



CASE REPORT

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| 1. Complaint reference number | 31/08 |
| 2. Advertiser | Nestle Australia Ltd (Nesquik cereal - Golden Compass) |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | Pay TV |
| 5. Nature of complaint | Advertising to Children Code - Food & beverages – section 2.4
Food and Beverage Code (Children) – misleading/deceptive
Food and Beverage Code (Children) – premium |
| 6. Date of determination | Wednesday, 13 February 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens with a group of kids arriving at their "clubhouse" to find the neighbour's Great Dane preventing approach to the table on which rests a box of Nesquik cereal. They mock up a fake cat puppet to walk along the fence, while a girl makes miaowing sounds into a walkie talkie. The dog, fooled by the "cat" chases it, and as the kids throw the "cat" into his own backyard, the dog disappears through the fence. The kids close the gap and start to enjoy the cereal. A child's voiceover explains "We'd do anything for our Nesquik cereal!" The scene then changes to an image of a girl sitting at a table about to eat her Nesquik. The voiceover announces "Share the thrills of the Golden Compass with Nesquik adventure devices. Four devices to collect; one free in every specially marked pack of Nesquik cereal." Images of the devices are shown. The advertisement closes with an image of the Nesquik pack and images of the devices.

THE COMPLAINT

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

Advertising to preschool aged children is objectionable in the first place. With a national increase in childhood obesity and diabetes, promoting junk food to little kids is irresponsible. Educating the parents to adopt healthy eating habits is hard enough, but promoting junk food as a breakfast option to three year olds is evil.

THE ADVERTISER'S RESPONSE

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

NESQUIK Cereal is manufactured and distributed by Cereal Partners Australia Pty Ltd (CPA), a joint venture between Nestle and General Mills. Thank you for the opportunity to comment on the issues raised. I understand the Bureau is concerned the Advertisement may not comply with Section 2 of the AANA Advertiser Code of Ethics (Code), which incorporates the AANA's Food and Beverages Advertising and Marketing Communications Code (Food Specific Code) and the AANA's Code for Advertising to Children (Children Specific Code). On behalf of CPA I would like the Board to consider the information below in its consideration of the Complaint. I wish to state at the outset that we do not consider the Advertisement to be in breach of the Code, the Food Specific Code or the Children Specific Code.

The Advertisement portrays children overcoming challenges in order to obtain their breakfast. This depiction encourages the following positive attributes for the audience:

- o an active lifestyle*
- o problem solving skills*
- o the importance of breakfast*

The Complaint asserts that NESQUIK Cereal is junk food. CPW rejects this assertion, providing reasons below.

o NESQUIK Cereal is made from whole grains, is low in fat (in particular saturated fat) and is fortified with essential vitamins and minerals.

o The suggested serving size for NESQUIK Cereal is realistic for the target consumer group and provides parents and children alike with a low calorie breakfast option. For this reason CPA refutes the implication made in the Complaint that NESQUIK Cereal is contributing towards national increases in childhood obesity.

o NESQUIK Cereal does contain added sugar however CPA does not consider the sugar content of NESQUIK Cereal to be high, noting its sugar content is lower than other comparable children's cereals in Australia. CPA notes that research shows that sugar is itself not a cause of obesity, diabetes or even dental health problems.

o NESQUIK Cereals great taste, together with the fun and excitement associated with this product, encourages children to eat breakfast to help ensure they receive the nutritional benefits of breakfast.

CPA provides the information below in support of its statement regarding the nutritional benefits of breakfast. The information below also refutes the implication made in the Complaint that NESQUIK Cereal is contributing towards national increases in childhood obesity.

o Research has found that breakfast consumption is an essential healthy eating habit, in part because people who eat breakfast have a lower likelihood to be overweight.

o A recent review of the evidence specifically with regards to breakfast cereals shows that people who choose cereal for their breakfast actually have a lower Body Mass Index than those who consume other foods for breakfast. This research included all types of cereals (including cereals similar to NESQUIK).

o CPA considers NESQUIK Cereal is a good and nutritious way of encouraging children to both consume breakfast and to have their recommended daily intake of dairy. This is important given that the health and nutritional benefits of milk consumption by children are well-recognized.

Contrary to the suggestion made in the Complaint that the Advertisement was promoted to pre-school children, the media schedule for the Advertisement demonstrates CPA sought to reach a target group of 5-17 year olds with the Advertisement.

The advertisement is required to comply, and does, with the requirements of the Australian Broadcasting Authority Children's Television Standards

The Complaint is the only complaint we have received in relation to the Advertisement.

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).

The Board noted that the advertisement is for a food product - specifically the Nesquik breakfast cereal. The Board noted the complainant's concern that the advertisement promotes 'junk food' to young or preschool children.

The Board noted that the advertisement makes no claims or comments as to the nutritional profile or ingredients in the cereal product. The only comment about the product in the advertisement is that 'we'd do anything for our Nesquik cereal'.

The Board considered the provisions of the Food Code and noted that there is no prohibition on advertising any particular type of food to young children - only requirements about the accurate

representation of the nutritional profile of such products if there is any reference to the nutritional profile of the food. There is therefore no provision which would prevent an advertiser marketing a particular product to children. The Board also noted that the advertisement does not suggest or state that the product is of any particular nutritional profile - suggesting only that it is a product that children will like to eat. The Board considered that this statement does not contain any material that is prohibited by the Food Code.

The Board then considered the advertisement's reference to the Golden Compass movie and the collectible toys that can be obtained with purchase of this product. The Board considered Section 3.7 of the Food Code which provides:

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

The Board also noted the Practice Note to Section 3.7 of the Food Code which states (in part):

... 'in testing whether or not an advertisement or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Board will consider whether the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement...the Board will consider whether the advertisement...features inclusions in a manner that accords them undue prominence in relation to the product being promoted, taking account of the fact that it is not the intent of this clause to prohibit legitimate promotion of special offers, but rather to impose a reasonable limit, based on the Board's representation of prevailing community standards, on the extent to which an average child within the target audience might regard the advertisement...being for a featured ingredient or premium rather than the product itself.'

The Board considered that the Golden Compass 'toy' was not an integral part of the Nesquik cereal - as a result it is therefore important that the references to the 'toy' are not made the dominant feature of the advertisement and cannot occupy more than half of the advertisement. The Board noted that the references to the toy come at the end of the main advertisement. It is clear that the toy references comprise less than half of the advertisement in total. The Board also considered that the primary part of the advertisement which depicted the children attempting to gain access to the cereal was a complex and self-contained advertisement which did not incorporate any references to the toy. The Board considered that the references to the toy were not the dominant feature of the advertisement and did not breach Section 3.7 of the Code.

On this basis the Board determined that the advertisement does not breach the Food Code.

The Board then considered whether the advertisement breached the AANA Code for Advertising to Children "the Children's Code". The Board noted that the advertisement was an advertisement directed to children, and that it was an advertisement for a product primarily designed for children.

The Board considered Section 2.8 of the Code which relates to premiums and considered that the advertisement did separate the body of the advertisement and the last part of the advertisement related to the Golden Compass. While the two parts of the advertisement were shown together the Board considered that the advertisement:

- did not create a false or misleading impression in the minds of children about the nature or content of the product;
- did not create a false or misleading impression in the minds of children that the product advertised is the premium rather than the product
- and that the advertisement did make clear the terms of the offer.

On this basis the Board determined that the advertisement did not breach Section 2.8 of the Children's Code. The Board noted that were the last ten seconds of the advertisement shown on its own it may have a different determination.

The Board also noted Section 2.10 of the Children's Code and considered that the advertisement:

- did not encourage or promote an inactive lifestyle or unhealthy eating habits;

- did not contain any misleading or incorrect information about the nutritional value of that Product.

On this basis the Board determined that the advertisement did not breach Section 2.10 of the Children's Code, nor did it breach any other provision of the Children's Code.

The Board then considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"). The Board noted the image of the puppet cat being thrown back into its own yard. The Board considered that this image was unrealistic and unlikely to encourage any unsafe behaviour by young children. The Board considered that the advertisement showed children trying to get their cereal but that there was no suggestion of cruelty to animals. The Board considered that this image did not breach Section 2.6 of the Code.

The Board also considered the complainant's view that the product is an unhealthy product that should not be marketed to young children. The Board considered that the advertisement did not depict the product in a manner that was likely to encourage excessive consumption by young children or consumption of this product in preference to other foods generally. On this basis the Board determined that the advertisement did not breach Section 2.6 of the Code in that it did not depict any material that is contrary to prevailing community standards on health and safety.

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