



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0429/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Nestle Australia Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/10/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Food and Beverage Code (Children) consumption of excess  
Advertising Message AFGC - Advertising Message  
2.8 - Food and Beverage Code undermines healthy lifestyle

### DESCRIPTION OF THE ADVERTISEMENT

Children and adults are shown in a street setting. A giant doll walks out on to the street, operated by puppet strings. Crowds of adults and children gather around the giant doll who is handed an oversized bag of Allen's lollies. The doll dips a bubble blower in to the bag and then blows lolly-shaped bubbles over the crowd.

Some of these bubbles burst in the air, but some of them are caught and change in to edible lollies. A child is shown eating one of the lollies.

In the background we can hear the song "This old man" being sung.

The final shot is of the Allen's logo and the text "Allen's makes smiles."

### THE COMPLAINT

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

*The advertisement is directed to children as:*

- (a) it features a doll and bubbles*
- (b) it features children catching and eating lollies*
- (c) it includes a song ("this old man") which is a children's song*
- (d) the giant doll giving away lollies and the bubbles turning into lollies would appeal to children's sense of fantasy and imagination*

*We believe the advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry as this advertisement does not "represent healthy dietary choices".*

#### *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 say "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 advertisement is also in breach of clause 2.15 (a) of the AANA Code for Advertising & Marketing Communications to Children as it encourages the consumption of unhealthy food. As indicated above lollies are not healthy dietary choices according to the Dietary Guidelines. By appealing to children's sense of fun and their imagination this ad will form a lasting memory for them which encourages them to consume Allen's lollies.*

#### *2.15 Food and Beverages*

*(a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits. We request the Advertising Standards Bureau consider whether the Allens advertisement breaches the advertising messaging clause of the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry and clause 2.15(a) of the AANA Code for Advertising & Marketing Communications to Children.*

## **THE ADVERTISER'S RESPONSE**

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

*On behalf of Nestle I would like the Board to consider the information below in its consideration of the Complaint. I wish to state at the outset that Nestle does not consider the Advertisement to be in breach of the Codes or the RCMI.*

#### *1. Audience and Programming for the Advertisement*

*Nestle directed its media agency that the target audience for the Advertisement was to be Main Grocery Buyers (MGB's) with children aged between 5 and 12 years. The Advertisement was shown during day-time talk shows and adult day time programming generally as well as during programs shown at or later than 7:30pm whose primary audience was the target audience. The Advertisement has not been shown during children's specific programming or 'C' programs.*

*The screening of the Advertisement complied with Nestle's own policy of not being during programs where 25% or more of the audience were children aged 14 years and under. The*

*Advertisement has only been shown during programs where 75% or more of the audience were over the age of 14.*

## *2. Advertisement*

### *2.1 Context*

*The Advertisement was created for its adult audience, specifically:*

- (a) to appeal to their sense of nostalgia;*
- (b) to trigger for them happy memories of their childhood, reminding them of bright, happy, good times and of just being kids; and*
- (c) to come across to them as being magical, a celebration and to capture the wonderment of a parade.*

*It is in this context that an iconic children's song of yesteryear was chosen for the Advertisement. Nestle sought to tap into its research that the song "This Old Man" would resonate with the Advertisement's adult audience, delivering a sense of nostalgia and bringing back happy memories of their childhood. A doll was selected as the centerpiece for the parade for its adult audience, as a timeless childhood object that had congruence with the parade. The Advertisement deliberately depicted families, a balance of adults and children, to remind the adult audience of happy, carefree family times before life became complicated.*

### *2.2 Content of the Advertisement*

*The Advertisement may feature children however, as per heading 2.1 above, it 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 directed primarily to children because:*

- (a) It features a doll and bubbles*
- (b) It features children catching and eating lollies*
- (c) It includes a song ("this old man ") which is a children's song*
- (d) The giant doll giving away lollies and the bubbles turning into lollies would appeal to children's sense of fantasy and imagination*

*In relation to this contention by the complainant, Nestle submits:*

- (a) A doll was selected as the centrepiece for the parade to appeal to the Advertisement's adult audience, as a timeless childhood object which adults could relate with their childhood. Nestle deliberately avoided use in the parade of a modern day children's object, as it did not seek to relate with children of today.*
- (b) The complainant correctly notes that the Advertisement features children, however ignores the fact that the Advertisement features both adults and children. It was deliberate on Nestle's part to feature in the Advertisement a balance of children and adults.*
- (c) It is incorrect and misleading of the complainant to suggest the Advertisement features children catching and eating jellies. It does not. The Advertisement features only one scene where a single child consumes one jelly. Contrary to the complainant's contention, this jelly was not caught by the child but by the child's father who handed the jelly to their child. The depiction of the only jelly consumption moment in the Advertisement in this way was deliberate by Nestle to demonstrate permissiveness and adult responsibility for the consumption of jellies by children.*
- (d) The complainant correctly identifies the use of a children's song in the Advertisement however, as per heading 2.1 above, the song "This Old Man" was selected by Nestle to appeal to the Advertisement's adult audience and not with children of today .*
- (e) The depiction of jellies in the Advertisement was intended to be a manifestation of the magic of ALLENS and to demonstrate the breadth of iconic jellies under the ALLENS brand.*

## *3. The Advertisement, the Codes and the RCMI*

### *3.1 Food & Beverage Code*

*Nestle does not consider the Advertisement breaches any of the matters set out in section 2 of the Food & Beverage Code. The Advertisement could not be construed as infringing prevailing community standards nor as containing any statements that are misleading or deceptive. In fact there are no product-specific statements contained in the Advertisement and no statements that could otherwise offend section 2 of the Food & Beverage Code. Although not specifically raised in the Complaint, having regard to the key issue of "marketing to children" raised by the complainant, section 3 of the Food & Beverage Code is relevant to the Complaint. In relation to section 3 Nestle submits:*

*(a) the Advertisement is not primarily directed to children (as discussed at headings 1 and 2 above), with effect that section 3 does not apply in its entirety; and  
(b) the Product is not a "Children's Food or Beverage Product" (as defined in the Food & 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.*

*If the Bureau does not accept these submissions and considers section 3 of the Food & Beverage Code applies to the Advertisement in its entirety, Nestle 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 nutritional or health claims (as per section 3.1 of the Food & Beverage Code), there being no health or nutritional claims in the Advertisement; or  
(b) encourage children to consume what would be considered excessive quantities of the Product (as per section 3.2 of the Food & Beverage Code).*

*In relation to section 3.2 Nestle notes the Advertisement does not focus upon consumption of the Product, but the wonder and nostalgic nature of a parade and the excitement and good times it provides for its audience (as discussed at heading 2 above). The Advertisement features only one consumption moment of the Product, by one individual consuming only one jelly, an amount which could not be considered excessive.*

### *3.2 Children's Code*

*Nestle submits that as the Advertisement is not primarily directed to children (as discussed at headings 1 and 2 above), the Children's Code does not apply.*

*If the Bureau does not accept this submission and considers the Children's Code does apply, Nestle does not consider that the Advertisement breaches any of the matters set out in the Children Food & Beverage Code. In relation to section 2.15 of the Children's Code, as specifically raised in the Complaint, Nestle submits that the Advertisement does not encourage nor promote an inactive lifestyle or unhealthy eating habits. The Advertisement depicts a crowd of people, outdoors and active, enjoying a parade. It focuses on the parade and not the consumption of the Product.*

### *3.3 RCMI*

*As previously indicated to the Bureau, Nestle is committed to the RCM! and has a Company Action Plan (CAP). A copy of Nestle's CAP has been previously provided to the Bureau. Under the RCMI Nestle commits to not advertising food products to children under 12 unless they represent health dietary choices. As submitted above, Nestle does not use the Advertisement as a vehicle to advertise the Product to children. Rather the Advertisement was created to advertise the Product, and appeal, to adults (as both consumers of the Product and purchasers of the Product for their children). The content and context of the Advertisement is discussed more fully under headings 1 and 2 above.*

### *3.4 Ethics Code*

*Nestle submits that the Advertisement does not contain any breach of the Ethics Code and that none of the matters set out in section 2 of the Ethics Code 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 no statements that could otherwise offend the Ethics Code.*

## **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, and the AFGC Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

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

The Board noted the complainant's concern that the advertisement breaches the AFGC RCMI because it is directed primarily to children, and because Allen's lollies do not represent a healthy dietary choice.

The Board considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that under the AFGC RCMI the relevant requirement is that the company not advertise food and beverage products to children under 12 in 'media' unless those products represent healthy dietary choices. The Board noted that the advertised product 'Allens Snakes' are not a healthier dietary choice. As a result the product cannot be advertised to children under 12 in 'media'.

Media is defined as: 'Media means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children'.

The Board also noted the recent Guideline to the RCMI Initiative which provided that advertising or marketing communication activities are captured under the RCMI Initiative if:

1. the audience of the communication activity is predominantly children (under 12);
2. the media in which the communication activity appears is clearly directed primarily to children (under 12)
3. The communication activities are, regardless of the audience, clearly directed primarily to children under 12.

The Board also noted that under the Guideline 'the key to determining whether the media or communication activities are directed to children is whether the themes, visuals, language and concepts are those that are attractive to children under 12.' The Board also noted, however, that while useful in determining whether the advertisement is directed to children, the requirement is that the advertisement is 'clearly directed primarily' to children.

The Board noted the extensive information provided by the advertiser about the range of programmes in which the advertisement was broadcast. The Board noted that the programmes in which the advertisement appears are programmes that are directed to adults and are not programmes which are primarily directed to children or likely to have significant child audiences. The Board considered that the programming in which the advertisement appeared was not directed primarily to children – although some children may view some of the programmes.

In particular, the Board noted that the complaint indicates that the television programme in which the advertisement was broadcast was “Home and Away”. The Board noted that this programme is rated PG. The Board noted that the audience profile for Home and Away during 2010, provided by Channel 7, shows that less than ten percent of the audience are aged 12 or under. The Board considered that this is not a programme where the audience is ‘predominantly’ children: i.e. there is not a viewing audience of more than 50% children under 12.

On the basis of the viewing audience and the classification of the programme the Board determined that the advertisement was not broadcast in a program where the audience is predominantly children or the program is directed primarily to children.

The Board noted that the revised guidelines require that the Board also consider whether the ‘communication activities are, regardless of the audience, clearly directed primarily to children under 12’.

The Board noted that the dictionary definition of ‘primarily’ is ‘in the first place’ and that to be within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children. The Board considered the theme of the advertisement (a giant doll handing out lollies during a parade), the visuals (children and adults participating in a street parade) and the language (old-fashioned nursery rhyme played in the background). The Board noted the advertiser’s response that the intent of the advertisement was to create a nostalgic scene which would remind adults of their childhoods. The Board considered that the use of the doll, instead of a more up to date child’s toy, and the choice of an old-fashioned nursery rhyme indicated that the advertisement was directed more towards adults than towards children.

On balance, the Board considered that the visuals, language and theme of this advertisement create an overall impact of this advertisement that is not specifically directed or designed to be clearly directly primarily appealing to children. The Board considered that the advertisement was more likely to be taken as being primarily directed to adults. The Board agreed that the advertisement would be of considerable attraction to children but that it is not, in the terms of the AFGC RCMI, clearly directed primarily to children.

On this basis, the Board determined that the advertisement is not broadcast within ‘media’ as provided by the RCMI and that the advertisement does not breach the RCMI Initiative.

The Board then 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, or Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code), the advertisement must be 'having regard to the theme, visuals and language used [...] directed primarily to children and are for product.'

The Board first considered whether the advertisement is directed primarily to children. The Board noted the practice note for the Food and Beverages Code which requires that 'in its determination of whether any advertising or marketing communication is directed toward children, the Board will apply the same criteria as used in considering complaints under the [Children's Code]. The Board will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.'

For the same reasons as noted in relation to the RCMI Initiative above, the Board agreed that the advertisement would be attractive to children but that it is not, in the terms of the Children's Code, 'directed primarily at children.'

The Board then considered whether the product is 'a good that is targeted to and of principal appeal to children' as required by the Children's Code. The Board noted that the advertiser considers that the product Allen's Snakes do not have principal appeal to children. The Board considered that, although the advertisement is of principal appeal and is directed to adults (in particular the main grocery buyer), the product, Allens Snakes, is a product that is targeted to children and is of principal appeal to children (even though it will be consumed by adults and children).

Although the Board determined that the product is a product which is of principal appeal to children, the Board considered that the advertisement is not directed primarily to children. The Board therefore considered that the Children's Code and Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) do not apply to this advertisement.

The Board considered that the advertisement complied with all relevant provisions of the Food and Beverages Code, in particular that it did not encourage excess consumption.

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

