



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0459/18
2	Advertiser	Stuart Alexander & Co Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Transport
5	Date of Determination	24/10/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive
Food and Beverage Code 2.3 - unsupported nutritional/health claims
Food and Beverage Code 2.6 inaccurate taste/size/content/nutrition/health claim
Food and Beverage Code (Children) 3.1 misleading/urgency/price minimization
Advertising to Children Code 2.02 Factual presentation

DESCRIPTION OF THE ADVERTISEMENT

This transport advertisement for Mentos features a pink and blue split background with fruits along the split. The pink half has text stating "a bit fruit-y a bit fusion-y" and the blue half has an image of the product and text stating "...who says no to mentos?"

THE COMPLAINT

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

The ad is misleading. By showing a large image of fruit it implies the product has fruit in it. Everyone knows fruit is healthy so this implies that the confectionery in the ad is also healthy when in fact it is a discretionary food and mainly sugar. The mentos website mentos.com.au shows an NIP with only 1.9g sugar and 44kJ per 100g. I also



question these numbers given the ingredients list shows sugar as the main ingredient, followed by glucose and fruit juice. I would like the board to consider that this ad is misleading, contains incorrect implied health claims and targets children by being on a bus and also by showing brightly coloured, magnified images of fruit to attract children. I would like the Board to consider this complaint under both the AANA Food and Beverages Advertising and Marketing Communications Code, the AANA Code for Advertising and Marketing Communications to Children and the AFGC Responsible Children's Marketing Initiative.

THE ADVERTISER'S RESPONSE

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

Advertiser Response – Complaint Reference Number: 0459/18

I refer to your letter dated 10 October 2018 regarding the complaint lodged with the Ad Standards Community Panel in respect of a mentos® Fruit Fusions billboard ad on a bus in Epping NSW, commissioned by the owner of the mentos® brand, Perfetti Van Melle Group B.V. (PVM).

Stuart Alexander & Co Pty Ltd (Stuart Alexander) is the exclusive distributor of mentos® products in Australia for PVM.

Description of the advertisement

The advertisement depicts pictorial graphics of sliced fruits in different combinations or 'fusions', including orange and peach, strawberry and banana and passionfruit and mango. The background of the ad is inspired by the product packaging design. Half pink and half blue, including colourful pictorial graphics of different coloured splashes that have been spread diagonally through the middle of the print. The advertisement also includes the following campaign slogans in white block print:

"a bit fruit-y", "a bit fusion-y" and "who says no to mentos®?"

Placement of the advertisement

As set out in the Creative Media Matrix attached as Appendix B, the advertisement was only placed in the following paid media:

(a) on the sides of buses; and

(b) on large format billboards,



in NSW, Victoria and Queensland.

The advertisement was also included as a cover photo on the mentos® AU promotional Facebook page.

Whether audience of programs are predominantly children

As set out under paragraph 11, the advertisement is not featured in any programs. In any case, the target audience for the advertisement is not children. The target audience for the advertisement is adults aged between 18 to 39. Attached as Appendix C is a Brief (dated December 2017) and as Appendix D is a copy of the Media Plan for the mentos® Fruit Fusions advertising campaign, including the bus billboard advertisement that is the subject of this complaint. The attached Brief and Media Plan clearly show that the target market for the campaign, including the advertisement, is adults aged between 18 to 39.

Our response

It is the position of Stuart Alexander that the advertisement, does not breach the:

(a) AANA Code of Ethics (AANA Code of Ethics)

(b) AANA Food and Beverages Marketing and Communications Code (AANA Food Code); or

(c) AANA Code for Advertising and Marketing Communications to Children (AANA Children Code).

We submit that this is because:

(1) AANA Code of Ethics

(i) The advertisement does not discriminate against or vilify a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief (section 2.1 of AANA Code of Ethics).

(ii) The advertisement does not employ any sexual appeal in any manner (section 2.2 of AANA Code of Ethics).

(iii) The advertisement does not present or portray violence in any manner (section 2.3 of AANA Code of Ethics).

(iv) The advertisement does not portray any images of sex, sexuality or nudity (section



2.4 of AANA Code of Ethics).

(v) The advertisement only uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium), and does not include any strong or obscene language (section 2.5 of AANA Code of Ethics).

(vi) The advertisement does not depict any material that is contrary to Prevailing Community Standards on health and safety (section 2.6 of AANA Code of Ethics).

(vii) The advertisement is clearly distinguishable as advertising, due to the nature of the content, where it is placed (buses, large format billboards and as a cover photo on the mentos® AU promotional Facebook page), the theme and visuals and campaign slogans and the use of the mentos® logo (section 2.7 of AANA Code of Ethics).

(2) AANA Food Code

Advertising or Marketing Communications for Food or Beverage Products

(i) The advertisement is truthful, honest and not designed to mislead or deceive consumers or contravene Prevailing Community Standards. As mentioned above, the target market for the advertisement is 18 to 39 year olds. The advertisement does not make any representations or references to nutritional values or health benefits. It simply depicts pictorial representations of sliced fruit to indicate to the target market that there are different flavoured dragées in the mentos® Fruit Fusions product, including Peach and Orange dragées, Strawberry and Banana dragées and Mango and Passionfruit dragées (section 2.1 of AANA Food Code).

(ii) The advertisement does not:

A. undermine the importance of a healthy lifestyle, as it does not disparage healthy foods or food choices or physical exercise; or

B. encourage excess consumption, as a member of the community in the target market would not take any message from the advertisement that condones excess consumption (section 2.2 of AANA Food Code).

(iii) The advertisement does not include any nutritional or health claims. A regular adult family shopper would not interpret anything in the advertisement as being a health or nutrition claim, as the advertisement simply depicts pictorial representations of sliced fruit (not real fruit) to indicate the flavour of the products and a regular adult family shopper would not consider mentos® Fruit Fusions products as being products that are predominantly made of fruit as opposed to simply being confectionery products (section 2.3 of AANA Food Code).



(iv) The advertisement does not contain any nutritional or health related comparisons (section 2.4 of AANA Food Code).

(v) The advertisement does not make any reference to consumer taste or preference tests (section 2.5 of AANA Food Code).

(vi) The advertisement does not include any claims relating to the size, nutrition or health benefits of mentos® Fruit Fusions products. Any claims relating to the taste or content of the products in the advertisement are specific to the promoted products and accurate in all such representations as the advertisement only makes reference to the fact that the products are “a bit fruit-y” in relation to their taste and content. These references to taste and content are accurate representations as the Fruit Fusions products contain the following ingredients:

Reconstituted fruit juices (banana, strawberry, mango, passionfruit and peach)

(section 2.6 of AANA Food Code).

(vii) The advertisement was placed on buses, large format billboards and as a cover photo on the mentos® AU promotional Facebook page. It does not appear within segments of media devoted to general and sports news and/or current affairs (section 2.7 of AANA Food Code).

(viii) The advertisement does not portray mentos® Fruit Fusions products as being intended or suitable as substitutes for meals. A regular adult family shopper would not consider anything in the advertisement as suggesting that the products are suitable as a meal replacement (section 2.8 of AANA Food Code).

(ix) The advertisement complies with:

A. the AANA Code of Ethics (as set out under part (a) above); and

B. the AANA Children Code (as set out under part (c) below)

(section 2.9 of AANA Food Code).

Advertising Food & Beverages and Children

(x) The advertisement is not directed primarily towards children aged 14 years or younger as:

A. the target market for the advertisement is adults aged 18 to 39 years (as evidenced above);



B. mentos® products are enjoyed by consumers of all ages. It is not primarily a children's product. The product is enjoyed by many adult consumers;

C. the advertisement does not include any children's themes or characters;

D. the advertisement does not tell any stories from a child's perspective or include any uncomplicated storylines directed primarily to children;

E. the visuals in the advertisement are bright and colourful to reflect the branding and packaging of the mentos® Fruit Fusions product and to attract the attention of consumers of all ages, including the target market (being adults aged 18 to 39 years). Because the advertisement was placed on buses and large format billboards, it is intended to be visually striking to attract the attention of the target market, as they will likely only have a short amount of time to view the advertisement due to the bus usually being in motion or because they are travelling past the billboard.

F. the language in the advertisement is adult like and includes adult-vernacular such as the word 'fusion' which is unlikely to be understood by a child that is 14 years old or younger. The breaking up of the word 'fruity' in the advertisement to "fruit-y" so that it can also include use of colloquial slang to describe the product as being "fusion-y" is also unlikely to be understood by a child;

G. as the visuals and language in the advertisement are not primarily directed to children, there is no 'call to action' directed to children

(section 3 of the AANA Food Code)

(xi) If it was to be determined that the advertisement is directed primarily to children:

A. the advertisement does not mislead or deceive children in relation to any nutritional or health claims as a reasonable child would not form any views towards nutritional value or health in relation to the advertisement (section 3.1 of the AANA Food Code);

B. it is not Stuart Alexander's intention, and it could not reasonably be regarded as being its intention, to improperly exploit children's imagination to encourage children to consume excessive quantities of mentos® Fruit Fusions product. More importantly, a reasonable child would not be encouraged, from viewing the advertisement, to consume excessive quantities of mentos® Fruit Fusions product (section 3.2 of the AANA Food Code);

C. the advertisement does not state nor imply that possession or use of mentos® Fruit Fusions product will afford physical, social or psychological advantage over other children, or that non possession of mentos® Fruit Fusions product would have the



opposite effect (section 3.3 of the AANA Food Code);

D. the advertisement is not aimed at undermining the role of parents or carers in guiding diet and lifestyle choices (section 3.4 of the AANA Food Code);

E. the advertisement does not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy mentos® Fruit Fusions product for them (section 3.5 of the AANA Food Code); and

F. the advertisement does not feature any premiums and only features pictorial representations of fruit to denote the flavours featured in the mentos® Fruit Fusions product, which are intended to taste like the fruits shown. The mentos® Fruit Fusions product, does include "reconstituted fruit juices" from the pictorial representations (banana, strawberry, mango, passionfruit, peach) in its ingredients base". (section 3.6 of the AANA Food Code).

(3) AANA Children Code

(i) For the reasons set out under paragraph (b)(x) above, the advertisement is not directed primarily towards children aged 14 years or younger, so the advertisement cannot be in breach of the AANA Children Code because it is not a 'Advertising or Marketing Communication to Children' (as defined in the AANA Children Code).

(ii) If it was to be determined that the advertisement is directed primarily to children:

A. the advertisement does not mislead or deceive children, is not ambiguous and accurately represents:

- the mentos® Fruit Fusions product, including the size of the product, which is included prominently at the bottom of the advertisement; and

- that the advertisement is a commercial communication rather than editorial content or other non-commercial communication,

in a manner that can be clearly understood by children aged 14 years or younger (section 2.2 (a), (b) and (c) of AANA Children Code);

B. the advertisement does not include any prices and does not imply that the mentos® Fruit Fusions product is immediately within reach of every family budget (section 2.2(d) of AANA Children Code);

C. the advertisement was placed on buses, large format billboards and as a cover photo on the mentos® AU promotional Facebook page, it is not placed in media which is in close proximity to any editorial comment or program content (section 2.3 of AANA



Children Code);

D. the advertisement does not, in any way employ sexual appeal, include sexual imagery or state or imply that children are sexual beings or that ownership or enjoyment of mentos® Fruit Fusions product will enhance their sexuality (section 2.4 of AANA Children Code);

E. the advertisement does not portray images or events which depict unsafe uses of mentos® Fruit Fusions product or unsafe situations which may encourage children to engage in dangerous activities or create an unrealistic impression in the minds of children or their parents or carers about safety. Mentos® Fruit Fusions product has not been declared unsafe or dangerous by an authorised Australian government authority (section 2.5 of AANA Children Code);

F. the advertisement does not portray images or events in a way that is unduly frightening or distressing to children and does not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability (section 2.6 of AANA Children Code);

G. nothing in the advertisement:

- undermines the authority, responsibility or judgment of parents or carers;*
- contains an appeal to children to urge their parents, carers or another person to buy mentos® Fruit Fusions product for them;*
- states or implies that mentos® Fruit Fusions product makes children who own or enjoy it superior to their peers; and*
- does not state or imply that persons who buy mentos® Fruit Fusions product are more generous than those who do not*

(section 2.7 of AANA Children Code);

H. the advertisement does not include any qualifying statements in asterisked or footnoted information (section 2.8 of AANA Children Code);

I. the advertisement does not include any competitions (section 2.9 of AANA Children Code);

J. the advertisement does not include any popular personalities or celebrities (section 2.10 of AANA Children Code);

K. the advertisement does not include any premiums (section 2.11 of AANA Children



Code);

L. the advertisement does not include or relate to any alcohol products in any way (section 2.12 of AANA Children Code);

M. the advertisement is not intended at collecting any personal information of any person, including children, and does not make any reference to the collection of personal information in any way (section 2.13 of AANA Children Code);

N. as set out under paragraph (b)(ii)A above, the advertisement does not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits and as set out under part (b) above, the advertisement complies with the AANA Food Code (section 2.14 of AANA Children Code);

O. as set out under part (a) above, the advertisement complies with the AANA Code of Ethics (section 2.15 of AANA Children Code).

Stuart Alexander is not a signatory to AFGC codes

Stuart Alexander is not a signatory to the Australian Food and Grocery Council Responsible Children's Marketing Initiative or the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children, so those codes do not apply.

Conclusion

For the reasons set out above, we believe that the advertisement fully complies with the AANA Code of Ethics, the AANA Food Code and the AANA Children Code.

THE DETERMINATION

The Ad Standards Community Panel (the "Panel") considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the "Children's Code"), and the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code").

The Panel noted the complainant's concern that the advertisement is misleading and suggests that the product contains fruit, and that the advertisement targets children.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the advertiser is not a signatory of the Australian Food and Grocery Council's Responsible Children's Marketing Initiative (AFGC RCMI) therefore



this Initiative does not apply.

The Panel noted the transport advertisement featured the words ‘a bit fruit-y a bit fusion-y’ and images of different fruits sliced and pieced together with an image of the Mentor packet and the words ‘who says no to Mentos?’.

The Panel then considered whether the advertisement complied with the requirements of the Children’s Code.

To fall within this Code, or Part 3 of the Food Code, “Advertising or Marketing Communications to Children 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 Panel noted the complainant’s concern that the advertisement is targeted towards children.

The Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Practice Note for the Food and Beverages Code which states that whether an advertisement or marketing communication is “directed primarily to children” is an objective test based on several factors including, but not limited to the combination of visual techniques, product and age of characters and actors. The use of any one factor or technique in the absence of others may not necessarily render the marketing communication “directed primarily to children.”

The Panel considered that the advertisement featured Mentos and considered that Mentos is a product that is targeted towards people of all ages and is not a product of principal appeal to children.

The Panel considered that the images of fruit ‘fused’ together was a visual representation of the product and while the bright colours may be attractive to children, the overall image would be equally attractive to both adults and children.

The Panel considered the wording of the advertisement ‘a little but fruit-y a little bit fusion-y’ and considered that this wording was not childlike and would not be considered directed primarily to children.

The Panel considered that the theme, visuals and language used would appeal to a broad audience and were not directed primarily to children, and that the advertisement was not for a product of principal appeal to children.

The Panel determined that as the advertisement is not directed primarily to Children, the Children’s Code and Part 3 of the Food Code do not apply.



The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel 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 Panel noted the complainant's concern that the advertisement is misleading and suggests that the product contains fruit.

The Panel noted the advertiser's response that the images of fruit in the advertisement are designed to indicate to the target market of 18-39 year olds the different flavour combinations available.

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

"The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, an advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product."

The Panel noted it had previously considered a similar issue in case 0206/15, in which:

"The Board considered that the product 'Fanta' is well known by consumers as being an orange coloured soft drink. The Board noted that the advertiser provided information stating that the product contains 'Orange Juice from Concentrate (2.1%)'



and that while the animation fills the bottle with orange pieces, this could equally be interpreted as a reference to the end product which is orange in colour and containing some orange concentrate.

The Board agreed that the bottle is intended to show a degree of completion and that children would understand the bottle to be representing the end of the level rather than a representation of a beverage product being full of fruit. The Board considered that in the context of the product being clearly a soft drink, not a fruit juice, it is not likely to be seen as representing high fruit content.”

Similar to case 0206/15, the Panel considered that Mentos is a well-recognised brand and that most consumers would be aware that it is a confectionary that does not contain fruit – but rather is fruit flavoured

The Panel considered that the imagery of the fruit in the advertisement is an artistic representation of the flavouring of the confectionary, and not suggestive that the fruit is an ingredient.

The Panel considered that the advertisement was not misleading or deceptive and that it was communicated in a manner appropriate to the level of understanding of the broad audience and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the AANA Food Code or the AANA Children’s Code, the Panel dismissed the complaint.

