with respect to its advertising very seriously, and in particular, has an extensive review process in place in relation to its advertising. This includes internal review and on some occasions also external legal review. Further,



McCain is committed to ensuring that it advertises its products in ways which are consistent with safe and responsible food handling, including by children.

McCain has considered the allegations the subject of the Complaint and for the reasons set out below, submits that the Complaint should be dismissed.

The response below considers section 2 of the Ethics Code, the AANA Code for Advertising and Marketing Communications to Children (Children's Code) and the AANA Food and Beverages Marketing Communications Code (Food Code), which are incorporated under section 2 of the Ethics Code.

2.2 Description of the Advertisement

The Advertisement the subject of the Complaint was one of a number of advertisements generated to promote McCain's "Shake Shake" potato products line (being frozen potato fries containing self-seasoning sachets to be added to the product before cooking).

The Advertisement was run in Australia as a digital advertisement from 3 June 2018 to 24 June 2018 on the following channels: Nine, Go!, Gem, 9 Life, Ten, One, Eleven, 13th Street, Arena, BBC First, Binge, Boxsets, Crime & Investigation, E!, Fox Footy, Fox League, Fox Sports, Foxtel Movies, Lifestyle Food, Home, SyFy, TLC, TV Hits, The Style Network, UK TV, Universal. In total, the Advertisement aired on 2,414 spots on metropolitan free-to-air television and 1,232 spots on subscription television channels in June 2018.

Further runs are scheduled for 8 July, 22 July, 5 August and 19 August 2018. A full list of play times is included in the spread sheet at Attachment C.

McCain strongly rejects the assertion that the Advertisement breaches 2.6 of the Ethics Code by encouraging children to prepare food in an unsafe manner. As outlined in the submissions below, the message of the Advertisement "find new ways to shake things up" is in no way designed to market McCain's products "towards children with no view to their safety".

McCain provided the following brief to Cummins & Partners (Cummins) to prepare the Advertisement:

The process of cooking McCain 'shake shake' fries is a fun way to start the weekend with those closest to you. Tearing open the bag, tipping and shaking the flavour is a first of its kind and a novel way of cooking, eating, and sharing chips.

*The campaign rationale for the Advertisement presented by Cummins was:
To dramatise the innovation of the product by finding ingenious ways to shake up a Friday – through the playful and wondrous eyes of a child.*



The TV commercial is filmed in a nostalgic and fanciful style, where whimsy and comedy play a significant role. This was an intentional decision, designed to increase the hyperbolic feel of the commercial and remove it from reality. The combined effect of this production style, along with the increasingly weird and comedic ways of shaking the fries (from the bike on cobblestones, to the laundromat, to the paint shaker, to the wet shaking dog) ensures that the child's actions are sufficiently removed from reality so as to avoid confusion that the product should be prepared in this way.

2.3 Ethics Code

We understand that the Ad Standards Community Panel (the Panel) will review the Advertisement against section 2 of the Ethics Code.

We consider that the only provision of section 2 of the Ethics Code which is relevant to the TVC is section 2.6, which is discussed below. None of the other provisions in section 2 of the Ethics Code are relevant to the Advertisement as there is no content in the Advertisement which brings into consideration those other provisions of the Ethics Code. We explain our reasons for this view further below.

Section 2.6 of the Ethics Code

Section 2.6 of the Ethics Code requires that advertising or marketing communications "shall not depict material contrary to Prevailing Community Standards on health and safety".

We strongly believe that the Advertisement does not depict any material contrary to "prevailing community standards on health and safety", and is not otherwise in breach of any provisions of the Ethics Code.

The Complaint takes issue with the imagery displaying the young boy watching the packet of frozen fries being "tumbled" in a tumble dryer at a laundromat. The Complaint claims that this scene in the Advertisement promotes the tumble dryer "as a toy", and that "placing plastic in this appliance could create a fire risk".

McCain considers that when the complained-of scene in the Advertisement is considered in the context of the entire sequence of "shaking" actions, it is clear that there is no suggestion that the child is at risk of harming himself or others. For example, as the Advertisement progresses, there is a clear progression in the level of fanciful actions used to "shake" the fries: from manual shaking (as is intended), to shaking by riding a bike on cobble stones, to the laundromat scene, to finally a paint shaker). Given the increasing level of hyperbole depicted in the Advertisement as the scenes progress, it is apparent that the video depicts images which are unrealistic and clearly exaggerated. By displaying these "shaking" actions in a fantasy manner, McCain considers that the Advertisement in no way promotes activities which are



unsafe or harmful to children, or to the community generally.

McCain also considers it relevant that in the majority of scenes, the boy is accompanied by an adult. The fact that the adult is not present in the laundromat scene does not detract from the overall message conveyed by the Advertisement that the preparation of the product should be done under supervision. Additionally, while the Complaint raises an issue of potential fire safety, there is no indication that the tumble dryer is actually being used in a manner which will result in a fire, particularly given the product in question is purchased frozen.

McCain considers that the dryer scene is a fleeting part of the Advertisement, and the child is not seen putting the product into a dryer as a means of seasoning the product. The suggestion that the child may have put the product into the dryer is insufficient for the Advertisement to be considered as encouraging unsafe behaviour. The view that the Advertisement does not encourage a child to engage in unsafe behaviour is further assisted by the fact that the dryer is clearly in a laundromat, located in a row of similar looking machines, instead being shown in a home setting. McCain believes it is unlikely that a child would appreciate the machines in the laundromat scene are similar to anything that may be present in his or her own home, and that therefore, a child in a home setting would not try to emulate the laundromat scene. Given that the overall impression of the Advertisement is one of fantasy, McCain considers that there has been no relevant breach of the Ethics Code.

Sections 2.1 to 2.5, 2.7 of the Ethics Code

McCain submits that the Advertisement complies with section 2 of the Ethics Code in its entirety. Below is a short summary of our submissions regarding the remaining provisions of section 2 of the Ethics Code:

- Section 2.1: the Advertisement does not portray people in a way which discriminates/vilifies a person due to race, nationality, gender, age, sexual preference, religion or illness.*
- Section 2.2: the Advertisement does not employ sexual appeal;*
- Section 2.3: the Advertisement does not present or portray violence;*
- Section 2.4: the Advertisement does not refer to or imply sex, sexuality or nudity;*
- Section 2.5: the Advertisement includes appropriate language for all circumstances and audiences, and does not use strong or obscene language;*
- Section 2.7: the audience will easily identify the Advertisement as advertising material (for example, the Shake Shake product is depicted in the Advertisement as the focus of each scene).*

2.4 Children's Code

McCain considers that the Children's Code is not relevant or applicable to the Advertisement, as it is not primarily directed to children under 14 years of age. Pursuant to the guidance set out in Appendix 1 to the Commercial Television Industry Code of Practice 2018, material classified as "G" is not necessarily intended for children, but any material is not unsuitable for children to watch without supervision.



While McCain acknowledges that the industry accepted age bracket for consumers of frozen grocery items is 13 years of age and older, in this case, the primary audience is not children. The AANA Regulatory Guide provides that:

"Advertising and marketing communications featuring children or which are aimed at children need special attention. Consider whether your ad engages and resonates with children in such a way as to bring about a response, reaction or action from children and whether it uses themes, visuals and language aimed at children. Consider whether the product or service is of principal appeal to children, not just a general consumer."

The AANA Regulatory Guide also states that advertisements marketed towards children must "Portray only safe uses of products".

McCain notes that while the Advertisement includes children, it also depicts the boy throughout the commercial being accompanied by adults. As noted above in relation to the description of the Advertisement, the hyperbolic/dream-like nature is intended to appeal to the child within everyone, not specifically children, and particularly to adults who are the target market to purchase the product in grocery stores. Thus children are not the target audience of the Advertisement.

In any event, even if the Panel determines that children are within the target audience, McCain considers it relevant that the CAD rating was "G", indicating that the content is "very mild in impact and does not contain any matter likely to be unsuitable for children to watch without supervision" (See FreeTV Commercials Advice, Classification Handbook). Additionally, as noted above, as the child is not seen placing the product in the dryer, the Advertisement does not encourage children to engage in dangerous activities. Thus McCain considers that the Advertisement complies with section 2.5 of the Children's Code.

We also note that the AANA Practice Note on the Children's Code states that it will not apply to marketing communications directed to parents, adults or grocery buyers. Additionally, we also note that section 3.1 of the Ethics Code specifies that section 2.6 of the Ethics Code does not apply to advertisements to which the Children's Code applies. Given that the Advertisement is directed to grocery buyers and that section 2.6 of the Ethics Code has been identified as the relevant provision for the issues raised in the Complaint, it therefore follows that the Children's Code is not relevant or applicable to this matter.

2.5 Food Code

McCain also considers that the Advertisement complies with the Food Code. Specifically, McCain considers that the Advertisement complies with section 2 of the Food Code (Advertising or Marketing Communications For Food or Beverages) as it does not make any misleading communications regarding the nutritional value or health benefits of the advertised product; and



McCain also considers that the Advertisement complies with section 3 of the Food Code (Advertising and Children), to the extent that this provision applies to the Advertisement. For the reasons set out in section 2.4 above, we consider that the primary audience of the Advertisement is not children. Additionally, we note that the Practice Note to the Food Code identifies that the target audience of an advertisement is relevant to considering whether or not a breach of the Food Code has occurred. Specifically, section 2.7 of the Food Practice Note states:

In testing whether the use of a personality contravenes the Code, the Community Panel will consider whether the target audience would see a clear distinction between advertising and editorial or program content.

In testing the matter of target audience, the Community Panel will not rely solely on the advice of the advertiser, but also consider the placement of the material or, in the case of broadcast media, the program within which it appears.

For any advertising or marketing communication directed towards children the Community Panel will:

- consider whether children within the target audience would be likely to see a clear distinction between advertising and editorial or program content.*
- exercise particular sensitivity in relation to younger children, taking special notice of target audience and time zones, recognising that while an advertisement might be placed between sections of editorial or program content, or between separate editorial material or programs, this might not represent a clear distinction for very young children.*

Thus, even if children are taken to be the target audience of the Advertisement, McCain considers that it complies with section 3 of the Food Code, as the Advertisement does not:

- convey misleading or deceptive messages regarding nutritional health claims (section 3.1);*
- improperly exploit children's imaginations in a way that may encourage excessive consumption of the product (section 3.2);*
- imply or state that possession of the product will afford any physical, social or psychological advantage (section 3.3);*
- undermine the role of parents in guiding diet/lifestyle choices (section 3.4);*
- urge adults responsible for a child's welfare to buy the products (section 3.5);*
- feature ingredients that aren't an integral element of the product (section 3.6).*

2.6 Additional matters

McCain also wishes to bring the following additional matters to the Panel's attention:

- Number of complaints received: we note that the Complaint is the only complaint that has been received in relation to the Advertisement. McCain is also unaware of any incidents involving children putting the SHAKE SHAKE product in a clothes dryer.*



- *Tone of the Advertisement: the Advertisement is intended to be humorous, light-hearted and exaggerated (for the reasons set out above).*
- *Multiple reviews: the Advertisement was subject to multiple levels of internal and external review prior to publishing. For example, the Advertisement was reviewed by at least four internal management level employees at McCain, including managers within the Marketing Team, the Retail Director and Managing Director [. In addition, McCain seeks legal review of a significant portion of its advertising material, and did so in the case of the Advertisement. We sought legal review of the Advertisement from our external legal representatives.*

3. CONCLUDING COMMENTS

We are sorry that the complainant was offended by the Advertisement but for the reasons set out above, and with respect to any offence caused to the complainant, we submit that the Advertisement does not breach any sections of the Ethics Code (including section 2.6) or any other applicable Code and we ask that the Panel dismiss the Complaint on this basis.

We appreciate your careful consideration of the Complaint. If you require any additional information, please do not hesitate to contact us.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code of Ethics (the Code), the AANA Code for Advertising and Marketing Communications to Children (the Children's Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainants' concerns that the advertisement features unsafe behaviour.

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

The Panel considered Section 2.6 of the Code. Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety".

The Panel noted the complainants' concerns that the advertisement features a child placing a packet of frozen chips in a dryer, and that this behaviour is unsafe as it could lead to a fire.

The Panel considered the advertiser's response that the images in the advertisement are unrealistic and clearly exaggerated and that there is no indication in the advertisement that the tumble dryer is being used in a way which would result in a fire.



The Panel considered that the scenarios in the advertisement may be fantastical, however the depiction of the chip packaging in the dryer was realistic and able to be copied.

The Panel considered while this scene was a realistic depiction, it was depicted as a part of a range of scenarios designed to build a message around eccentric and whimsical ways to shake the product. In combination with the scenes of the product in the paint shaker and the boy's face lighting up when he sees the wet dog shake, the depiction of the packet in the dryer is also painted in an imaginative and whimsical, rather than realistic, way. The Panel considered the range of actions were not likely to be imitated in that context.

The Panel noted that advertisers should use caution when depicting children using electrical appliances, however in this instance the Panel considered the actions in the advertisement were unlikely to cause injury or to cause a fire.

The Panel considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety. The Panel determined that the advertisement did not breach Section 2.6 of the Code.

The Panel then considered whether the advertisement complied with the Children's Code. The definition of "advertising and marketing communications to children" in the AANA Children's Code is: Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.'

The Panel noted that the product, frozen chips with flavouring, was a product that would be equally attractive to adults and children and which would require an adult to prepare.

The Panel considered that although a child is the main subject of the advertisement, the language and visuals used in the advertisement are targeted towards the grocery buyer.

The Panel considered that while there is a focus in the advertisement on fun and fantasy, the settings of the advertisement (a hardware store and a laundromat) were scenarios which would be more recognisable to an adult audience.

The Panel considered that the advertisement may have some appeal to children however it is not clearly directed primarily to children.

The Panel considered that this advertisement, considering its overall impact and the theme, visuals and language used are not directed primarily to children. The Panel



therefore considered that the AANA Children's Code did not apply.

The Panel then considered whether the advertisement complied with all relevant provisions of the Food Code.

The Panel considered 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 Panel noted that the end of the advertisement depicts the child with a full bowl of chips on his lap and considered whether this would be a representation of portion sizes disproportionate to the setting.

The Panel considered that while the boy is seen holding the bowl of chips, there are also two adults depicted in the scene and there was no suggestion that the boy would eat all the chips on his own.

The Panel considered that the focus of the advertisement was on the fun nature of the product and not the consumption of the product. The Panel determined that the advertisement did not encourage excessive consumption of the product.

The Panel also noted that it had consistently determined that advertising a product of low nutritional value on its own is not a depiction which would on its own undermine the importance of healthy or active lifestyles or the promotion of healthy balanced diets.

The Panel determined that the advertisement did not breach Section 2.2 of the Food Code.

Finding that the advertisement did not breach the Code, the Children's Code or the Food Code on other grounds, the Panel dismissed the complaints.

