



## CASE REPORT

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| 1. Complaint reference number | 536/09   |
| 2. Advertiser                 | Sumo Salad   |
| 3. Product                    | Food & Beverages   |
| 4. Type of advertisement      | TV   |
| 5. Nature of complaint        | Discrimination or vilification Gender - section 2.1<br>Food and Beverage Code – untruthful/dishonest |
| 6. Date of determination      | Wednesday, 25 November 2009  |
| 7. DETERMINATION              | Dismissed  |

## DESCRIPTION OF THE ADVERTISEMENT

This TV ad depicts a young woman sitting on a public seat, she is wearing jeans and a tee-shirt. She leans over to pick up her burger and her black g-string underwear is revealed over the top of her jeans. She is then shown to be about to take a bite, her mouth is open. The voiceover says "every burger is doing you harm" the camera is shown to go inside her mouth and down her throat "everytime you eat a burger, processed fat and oils enter your body, building up until they hand off your sides." A picture of a woman is shown (Fig 1) and the voiceover says "this is a healthy woman's waist" a second figure drops down which says "this is a muffin top (Fig 2)". Eat salad, quit muffin tops for good. The end shows her munching on the burger.

## THE COMPLAINT

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

*I object to their catch phrase at the end "eat large, stay thin" - use of the word thin implies that you have to be thin - is a very emotionally charged word, ignores the need for a healthy balanced diet, may effect people who have body image issues. I would suggest just changing the slogan to "stay healthy" or "Eat healthy" rather than "stay thin"*

*I find that this add promotes and unhealthy body image for women and young girls, an excessive "muffin top" may be unhealthy but women are not meant to be ultra skinny like the picture displayed of a "healthy" woman in the add. The image of the "healthy" women is an unrealistic and also a very dangerous body image/goal for women with genes who would have to starve themselves to the point of malnutrition to achieve that look. Yes salad is healthy yes hamburgers are not. But these images of healthy and unhealthy women is irresponsible and dangerous in our current society.*

- 1. Sumo Salad seem to think it is appropriate to ridicule an overweight woman for their advertising purposes. This includes an unflattering shot of her bottom hanging out of her jeans, showing her G-string. I find this a highly insensitive and offensive portrayal of obesity.*
- 2. It also makes illustrative health judgments on the appropriate healthy waist of a woman, but they are in no position of health authority to do this.*
- 3. Finally, Sumo Salads themselves sell products with high saturated fat content, making the ad hypocritical.*

*A 'bigger' sized woman (size 12) is sitting on a chair at a station, showing a g-string with tight jeans, with rolls hanging over the jeans, emphasising her weight whilst eating a fattening burger. Then imitates the smoker's ad, of what a 'fatty' burger does to your insides. It continues to then show a size 6 girl (unrealistic figure) stating that this is ideal body to have, then showing a size 10 with tight jeans making her look as though she is 'fat'. When a size 10-12 is the national average*

size for women in Australia.

*There are several reasons why this advertisement is wrong eg the way that they address only women (weight issues); girl's with eating disorders watching this ad, seeing the normal size 10 woman as being 'fat' opposed to the size 6 'ideal' figure; young impressionable minds believing that it is the 'ideal' body to have.*

*Sumo Salad is a healthier option than McDonald's or KFC, but they should've focused on the healthy burger, not on normal sized woman, portraying that the size 12 figure is large. And that a size 6 body is what we should aim and aspire to.*

## **THE ADVERTISER'S RESPONSE**

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

### ***Executive Summary:***

*This response seeks to –*

- *Summarise the detail and intent behind the advertising campaign;*
- *Comment about the key provisions of the Australian Association of National Advertisers (“AANA”) Code of Ethics and the AANA Food & Beverages Advertising & Marketing Communications Code;*
- *Respond to the complaints received by the Bureau.*

*While SumoSalad respects the right of the persons who have voiced their opinions about the advertisement, it believes that there is no proper basis for the Australian Standards Board to form a view that the advertisement in any way contravenes either the AANA Code of Ethics or the AANA Food & Beverages Advertising & Marketing Communications Code.*

### ***A) Summary of the detail and intent behind the advertising campaign:***

*The Television Commercials (“TVC”) have been screened for 4 weeks in October 2009 and are due to be screened throughout February 2010. The intent and general themes behind the advertisements are as follows:*

- *Highlighting the health issues linked to unhealthy eating conveyed by humour in a bid to address Australia’s growing obesity crisis;*
- *Conveying views relevant to the target audience (The 24-39 age-group of both men and women) and the product being marketed;*
- *Playing off the successful government anti-smoking ‘quit’/‘every cigarette is doing you damage’ campaigns;*
- *Deliberately portrays people with relatively small overweight issues in order to convey the message that you don’t actually need to be immensely obese to be unhealthy nor is there any need to be ‘super skinny’;*
- *Promotes a positive message that obesity is an issue that can be addressed as a ‘choice’ of changing our attitudes, our eating habits [and our lifestyle choices]; and*
- *Seeks to provoke a reaction in the Australian public to encourage a healthy diet and challenge Australians to improve their health and wellbeing.*

### ***B) The issues within the advertisement falling within relevant Codes.***

*For the purposes of this submission, reference will be made to the Australian Association of National Advertisers (“AANA”) Code of Ethics and the AANA Food & Beverages Advertising & Marketing Communications Code.*

#### *i) The Australian Association of National Advertisers (“AANA”) Code of Ethics:*

*The Code seeks to ensure that advertisements abide by standards of decency, are honest and truthful, and are prepared having due regard to consumers, society in general and market competitors.*

*Section 2 sets out a series of provisions governing advertising or marketing communications.*

*For the purposes of this submission which seeks to respond to the complaints received by the Advertising Standard Board (“Board”), the key provisions of the AANA Code are sections 1.2, 2.6 and 2.8.*

*In summary, the effect of these provisions is that advertisements or marketing communications are not to be misleading or deceptive or be likely to deceive (section 1.2) or depict material contrary to Prevailing Community Standards on health and safety (Section 2.6). When considering community standards, the Board will have regard to those standards it determines reflect current community standards and having regard to research conducted by the Board as to advertisements or marketing communications.*

*Further, such advertisements or marketing communications are to comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code (section 2.8).*

**ii) AANA Food & Beverages Advertising & Marketing Communications Code:**

*The object of this Code is to ensure the adherence to a high sense of social responsibility in advertising and marketing food and beverage products in Australia.*

*For the purposes of this submission, the key relevant provisions are sections 2.1 and 2.6. In effect, these sections seek to lay down a framework for advertising or marketing communications of food or beverage products governing –*

- Communication that is truthful, complies with Prevailing Community Standards, is appropriate to the level of understanding of the target audience and accurately presents all information including any references to nutritional values or health benefits (section 2.1); and*
- Claims relating to material characteristics, such as taste, size, content, nutrition and health benefits, and which are to be specific to the promoted product/s and accurate in all such representations (section 2.6).*

**C) Response to the Complaints:**

*Complaint #1:*

*Food and Beverage Code: The complaint is that the ad is untruthful and dishonest in breach of section 2.1, and section 2.6 regarding health and safety.*

*The complaint is that the ad is ‘wrong’ and voices concern on several fronts:*

- only women are depicted,*
- girls with eating disorders watching this ad, seeing the normal size 10 woman as being ‘fat’ opposed to the size 6 ‘ideal’ figure, and*
- young impressionable minds believing that it is the ‘ideal’ body to have.*

**SumoSalad Response:**

*The ad is not untruthful nor dishonest as alleged nor has the complainant advanced evidence in support of the allegations made.*

*It is claimed that only women are featured in the advertisement. While this is true, in fact the advertisement is designed to appeal to a target audience of both males and females aged between 24-39 years of age. That only a woman is depicted misses the point of the voice-over which highlights the dangers of unhealthy eating for both men and women.*

*The complaint expresses concern about the effect on girls with eating disorders watching this ad. The ad seeks to reinforce a positive message of healthy eating. Eating disorders affect both men and women in society and are a serious issue. With respect to the complainant, the ad does not depict or portray people with eating disorders. Rather the ad seeks to challenge consumers to think about their eating choices.*

*The complaint also concedes that SumoSalad is a healthier option than other named food products from McDonald or KFC. It suggests that its focus “should have been on the healthy burger not on a normal sized woman portraying that the size 12 figure is large”. This is not an issue which brings into operation either of the relevant Codes referred to.*

*The complaint suggests a comparison should have been made between a ‘healthy burger’. The ad promotes healthy eating through eating a SumoSalad. This has more to do with a comparison*

between different food products and is not the aim of sections 2.1 or 2.6. Section 2.1 deals with untruthful or dishonest or misleading or deceptive advertising. Section 2.6 of the AANA Code of Ethics deals with advertising which contravenes Prevailing Community Standards on health and safety. The complaint is that the ad portrays that the size 12 figure is large. In fact the ad features what appears to be a size 10 figure. The advertisement does not seek to portray a size 6 as something to be aspired to.

### **Complaint #2:**

*Food and Beverage Code. The complaint is that the advertisement is untruthful & dishonest in breach of section 2.1 and section 2.6 regarding health and safety.*

*The complaint concedes that obesity is a problem in our society and that there are healthy options such as eating salads. The ad sends a 'skewed' message that being healthy depends on being certain body size and sends a message that makes it hard for women in particular to accept their bodies.*

### **SumoSalad Response:**

*The ad is not misleading. The ad does not say that only a size 6-8 is the only healthy woman. It depicts a healthy woman. It goes without saying that a well balanced lifestyle includes exercise and healthy eating. This is well known.*

*The ad does not seek to indoctrinate the message that 'thin is healthy', nor does it say or suggest that you are guilty of harming your body if you are not thin.*

*There is a body of evidence which points to a correlation between a person's waistline and their health. As a point of reference and comparison it is helpful to consider a current campaign by the Federal Government via the Department of Health and Ageing website and advertisement about health and weight. The advertisement and the website emphasizes that regardless of a person's height or build, there is a link between being an increased waistline and increased risk of contracting serious diseases.*

*[see:<http://www.measureup.gov.au/internet/abhi/publishing.nsf>] Australian Better Health Initiative Measure Up <http://www.health.gov.au/internet/healthyactive/publishing.nsf/Content/healthy-weight> ] .*

*The information set out in this site contains the following:*

#### *"Waist circumference*

*A person's waist circumference may be a better predictor of health risk than BMI. Having fat around the abdominal organs and enlarged waist circumference, regardless of your BMI, means you are more likely to develop certain obesity-related health conditions. Fat predominantly deposited around the hips and buttocks does not appear to have the same risk. Men and post menopausal women are at greater risk of excess fat in the waist region.*

*Waist circumference for women: a waist circumference of 80cm or over indicates increased risk of obesity related health conditions. A waist circumference of 88cm or more indicates a substantially increased risk.*

*Waist circumference for men: a waist circumference of 94cm or over indicates increased risk of obesity related health conditions. A waist circumference of 102cm or more indicates a substantially increased risk. For further information visit "**Measure Up**".*

*The advertisement featured in the Commonwealth features only a man and contains a message that an increased waistline for both men and women can lead to increased health risks for both men and women. This is something consumers of all ages relate to.*

*By comparison, the SumoSalad ad features only a woman but emphasizes health benefits for both men and women in eating healthy food choices such as salads. The message from the SumoSalad advertisement is clear: We are what we eat!*

*The 'Measure Up ad also states a direct correlation between waistline measurement in adults and health and increased exposure to serious healthy issues. It also quotes that for men this includes waistlines of more than 94 cm. and in women more than 80 cm.*

By reference to current clothing sizes for women (“Ideals Collection Women Fashion House” attached) more than 80 cm equates to a size 14. This is still within the range of waist sizes which are regarded as being healthy in women. The SumoSalad advertisement seeks to depict by pictorial illustration the effects of unhealthy eating habits on consumers. It seeks to deal with a sensitive topic by reference to waist size as a gauge for healthy eating choices.

The reference in the SumoSalad ad to a woman with a trimmer figure is done as a representation about a person who is represented as being healthy. The person represented as being overweight is used as a direct contrast between a person who makes sensible choices about healthy eating and a person who does not. There is a difference between ‘accepting and embracing one’s own body’ and being healthy. The ad seeks to challenge the consumer to treat seriously the issue of obesity and challenges us to start with eating healthy foods such as salads.

### **Complaint #3:**

The complaint cites Food and Beverage Code – untruthful/dishonest (section 2.1) and health and safety (section 2.6).

There are 3 bases for the complaint:

- The ad ridicules an overweight woman by depicting an unflattering shot of her bottom hanging out of her jeans and showing her G-string. This is viewed as highly insensitive and offensive portrayal of obesity;
- The ad also makes illustrative health judgments on the appropriate healthy waist of a woman, when the advertiser is in no position of health authority to do this;
- The advertiser sells products with high saturated fat content, making the ad hypocritical.

SumoSalad Response:

The advertisement does not ridicule an overweight woman nor does it offend what may be regarded as bounds of what may be seen as decent or offensive in the AANA Code of Ethics.

The advertisement seeks to draw a comparison between what may be regarded as ‘healthy’ by reference to waist size. Again reference is made to SumoSalad’s previous submission in response to Complaint #2, where reference is made to a recent advertisement run by the Commonwealth Government and the correlation between waist size and adverse health effects for both women and men.

The complaint also disputes the authority of SumoSalad to make comments about its products which are said to be ‘products with high saturated fat content’. Attached is the following information:

- Outline of the Saturated Fat in SumoSalad salads for all serving sizes and
- Breakdown based on the recommend daily intake (RDI) of 24gm.

Of the 35 Salads available from the SumoSalad range 27 salads contain 25% or less of the total recommended daily intake of saturated fat in a regular serve. When choosing a small serve, 33 of the 35 salads contain less than 25% of the total RDI of Saturated Fat. These figures demonstrate that SumoSalad is in a position to speak with authority about its salads which offer a healthy alternative food choice. There is no basis for the complaint that the advertisement contravenes either section 2.1 or section 2.6 of the Food and Beverage Code.

### **Complaint #4:**

Nature of Complaint Health and safety – section 2.6

The complaint speaks from experience about a family member who suffers from Bulimia and expresses concern about the ad causing young people questioning their own figures which may “starts the long and slippery slide into bulimia or anorexia.”

The complainant suggests more appropriate ways to advertise the benefits of eating salad then to make people watching the ad feel that maybe they are “fat” or do not have an acceptable figure. If SumoSalad had showed a clearly obese woman rather than a woman with a very slight “muffin top”

*then maybe even this would be more acceptable. This ad is dancing on the line of being most unacceptable and promoting "thinness" as opposed to "healthiness".*

*"Being thin is not the ideal. Being healthy is. As a health professional I am most concerned about the message this ad sends to young people and those with body image disorders."*

**SumoSalad Response:**

*The ad does not contravene section 2.6 of the AANA Code of Ethics in any manner. The ad does not promote thinness nor does it advocate a certain type of figure. It does promote and advocate a positive message of sensible eating choices. Eating sensibly is an important issue to avoid obesity.*

**Complaint #5:**

*Nature of Complaint*

- *Food and Beverage Code – untruthful/dishonest - 2.1 -*
- *Health and safety – section 2.6 -*

*Reason for Concern:*

*The ad promotes and unhealthy body image for women and young girls. Women are not meant to be ultra skinny like the picture displayed of a "healthy" woman. The image of the "healthy" women is an unrealistic and a very dangerous body image/goal for women with genes who would have to starve themselves to the point of malnutrition to achieve that look. Salads are healthy. Hamburgers are not.*

**SumoSalad response:**

*The ad does not contravene sections 2.1 or 2.6 of the Food & Beverage Code. The model depicted is not an unrealistic or a dangerous body size. The ad challenges the consumer to make choices about eating sensibly which includes eating salads.*

*There is no factual basis to the complaint that "some women would have to starve themselves to the point of malnutrition to achieve the look of the 'healthy' woman". The available literature advocates healthy eating and regular exercise.*

**THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code") and the AANA Food and Beverages Advertising and Marketing Communications Code ("the F & B Code").

The Board noted the complainants' concerns in relation to the following: only women are depicted and that girls with eating disorders watching this ad, seeing normal size 10 woman as being "fat" opposed to the size 6 "ideal" figure may believe that it is the "ideal" body to have; and that the advertisement was irresponsible and derogatory and insensitive towards women by promoting thinness as opposed to healthiness; and the woman with a "muffin top" was less desirable.

The Board noted the advertiser's response that their advertisement promotes a positive message that obesity is an issue that can be addressed as a choice of changing attitudes, our eating habits and [our lifestyle choices] and seeks to promote a reaction in the Australian public to encourage a healthy diet and challenge Australians to improve their health and wellbeing.

The Board considered whether the advertisement was in breach of section 2.1 of the Code. Section 2.1 of the Code states:

*"Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief".*

The Board noted the complainants' concerns that bodies of the women were featured in an objectifying manner (with the simulated scientific observation of what is healthy and what is a muffin top) and were insensitive to the portrayal of women in our society. The Board noted that the advertisement might engender feelings of shame or embarrassment among some women in the community but that the overwhelming message of the advertisement is about choosing salad as a healthier option and about better health not body image.

The Board considered that in this instance, the advertisement was not in breach of section 2.1 of the

Code. The Board agreed that there is a real community concern with respect to obesity in our community and that although those who suffer from life-threatening eating disorders may be more sensitised to this type of advertisement, that most members of the community would understand that the advertisement was describing and demonstrating the potential effects of those who choose a high-fat meal over more healthy food choices. The Board considered that the depiction of the woman was not a depiction that was intended to ridicule women generally or overweight women and that the references to 'muffin top' and the cartoon characters gave the advertisement as element of humour. The Board agreed that the advertisement could have been more socially aware by depicting men and women instead of targeting the female figure (which is genetically predisposed to carrying greater amounts of fat on their hips).

In considering whether the advertisement was in breach of the F & B Code, the Board referred to 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 Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to section 2.1 provide:

"The Board 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 advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest".

Having regard to the generality of the advertisement (it does not make specific health claims or state the benefits of particular ingredients) and the availability of a variety of healthy food choices at the Sumo Salad store the Board considered that the statements made by the advertiser were fair and reasonable in the circumstances and that most members of the community would consider the advertisement to be making a fair comment in relation to choosing burgers over a salad. The Board noted that achieving good health and weight loss is not achieved simply by replacing burgers with salad. The Board considered that most members of the community would consider this advertisement is trying to convince consumers to purchase salad rather than burgers and is not representing their product as the way to become healthy without other actions such as increased activity.

The Board considered that presenting the advertisement (as a simulated health awareness campaign) was relevant to the product and that most people in the community would understand that the advertisement is a parody of one or more health campaigns but is not a health campaign. The Board noted that the advertiser does not suggest or imply that they sell only healthy food choices. The Board determined that the advertisement was not misleading or deceptive and not in breach of section 2.1 of the F & B Code.

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