

18 May 2007

Advertising Standards Board
Level 2, 97 Northbourne Avenue
Turner ACT 2612

To the Advertising Standards Board

Uncle Tobys Roll-Ups email newsletter – breach of AANA Food and Beverages Code

The Obesity Policy Coalition is a coalition between the Cancer Council Victoria, Diabetes Australia – Victoria and the World Health Organisation Collaborating Centre for Obesity Prevention at Deakin University, with support from VicHealth. The Coalition is concerned about the escalating rates of overweight and obesity in Australia, particularly in children.

We write to complain about an email newsletter promoting Uncle Tobys Roll-Ups that is being sent to children who have signed up on the Roll-Ups ‘Frubalia’ website (at www.rollups.com.au) to receive ‘Fruba News’ newsletters. A copy of the email is enclosed.

We believe the newsletter breaches clause 2.8 of the AANA Advertiser Code of Ethics because it fails to comply with clauses 3.5 and 3.7 of the AANA Food and Beverages Advertising and Marketing Communications Code.

We believe the newsletter constitutes a Marketing Communication for the purposes of the AANA Food and Beverages Advertising and Marketing Communications Code because it draws the attention of children to Roll-Ups in a manner calculated to promote Roll-Ups.

A section of the newsletter is devoted to describing a competition children can enter by purchasing Roll-Ups, and includes the following statements:

‘We’re giving YOU the chance to win some frubalistic prizes including a PlayStation ® Portable, Sony Cybershot DSCS700, 1 Gb iPod Shuffle and Motorola Motofone F3. And its sooo simple...

Ask mum or dad to purchase any Uncle Tobys Roll-Ups product from a participating Woolworths or Safeway supermarket between 16/04/07 and 18/05/07 and then choose the way you want to enter...’

As you know, clause 3.5 of the Food and Beverages Advertising and Marketing Communications Code states that marketing communications directed to children for food 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’. We believe the email breaches clause 3.5 of the Code because it explicitly directs children to ask their parent to buy Roll-Ups for them in order to enter the competition.

We also think the email breaches clause 3.7 of the Code because it features a premium that is not an integral element of Roll-Ups – the product being offered. As you know, clause 3.7 states that marketing communications directed to children for food 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 offered’.

‘Premium’ is defined in the AANA Code for Advertising to Children as ‘anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product’. The email offers children free entry to a competition to win the prizes described in the statement above, which is conditional upon purchase of Roll-Ups – the regular product. This premium is clearly not



1 Rathdowne Street
Carlton Vic 3053
Australia

Telephone: 61 (0) 3 9635 5000
Facsimile: 61 (0) 3 9635 5270



WHO Collaborating Centre for
Obesity Prevention



an integral element of Roll-Ups. As you would know, the Practice Note accompanying the Code states that in determining whether a premium is an integral element of a product or service, the Board will consider whether it is 'necessary to the completeness of the product or service being offered.' Clearly, entry to the competition is not necessary to the completeness of Roll-Ups.

Although a literal construction of clause 3.7 indicates that the clause prohibits an Advertisement or Marketing Communication if it *features* a premium that is not an integral element of a product, the Practice Note accompanying the Code suggests a different interpretation of the clause. The Practice Note states that in considering whether material breaches the clause, the Board will consider 'whether the premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement'.

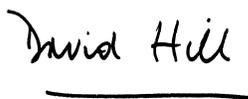
It is unclear whether the Practice Note is to be given precedence over clause 3.7. Clause 1.2 of the Code states that any practice or explanatory notes published by AANA will be taken into account as part of the Code, but it does not state that practice notes are intended to override the literal meaning of provisions of the Code. As you would know, practice notes are normally intended to shed light on the provisions of an instrument, not to change their meaning.

However, if the Practice Note is intended to have this effect, we still think the Uncle Tobys email breaches clause 3.7. The relevant section of the newsletter is almost entirely devoted to promoting the competition, and describing the prizes on offer and how to enter. The only mentions of Roll-Ups in the newsletter are the direction to children to ask their mum or dad to buy Roll-Ups in order to enter the competition, and a statement headed a 'Fruba fact for Mum' that 'Uncle Tobys Roll-Ups are made with No Artificial Flavours and No Artificial Colours' which appears in a small circle to the side of the main text of the newsletter.

We request the Advertising Standards Board to consider whether the Uncle Tobys Roll-Ups 'Fruba News' newsletter breaches clauses 3.5 and 3.7 of the AANA Food and Beverages Advertising and Marketing Communications Code.

Please contact Sarah MacKay, Legal Policy Adviser, Obesity Policy Coalition (The Cancer Council Victoria, Diabetes Australia – Victoria, WHO Collaborating Centre for Obesity Prevention, Deakin University) on (03) 9635 5612 or sarah.mackay@cancervic.org.au if you wish to discuss the complaint or you would like us to provide more information.

Yours sincerely



Professor David Hill AM
Director
The Cancer Council Victoria



Professor Boyd Swinburn
Coordinator
WHO Collaborating Centre for Obesity Prevention
Deakin University



Greg Johnson
Chief Executive
Diabetes Australia – Victoria



Todd Harper
Chief Executive Officer
VicHealth

