



**ADVERTISING
STANDARDS
BUREAU**

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**Ms Caroline Mills
615 St Kilda Road
MELBOURNE VIC 3004**

26 November 2014

1. Complaint reference number: **0464/14**
2. Advertiser: **Peters**

Dear Ms Mills,

We refer to your complaint regarding the above advertisement.

The Advertising Standards Board reviewed the advertisement and considered your complaint at its recent meeting. We have to advise you that the Board did not uphold your complaint.

A copy of the case report reflecting the Board's determination is enclosed.

Please note that if you are dissatisfied with the determination it may be possible for you to request a review, within 10 business days of the date of this letter. Before submitting a request for review, please refer to the information about the Independent Review process. This will ensure that you have the right information to decide if you have grounds to make the request. This information is available on our website at <http://www.adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>

Thank you for your participation in the self-regulation system. It would be appreciated if you would complete a short survey about your views on the advertising complaint adjudication process. Your comments will assist the ASB in delivering a best practice complaints system. The survey link is at <https://www.surveymonkey.com/s/LL8YLNv>.

With regards,

Nikki Paterson/ Daniela Gray

Case Managers

Advertising Standards Bureau

complaint@adstandards.com.au



Case Report

1	Case Number	0464/14
2	Advertiser	Peters
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/11/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
Advertising to Children Code 2.14 Food and beverages

DESCRIPTION OF THE ADVERTISEMENT

A row of marshmallows sing a melodic song in harmony. One is on fire. Another jumps on him to put him out. Suddenly a big shadow looms over the group and a giant marshmallow comes into frame. He blows the rest away with a deep, 'Al Jolson' style baritone "Fandangles".

We then see on screen the Choc Shmallow ice cream and pack and a male voiceover says the new Fandangles are available in the ice cream freezers now.

THE COMPLAINT

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

1. The advertisement is a marketing communication directed primarily to children Peters Fandangles Ice Creams are clearly a product directed primarily to children. The advertisements employ brightly coloured, simple animation of a kind that would overwhelmingly appeal to younger children. Though the Board has noted that animation is not, of itself, determinative of an advertisement being directed primarily to children, the style of animation here is similar to cartoons enjoyed by very young children such as "Arthur" and "Giggle and Hoot". It is of a simplistic style very similar to the styles of animation found to be directed "primarily to children" in decisions 033/14 (Coco Beats website), 0411/13 (Coco Pops Marco Polo) and 0179/13 and 0180/13 (LCM Bars).

Further, the AANA Code of Advertising and Marketing Communications to Children Practice

Note (April 2014) provides that advertising “for products which are targeted towards or have principal appeal to children” may be “directed primarily to children”, noting that “visuals which appeal to a child’s imagination and sense of play and wonderment may bring a marketing communication within the code”. Fandangles are clearly a product designed for children, as evidenced by the childish cartoons, simplistic jingle, very basic language and silly, fun-sounding names. The ads are also highly appealing to a childish sense of play and wonderment.

Section 3 of the Practice Note also provides that marketing is directed primarily to children if children’s themes and characters are used. Themes of cute green aliens, singing marshmallows and fairy floss with butterfly wings are clearly child-oriented, and the style of animation shows they are not designed to appeal to adults “using imagery reminiscent of childhood”. That is, this could not be said to be a more “sophisticated” style of animation aimed at an older audience. There are no complex plot structures, rapid transitions between elements of the story or sophisticated themes that could be said to be designed to appeal to adults rather than children.

2. Powerful marketing for energy-dense, nutrient poor products has the potential to harm children

Poor diets and high body mass index are the major risk factors contributing to Australia’s significant disease burden, ahead of smoking-related illness (Institute for Health Metrics and Evaluation (2014) Global Burden of Disease Country Profile data for Australia, available at www.healthmetricsandevaluation.org). Overweight and obesity lead to heightened risk of developing chronic diseases including cardiovascular disease, type 2 diabetes and some cancers (World Health Organization Obesity: preventing and managing the global epidemic, Report of a WHO consultation. Technical Report Series 894. WHO: Geneva, 2000).

The National Health and Medical Research Council Australian Dietary Guidelines 2013 note that most Australian children’s intake of vegetables, fruit and grains is below recommended levels whilst intake of saturated fat, sugar and salt is often high. The Guidelines highlight the importance of limiting foods and drinks high in added sugars (see National Health and Medical Research Council (2013) Australian Dietary Guidelines. Canberra: National Health and Medical Research Council).

There is robust evidence from high level international studies examining associations between food advertising, food behaviours and diet-related health outcomes, which have found consistent evidence of a causal relationship.

The importance of protecting children from powerful targeted advertising for unhealthy foods as an influential medium contributing to poor diets has been reiterated by the World Health Organization and Australia’s Preventative Health Taskforce.

Protecting children from influential marketing that may affect their diets has never been more important, with a quarter of Australian children and adolescents now overweight or obese, and with many consuming poor diets. Overweight in childhood is linked to heightened risk of overweight and obesity in adulthood. Obesity, in turn, is a leading risk factor for heart disease and several types of cancer including endometrial, oesophageal, gallbladder and bowel. Australia faces a future marked by profound economic and personal costs flowing from high population levels of obesity.

3. Determining “prevailing community standards”

Community standards are generally understood to be norms bounding acceptable conduct for advertising. We submit that the Peters Fandangles television advertisement is designed to engage young children with the products and brands, forming positive associations with energy-dense products through simplistic, playful, cartoonish and brightly coloured advertising.

In support of this contention, we rely on the following publications, which provide robust

evidence as to current “prevailing community standards” among Australian adults on the issue of advertising foods to children:

1. A 2007 national survey commissioned by Queensland Health found that an overwhelming majority (86%) of Australian parents believe junk food advertising is bad for their children’s health and should be banned during popular viewing hours. (See reporting in *The Age* here <http://www.theage.com.au/news/National/Parents-want-junk-food-TV-ad-ban-survey/2007/05/16/1178995191789.html>).

2. A 2008 survey conducted by the Centre for Behavioural Research and Cancer at Cancer Council Victoria found that 91% of consumers surveyed were in favour of the Government introducing stronger restrictions to reduce the amount of unhealthy food advertising seen by children, with 79% strongly in favour (Morley B, Martin J, and Dixon H. *Obesity prevention policy initiatives: consumer acceptability*. Centre for Behavioural Research in Cancer, Cancer Council Victoria, 2008.)

3. In 2008, research undertaken by consumer group Choice showed that 88% of parents reported that advertising and marketing of junk food made their role more difficult and were in favour of greater restrictions (See reporting in *The Australian* here <http://www.theaustralian.com.au/news/health-science/parents-want-junk-food-ads-banned/story-e6frg8y6-1111116377102>).

4. In 2011, public opinion research conducted by Cancer Council South Australia found that 85% of consumers believed that children should be protected from unhealthy food advertising and 93% were in favour of stronger restrictions to reduce the amount of unhealthy food and drink advertising seen by children. 79% were strongly in favour (Cancer Council Victoria, 2011, “Public supports tougher regulation of unhealthy food advertising” <http://www.cancervic.org.au/about/media-releases/2011-media-releases/nov-media-2011/public-support-tougher-regulation.html>).

5. In 2010, public opinion research conducted by the Centre for Behavioural Research and Cancer at Cancer Council Victoria showed that 83% of adult grocery-buyers surveyed were in favour of a ban on advertising of unhealthy food at times when children watch TV (Belinda Morley, Jane Martin, Philippa Niven and Melanie Wakefield (2012) ‘Public opinion on food-related obesity prevention policy initiatives’ *Health Promotion Journal of Australia* 23(2) 86.)

6. Peak public health bodies who support protecting children from unhealthy food advertising include the Australian Medical Association, the Heart Foundation, Cancer Council Australia, Diabetes Australia and the Parents’ Jury.

These consistent results from public opinion research conducted over several years, including research published in peer-reviewed journals, are excellent evidence of “prevailing community standards” on the issue. They show that Australians overwhelmingly do not want unhealthy food to be marketed to children. In our submission, this research conclusively establishes that advertising unhealthy products to children is contrary to “prevailing community standards” in Australia. We are able to provide copies of these publications for the Board’s consideration, on request.

If the Board does not accept the significant body of evidence submitted for consideration as determinative of the issue of “prevailing community standards”, we request an explanation of the evidence, demographic information, interviews or reasoning upon which the Board has determined the relevant “prevailing community standards” regarding advertising of energy-dense, nutrient poor food items to children. A description of the basis upon which the key factor in this decision (assessing how “Prevailing Community Standards” has been determined) is essential to ensure the Board’s decision making is accessible to consumers, transparent and ensuring procedural fairness for complainants.

7. The advertisements would breach standards accepted by the Australian Food and Grocery Council and other large manufacturers

We also submit the board may look to other food industry self-regulatory codes, approved by the peak body for food manufacturers in Australia (the Australian Food and Grocery Council) for guidance on behaviour currently considered acceptable by the advertising and business community. The OPC notes that unlike most other major food and beverage companies, Peters is not a signatory to the Responsible Children's Advertising Initiative (RCMI). However, in considering the scope of community standards we submit that it is relevant that if the advertiser was a signatory of the RCMI, this advertisement would not be acceptable, falling short of the standards adhered to by other large Australian food manufacturers. The Board has previously considered whether Paddle Pops products are appropriate for advertising to children pursuant to the RCMI, finding them appropriate because they are "amber" foods as characterised by the NSW Healthy School Canteen Strategy, developed by the NSW Government to assist decision making regarding appropriate food choices in the school environment. Delivering up to 11.5g of sugar and 380kJ per 48g serve (23% sugar by weight), Fandangles (unlike Paddle Pops) would be categorised as "red" foods and would be allowed to be sold in a school canteen only twice a term on the basis of their poor nutritional value and high energy content (each ice cream is greater than 300kj per serve) and high levels of sugar (each ice cream contains up to 24% sugar). On this assessment (as well as on any common sense analysis) these products could not be characterised as "healthier dietary choices" within the meaning of the RCMI. Even in the case of products which, unlike Fandangles, represent healthy dietary choices, the RCMI requires that advertisers promote a healthy lifestyle, designed to appeal to children through messaging that encourages good dietary habits and physical activity. None of the television advertisements for Peters Fandangles promotes these messages. Therefore, if, like other large manufacturers of equivalent products including Kellogg's, Unilever and Nestlé the advertiser was a signatory to the industry codes, this advertisement would not be permitted. We submit this is strong evidence that this type of advertising is contrary to both prevailing industry and community standards.

8. Conclusion

There is robust evidence that advertising unhealthy foods to children, a known contributor to poor diets, is not consistent with prevailing community standards. Nor is it consistent with community standards to subject certain advertisers to a particular code of conduct (RCMI) while others (like Peters) target children with sophisticated marketing for unhealthy products with impunity. This advertisement breaches the AANA Code and we ask that the Board require the advertiser to remove the Peters Fandangles advertisements immediately.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

We have reviewed the above mentioned complaint in reference to the Peters Fandangles Choc Shmallow TVC.

Firstly, we wish to confirm that Peters Ice Cream takes its advertising obligations very seriously and thank you for allowing us the opportunity to respond.

It is the submission of Peters Ice Cream that the advertisement is not likely to be considered as being directed to children or predominantly directed to children and that the present complaints should be dismissed and no further action taken. In this regard, we make the

following points:

1. Background

The Ice Cream category is one that consumers have a strong emotional connection to and 'fun' plays an important role in communicating and exciting consumers. Peters Fandangles is a new ice cream brand which was launched to appeal to consumers of all ages and was developed in the style of Cadbury Marvellous Creations and Nestle Wonka, brands which also have broad appeal to families in general. When launching a new brand, achieving awareness is a significant challenge and the product and the advertisement was designed to be different to the existing category advertising and cut through the clutter to engage consumers of all ages.

2. The Content of the Advertisement

Here we poke fun at the traditional "Barber Shop Quartet" style of the 1920s. A row of marshmallows sing a melodic song in harmony. One is on fire, another jumps on him to put him out. Suddenly a big shadow looms over the group and a giant marshmallow comes into frame. He blows the rest away with a deep, 'Al Jolson' style baritone.

We then cut to a heroic Choc Shmallow ice cream and pack.

The Fandangles Choc Shmallow 15 second TV spot was written to the brief of an "ice cream for families". Consequently, the narrative – including the style of animation and humour – was pitched to appeal to a wide family audience, specifically the main grocery buyer (mum). Executionally, the storyline and animation imitates the widespread popularity of family-friendly animated movies by Pixar – which are directed at a wide age group and provide entertainment, humour and appeal to the entire family. This spot in particular references tropes and styles from 1920s music halls and entertainers

Animators Mighty Nice were engaged to execute the animation of this TVC – they were appointed as they are renowned for their polished and sophisticated style of graphic design / animation and are in no way 'simplistic' or 'basic' as the complaint suggests. The style and standard of the animation is complex and multi-layered – it is not made up of simple shapes but of photo-real, highly detailed renders.

3. The Media Placement of the Advertisement

The TV Buying strategy was to target the demographic of the main grocery buyer aged 25-54; All the programs the advertisement has been in and is booked into fall within the Fandangles TVC CAD approved classification of 'G'. Throughout the campaign, for all our paid activity we have specifically avoided kids programming (as defined by a greater than 50% audience under 18).

The top 10 programs the advertisement has appeared in, as defined by audience size, and the percentage of viewers over the age of 18 is as follows:

The X-Factor: 87% above age 18

The Force – Behind the Line: 90% above age 18

The Big Bang Theory: 86% above age 18

60 Minutes: 92% above age 18

Border Security: 90% above age 18

The Big Adventure: 80% above age 18

Big Brother: 83% above age 18

Dancing with the Stars: 88% above age 18

Nine News Sunday: 92% above age 18

Beauty & The Geek Australia: 79% above age 18

The buying strategy for cinema was the same and the movies the advertisement has appeared in are classified according to Australian Classification as; M (Mature – Not recommended for children under 15. May include moderate levels of violence, language or themes.) and MA (Mature Audience – Restricted - Unsuitable for persons under 15. May contain strong

content). We believe that this is a further demonstration of not targeting children. The list of cinema placements and their classification is as follows:

- *Gone Girl (MA)*
- *A Walk Amongst the Tombstones (MA)*
- *Tammy (M)*
- *Son of A Gun (MA)*
- *Before I Go to Sleep (MA)*
- *Annabelle (MA)*
- *This is Where I Leave You (M)*
- *Whiplash (MA)*
- *Fury (MA)*
- *Dracula Untold (M)*
- *The Judge (M)*
- *Hector and the Search for Happiness (M)*

We have provided the demographic breakdown of the followers of our branded Fandangles Facebook page, which further demonstrates the target of our advertising. Of the 10,286 followers (defined as those who have 'liked' the page) 96% are aged over 25.

4. Nutritional Status of Fandangles

The Fandangles Choc Shmallow product is made from reduced fat ice cream, contains no artificial colours and is only 87 calories per serve. This product is classified as Amber rated as per the following;

- *NSW Canteen Association – Fresh Tastes @ School*
- *Victorian State Government Department of Education & Early Childhood Development – Healthy Canteens*
- *Queensland State Government Department of Education & Arts – Smart Choices Healthy Food and Drink Supply Strategy for Queensland Schools*
- *South Australian State Government Department of Education and Child Development – Right Bite Policy*
- *Western Australian School Canteen Association – Star Choice™ Food Registration Program*

5. Section 2 of the Advertiser Code of Ethics

Peters Ice Cream contends that the advertisement does not breach any parts of the Section 2 of the AANA Code of Ethics as follows;

- 2.1 - Discrimination or vilification*
- 2.2 - Exploitative or degrading*
- 2.3 - Violence*
- 2.4 - Sex, sexuality and nudity*
- 2.5 - Language*
- 2.6 - Health and Safety*

Peters Ice Cream appreciates the board's careful consideration of this complaint. Please don't hesitate to contact us if you require any clarification or further information.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children’s Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board noted the complainant's concerns that the advertisement is promoting an unhealthy food choice to children which is against prevailing community standards.

The Board noted that the advertiser is not a signatory of the Australian Food and Grocery Council's Responsible Children's Marketing Initiative (RCMI) and therefore the provisions of the RCMI do not apply in this instance.

The Board viewed the advertisement and noted the advertiser's response.

The Board considered whether the Children's Code applied.

The Board considered the definition of advertising or marketing communication. Under the Children's Code, Advertising or Marketing Communications to Children means "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product." The Board noted that Children are defined as "...persons 14 years old or younger" and Product is defined as "...goods, services and/or facilities which are targeted toward and have principal appeal to Children."

The Board noted this animated advertisement features a row of animated marshmallows singing the word, "fandangles" over and over before a giant marshmallow appears and sings, "Choc Schmallow" in a deep voice which blows the small marshmallows away.

The Board noted the theme and visuals of the advertisement (singing animated marshmallows) and the language (deep voice, call to action). A minority of the Board considered that animated marshmallows singing a simplistic jingle amounts to an overall depiction which, consistent with its determination against 0463/14, is directed primarily to children. Following considerable discussion however the majority of the Board considered that whilst animation has become more sophisticated over the years the use of animation or animated characters in an advertisement does not necessarily mean it is directed at children (0229/11, 0190/13). The Board noted that the giant marshmallow uses a deep voice and considered that whilst the advertisement would be of appeal to a broad audience of all ages in the Board's view this advertisement is not clearly directed primarily to children but rather is likely to be appealing to all audiences.

Finding that the advertisement is not directed primarily to children the Board considered that the provisions of the Children's Code do not apply in this instance.

The Board considered 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.'

Consistent with its determination in case 0463/14 the Board noted it has consistently determined that an advertisement for a food or beverage which has high fat, kilojoule and/or salt levels does not in itself breach prevailing community standards.

The Board noted the complainant's concern that advertising unhealthy foods to children is not consistent with prevailing community standards. The Board noted the advertiser's response that the advertised product is classified as Amber rated by the NSW Canteen Association as well as similar organisations in other states. The Board considered that whilst there is community concern about the advertising of unhealthy food products to children in the Board's view this concern does not amount to a community standard that advertising a food of a particular nutrition profile to children should be prohibited. The Board noted that products such as Fandangles are legally allowed to be advertised and considered that in this instance the content of the advertisement does not breach any of the provisions of the Food Code.

Based on the above the Board considered that the advertisement was not misleading and did not contravene prevailing community standards on healthy eating.

The Board determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Children's Code or the Food Code the Board dismissed the complaints.

