



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0335/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Murray Goulburn</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet</b>
<b>5</b>	<b>Date of Determination</b>	<b>25/09/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

### DESCRIPTION OF THE ADVERTISEMENT

We open on an evening shot of a suburban house with a front window with an unnatural green glow. We cut inside and see a 13-year old girl brushing her hair, she is glowing bright green. Melancholy music begins to play and we launch into a montage of our Glowgirl's awkward life and how her glowingness affects it. The text on screen reads, "Preservatives have consequences".

### THE COMPLAINT

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

*The advertisement is inflammatory and specifically aims at instilling fear in the minds of people in regards to preservatives in foods. Australia's food and drug regulations are extremely tight, we do not permit additives which pose a significant health risk. This advertisement specifically implies that consumers should fear additives and preservatives, and goes so far as to show a girl glowing, implying that the preservatives she has consumed have caused it. This is completely ridiculous and is basically fear-mongering.*

### THE ADVERTISER'S RESPONSE

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

*The concerns raised by the complainant relate to Section 2.1 of the AANA Food & Beverages Advertising and Marketing Communications Code.*

#### *Section 2*

*2.1 Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.*

*The “Glowgirl” TVC in question is part of a broader campaign of seven TV commercials for the Devondale brand that are on air from October 2013. The other ads to feature are called “Cat Lady”; “Cyclops” ‘Jumpers’ ; “Stepdad Steve” and “Fast Start.”*

*All spots in the TV campaign were intended to be humorous and not to be taken literally. The use of comedy and humour is consistent across all ads. Therefore, the intent of the whole campaign is to provide a light touch and engage the viewers on the basis of humour.*

*In the “Glowgirl” TVC that is noted in the complaint, the character of the girl is used for comedic effect and the clearly over the top treatment to her “glow” is not to be taken seriously.*

*Note also, the spot is dramatizing the accurate substantiation of Devondale milk being “100% natural, zero preservatives” with no preservatives added. This claim has been substantiated with CAD, in a letter dated 15/8/13 from Devondale’s Nutrition and Regulatory Affairs Manager, Dr Victoria Inglis.*

*Both the creative advertising agency DDB and the advertiser Devondale are strong supporters of self-regulation and the AANA Codes of Ethics.*

## **THE DETERMINATION**

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

The Board noted the complainant’s concerns that the advertisement is inflammatory and it is aiming at instilling fear in the minds of people regarding preservatives used in food.

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

The Board noted that the product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Board considered section 2.1 of the Food Code which provides: 'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an

accurate presentation of all information including any references to nutritional values or health benefits.'

The Board noted that it has a special role given the broad principles in the various Codes and Initiatives and its role as set out in the complaints provisions of the Codes and Initiatives and other sources such as the Food and Beverage Practice Note. The Board reflects community standards and expectations and these necessarily change over time.

The Board does not determine as a legal matter whether an advertisement is misleading nor does it reach a legal opinion. The Board's task is to deal with complaints. In such dealings the task is to reflect the community's attitude - to assess whether the advertisement meets current community expectations for truthfulness given what the advertisement conveys to ordinary consumers and in light of the relevant circumstances and given the grounds of the complaint.

The Board noted the advertisement features a girl who glows green and the text, "preservatives have consequences" is written on screen followed by an image of Devondale milk and the claim that the milk contains no preservatives.

The Board noted the Advertiser's response that their Devondale milk does not contain any preservatives and noted that this has been substantiated with CAD. On this basis the Board accepted the advertiser's assertion that the product is preservative free. The Board therefore considered that the assertion that the product does not contain preservatives is not misleading.

The Board then considered the depiction of the girl glowing green and the statement "preservatives have consequences". The Board noted the advertiser's response is that the advertisement is intended to be humorous and over the top.

The Board considered that the depiction of a girl glowing green is hyperbole and considered that members of the community would recognise that this special effect is being employed to make an exaggerated point rather than to actually suggest that consuming preservatives will make you glow green. The Board agreed that the depiction of the girl glowing green is humorous and is not a misleading depiction.

The Board noted that the text on screen reads, "preservatives have consequences". The Board considered that a reasonable member of the community would not consider that preservatives will have the consequence of making hair glow green. However the Board expressed some concern over the impression and likely impact of this statement.

The Board considered that a 'preservative free' claim gives consumers information about the content of the product which is desirable for consumers who wish to avoid particular additives or preservatives.

The minority of the Board considered that the statement 'preservatives have consequences' in conjunction with the unrealistic image of a girl with glowing green hair is simply a

humorous way of portraying the fact that their product is preservative free and that this is acceptable hyperbole.

However the majority of the Board considered that the statement ‘preservatives have consequences’ has a different effect to a mere statement that something is preservative free. The majority of the Board considered that whilst the interpretation of the meaning of the text on its own is subjective and does not suggest what the consequences are or whether they are good or bad, in the Board’s view the context of the statement being used in conjunction with an image of a girl glowing green amounts to an overall suggestion that preservatives are bad for you.

The Board noted that preservatives are a necessary addition to many foods and that preservative use is strictly regulated by Food Standards Australia New Zealand. The majority of the Board considered that the advertisement’s reference to preservatives having consequences plays to the fears of members of the community who are concerned about the health risks associated with some preservatives and additives in food and beverage products. The Board considered that the advertisement’s statement ‘preservatives have consequences’, although linked with an unrealistic image, is likely to imply to reasonable members of the community that preservatives might be harmful. In the Board’s view the implication of harm from preservatives goes beyond a factual representation of a product as being preservative free, and creates a misleading impression about preservatives generally.

The Board considered that the overall effect of the advertisement, through the use of the phrase “preservatives have consequences” in conjunction with the depiction of a girl with glowing green hair, amounts to an overall message which would be considered misleading by reasonable members of the community.

Based on the above the Board considered that the advertisement did breach Section 2.1 of the Food Code.

Finding that the advertisement breached the Food Code the Board upheld the complaint.

## **ADVERTISER RESPONSE TO DETERMINATION**

In relation to the action taken by Murray Goulburn regarding these complains, the following is our response:

The advertising has been modified and will continue to run.

The modifications will be effective from October 5th 2013 online, including Facebook, YouTube, and the Devondale website. The current television commercial will run until end of

Saturday October 5th 2013, and it will then be taken off air. The new version will air from Thursday 10th October 2013.

The super saying “Preservatives have consequences” is being replace by the line “What are you feeding your kids.”