



## **CASE REPORT**

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| 1. Complaint reference number | 302/06   |
| 2. Advertiser                 | Nestle Australia Ltd (Allen's Snakes)  |
| 3. Product                    | Food & Beverages   |
| 4. Type of advertisement      | TV   |
| 5. Nature of complaint        | Advertising to Children Code – Other – section 2.4<br>Language – use of language – section 2.5 |
| 6. Date of determination      | Tuesday, 8 August 2006   |
| 7. DETERMINATION              | Dismissed  |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television commercial features animated characters of a snake and bats. The yellow black-striped snake sitting in a tree tells us “Oh hello – I’m a snake. My name’s Allen. These are my friends (indicating purple bats hanging upside down from the branches). I do have friends you know – in high places. Do you want to hear something juicy? I think they’re vampires. They go out after dark and come back before it’s light - and they have blood dripping off their teeth.” One of the bats replies “That’s fruit juice, stupid. We’re made from all natural colours and flavours” to which the snake replies “A likely story!”

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*I have 3 little grandchildren here and we don't allow them to call each other stupid, as it can be very hurtful, but how can we win when they see this ad which is obviously aimed at children?*

## **THE ADVERTISER'S RESPONSE**

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

*The ad was pre-tested with mums and this issue was not spontaneously raised across all consumer groups.*

*The animation style uses characters to convey the messages in a fun and entertaining way – we believe that the use of characters does not imply that the word “stupid” is used in a negative sense.*

*The ad is targeted to mums – trying to communicate the rational message of “only natural colours and flavours and real fruit juice” in a fun/engaging way.*

## **THE DETERMINATION**

The Advertising Standards Board (the Board) considered whether this advertisement breached the AANA Advertising to Children Code (the Children’s code).

To come within the Children’s Code, the material being considered must be an “advertisement”. The Children’s Code defines an “Advertisement” as follows:

*“matter which is published or broadcast in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a*

*segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct”.*

The Board decided that the material in question was broadcast in all of Australia or a substantial section of Australia for valuable consideration, given that it was being broadcast on television in Australia . The Board determined that the material draws the attention of the public or a segment of it to a “product” being Allens Snakes “in a manner calculated to promote...that product”.

The Board then needed to determine whether the advertisement is an “Advertisement to Children”, which is defined in the Children’s Code as meaning:

*“Advertisements which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product”.*

“Children” are defined in the Children’s Code as being 14 years old or younger. The Board noted the advertiser’s comment that the advertisement was directed to parents. The Board had regard to the product, music, theme and visuals used, and considered that the advertisement was directed primarily towards children and was therefore within the scope of the Children’s Code.

Having concluded that the material is an “advertisement to Children” as defined by the Children’s Code, the Board then had to determine whether the advertisement is for a “Product”. “Product” is defined in the Children’s Code as meaning;

*“goods, services and facilities which are targeted toward and have principal appeal to Children”.*

The Board determined that the Allens Snakes is a “good” targeted toward and having principal appeal to Children and accordingly is a Product.

The Board considered the provisions of the Children’s Code and determined that the advertisement did not breach any of the provisions of the Children’s Code.

The Board went on to consider whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the “Code”). The Board noted that the only relevant clause of the Code was whether or not the advertisement used language that is appropriate in the circumstances and that strong or obscene language shall be avoided.

The Board noted that the complaint concerned the use of the word ‘stupid’ . The Board considered that the use of ‘stupid’ was not use of strong or obscene language.

The Board noted that the word was used by one cartoon character to another in an affectionate not aggressive manner. The Board considered that the use of the word ‘stupid’ was not inappropriate in the context of the advertisement.

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