



CASE REPORT

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| 1. Complaint reference number | 595/09 |
| 2. Advertiser | Nestle |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | Outdoor |
| 5. Nature of complaint | Health and safety – section 2.6 |
| 6. Date of determination | Wednesday, 20 January 2010 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This outdoor advertisement from Nestle for its Smarties product depicts three images a bird, a lizard and a butterfly. Each image is made from round beads - or Smarties. Above each image are the words: Created with no artificial colours or additives. The Smarties logo is below each image sitting on top of a pile of the confectionery.

THE COMPLAINT

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

Smarties has to be one of the most artificial products around, and to claim otherwise is grossly misleading. I know that they have recently reduced the number of food colourings in the product, but that does not warrant the blanket statement on their bus side. I am sure they will try to wriggle out of the argument with dubious claims, which cannot be upheld.

THE ADVERTISER'S RESPONSE

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

On behalf of Nestle 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 AANA Advertiser Code of Ethics.

The complainant asserts the Advertisement is misleading in that the claim "No artificial colours and flavours " made by Nestle in relation to SMARTIES (Claim) is not true as " Smarties has to be one of the most artificial products around" and Nestle has only " reduced the number of food colourings in the product ". Nestle refutes this assertion made by the complainant and confirms SMARTIES contains no artificial colours and flavours. Nestle also notes the Claim is made on the packaging for SMARTIES and in other marketing materials for SMARTIES. I set out in the table below all colours used in SMARTIES and the source of each of each of the see colours. You will see that none of them are artificial.

Colour

Source

White

An extraction from a mineral source

Blue

An extraction from algae

Pink

An extraction of carmine

Purple

An extraction of carmine

Yellow

An extraction of carmine

Green

A blend of turmeric and spirulina

Red

An extraction of carmine and carotene

Orange

An extraction of carmine and carotene

Brown

An extraction of carmine, carotene and spirulina

The flavour for SMARTIES is entirely from the ingredients listed on its ingredients list which appears on its packaging and from the production of SMARTIES using these ingredients. None of the flavours used for SMARTIES are artificial. 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 Section 2 of the Advertiser Code of Ethics (the "Code") and section 2 of the AANA Food & Beverages Advertising & Marketing Communications Code ("the FBAMC Code").

The Board noted the complainant's concern that the advertisement is misleading because the product is not made from natural colours and flavours.

The Board viewed the advertiser's response and substantiation for the claim that the flavouring and colouring are natural.

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

"Advertising or Marketing Communications for Food or Beverage Products 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 comments from the advertiser and considered that the information from the advertiser demonstrated that all of the colourings and flavourings in the product are natural and that therefore the claim was correct.

The Board then considered the application of section 2.6 of the FBAMC Code. Section 2.6 of the FBAMC Code states:

"Advertising or Marketing Communications for food or beverage products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits shall be specific to the promoted products and accurate in all representations."

The Board noted that all claims are relevant to the particular product and that there was no breach of section 2.6.

The Board then considered the application of part 3 of the FBAMC Code - Advertising and Children. The Board considered that this part of the FBAMC Code was not relevant as the product is not aimed or directed to people 14 years or younger.

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