



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph: (02) 6173 1500 | Fax: (02) 6262 9833
www.adstandards.com.au

Case Report

1	Case Number	0393/12
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	10/10/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.15 Food and beverages
RCMI a - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement forms part of the Smilemaker campaign from ALLENS which features the character of Bravo as he travels Australia with the intention of creating a million more smiles in the course of the campaign. The Advertisement in question shows Bravo at a dance studio where he gets the children to get their parents involved by having them teach dance moves to them.

THE COMPLAINT

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

Nestle – Allens TV advertisement in breach of AANA Children’s Code & RCMI

We wish to complain about the content of the Allens TV advertisement and believe it is in breach of the AANA Code for Advertising and Marketing Communications to Children (AANA Children’s Code) and the AFGC Responsible Childrens Marketing Initiative (RCMI).

The advertisement: This was a 15 second advertisement. It starts with a shot of people all wearing black tracksuits except one man wearing colourful clothes. They are huddled and talking, as a group of young girls run in excitedly from the next room. Colourful man leads

them in silly physical exercises which makes them all laugh. The voiceover states; How do you make smiles? A brand shot is then shown, including encouragement to share your answer on Facebook.

The advertisement was screened in a number of programs, including the X Factor (3rd September 2012 at 7.57pm on Channel 7), which is a program popular with children.

Marketing to children: The advertisement is appealing to children as it includes images of children dancing, the music includes children cheering and laughing and there is an upbeat jingle. Directing viewers to Facebook also appeals to pre-teen children who like to utilise social networking sites.

ANA Childrens Code: The website breaches clause 2.15a of the Children's Code, that; "Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits". Allens lollies are not healthy products, as demonstrated by their nutritional content.

RCMI: Under the RCMI, Nestle has agreed to not advertise food and beverage products to children under 12, unless these represent healthy dietary choices. As stated above, the TV advertisement is an example of marketing to children and is for a food of poor nutritional quality.

Nutritional Information: The Allens' brand advertised produces a range of lolly products that are popular with children. To provide an estimate of average nutritional content, we considered the Allens Party Mix, as this provides a number of different Allens products. Nutritional information from the Nestle Australia website reveals that Allens Party Mix contains 1460kJ and 50g of sugar per 100g.

The Dietary Guidelines for Children and Adolescents in Australia advise "consume only moderate amounts of sugars and foods containing added sugars". Allens lollies contain large amounts of sugar and energy, without contributing anything beneficial to the diet. They are hence not healthy dietary choices for children, and Nestle is in breach of clause 2.15a of the AANA childrens code & the core principles of the RCMI.

THE ADVERTISER'S RESPONSE

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

Nestlé Response

We would like to refer to the ASB's decision in Case Report 0429/10 as the ASB considered similar issues in relation to an ALLENS' advertisement.

Nestlé has also considered the AANA Advertiser Code of Ethics (Code of Ethics) and the

AANA Food and Beverages Marketing and Communications Code (Food and Beverage Code).

We wish to state from the outset that Nestlé does not consider the Advertisement to be in breach of the Codes which the ASB administers or the RCMI.

1. Audience and Programming for the Advertisement

Nestlé's media agency was directed that the target audience for the Advertisement was the Main Grocery Buyer with children aged 5- 12 years.

The Advertisement was shown in a range of adult day-time programming as well as during programs shown at or later than 7.30pm whose primary audience was adults. The

Advertisement was not shown during children specific programming or 'C' programs.

Nestlé's media agency was also directed to comply with Nestlé's own mandatory media placement requirements including that the Advertisement was not to be run during programs

where 25% or more of the audience were children aged 14 years and under. The

Advertisement was only shown in programs where 75% or more of the audience was over the age of 14 years and not to be run during programs where more than 35% share of audience is children 0-14 years.

2. Advertisement

2.1 Context

The ALLENS Smile Maker campaign features a number of different initiatives that have an overall engagement strategy that life should not always be about what you have to do and that even as adults, we all need moment of fun.

During the Smile Maker campaign, ALLENS is using a character called Bravo who is travelling the country with the intention of unlocking the potential of Australian's to make more smiles through doing or saying things which make others smile.

The Advertisement falls into the 'age is just a number' initiative (which features a number of different creatives) which has the intention of showing its adult audience that they all have an inner child waiting to be unlocked.

2.2 Content of Advertisement

In the Advertisement, Bravo is at a dance studio. The children at the studio are wearing their usual dance attire. Bravo calls the children into a huddle and passes on a message which has them running from the room to get their parents. The children bring their parents back into the room and proceed to teach them different dance moves which the parents do with the encouragement of the children – thus creating the laughter and smiles in the sharing of the fun.

The intention behind the Advertisement is a simple one – to show adults that you are never too old to learn to dance - as age is just a number!

The Advertisement does feature children however the Advertisement is directed at an adult audience and not to children. It is not a logical conclusion to assume that the depiction of children in an advertisement means it is directed to children.

The Complainant contends that the Advertisement is appealing to children because: "it includes images of children dancing, the music includes children cheering and laughing and there is an upbeat jingle. Directing viewers to Facebook also appeals to pre-teen children who like to utilise social networking sites."

In relation to this contention by the Complainant, Nestlé submits:

(a) The Complainant correctly identifies that the children are dancing however overlooks the fact that this is in the context of teaching the adults the dance moves so their parents can release their inner child and have fun.

(b) The Complainant also correctly identifies the inclusion of children cheering and laughing however ignores that this is the result of the children watching the adults dancing and sharing in the fun with them.

(c) The Advertisement does contain an upbeat jingle but this is appropriate in the context of dancing.

(d) The Advertisement does encourage viewers to go to ALLENS' Facebook site and share their smile making experiences. However, we refer to the Statement of Rights and Responsibilities which is agreed to when a user joins Facebook and Item 5 (Registration and Account Security) which states that a user will not use Facebook if they are under 13 years of age. Nestlé adheres to strict guidelines in relation to the use of social media as an advertising or marketing platform.

(e) There is no connection with the product within the Advertisement which could appeal to children and no child is depicted consuming ALLENS lollies.

3. The Advertisement, the Codes and the RCMI

3.1 RCMI

Nestlé is committed to the RCMI and has a Company Action Plan (CAP). We have previously provided a copy of this to the ASB and are happy to resubmit this if the ASB requires it.

Under the RCMI Nestlé commits to not advertising food products to children under 12 unless they represent healthy dietary choices. As submitted above, Nestlé does not use the Advertisement as a vehicle to advertise its products to children; rather the Advertisement was created to appeal to adults – including those who would understand the place of products such as lollies in their children's diets.

If the ASB does not accept this submission, we refer to the Guidelines/ Practice Note to the RCMI and the requirement for the communication activity to be 'clearly directed primarily' to children.

We refer to the extensive spot schedules we have provided about the range of programs in which the Advertisement was broadcast and note that the programs are directed at adults and are not programs which are primarily directed to children or likely to have a significant child audience. Although some children may view some of these programs, it does not automatically mean that the Advertisement is therefore directed at children.

In particular, the Complaint refers to the Advertisement being shown during 'X Factor' which the Complainant state is "popular with children". We note that this program is rated PG (Parental Guidance Recommended) it cannot be reasonably construed that the audience profile for this show is predominantly children or directed at children. Our media agency has advised that the Metro Cap 5 City data shows that the percentage of the audience aged between 0-12 years for 'X Factor' is only 9%.

Nestlé considers that the theme (adults being never to old to learn to dance), visuals (adults attempting to learn dance moves taught by their children) and the language (laughter) create an overall impact that is not specifically directed or designed to be clearly directed primarily to appeal to children but rather, primarily directed at adults.

3.2 Children's Code

Nestlé submits that as the Advertisement is not directed primarily at children (as discussed above), the Children's Code does not apply.

If the ASB does not accept this submission and considers the Children's Code does apply, Nestlé does not consider that the Advertisement breaches any of the matters set out in the Children's Code.

In relation to Section 2.15a of the Children's Code specifically raised in the Complaint, Nestlé submits that the Advertisement does not encourage nor promote an inactive lifestyle or unhealthy eating habits. On the contrary, the Advertisement depicts children and adults participating in the physical activity of dance. The Advertisement focuses on the fun and enjoyment to be found in that physical activity.

3.3 Food & Beverage Code

Nestlé does not consider the Advertisement breaches any of the matters set out in Section 2 of

the Food and Beverage Code. There are no product specific statements in the Advertisement and no statements which could otherwise contravene this section of the Food and Beverages Code.

Although not specifically raised by the Complainant, having regard to the key issue of advertising or marketing to children raised by the Complainant, we have considered Section 3 of the Food and Beverages Code.

In relation to Section 3, Nestlé submits:

(a) the Advertisement is not primarily directed to children (as discussed above) with effect that Section 3 does not apply in its entirety; and

(b) the product (ALLENS lollies) is not a “Children’s Food and Beverage Product” (as defined in the Food and Beverage Code) as it has appeal and is consumed across all ages and could not be said to be targeted towards or have principal appeal to children, with effect that Section 3.2 does not apply.

In the event the ASB considers Section 3 of the Food and Beverages Code applies to the Advertisement in its entirety, Nestlé submits it does not breach any of the matters set out in Section 3 as it does not:

(a) contain any statements that are misleading or deceptive in relation to health or nutrition claims (as per Section 3.1) as there are no nutritional or health claims in the Advertisement; or

(b) encourage children to consumer what would be considered excessive quantities of the product.

In relation to Section 3.2, Nestlé notes that the Advertisement does not feature consumption of any product but rather the fun that can be found in life by adults.

3.4 Code of Ethics

Nestlé submits that the Advertisement does not contain any breaches of the Code of Ethics and that none of the matters set out in Section 2 of the Code of Ethics are infringed by the Advertisement.

The Advertisement could not be construed as infringing prevailing community standards nor as containing any statements that are misleading or deceptive. There are no product specific statements contained in the Advertisement and non statements that could otherwise offend the Code of Ethics.

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 Food and Beverages Advertising and Marketing Communications Code (the 'Food Code'), and the AFGC Responsible Children’s Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI) and the AANA Code for Advertising and Marketing Communications to Children (the ‘Children’s Code’).

The Board noted the complainant's concerns that the advertisement is appealing to children and is for an unhealthy product.

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

The Board noted that the advertisement features a group of children entering a dance studio

or hall and being directed by a young man in a brightly coloured vest with some exercises or dance moves. The children are then joined by their parents/caregivers and they then try to teach them some of the steps. At the end we see the group dancing together and the voice over says “How do you make smiles?...share your smile maker at the Allens facebook page..” The end shot is of a large cartoon smile with the Allens confectionery logo as part of the face.

The Board first considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (the Children’s Code). To fall within this Code the advertisement must be “Advertising of 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 the definition for Children means persons 14 years old or younger.

The Board noted the complainant’s concerns that the use of upbeat music and children cheering and laughing and dancing around would make this advertisement attractive to children. The Board considered that whilst the advertisement may appeal to children, the use of scenes of children and adults together would appeal to a broad audience and not primarily children. The Board noted the theme of the advertisement (getting adults and children enjoying time together), the visuals (groups of children and adults dancing) and the language (a male voiceover directing the audience to a facebook page) and considered that overall the advertisement is not directed primarily to children.

The Board also noted that when a user joins Facebook, part of the registration requirements are that a user may not properly create a facebook account if they are under 13 years of age.

The Board then considered whether the advertisement was for product. The Board noted that there are no scenes showing any food product at all and that there are no images of confectionery lines available to purchase. The Board noted that the advertiser sells a range of confectionery products, however in this case the advertisement did not specifically highlight any one product in particular.

The Board considered that that the promotion of access to a facebook page to share moments that have made you smile was not of itself a promotion of a food or beverage. The Board determined that as the advertisement does not meet the definition of ‘being directed primarily to children’, and was not for product the Children’s Code did not apply and that the advertisement did not breach the Children’s Code.

The Board then considered whether the advertisement complied with the requirements of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code). To fall within this Code, the advertisement must be “Advertising of Marketing Communications which having regard to the theme, visuals and language used are directed

primarily to children and are for product.”

For the reasons mentioned above, the Board considered that the advertisement was not directed primarily to children and not for product and noted that advertiser’s response that the intention of the advertisement is to encourage adults to unlock their inner child and to share in the fun.

As discussed above, the Board considered that the promotion of a facebook page is not of itself a promotion of a food and/or beverage and therefore the Food Code did not apply.

The Board then considered whether the provisions of the RCMI initiative applied. The Board noted the complainant’s concern that the advertisement is directed to children and does not represent a healthier choice according to the RCMI Initiative.

The Board noted that the RCMI Initiative is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

The Board considered the definition of advertising or marketing communications to children within the RCMI Initiative. The definition states that ‘ Advertising or Marketing Communications to Children is defined by the ANNA Code for Advertising and Marketing Communications to Children and means 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 the definition for Children means persons under 12 years of age.

For the reasons mentioned above, the Board considered that the advertisement was not directed primarily to children and noted that advertiser’s response that the intention of the advertisement is to encourage children and parents and/or guardians to visit the facebook page.

As the advertisement is not directed primarily to children the Board considered whether the advertisement was for product. The Board considered that the promotion of a facebook page is not of itself a promotion of a food and/or beverage and therefore the provisions of the RCMI initiative do not apply.

The Board considered that the advertisement did not breach any of the sections within the Code of Ethics.

Finding that the advertisement did not breach, the Children's Code, the Food Code, the RCMI or the Code of Ethics, the Board dismissed the complaint.