



Case Report

1	Case Number	0385/16
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	14/09/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive
Food and Beverage Code 2.1 (b) - Contravenes community standards

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement centres around Nestlé wellness ambassador, Hugh Sheridan in a typical backyard scene with adults and children enjoying themselves – socialising and kicking a ball around. The voice over reflects on what 'wellness' means to Hugh - having loads of fun but staying balanced - and then goes on to say that one portion of Allen's is just enough to make everybody smile. We see a woman holding a pack of Allen's Sea Stretchies and pointing to the label which reads, "1 Piece = 1 Portion." The final scene is of 3 packs of Allen's on a table with people playing in the background and the voice over says, "Choose wellness, choose Nestle".

THE COMPLAINT

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

Overall I find the message of the campaign to be factually baseless; specifically the use of terms like "nourishing" etc implies nutritional benefits which are simply not present in products such as milo. I certainly don't begrudge them the opportunity to advertise their products but much of what they produce is realistically confectionery touted as breakfast foods/snacks and should be advertised appropriately. Many groups in society take these sorts of campaigns as gospel and buy them hook line and sinker and so some level of protection has to be exercised.

I object to the final image and a specific voice over of unhealthy foods being classed in the "wellness" category.

The voice over starts by saying "nourishing glass of milo" Milo is not nourishing and is not a health drink.

Then at the end of the ad there is a picture of all of Nestlé's products including Allen's snakes suggesting that these products are all part of the "wellness" product. This was in prime time and at a time that kids are watching.

Obesity is one of the leading risk factors of chronic disease within Australia. These ads need to be made accountable for false advertising attributing to the growing burden of disease that our future generations will have to deal with.

Sugar is well known for its adverse effects on our health and advertising lollies with the slogan 'Wellness' used on the screen and voiceover is unconscionable.

THE ADVERTISER'S RESPONSE

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

In making our submission, Nestlé has considered the Advertisement under the AANA the Food & Beverage Advertising & Marketing Communications Code (Food Code), specifically section 2.1 of that Code.

Nestlé has also considered other relevant aspects of section 2 of the Food Code and under the AANA Advertiser Code of Ethics (Code of Ethics) in this submission.

The Complaint

The Complainant is concerned the Advertisement is in breach of clause 2.1 of the Food Code and asserts;

"Sugar is well known for its adverse effects on our health and advertising lollies with the slogan "Wellness" used on screen and voiceover is unconscionable."

Nestlé has considered in detail the Complaint and respectfully submits that the Advertisement does not breach either the Food Code or other AANA Codes.

As a manufacturer of confectionery products, and as a leading nutrition, health and wellness company, we developed the Advertisement as a positive way of contributing to changed behaviour around discretionary foods.

The Advertisement forms part of a wider Nestlé Choose Wellness campaign by communicating the Nestlé Portion Guidance device as a way of helping consumers understand appropriate portion sizes and the consumption of confectionery in line with the Australian Dietary Guidelines.

The Advertisement was developed to primarily address this wellness message around portion control and a balanced diet, not, as the Complainant suggests, solely to advertise lollies.

Background to the Advertisement

As noted above, the Advertisement forms part of a wider 'Nestlé Choose Wellness' campaign which we first launched in 2013 and have been building on year on year.

The general concept of wellness has long been understood to capture more than just the state of being 'healthy.' The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity", a definition which has not changed since 1948.

Further to this, the WHO health promotion glossary now provides a definition of wellness;

"Wellness is the optimal state of individuals and groups. There are two focal concerns: the realisation of the fullest potential of an individual physically, psychologically, socially, spiritually and economically, and the fulfilment of one's role expectations in the family, community, place of worship and other settings."

This understanding of both 'Health' and 'Wellness' focus on many aspects of the individual including, as referenced above, their physical, psychological, social, spiritual and economical state.

It is the interaction of these different states that contribute to the general and holistic notion of wellness which we have endeavoured to capture through the Advertisement and our Nestlé Choose Wellness campaign with a particular focus on;

- enjoying a balanced diet;*
- regular physical activity; and*
- participating in social events and mental wellbeing.*

Overview of the Advertisement

The Advertisement opens with our Nestlé Wellness ambassador Hugh Sheridan in a typical backyard scene depicting adults and children enjoying themselves – socialising and actively kicking a ball around.

HUGH V/O: What's wellness to me? It's spending good times with friends.

The children and adults are around the food table which is filled with nutritious foods – water, salads, vegetables etc. Hugh is talking to a friend with an ALLEN'S Sea Stretchies in each of his hands.

HUGH V/O: Having loads of fun, but staying balanced.

Meg, our Nestlé corporate nutritionist notices Hugh is already eating an ALLEN'S Sea Stretchies so takes the other ALLEN'S Sea Stretchies he is holding, drawing his attention to the portion message on the pack "1 Piece = 1 Portion."

SUPER: Meg – Nutritionist

A Dad takes an ALLEN'S Sea Stretchies out of the packet and hands it to their child.

HUGH V/O: With ALLEN's one portion is just enough to make everybody smile.

Hugh stretches out an ALLEN'S Sea Stretchies and smiles.

HUGH V/O: Choose Wellness, Choose Nestlé.

The intention of the Advertisement was to depict an important aspect of "Wellness" being responsible consumption and how a treat can be appropriately incorporated as part of a balanced lifestyle.

Alleged breach under section 2.1 of the Food Code

The Complainant asserts the Advertisement is in breach of section 2.1 of the Food Code as it is 'unconscionable' to advertise lollies in conjunction with a reference to "Wellness" given their sugar content.

Section 2.1 of the Food Code states;

"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."

As outlined above, the Advertisement focuses on the overall notion of wellness – depicting a balanced diet and physical activity in a social atmosphere. While lollies are featured in the Advertisement, we have included this product deliberately to demonstrate responsible consumption – including where there can be an appropriate place for discretionary foods such as confectionery within a balanced lifestyle where diet and the physical activity of the person consuming the product are taken into account.

We are committed to communicating openly and transparently on the nutrition of our products, and know how important it is for our consumers to be able to readily understand what an appropriate serve size or portion of that product is and the nutrition contribution this makes. This enables our consumers to use this information to assess whether these products, including discretionary foods, are appropriate to include into their diet within the context of a healthy lifestyle.

The Advertisement highlights this important message about responsible consumption with regards to discretionary foods through the use of our confectionery products.

The Advertisement was specifically created to draw the viewers' attention to the important fact that where discretionary foods are incorporated into the diet, it is important they are consumed in an appropriate portion. The Advertisement demonstrates this through prominent visual cues;

- Meg, our Nutritionist, takes one of the two ALLEN'S Sea Stretchies Hugh has to ensure he consumes only one portion;*
- Meg, our nutritionist, points to the portion message on pack "1 piece = 1 portion" to highlight this message;*

- Any reference to confectionery products highlights this one portion message;
- The voice over refers to 'one portion'; and
- The end frame demonstrates our Nestlé Portion Control device that appears on all our confectionery packs and provides a visual graphic of the appropriate portion of that product.

The Complainant specifically alleges that “Sugar is well known for its adverse effects on our health.”

We agree that good nutrition is necessary to promote health and wellbeing which is reflected in the Australian Dietary Guidelines. These guidelines focus on the consumption of a wide variety of nutritious foods predominantly from the five core food groups.

Due to their sugar content, the Australian Dietary Guidelines classify lollies as “discretionary foods” and recommend their consumption should be limited, however they do acknowledge these foods can have a place in an overall balanced diet. Specifically the Australian Dietary Guidelines provide;

“Discretionary foods should only be consumed sometimes and in small amounts. While discretionary foods can contribute to the overall enjoyment of eating, often as part of social activities and family or cultural celebrations, if their intake is not reduced, most Australians need to greatly increase physical activity to ‘burn up’ the additional energy (kilojoules) from discretionary foods to help achieve and maintain a healthy weight.

This is further highlighted in the Eat for Health Educators Guide;

“However, when consumed in occasional or small amounts, these foods and drinks can add to variety and enjoyment.”

One “serve” of a discretionary food typically provided about 600kJ. The example portion provided for sugar confectionery/small lollies is 40g (5-6 small lollies).

We believe it is important to communicate responsibly and ensure our consumers are not unintentionally over-consuming our products.

By introducing our Nestlé Portion Guidance Device, we are helping consumers take the guesswork out of ‘how much is enough?’ and equipping them with a tool to understand what reasonable consumption of a discretionary food looks like and how a discretionary food can be responsibly consumed as part of a balanced diet.

Why Portion Control is Important

Research shows that portion sizes have increased steadily over recent years leading to what is commonly known as “Portion Distortion”, that is, the perception that large portions are appropriate and ‘normal’.

It is within this context that as part of our global commitment to nutrition, health and wellness, Nestlé has taken the initiative to provide consumers with guidance on appropriate portions on our products. This has resulted in changes to many of our product sizes and packaging and the launch of our Nestlé Portion Control Device initiative, starting with our confectionery products.

A high profile example of this work was the announcement by ALLENS in 2014 that it would cut the size of the Killer Python to ensure each Killer Python fell within the Australian Dietary Guidelines portion of discretionary foods.

The Nestlé Portion Guidance device can be found on the back of every confectionery pack near the nutrition information panel to ensure consumers are able to easily understand what makes up a portion.

We recognise portion guidance is just one part of the bigger picture towards helping consumers make behaviour changes with regards to healthy and mindful eating and portion control. It is our view that communicating openly in this area is important to help consumers understand and be aware of the Nestlé Portion Guidance device as a tool to help them to make appropriate portion choices.

This Advertisement is part of our ongoing commitment to ensure that we communicate responsibly about our products and the role of discretionary foods in the diet.

Please see attached some further information on the work we are doing on portion control;

- Nestlé Choose Portion Perfect Ideas booklet; and*
- Nestlé Serving up New Approaches to Portion Guidance booklet.*

Nestlé products depicted in the Advertisement

The product used in the Advertisement to demonstrate portion guidance of discretionary foods is ALLEN'S Sea Stretchies. Each 'Sea Stretchies' is portion controlled and at 23g provides 320 kJ (4% of the recommended daily intake of energy) which fits well below the Australian Dietary Guidelines for a serve of a discretionary food.

The Australian Dietary Guidelines recommendations regarding the consumption of discretionary foods are;

“For younger children, up to about 8 years of age, discretionary choices are best avoided or limited to no more than ½ serve a day unless the child is taller or more active, in which case they could have 0–2 serves a day.

Older children and adolescents who are more active and not above their healthy weight range, could have extra servings from the Five Food Groups and/or a combination of 0–2½ serves a day of discretionary choices.

Older adolescents who are still growing and/or very active could increase discretionary choices up to 3 serves or more a day.

For adults, the recommendation ranges from 0 to 2–3 serves a day for men and 0 to 2–2½ serves a day for women depending on activity and height.”

The Advertisement emphasises the importance of a balanced diet through the prominent visual of the table with healthy snacks including vegetables, salads, sushi and water.

We ensure that where confectionery products are depicted, a suitable portion is referenced

including through use of the Nestlé Portion Guidance device and other communication as depicted front of pack on ALLEN'S Sea Stretchies that "1 piece = 1 portion."

We recognise many of our products, including ALLEN'S Sea Stretchies, come under the heading of 'Discretionary Foods' and so Nestlé has taken the initiative to ensure that all of our confectionery products are clearly labelled with the 'Nestlé Portion Guidance device' to ensure it is clear to consumers what a portion is so they may make an informed choice regarding their nutritional intake and incorporating discretionary foods.

This is further emphasised in the end shot of the Advertisement which also shows the Nestlé Portion Guidance device.

The Advertisement – Truthful and honest

The core messaging of the Advertisement is about balance and how in certain and appropriate situations, consumption of discretionary foods can fit into a balanced lifestyle.

This is in line with the Australian Dietary Guidelines and Australia's Physical Activity and Sedentary Behaviour Guidelines which recommend being physically active and choosing the right amount of nutritious food and drinks to meet your energy needs.

As outlined above, a portion of the product as featured in the Advertisement falls well below the definition of a "serve" of a discretionary food under the Australian Dietary Guidelines which is typically provided about 600kJ.

Each ALLEN'S Sea Stretchies is portion controlled and at 23g provides 320 kJ (4% Recommended Daily Intake for energy).

The Advertisement is designed to highlight the importance of ensuring that where discretionary foods are eaten, they should be consumed in an appropriate portion in line with the Australian Dietary Guidelines.

The Advertisement – Prevailing Community Standards

We note previous decisions of the ASB have considered that advertising containing products of this nature (confectionery products) is not, of itself, something which is contrary to prevailing community standards.

As we have outlined above, the intention of the Advertisement and the Nestlé Choose Wellness campaign is to ensure consumers are aware that discretionary or treat foods, like lollies, are to be consumed in balance. One way to achieve this is via appropriate portions.

It is for this specific reason we developed the Advertisement set within the appropriate context of a social occasion where adults and children are shown running around and being active and a variety of foods from the five food groups which would appropriately form the core nutritional intake of those depicted.

We have taken a strong position on portion control and have committed to the responsible communication of appropriate portion and serve sizes in our wellness communications. The Advertisement highlights this important message with regards to discretionary foods using the examples of our confectionery products as shown in the Advertisement.

We respectfully submit that our Advertisement showing confectionery products, when consumed in an appropriate portion, are able to fit within a balanced lifestyle is consistent with prevailing community standards.

Other considerations under the Code of Ethics and other Relevant Codes

We have reviewed the Advertisement for compliance with section 2 of the Food Code and the Code of Ethics and are confident the Advertisement complies in all respects.

Final Comments

The Advertisement and the Nestlé campaign were developed to encourage all Australians to “Choose Wellness” and is an appropriate representation of how discretionary foods fit within the context of a balanced lifestyle in line with the Australian Dietary Guidelines.

We feel the Advertisement provides an appropriate depiction of what “Wellness” looks like - combining social activity, physical activity and a balanced diet.

It is for the above reason that we respectfully disagree the Advertisement is in contravention of Section 2.1 of the Food Code and can see no basis for the Complaint and request the Complaint be dismissed.

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 depicts a family eating snakes with the word ‘wellness’ on screen which is misleading as sugar is well-known for its adverse effects on health.

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 friends of all ages socialising in a back yard while Nestlé’s wellness ambassador, Hugh Sheridan, talks about what wellness means to him. The Board noted that Hugh says that one portion of Allen’s is enough to make everyone smile and we see a pack of Allen’s Sea Stretchies being shared with a woman pointing to the

on-pack messaging which reads, “1 piece = 1 portion”.

The Board noted that during the advertisement we only see people taking and eating 1 Allen’s Sea Stretchies and considered that there is a focus on portion control throughout the advertisement. The Board expressed concern that the phrase ‘wellness’ is being used in an advertisement for a lolly product but considered that lollies are allowed to be advertised and in the Board’s view the advertisement does not suggest that consuming lollies will contribute to wellness but rather that having an occasional treat will not undermine a healthy diet.

Overall the Board considered that the advertisement is not misleading and does not contravene prevailing community standards.

The Board considered that the advertisement did not breach Section 2.1 of the Food Code.

The Board then considered Section 2.2 of the Food Code which provides:

'Advertising or marketing communications for food ...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as 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 noted that the opening scene of the advertisement shows Hugh Sheridan playing football with children in a back yard setting and considered that in conjunction with the messaging in the advertisement around having fun and staying balanced, the advertisement does not undermine the importance of an active lifestyle. The Board noted that while we do see adults and children eating the advertised product, Allen’s Sea Stretchies, the Board considered that each person is shown to take only one lolly. The Board noted that Hugh says that one portion of Allen’s is enough and considered that this statement, along with the focus on the on-pack messaging which reads, 1 piece = 1 portion, is suggestive of the product being consumed as an occasional treat and in the Board’s view does not encourage excess consumption.

Overall the Board considered that the advertisement did not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption.

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

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

