



Case Report

1	Case Number	0344/16
2	Advertiser	Stuart Alexander & Co Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/08/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The opening sequence of the Advertisement shows a mature woman looking into the window of a Werther's Original Caramels store. The words 'No Sugar Added' appear in a banner on the top left hand corner of the screen. Inside the store a man is making Werther's Original Caramels by pouring liquid caramel into moulds. The Advertisement then cuts to images of ingredients, coffee beans, caramel and chocolate before cutting to the final frame which includes images of the Werther's Original No Sugar Added range of products. The words 'No Sugar Added' appear on the bottom of the screen.

THE COMPLAINT

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

Caramel is cooked sugar - to state it has 'no added sugar' is misleading and deceptive.

It is misleading for a caramel confection product to claim 'no added sugar' as caramel and confection by nature have high quantities of sugar. Caramel by nature is made from sugar as a key ingredient - it is misleading to allow a caramel product to be portrayed as 'no added sugar' which implies it has some healthy attributes.

THE ADVERTISER'S RESPONSE

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

It is the position of Stuart Alexander & Co Pty Ltd (Stuart Alexander) that:

(a) the Advertisement does not breach:

- (i) Section 2 of the AANA Code of Ethics (AANA Code of Ethics)*
- (ii) Section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code (AANA Marketing Code);*
- (iii) any other relevant section of the AANA Marketing Code; or*
- (iv) any other relevant section of the AANA Code for Advertising & Marketing Communications to Children (AANA Communications to Children Code).*

(b) the Advertisement is not directly related to children, nor should it be considered predominantly directed to children aged 14 years old or younger (Children).

Section 2 of the AANA Code of Ethics

We submit that the Advertisement does not contain, or make reference to the themes outlined in Section 2 of the AANA Code of Ethics. Namely, it does not:

- (a) 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 (Section 2.1);*
- (b) employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people (Section 2.2);*
- (c) present or portray violence (Section 2.3);*
- (d) present or portray sex, sexuality or nudity (Section 2.4);*
- (e) use language which is inappropriate, or which would otherwise be considered strong or obscene language by any sector of society (Section 2.5); or*
- (f) depict material contrary to Prevailing Community Standards on health and safety (Section 2.6).*

Section 2.1 of the AANA Marketing Code

Misleading and deceptive communication of material

We submit that the Advertisement does not contravene section 2.1 of the AANA Marketing Code. The material communicated in the Advertisement is truthful and honest. It is not, nor is it designed to be, misleading or deceptive. It does not otherwise contravene Prevailing Community Standards and is communicated in a manner appropriate to the level of understanding of the target audience of the Advertisement. All information presented in the Advertisement is presented accurately.

Standard 1.2.7 of the Australia New Zealand Food Standards Code (Food Standards Code), permits us to make the claim 'no added sugar' in respect of the Product. As set out in paragraph 3 above, the main ingredient in the Product is Isomalt. Isomalt is a sugar substitute which is excluded from the definition of 'sugars' under the Food Standards Code meaning that FSANZ does not consider Isomalt to be a 'sugar' for food labelling purposes. Attached as Annexure C are excerpts from Schedule 4 of the Food Standards Code showing that the claim 'no added sugar' can be made in respect of the Product. If we are permitted to make this claim on the Product packaging, it is difficult to see why we are not permitted to make this claim in the Advertisement.

Further, the claim is made in circumstances where the 'total sugars' in the Product as required to be set out under the Food Standards Code are less than 1g per 100g. The small amount of sugars that are present in the Product are contained in the ingredients themselves. No sugar is added to the Product during the manufacturing process.

There are a number of sugar related claims on products which are currently in the market. As a result, the average consumer shopping for a no sugar, or low sugar, product would appreciate this difference and would not expect a 'no added sugar' claim to indicate that a product is sugar free. Whereas 'sugar free' communicates that a product does not contain sugar, 'no added sugar' only communicates that sugar has not been added to the product.

In these circumstances, the phrase 'No Sugar Added' is an entirely truthful, honest and accurate descriptor to use in connection with the Product. The Advertisement does not misleadingly represent the overall nutritional or health benefit of the Product. The Product is not 'cooked sugar' as is wrongfully asserted in the complaint set out in paragraph 1(a), nor is sugar a 'key ingredient' of the Product as is wrongfully asserted in the complaint set out in paragraph 1(b). Consequently, each Complaint should be disregarded as it proceeds on the false premise that sugar comprises a significant portion of the Product.

Directly related to children, or predominantly directed to children

We submit that the Advertisement is not directly related to Children, nor should it be considered predominantly directed to Children for the following reasons:

(a) the main actor in the Advertisement is a mature age lady;

(b) the look and feel of the Advertisement is in stark contrast to the brash bold colours and frenetic pace of today's advertisements designed to catch the attention of children. The scene depicted in the advertisement evokes the slow pace and old world charm of a classical European village. It is communicated to the viewer in muted colours in the same way as a flashback to a past era. This portrayal is designed to elicit an emotional response from the adult viewer by transporting them back to, and tapping into, memories of their own childhood. This symbolism would be lost on Children;

(c) the Product packaging itself is similarly traditional and understated. The predominant colour is a warm caramel beige. Again, this lacks the bold colouring and attention grabbing tactics which are characteristic of the packaging of today's children's products.

(d) as set out in paragraph 5, the Advertisement is directed to Women 40+.

(e) Children do not form a meaningful part of the customer demographic for the Product. 93% of the Product buyers are aged over 35 years old, with 48% aged over 55 years old. Further, 97% of volume purchases are made by those aged over 35 years old. Scan results supporting these figures have been included as Annexure D.

AANA Marketing Code and AANA Communications to Children Code

If it were to be considered that the Advertisement was 'directly related to children or predominantly directed to children', our submission is that the Advertisement is not 'directed primarily to Children' as required by the AANA Marketing Code and the AANA Communications to Children Code.

The Advertisement:

(a) does not 'engage and resonate with Children in such a way as to bring about a response, reaction and action as the engagement and resonance is created in the Adult viewer;

(b) is not aimed in the first instance at Children. As set out in paragraph 14 above, the Product is overwhelmingly enjoyed by adults, and the Advertisement targeted toward adults;

(c) is not targeted toward and does not have principal appeal to Children. As set out in paragraph 14 above, the Products are overwhelmingly enjoyed by, and targeted toward, adults;

(d) does not use children's themes and characters. As set out in paragraph 14 above, the Advertisement uses imagery reminiscent of an adult viewer's childhood;

(e) is not told through a child's eyes. As set out in paragraph 3 the Advertisement depicts, and includes images of an adult reaction to the Product;

(f) uses visuals reminiscent of the adult viewer's childhood. As set out in paragraph 14 above, the imagery and symbolism used is unlikely to be appreciated by Children;

(g) depicts a mature woman in keeping with the customer demographic. The Advertisement does not depict Children;

(h) by depicting an adult reaction to the Product, directs a clear call to action to the adult to purchase the Product, not a child.

Having regard to the information set out above, the Advertisement:

(a) does not satisfy the threshold test for Section 3 of the AANA Marketing Code

(b) does not satisfy the threshold test for the AANA Communications to Children Code.

In any case, the Advertisement does not contravene any relevant section of the AANA Marketing Code, or the AANA Communications to Children Code.

Conclusion

For these reasons, it is our view that the Advertisement does not breach:

(a) section 2 of the Advertiser Code of Ethics;

(b) section 2.1 of the AANA Marketing Code;

(c) is not 'directly related to' Children, 'predominantly directed to' Children, or 'directed primarily to' Children; and

(d) is otherwise compliant with all relevant requirements under the Advertiser Code of Ethics, the AANA Marketing Code and the AANA Communications to Children Code.

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 complainants’ concerns that the advertisement is misleading in its ‘no added sugar’ claim as the product does contain sugar.

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 the advertisement depicts a woman looking through the window of a Werther’s Original Caramels store where she can see caramels being made while a voiceover says that these are ‘no sugar added’ caramels.

The Board noted the advertiser’s response that their no sugar added caramels contain Isomalt, a sugar substitute.

The Board noted that this ingredient, Isomalt, is excluded from the definition of ‘sugars’ under the Food Standards Australia and New Zealand (FSANZ) Code (<http://www.foodstandards.gov.au/code/Pages/default.aspx>) and considered that, relying on the advertiser’s statement that the product contains Isomalt and no sugar added, the statement “no sugar added” is correct. The Board noted that caramels are traditionally made with sugar but considered that the advertisement’s statement of no sugar added, when most people would be aware of the traditional ingredients of caramel, does not mislead people as Isomalt is technically not a sugar, and the advertisement clearly identifies to consumers that the

product is different to traditional caramels.

Overall the Board considered that the advertisement is truthfully stating that the advertised product does not contain any added ingredients which match the FSANZ definition of 'sugar'.

Based on the above the Board considered that the advertisement was not misleading and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.