



Case Report

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| 1 | Case Number | 0369/11 |
| 2 | Advertiser | Ferndale Confectionery P/L |
| 3 | Product | Food and Beverages |
| 4 | Type of Advertisement / media | TV |
| 5 | Date of Determination | 28/09/2011 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

Advertising to Children Code 2.15 Food and beverages
Advertising to Children Code 2.2 Factual presentation

DESCRIPTION OF THE ADVERTISEMENT

Jo Silvagni and Registered Nutritionist & Accredited Practicing Dietician, Dr. Joanna McMillan discuss Slim Fruits and how they contain fibre and are sugar and fat free.

THE COMPLAINT

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

The advertisement was broadcast on commercial free-to-air television station ATN Seven Sydney during the following shows:

Sea Princesses on 5th July at 2:38pm and 4th July at 2:51pm

Dive Olly Dive on 5th July at 2:23pm

Spit it out on 4th July at 4:22pm

It's Academic on 4th July at 3:25pm.

These programs are all C programs so obviously aimed at children.

We believe the advertisement breaches AANA Code for Advertising & Marketing Communications to Children

2.2 Factual Presentation

Advertising or marketing communications to children must not mislead or deceive children and

We believe this advertisement is misleading to children because it uses the phrases "healthiest sweet on the market" "good for dental health" "smart choice" "good news"

and “delicious” and describes the flavours as “yummy” and “luscious”. The way the advertisement portrays sweets would be interpreted by children as a very positive addition to the diet eg “the healthiest sweet on the market”. It highlights positive nutrition information eg “fibre something our bodies need every day” which could be interpreted by children as it being essential for them to eat this product.

This advertisement does not “represent healthy dietary choices” This breaches AANA Code to children

2.15 Food and Beverages

Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits and the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry

Advertising Messaging

Participants will not advertise food and beverage products to children under 12 in media unless:

1. those products represent healthy dietary choices consistent with established scientific or Australian government standards.

The Dietary Guidelines for Children and Adolescents in Australia advise “Consume only moderate amounts of sugars and foods containing added sugars” and “limit lollies”. School Canteen Guidelines around Australia categorise all confectionery in the RED category and so not to be sold from canteens and vending machines. This product is not a healthy choice.

THE ADVERTISER’S RESPONSE

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

In commenting on the complaint Ferndale is arguing both on the fact and intent of the advertisement's content.

In no way does the advertisement mislead viewers or, potential consumers, (whether children or adults)! It does not advocate any change in eating habits. It only states scientific and medical facts and explains the benefits of its ingredients.

The spots in question were run on week commencing 31/7/11 as "filler spots" (i.e. not authorized paid or bonus spots) in programming by the Seven Network at their discretion as the commercial had a C rating at that time.

These spots were not authorized by the media agency, The Ross Partnership, as these were not listed as bought on the media schedule (refer attached).

The primary target audience for Slim Fruits is Females, aged 16-24 years with older women 30-45 years secondary. Ferndale does not wish to target children and was not aware that initially, the commercial had a C rating. Ferndale did not agree to the airing of the commercial in these C programs and was unaware that it had happened until this complaint was aired.

However, we contend that even with a C rating the advertisement, in no way, contravenes Section 2 of the advertising code.

• It does not encourage (or promote,) children (or consumers) to eat something that is unhealthy.

- It does not promote an 'inactive' lifestyle.
- It does not advocate replacing any food (healthy or otherwise), with the product.
- It does not claim that the product is 'essential', only that its primary ingredient has health benefits.
- It does not contravene the 'Dietary Guidelines for Children and Adolescents i.e. that they "Consume only moderate amounts of sugar and foods containing added sugars", and "limit lollies." The reason? The product does not contain any sugar or, added sugars.
- Similarly, it does not contravene the ruling that participants will not advertise food and beverage products to children under 12 in media unless: "those products represent healthy dietary choices, consistent with established scientific or Australian government standards." The reason? The product is a healthy dietary choice and the manufacturer's claims are backed by scientific fact.

The actual message is very much one of highlighting facts and saying the product is a 'healthy alternative' .

It does not say the product is a 'health product', just a healthy product. It is called 'a sweet', both in the generic sense and as an accurate portrayal of what it is.

Overall, the television advertisement:

- Provides accurate and scientifically proven information on dietary fibre and its benefits.
- The product's ingredients can be used (and are used), in legitimate dietary supplements).
- The product is sugar free and fat free.

Note: This fact is not mentioned in the television advertisement, only in print media.

In effect, there is nothing detrimental in consuming the food and, there are benefits – consuming dietary fibre!

2.21 Factual Presentation

Therefore, because of the above and, though the commercial is targeted at young women I mothers, Ferndale disagrees that the commercial misleads children to an unhealthy choice of confectionery. Prior to active marketing of this product Ferndale commissioned the well respected Dr.

Joanna McMillan (Registered Nutritionist & Accredited Practising Dietician) to evaluate the product health claims and ingredients, especially the fibre aspect. Below is an extract of her report.

Comparing the fibre levels to naturally high fibre foods

A serving of 5 Slim Fruits provides 1.9g of dietary fibre. This is equivalent to the fibre found in:

46g raw broccoli (about half a cup)

70g of raw English spinach (about 2 cups)

22g raw almonds (about 18 nuts)

95g apple (2/3 of an apple)

40g wholegrain bread (approx. 1 slice)

Of course the types of fibre in these various foods differs and does not have the same effect in the body. We can't therefore say that Slim Fruits are better sources of fibre, but consuming these pastilles certainly adds significantly to total fibre intake.

Slim Fruits are a great alternative for those who love a lollie. They will not harm teeth, they are very low in kilojoules so can potentially assist weight loss and they do not invoke a blood glucose response given the negligible carbohydrates. They have a pleasant taste and I can see they will be popular with consumers. The potential to add to the fibre intake of Australians is an added bonus. Of course this doesn't replace the need for fibre-rich natural foods, but is a positive attribute.

Dr Joanna McMillan, Registered Nutritionist & Accredited Practising Dietitian

Note: Based on the evaluation and test report, we believe that although not a substitute for fibre rich foods, it's potential to add fibre to a diet is a positive attribute. Given also the products other attributes of no carbohydrates, no sugars and low kilojoules, Slim Fruits therefore does not represent an unhealthy dietary choice and therefore does not breach the AANA Code to Children by misleading them or deceiving them.

- *See complete Dr. Joanna McMillan report (attached)*

- *See Ferndale background paper on the value of fibre in diets and in particular on the value I merits of Acacia Gum.*

2.15 Food and beverages

Based on the Dr. Joanna McMillan report and the fact that Slim Fruits is the only lolly commonly available to provide fibre, an essential in a healthy diet. The average Australian consumes only 14 grams of dietary fibre per day falling well short of the World Health Organisation of 20 to 40 grams per day.

Under 2.15 Food & Beverage, Slim Fruits is not encouraging unhealthy eating habits to children due to the fat it has no sugar, no fat, low kilojoules and is the only commonly available sweet to provide fibre (an essential in a daily diet for children and actually as such presents a healthy choice that adds significantly to total fibre intake. It is not a negative dietary addition compared with commonly available alternatives which are high in kilojoules, high in carbohydrates, high in sugar and yet have no fibre.

In summary, based on its ingredients Slim Fruits is a healthy choice.

Summary

In conclusion, we contend that there are no grounds for any sanction or complaint against Ferndale or the advertisement. The advertisement was not aimed at children and was not commissioned to appear at these afternoon time slots. However, even with a 'C' classification, the advert does not contravene Section 2 of the Advertising Code. In no way does it mislead or, advocate an unhealthy product and unhealthy eating habits. Neither does it promote an inactive lifestyle.

Most important is the simple fact - Slim Fruits contains nothing harmful and because it contains dietary fibre and no sugar, is healthy, whether as a straight food or as an alternative to the traditional 'unhealthy' sweet!

Ferndale is a small Australian company that has built a reputation for creating and making 'sugar free' confectionary and now has introduced a healthy alternative to commonly available "unhealthy" products. As such, Slim Fruits provides a healthy alternative for young girls and women who like lollies. Ferndale should be applauded for doing so.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the AANA Advertiser Code of Ethics (the "Code"), the AANA Code for Advertising and Marketing Communications to Children (the Kids Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board reviewed the advertisement and noted the advertiser's response.

The Board noted the complainant's concern that the advertisement is misleading to children in its portrayal of sweets as healthy and does not encourage or portray an active lifestyle.

The Board noted that Ferndale is not a signatory of the AFGC RCMI or the QSR Initiative therefore these Codes do not apply.

The Board considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is 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 Board noted that Children means, "children 14 years old or younger" and Product means, "goods, services and/or facilities which are targeted toward and have principle appeal to children."

The Board noted the advertisement features a presenter and a registered nutritionist discussing Slim Fruits sweets which are sugar and fat free and contain fibre.

The Board considered that the theme, visuals and language used in the advertisement are clearly directed at adults and not at children. The Board considered that Slim Fruit sweets are a product which would not have principle appeal to children.

Finding that the advertisement is not directed primarily to children and is not for Product, the Board considered that the provisions of the Children's Code do not apply.

The Board then considered the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code). The Board noted 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 Board considered that the advertising or promotion of lollies is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. Some members of the Board expressed concern over the claim made in the advertisement that this product is the healthiest sweet on the market however the majority of the Board considered that the advertisement is not encouraging the consumption of this product instead of healthy options such as fruit and that the claims made in the advertisement regarding the healthier aspect of the product compared to similar products are substantiated.

The Board determined that the advertisement did not depict or encourage excess consumption and that there was nothing in this advertisement that would amount to undermining of a balanced diet or healthy lifestyle.

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

The Board determined that the advertisement did not breach any provisions of the Code.

Finding that the advertisement did not breach the AANA Code of Ethics, Food Code or Kids Code, the Board dismissed the complaint.