



## **CASE REPORT**

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| 1. Complaint reference number | 248/07  |
| 2. Advertiser                 | Ferrero Australia Pty Ltd (Nutella)   |
| 3. Product                    | Food & Beverages  |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Advertising to Children Code - Food & beverages – section 2.4<br>Food and Beverage Code – other |
| 6. Date of determination      | Tuesday, 14 August 2007   |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement opens on the cartoon movie characters Shrek and Fiona waking up and wishing each other good morning. The next scene depicts a boy and girl dressed in school uniform having Nutella on bread for breakfast and a voiceover announcing "Make a good morning great with the delicious taste of Nutella! Collect Shrek and friends on six Static Mates and catch Dreamworks Shrek the Third in cinemas now." Six Static Mates stickers zoom out of the Nutella jar and fly through the air with a trail of sparkles and land on the fridge door. The room darkens to show the glow of the stickers, then in a magical cloud of sparkles they zoom past the excited children back into the Nutella jar. There is a quick glimpse of the Donkey and Puss in Boots characters from the movie.

## **THE COMPLAINT**

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

*We write to complain about examples of the current widespread use of the children's film "Shrek The Third" and the animated Shrek character, in advertising and promotion of unhealthy foods directed to children, and on packaging of unhealthy food products directed to children. We believe the use of Shrek in these promotions and product packaging is designed to encourage "pester power" in children, that is, to encourage children to ask their parents to buy the products promoted...Directly or implicitly asking or encouraging children to pester their parents is not a technique marketers commonly use to engage pester power. Rather, they use techniques, such as offering premiums, using popular children's personalities and characters, or using promotional "tie-ins" with popular children's films, to make children desire products, so they will pester parents to buy them.*

*(The advertisement) for Nutella features a scene from Shrek The Thired and encourages children to collect six glow-in-the-dark "Shrek and friends" stickers, provided free with Nutella products. Clearly the ad encourages children to urge their parents to buy Nutella for them so they can collect the Shrek stickers.*

*We think the advertisement encourages children to urge their parents or other adults responsible for their welfare to buy the advertised products for them, and therefore breach clause 3.5 of the (Food & Beverages) Code.*

## **THE ADVERTISER'S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*Firstly we confirm that the media schedule for the commercial was completed on 21 July 2007 and*

*will not be aired again in Australia.*

*By way of background, we would like to stress that Ferrero understands the current issues surrounding childhood obesity and in order to address this issue, Ferrero has made a global decision to eliminate advertising to children...In relation to this Nutella campaign in question, Ferrero expressly instructed its media agency to avoid placing Nutella advertising in programs aimed or targeted to children in accordance with this policy.*

*In relation to Nutella as a matter of policy, the advertising imagery does not isolate the product but consistently shows the product as part of a balanced meal, which may include toast, bread, milk, fruit and cereal as the setting will allow. You will not that the commercial in question maintains the essence of the institutional scene within a balanced breakfast.*

*There is no overt reference to children asking their parents to purchase the products in question. There is no "appeal", whether direct or indirect, to children to urge parents or adults to buy the products for them. The commercial simply presents the products in an appealing way and shows children enjoying the products that have already been purchased.*

*The free item being the static mate, is integral to the product being offered, in that it is an item being offered in association with the Shrek campaign and comes inside the Nutella product, as part of the product purchased. It is promoted in an acceptable and legitimate manner.*

*The commercial does not undermine the authority, responsibility or judgement of parents or carers. To the contrary the commercial appeals to their judgement as parents and is directed at parents to make the decision for their children.*

*As a precautionary safeguard, measures were taken in production of the commercial to ensure that there was no undue focus on the free items in comparison with the Nutella product, and to ensure that prominent references to the Nutella product were included.*

*For the reasons expressed above we maintain that the commercial complies with the relevant AANA Codes and that the complaint should be dismissed.*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches the AANA Food and Beverages Communications and Marketing Code (the Food Code).

The Board noted the complainant's concern that the advertisement breaches Section 3.5 of the Food Code. Section 3.5 of the Food Code provides:

*'Advertising and/or marketing communications directed towards children for food and/or beverage products shall not include any appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular products for them.'*

The Board also noted the provisions of the Explanatory Notes to the Food Code in relation to Section 3.5:

*'In considering whether an advertisement contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:*

*- although children may be expected to exercise some preference over the foods and beverages they consumer, advertisements...must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.*

*- advertising must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. [As an example, in a supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text message must not include such urging as 'Ask Mummy to buy you one']'*

The Board noted that it is its role to interpret and apply the provisions of the Food Code as they are. The Board considered that the correct interpretation of section 3.5 as it is currently drafted is to

prohibit advertisements directly asking or encouraging children to urge parents to buy the product, or including depictions of children asking for the product or placing it into the trolley.

The Board noted that movie characters (both real and animated) have been used to promote all types of products for many years. The Board considered that the mere inclusion of a cartoon character in the advertisement or an offer of a premium (such as stickers) did not of itself breach this provision of the Code. The Board noted that this advertisement does not contain any direct appeal to a child to ask a parent to buy the product, and that the invitation to collect all six stickers did not amount to 'an appeal to children to urge parents to buy particular products for them'.

The Board noted that there is community debate about advertising particular food types to children but that the correct interpretation of the Food Code is that the use of a cartoon character or a promotional toy does not of itself amount to a breach of Section 3.5 of the Food Code.

The Board also considered whether the advertisement breached clause 3.7 of the Food Code. Clause 3.7 of the Food Code provides:

*'Advertising and/or marketing communications directed towards children for food...shall not feature ingredients or premiums that are not an integral element of the products or services being offered.'*

The Board also noted the Explanatory Notes to clause 3.7 of the Food Code. The Board considered that the references to the stickers in the Nutella advertisement were a reference to a premium that was not an integral part of the product (Nutella) being offered. However, referring to the Explanatory Notes, the Board considered that the reference to the stickers was 'not given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement.' On this basis the Board determined that the advertisement did not breach clause 3.7 of the Food Code.

The Board considered other provisions of the Food Code and determined that the advertisement did not breach the Food Code.

The Board also considered whether the advertisement breached the AANA Advertising to Children Code (the Children's Code). The Board noted similar provisions in the Children's code relating to fair representation of the advertised product (2.1.1(c)) and use of premiums (2.8). The Board determined that the advertisement did not breach the Children's Code.

The Board also considered whether the advertisement breached section 2 of the Advertiser Code of Ethics (the "Code"). The Board considered that the advertisement did not breach the Code.

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