



Case Report

1	Case Number	0437/11
2	Advertiser	7-Eleven Stores Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	23/11/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code undermines healthy lifestyle

DESCRIPTION OF THE ADVERTISEMENT

One day promotion by 7 Eleven where customers were invited to bring their own drinks vessel to be filled with Slurpee.

THE COMPLAINT

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

We believe the advertisements breaches clause 2.2 of the AANA Food & Beverages Advertising and Marketing Communications Code (AANA Food Code).

Clause 2.2 states:

*“Advertising or Marketing Communications for Food or Beverage Products 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 presentation of product/s or portion sizes disproportionate to the settings portrayed or by means otherwise regarded as contrary to Prevailing Community Standards”
Advertising or Marketing Communication*

The Advertising Standards Board has determined that the AANA Food Code applies to company-owned websites because they fall within the definition of Advertising and Marketing Communications (McDonald’s Australia Ltd (Shrek – internet) case number 256/07 14 August 2007). The Board noted in its determination that a McDonald’s website was ‘considered to be within the definition of advertising and/or marketing communications within the scope of the Food Code as it is material that is published that the company has

incurred cost in publishing the material and that it is material that draws the attention of the public or a segment of it to a particular product in a manner calculated to promote that product.' The 7eleven Slurpee website and associated Facebook page therefore meets the definition of an Advertising or Marketing Communication.

*Undermines the promotion of a healthy balanced diet and encourages excess consumption
The OPC is concerned that the advertisements encourage young people to consume excess quantities of Slurpee. Slurpees are very high in sugar for example a 600g cup of raspberry flavoured Slurpee (approximately equivalent to a standard large Slurpee) contains up to 72 grams (approx. 17 teaspoons) of sugar. A larger container bought in by a consumer on Bring your own cup day could easily hold over 1 litre of Slurpee and therefore pack 120 grams (approx. 28 teaspoons) of sugar. Indeed many of the containers depicted on the Facebook page appear to hold significantly more than 1 litre.*

The Dietary Guidelines for Australian Adults and the Dietary Guidelines for Australian Children and Adolescents recommend the consumption of only moderate amounts of added sugar (Dietary Guidelines for Australian Adults endorsed by the NHMRC on 10 April 2003. p.172 and Dietary Guidelines for Australian Children and Adolescents endorsed by endorsed by the NHMRC on 10 April 2003. p. 211). Added sugar provides the consumer with energy but no specific nutrients. It is also likely to contribute to weight gain and dental caries (see for example Joint WHO/FAO Expert Consultation on Diet Nutrition and the Prevention of Chronic Diseases (2002: Geneva Switzerland) Diet nutrition and the prevention of chronic diseases: report of a joint WHO/FAO expert consultation Geneva 28 January - 1 February 2002. Ch. 5). The World Health Organization in the report cited above states that an average adult should consume no more than 50g of sugar per day.

It follows that as part of a healthy diet Slurpees should not be consumed regularly or in large portion sizes. While there was only one day on which a person could visit 7eleven and fill their large container with Slurpee the OPC is concerned that the advertisements celebrate the over consumption of slurpees condone excess consumption and encourage it in the longer term. Overweight and obesity is a serious health issue with nearly two thirds of Australian adults and one quarter of Australian children overweight or obese. It is irresponsible of 7eleven and contrary to prevailing community standards to encourage the excess consumption of slurpees and in particular such high levels of added sugar.

For these reasons we ask the ASB to request 7eleven to remove the advertisements from its website and associated Facebook page and to undertake that it will not encourage the excess consumption of Slurpees in the future (whether via a Bring your own cup day or other means).

THE ADVERTISER'S RESPONSE

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

We refer to your letter dated 3 November 2011 enclosing a copy of a complaint recently received by the

Advertising Standards Bureau ("ASB") however this is not clearly communicated and the complaint is inconsistent in this regard.

Importantly, it is not possible to determine exactly what the complaint is in relation to, as the complaint is ambiguous with respect to any specific material that may be the subject of the complaint, as opposed to a general complaint about a sales promotion that was conducted by 7-Eleven. The complainant seems concerned about the promotion itself (which of course is outside the realms of the ASB's jurisdiction) rather than any specific advertising/marketing material.

In any event, the complainant does reference the 7-Eleven Slurpee website ("Website") and references that were once contained therein to a previous promotion conducted by 7-Eleven, the "Bring Your Own Cup" promotion ("Promotion"). For the sake of expediency we shall assume that the complaint relates to the Website and the references to the Promotion that were previously found on the Website.

On the basis of the above it is not possible to provide a digital copy of the advertising in question, as it is impossible to ascertain exactly what that material was. However, a collection of some of the material referencing the Promotion that appeared on the Website is attached to this response to provide context to the ASB, and for consideration when assessing the complaint.

For the ASB's information, the Promotion was conducted in 7-Eleven stores in Victoria, NSW, QLD and the ACT on one day only, 21 September 2011. The Promotion involved consumers bringing in their own vessels (subject to certain restrictions) to fill with their favourite Slurpee product.

The Promotion was hugely popular and was taken in great spirit by 7-Eleven's many happy customers, with a great number of them taking to social media with photographs illustrating the fun of the day. Indeed, there were some associated competitions run by 7-Eleven involving posting photographs, but to our understanding these are not relevant to the complaint. 7-Eleven takes its obligations for the health and safety of its customers very seriously, just as it does its obligations under the AANA Food and Beverages Advertising and Marketing Communications Code ("AANA Food and Beverages Code"), and the AANA Code of Ethics. This obviously includes the obligations outlined in the complainant's submission, clause 2.2 of the AANA Food and Beverages Code. Again, for clarity, clause 2.2 provides as follows:

Advertising or Marketing Communications for Food or Beverage Products 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 products or portion sizes disproportionate to the setting / s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards. It also goes without saying that the "AANA Food and Beverages Code Practice Note" is also applicable here, and for ease of reference, in relation to clause 2.2 the Practice Note provides as follows:

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code. The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise. Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.
- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the

setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

In relation to the Promotion, the references to the Promotion on the Website that are apparently the subject of the complaint, and the above provisions of the Food and Beverages Code, we respond as outlined below.

Response

It is clear that the Promotion (as evidenced by the material provided for your reference) certainly did not disparage healthy food choices or lifestyles, or physical exercise, and there were no implicit or explicit messages to this effect present in any Promotion advertising or marketing. Indeed, the mere depiction of a product that is taken as a rare sweet treat by consumers is not, of itself, disparaging of other food/beverage choices. Further, silence with respect to other "more healthy" options does not automatically constitute a disparagement of such choices. On that basis, it is clear that the first limb of the clause 2.2 test in the abovementioned Practice Note is not breached by the Promotion or its associated advertising. In relation to the second limb, relating to "excess consumption", there are numerous factors in play that are directly relevant to a consideration of the Promotion advertising and its acceptability or otherwise under this second limb.

In particular:

i) Contrary to the complainant's submission, 7-Eleven did NOT encourage consumers to "bring a large container to 7Eleven and fill it with Slurpee for \$2.60". This claim grossly misrepresents the nature and terms of the Promotion .

ii) Acknowledging that customers may have been inclined to redeem under the offer with extremely oversized vessels that would represent a health and/or safety risk, 7-Eleven imposed a definite top end limit on the size of the vessels that could be used to claim under the offer. This was a clear acknowledgement by 7 Eleven of our obligations to the community, as well as an acknowledgement of the provisions of clause 2.2 of the Food and Beverages Code. However, being a promotion, it would have had very little commercial appeal if the limit was set so low as to count out the vast majority of vessels that may otherwise have been used by customers. There needed to be some flexibility in this regard, so that customers could use their own originality and personalise the whole promotion to their own circumstances and their favourite personal items. Indeed, this was a huge part of the appeal of the Promotion.

iii) There are numerous sizes of "Slurpee" products that can be purchased in the normal course of business by 7-Eleven customers. Just like at every other food retailer, it is important to note that there is no limit on the number of products that can be purchased per day. In the case of this Promotion, 7-Eleven went further than the standard terms of business and deliberately imposed four set rules, three of which were specifically designed to protect consumers, given the unique nature of the Promotion. As evidenced in the material provided, the rules were as follows:

a. Cups must fit within the set size limit;

b. Cups must be watertight;

c. Limit of one fill up per cup; and

d. Cups must be clean and free of foreign matter.

iv) At no point was it implied that the vessels used must meet any minimum size requirement. The size of vessels was entirely up to consumers to determine, without any degree of implied or express encouragement one way or the other, subject to the limits mentioned above. Of course, some promotional material provided examples of ideas for vessels, but these were indicative only (some clearly light-hearted and tongue in cheek) and consumers were free (within the terms of the offer) to use their creativity and choose their own vessels. Some

promotional material depicted potential vessels that were larger than others (just like the vessels that were finally used by consumers when claiming under the offer), but this was not meant to, nor was it taken as, promoting or endorsing unsafe or excess consumption.

v) Further to the above, there was no statement or expectation that a vessel would be filled and could be enjoyed by only one person. Indeed, some of the larger vessels used would more than reasonably be expected to be shared amongst one or more friends, and this would clearly have been in line with 7-Eleven's commercial interests. In other words, getting friends involved, talking about the product and sharing the Slurpee experience was implied as a potential outcome for people participating in the Promotion, whether it was explicitly stated as a rule or not. To be clear, there was certainly no rule that individuals must take the full product and consume it themselves.

vi) As the complainant has conceded, the Promotion was conducted for one day only. While 7-Eleven stocks Slurpee products all year round, and conducts sales promotions in relation to Slurpee products at different stages throughout the year, this Promotion was specifically limited to a one day event. This was a direct and set initiative by 7-Eleven, since 7-Eleven is well aware of the fact that a Slurpee should be viewed as a special treat by its fantastic customer base, to be consumed as part of a balanced diet and only in moderation, like all other food and beverage products. This was not a promotion that 7-Eleven would have considered appropriate to conduct all year round, for example.

The Promotion (and its associated advertising and marketing material) was clearly a light-hearted bit of fun that was taken in the spirit in which it was intended by all participants, and was conducted in line with all relevant codes and regulations, including the AANA Food and Beverages Code.

Ultimately, whilst we respect the complainant's right to express her concerns, we do not agree that the Promotion or any advertisement for the Promotion breached any operative code, including the AANA Food and Beverages Code.

In any event, the Promotion is well and truly over and all material relating to the Promotion has been removed from the Website and, to the best of our knowledge, all other media.

Importantly, as you are more than aware, contrary to the complainant's request the ASB has no jurisdiction to request any undertakings from 7-Eleven with respect to its future sales promotions, and it is obvious that the complainant misunderstands the nature of the complaints process in this respect. Rest assured however that 7-Eleven is well aware of its obligations under the AANA Food and Beverages Code (and all other codes) and will ensure that, as in the past, it takes all practicable steps to ensure that all of its advertising and marketing materials are compliant.

Please do not hesitate to contact me if you have any queries or require further information.

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) or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement undermines the promotion of a healthy balanced diet and encourages excess consumption.

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

The Board determined that the advertisement is not directed to children or likely to appeal to children and that the AANA Code for Advertising and Marketing Communications to Children does not apply.

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 2.2 of the Food Code which provides:

‘Advertising or Marketing Communications for Food or Beverage Products 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 presentation of product/s or portion sizes disproportionate to the settings portrayed or by means otherwise regarded as contrary to Prevailing Community Standards’

The Board noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.2, provide:

‘In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise.

Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication’.

‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board noted that the advertisement on the slurpee.com.au website promotes a one day event where customers are encouraged to bring along their own cup to be filled in store with their chosen slurpee.

The Board considered the statements and promotional information to be clearly conveying a message to a reasonable consumer that this is a one day event and that there are restrictions on the size of cup and limitations to only one fill per cup.

The Board considered that the overall message of the advertisement was to gather some friends together and bring your own cup to enjoy a slurpee during the one day promotion at participating stores. Consumers were encouraged to take photos and share them via facebook.

The Board considered that, on the basis of the information provided by the advertiser, a reasonable consumer would consider that consumption of this particular product was not intended to replace other foods in the diet or be suggestive of a slurpee forming the basis of a regular part of everyday food choices. The Board considered that the advertisement does not suggest that people replace healthy food choices and physical exercise with a slurpee product and that the average consumer would likely know that the promotion is for one day and stay within the restrictions of the promotion, enjoying one cup. The Board considered that the statements in the advertisement are not disparaging of healthy foods or food choices or disparaging of physical exercise.

The Board noted that the advertisement was encouraging consumers to bring their own cup on the day and agreed that this was likely to be a cup larger than usually provided for this product. However, the Board noted that the advertiser had placed rules and restrictions about the size of cup and number of fills per cup. The Board considered that a reasonable consumer would most likely not take the message that the advertiser is condoning or encouraging excess consumption.

The Board considered that the advertisement did not undermine the promotion of a healthy balanced diet and did not encourage excess consumption and therefore did not breach Section 2.2 of the Code.

Finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.