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| <b>COMPLAINT NUMBER</b> | 17/217                            |
| <b>COMPLAINANT</b>      | S. Harrison and 16 others         |
| <b>ADVERTISER</b>       | Frucor Suntory NZ Ltd             |
| <b>ADVERTISEMENT</b>    | Frucor Suntory NZ Ltd, Television |
| <b>DATE OF MEETING</b>  | 25 July 2017                      |
| <b>OUTCOME</b>          | Upheld, in part; Settled, in part |

## SUMMARY

The television advertisement for 'V Energy' drink showed a construction worker on a building site next to setting concrete attempting calculations. At exactly 3pm two small human characters appear and begin saying numbers to try and confuse the worker, with one jumping into the wet concrete. The worker is seen drinking a 'V' before picking up a nail gun and firing it at the small humans. The advertisement concludes with the message: "Outsmart the afternoon".

Seventeen complaints were received about the advertisement and focused on two issues around workplace and general safety. Complainants were primarily concerned with the scene showing the nail gun being fired at the characters as it showed an irresponsible use of a power tool and dangerous workplace practices. Many were worried it was an act that could be easily emulated. Others raised concerns about the characters in the advertisement coming into contact with wet concrete as it is caustic.

The Advertiser responded advising it had removed the scene showing the nail gun and was of the view the concrete scene was saved by the fantastical and hyperbolic nature of the advertisement and the product was intended for, and targeted at, an adult audience.

The Complaints Board ruled the complaints were Settled in relation to the nail gun scene.

In accordance with the majority of the Complaints Board, the complaints relating to the concrete scene were Upheld as it was found the advertisement depicted a dangerous practice with the potential to encourage a disregard for safety, in breach of Principle 1 of the Code for Advertising Food and Rule 12 of the Code of Ethics.

The Complaints Board ruled the complaint was Upheld, in part and Settled, in part.

### **[Advertisement to be removed/amended]**

Please note this headnote does not form part of the Decision.

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## COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Rules 5 and 12 of the Code of Ethics and Principle 1 of the Code for Advertising Food.

This required the Complaints Board to consider whether the advertisement contained anything which, in the light of generally prevailing community standards, was likely to cause serious or widespread offence considering the context, medium, audience and product; and whether, unless justifiable on educational or social grounds, it contained any visual presentation or description of dangerous or illegal practices or situations which encouraged a disregard for safety.

The Complaints Board were also required to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

**The Complaints Board ruled the complaint was Upheld, in part and Settled, in part.**

**The advertisement**

The television advertisement for 'V Energy' drink showed a construction worker on a building site next to setting concrete attempting calculations. At exactly 3pm two small human characters appear and begin saying numbers to try and confuse the worker, with one jumping into the wet concrete. The worker is seen drinking a 'V' before picking up a nail gun and firing it at the small humans. The advertisement concludes with the message: "Outsmart the afternoon".

The Complaints Board noted the Advertiser's description of the advertisement, which said, in part: "The advertisement complained of is part of a multi-medium campaign for the V Energy Drink. The campaign as a whole features two fantastical characters referred to as 'After' and 'Noon' (collectively 'the After Noon'). Their role is to personify 'afternoon distractions'... The advertisement is obviously meant to be understood as a hyperbolic and comical depiction of the average working person's struggle to overcome afternoon distractions. This concept is aligned with the greater V branding which seeks to attract consumers by offering vivacious and edgy humour."

**The Complaints**

Seventeen complaints were received about the advertisement and focused on two issues around workplace and general safety.

Complainants were primarily concerned about the scene showing the nail gun being fired at the characters saying it showed an irresponsible use of a power tool and dangerous workplace practices. Many were worried it was an act that could be easily copied.

Six Complainants raised concerns about the characters in the advertisement coming into contact with wet concrete as it is caustic and could cause serious harm and was a poor example of work place practices.

**The Advertiser's response**

The Advertiser submitted the advertisement was clearly fantastical in nature, evidenced by the hyperbolic charisma of the characters 'After' and 'Noon' as manifestations of the afternoon 'slump' and did not encourage a disregard for occupational health and safety practices.

The Advertiser said it took care to ensure real people on the building site were shown to wear appropriate safety attire which juxtaposed the fantastical nature of the 'After' and 'Noon' characters. The Advertiser said, in part "as a result of being abstract concepts, and clearly fantastical creations (along the same vein as 'the devil on your shoulder', gnomes, pixies, elves and other tiny imaginary creatures), 'After' and 'Noon' are not shown as being harmed by wet concrete... the presence of 'After' and 'Noon' in a construction site, and in particular the depiction of their antics, is in no way a depiction of reality and is clearly light-

hearted and humorous. There cannot be any real risk that viewers would feel encouraged to attempt to swim in concrete as a result of viewing the advertisement.”

The Advertiser said the advertisement was given a 'PGR' rating and said “Frucor's media agency has ensured the advertisement runs within the guidelines of this rating and does not run, for example, during children's viewing times. The audience in respect of which the advertisement must be considered accordingly does not include children.”

Addressing the nail gun scene specifically, the Advertiser said, in part: “as a gesture of good faith, Frucor has arranged for the advertisement to be edited to remove any images of the nail gun being fired.”

Referring to the scenes showing the characters swimming in concrete, the Advertiser said, in part: “It is highly unlikely that any individual would think it at all possible to actually swim or jump into a shallow pool of freshly poured concrete. The nature of the campaign is to reflect to viewers that ‘afternoon’ distractions can have a significant impact on the quality of afternoon work, by depicting the humorous characters ruining the tradesman's concentration. The tradesman in the advertisement is not shown as encouraging this, or wishing to participate. Rather the presentation of these ‘afternoon distractions’ acts as a major hindrance to his day... The ‘Outsmart the Afternoon’ campaign — including in respect of the actions of ‘after’ and ‘noon’ in relation to the concrete pour — is also similarly clearly hyperbolic and fantastical in nature, and is in no way a depiction of reality. The advertisement is a light-hearted and humorous depiction of the frustrations of common afternoon distractions which are faced by most individuals.”

#### **The Commercial Approval Bureau’s response**

The Commercial Approval Bureau (CAB) response on behalf of the media said the PGR classification afforded to the advertisement was a restrictive one “limiting broadcast to times and programmes during which parental guidance is recommended. The effect of the PGR classification can be seen in the broadcast times for which the complaints have been lodged: between 7pm and 10pm.”

The Complaints Board noted the CAB said in its view, the advertisement contained an obvious level of fantasy and the likely audience of adults would be “able to delineate between fantastical scenarios and the genuine requirements for safety in a construction workplace... CAB understands that the advertiser has amended the nail gun scenario, and will defer to their response on that issue. With regards to the concrete scenario, CAB does not believe the audience for PGR programming would interpret that activity as either recommended or desirable.”

#### **The precedents**

The Advertiser referred to precedent Decisions in their response to the complaints.

While the Complaints Board considered the precedent Decisions referenced, of most relevance was Decision (15/319) about a Trade Me Jobs television advertisement that showed a man riding on the forks of a forklift and jumping off them. The focus of the complaint was the depiction of a real-life scenario and the ability of the act to be emulated. The Complaints Board noted that advertisement contained many farcical scenarios and was accompanied by music and dancing which it said were “clearly hyperbolic and fantastical in nature and was in no way a depiction of reality. It said when considered in its entirety, the advertisement was light-hearted and humorous.”

**Nail Gun scene**

The Complaints Board noted the Advertiser's undertaking to remove the nail gun scene from the advertisement. Acknowledging the self-regulatory action of the Advertiser to change the advertisement, the Complaints Board said this aspect of the complaints was Settled.

**Concrete scene**

The Complaints Board considered the scenes relating to the characters 'After' and 'Noon' jumping into wet concrete. They noted the concerns of six Complainants who said wet concrete is caustic and contact with it could cause serious harm and was a poor example of workplace practices.

The Complaints Board noted the Advertiser's view the advertisement was obviously fantastical and hyperbolic in nature and the product was intended for, and targeted at, and adult audience.

The majority of the Complaints Board said the advertisement depicted a dangerous practice with the potential to encourage a disregard for safety. It agreed the advertisement would not encourage people to swim in wet concrete but was of the view people may reasonably conclude you would not come to harm by touching it. It said the human characters 'After' and 'Noon', while small, did not push the advertisement sufficiently into the realm of the fantastical and extreme hyperbole, which added to the safety concerns.

The majority of the Complaints Board said the advertisement was therefore in breach of Rule 12 of the Code of Ethics as it depicted a dangerous and unsafe practice, without justifiable cause on educational grounds. It said the advertisement had not been prepared with a due standard of social responsibility required by Principle 1 of the Code for Advertising Food and ruled the complaints were Upheld.

A minority disagreed and said the product and placement of the advertisement in a PGR environment showed it was targeting an adult audience which saved it from reaching the threshold to encourage a disregard for safety. The minority said the advertisement was hyperbolic enough that viewers would distinguish it from real life and noted a level of humour employed in the advertisement. The minority said the advertisement did not reach the threshold to breach Principle 1 of the Code for Advertising Food or Rule 12 of the Code of Ethics.

**Conclusion**

The Complaints Board ruled the complaints were Settled in relation to the nail gun scene.

In accordance with the majority of the Complaints Board, the complaints relating to the concrete scene were Upheld as the advertisement depicted a dangerous practice with the potential to encourage a disregard for safety, in breach of Principle 1 of the Code for Advertising Food and Rule 12 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Upheld, in part and Settled, in part.

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**DESCRIPTION OF ADVERTISEMENT**

The television advertisement for 'V Energy' drink showed a construction worker on a building site next to setting concrete attempting calculations. At exactly 3pm two small humans appear and begin saying numbers to try and confuse the worker. When questioned who they were, the small humans yelled "we're the afternoon". One of the small humans proceeded to jump into wet concrete and another kicked a toolbox into the path of the

worker, making him trip. The worker is then seen drinking a 'V Energy' drink before picking up a nail gun and firing it at the small humans who both end up in the wet concrete. The advertisement concludes with the message: "Outsmart the afternoon".

#### **COMPLAINT FROM S. HARRISON**

Not overly impressed when the two dancing mini people in the unset concrete talking to the builder, towards the end of the advert the builder points the nail gun at the two little guys and shoots it, what is that showing our kids.. especially in the classroom with staple guns etc. Not a good look.

#### **COMPLAINT FROM G. HUGHES**

Advertisement belittles H&S regulations governing safety in the workplace. A lot of tradespeople die on NZ work sites and this advertisements mock standard Health and Safety procedures. Just recently a tradesman was badly burnt when he fell in to a cement pour. This ad encourages swimming in it! There is also use of a nail gun as a joke weapon. Ridiculous.

#### **COMPLAINT FROM K. DELAMORE**

The TV ad for the drink v is based on a construction site and ends with the main worker pointing get a nail gun and firing it at two tiny humans in a wet concrete pit. This advert is inappropriate as it infers that it is OK to point a nail gun and press the trigger anywhere anytime.

#### **COMPLAINT FROM A AND C. BROWNLEE**

During the advertisement I watched in horror to see a male firing what appeared to be a nail gun at two other characters in the ad. To portray the irresponsible use of a power tool (an extremely dangerous one) in such a reckless fashion is moronic and capricious. The product advertised is targeted at an age group who is easily influenced and to whom we should be role modelling correct, safe use of such equipment. This ignoble ad needs to be modified or removed immediately

#### **COMPLAINT FROM J. BORLAND**

This advertisement shows trademen doing things that are counter to the Health and Safety at Work standards - jumping into wet concrete and shooting at each other with a nail gun. This is totally inappropriate at anytime of day but especially when children are watching. These actions could kill them!!

#### **COMPLAINT FROM T. BARRETT**

I feel this ad is irresponsible with the high level of accidents that occur in the building industry and is not reflecting good health and safety standards that should be in place on any building site in NZ these days. To show people jumping into concrete which can burn people and then to use a nail gun as a weapon aiming at people is completely stupid and irresponsible. To condone any weapon shooting people should not be allowed.

#### **COMPLAINT FROM N. JUDD**

I object strongly to the ad from V energy drink that shows a strong disregard to Health & Safety practices on the following grounds: (1) Pushing 'person' into wet concrete (2) firing a nail type gun at persons in the concrete. The use of differing sized figures in the ad does not negate the implications of unsafe worksafe health & safety practices.

#### **COMPLAINT FROM T. DEUCHAR**

The TV add showed a nail gun being used as a weapon.

**COMPLAINT FROM B. JOHNSON**

Ad shows a person in a pool of concrete being fired at with a nail gun.  
An OSH no no.

**COMPLAINT FROM V. TATE**

This advert features a construction worker with a nail gun shooting at two people. I find this to be offensive as it is promoting violence as well as unsafe behaviour on a work site. Although this advert is supposed to be lighthearted I think it overlooks the seriousness of on-site safety practices legally required of the construction and labour industry. Nail guns have the potential to seriously harm, and although you would hope all workers would not be so stupid as to reenact this advert it is concerning that if put in the wrong hands there is potential for harm.

**COMPLAINT FROM G. TAYLOR**

I am making this complaint under the advertising code of ethics, number 12, which states that "Advertisements should not, unless justifiable on educational grounds, contain any visual presentation or any description of dangerous or illegal practice or situation."

The advertisement is set on a building site. It depicts two apparently miniature men playing around on the edge of a concrete pour and then jumping in and 'swimming' in the concrete. This is extremely dangerous behaviour and will kill if copied as concrete instantly burns. The ad has serious breaches of work site health and safety and is extremely misleading. In addition, a 'full sized' man then uses his nail gun to 'shoot' the miniature characters submerged in the concrete pool. This advertisement must be removed before someone chooses to copy this life-threatening behaviour.

**COMPLAINT FROM D. WHITFIELD**

The advert is totally against work safe rules and encourages violence at work.

**COMPLAINT FROM K. CRESSWELL**

In the V guarana energy drink advert 'Outsmart the afternoon' that takes place on a building site, two of the characters portrayed are small scale people about 15cm high. Their idiotic behaviour is stopped by the life-sized builder on site shooting a nail gun at them as they sink in wet concrete as he says 'dance shorty'. I believe demonstrating the use of a nail gun as a weapon and a way to silence an annoyance is irresponsible and potentially dangerous to children, teens and impressionable individuals who may get dumb ideas from a not very smart advert.

**COMPLAINT FROM L. GILES**

Promotes the unsafe use of nail guns which is a problem in the construction industry.

**COMPLAINT FROM D. CONWAY**

You had an add on the early part of Gutsful. It had men using a concrete area of wet watery concrete and one guy falling in and being shot at with a nail gun.. I had a relative in America shot through the head as a joke, with a nail gun exactly the same as the one on your add, he died. The attacker went to jail for life he's still there. Life is life in the states. Showing this act as a joke is NO joke and someone could see this add and think it's ok to shoot at someone with a nail gun. Please remove the add before someone does just that.

**COMPLAINT FROM R. ANDERSON**

Construction site worker appears to shoot nail gun at imaginary friends one having fallen into wet concrete, very bad taste considering worker injured last week in Christchurch site. Poor H&S message displayed.

**COMPLAINT FROM N. LARSON**

The recent V energy ad is inappropriate. It shows a man firing a nail gun at another man which is beyond stupid. Whilst maybe funny to some, nail guns are very dangerous and when used by the wrong people can be even more dangerous. Not sure how V thought this was ok.

**CODE OF ETHICS:**

**Rule 5, Offensiveness:** Advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services).

**Rule 12, Safety:** Advertisements should not, unless justifiable on educational or social grounds, contain any visual presentation or any description of dangerous or illegal practices or situations which encourage a disregard for safety.

**CODE FOR ADVERTISING FOOD:**

**Principle 1:** All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However food advertisements containing nutrient, nutrition or health claims\*, should observe a high standard of social responsibility.

**RESPONSE FROM ADVERTISER: FRUCOR SUNTORY**

We write in response to your letter of 10 July 2017 regarding the complaints received in relation to Frucor Suntory New Zealand Limited's (**Frucor's**) "outsmart the afternoon" television campaign for its V Energy Drink product. We set out our response below.

**Advertising codes of practice**

You have referred to the Code of Ethics — Rule 12, Rule 5; and the Code for Advertising Food — Principle 1:

- **Code of Ethics — Rule 12 Safety** states advertisements should not, unless justifiable on educational or social grounds, contain any visual presentations or any description of dangerous or illegal practices or situations which encourage a disregard for safety.
- **Code of Ethics — Rule 5 Offensiveness** states advertisements should not contain anything which in the light of generally prevailing community standards is likely to cause serious or widespread offence taking into account the context, medium, audience and product.
- **Code for Advertising Food — Principle 1** states all food advertisements should be prepared with a due sense of social responsibility to consumers and to society.

We believe the V advertising campaign has been prepared with a due sense of social responsibility, In the light of generally prevailing community standards nothing in the advertisements is likely to cause serious or widespread offence taking into account the context, medium, audience and V Energy Drink product.

## The complaints

We perceive that the essence of the complaints can be summarised as an allegation that the advertisement:

- Trivialises occupational health and safety practices;
- Desensitises the public to hazards associated with nail guns;
- Is contrary to construction site safety standards generally.

## Our response

The advertisement complained of is part of a multi-medium campaign for the V Energy Drink. The campaign as a whole features two fantastical characters referred to as "After" and "Noon" (collectively "the After Noon"). Their role is to personify "afternoon distractions".

The characters are depicted by tiny shrunken individuals (approximately 6-8 inches tall) using graphic special effects. Their role is to comically intrude upon various persons afternoon work by distracting them and generally showing how hard it is to concentrate when the "after" and "noon" roll around.

In the advertisement complained of "After" and "Noon" humorously attempt to distract a tradesperson by yelling random numbers at him as he attempts to count, jumping into the shallow concrete he has just laid (i.e. disturbing its lovely flat surface) and releasing flatulence in the wet concrete while swimming through it. The tradesman then drinks a can of V Energy Drink and uses his nail gun in an attempt to defeat/conquer his "After" and "Noon" distractions.

### Code of Ethics — Rule 12

It is our submission the fantastical nature of these characters evidence the hyperbolic charisma of the campaign. "After" and "Noon's" tiny stature, self-identification as "the After Noon" and overall aura as manifestations of commotion and disturbance clearly represent to the viewer these are not, and should not, be equated with humans or any real life situation.

For this reason, we do not believe the advertisement encourages a disregard for occupational health and safety practices. "After" and "Noon" are clearly presented as, and are clearly understood to be, imaginary personifications of an abstract concept. Importantly, it is not possible to physically harm an abstract concept. We took great care to ensure that every actual person depicted on the construction site is wearing a safety vest, hard hat and boots (in accordance with construction site safety standards generally). In addition, the tradesman adorns safety eyewear before picking up his tool. As a result of being abstract concepts, and clearly fantastical creations (along the same vein as 'the devil on your shoulder', gnomes, pixies, elves and other tiny imaginary creatures), "After" and "Noon" are not shown as being harmed by wet concrete. Similarly, the tradesman's usage of the nail gun is merely intended to symbolise his dominance over his afternoon distractions after having consumed V Energy Drink (i.e. not to cause physical harm).

ASA Complaint number 15/319 concerned an advertisement by Trade Me Jobs in which a successful job-hunter rode in on the forks of a forklift and then jumped off to celebrate. The complainant said that if this was imitated in real life it could result in serious injury or death and noted that it was in breach of the Safety Code for Forklift Truck Operators. The ASA found (in summary):



"The Complaints Board said the advertisement was clearly hyperbolic and fantastical in nature and was in no way a depiction of reality. It said when considered in its entirety, the advertisement was light-hearted and humorous."

Similarly, the presence of "After" and "Noon" in a construction site, and in particular the depiction of their antics, is in no way a depiction of reality and is clearly light-hearted and humorous. There cannot be any real risk that viewers would feel encouraged to attempt to swim in concrete as a result of viewing the advertisement.

#### Code of Ethics — Rule 5

For the above reasons, we submit the advertisement is not offensive taking into account the context, medium, audience and V Energy Drink product.

The advertisement is obviously meant to be understood as a hyperbolic and comical depiction of the average working person's struggle to overcome afternoon distractions. This concept is aligned with the greater V branding which seeks to attract consumers by offering vivacious and edgy humour.

The advertisement was given a 'PGR' rating in the context of its approval by the Commercial Approvals Bureau. Frucor's media agency has ensured the advertisement runs within the guidelines of this rating and does not run, for example, during children's viewing times. The audience in respect of which the advertisement must be considered accordingly does not include children.

Complaint number 15/053 concerned a television advertisement for the Heroes Charge mobile and tablet game, which showed cartoon skeletons being blown up by a mystery being. The complainant said the advertisement, which consists of "ugly skeletons being blown up and killed", was highly offensive and frightened his grandchildren. The Chairman did not agree and said the characters were fantastical and hyperbolic and were involved in an unrealistic scenario. As such, the advertisement was unlikely to cause serious and widespread offence to most people.

In the current case "After" and "Noon" are computer generated imagery, shown as being 6-8 inches in height and are clearly not real humans, The characters are fantastical, their actions hyperbolic, and they are clearly involved in an unrealistic scenario.

In light of these circumstances, we do not consider that the advertisement contains anything which, in the light of generally prevailing community standards (particularly considering the PG audience) is likely to cause serious or widespread offence.

#### Code for Advertising Food

Further to the reasons provided above, we submit the advertisement is pure advertising hyperbole and stretches the realms of believability too far to be considered socially irresponsible. For this reason we submit the advertisement was prepared with a due sense of social responsibility to consumers and to society.

In complaint 13/193 a television advertisement for Burger King advertised its new Pork Burger and stated in part: "There are loads of reasons to [try] Burger King's new pork burger, like tender pulled pork...Hunger is another. So is loneliness." The complainant argued it was wrong to encourage people to eat because of loneliness. The Chairman held the majority of viewers would recognise there was a level of intended humour associated with the reference to periods of loneliness (experienced by most sporadically) and the indulgence of a burger, rather than seeing it as encouraging lonely or vulnerable people to eat.

Similarly, we submit that people understand consuming V to "outsmart the afternoon" is a humorous reference to the usual slump in concentration experienced by most after lunch. There is nothing socially irresponsible about advertising an energy drink in a situation which suggests it may energise someone.

### **Moving forward**

We submit the advertisement does not reach the threshold to breach the Code of Ethics or the Code for Advertising Food. The advertisement does not present a realistic scenario which is likely to (or even could) be emulated by viewers. It therefore could not be said to encourage a disregard for safety, infringe standards of social responsibility, or cause serious or widespread offence taking into account the context, medium, PG audience and V Energy Drink product.

Nonetheless, as a gesture of good faith, Frucor has arranged for the advertisement to be edited to remove any images of the nail gun being fired.

The advertisement is clearly fantastical in nature and could not be replicated in a real life situation. The advertisement is "light-hearted, farcical, kitsch and pokes fun" at the afternoon drudgery.' We submit that it is a "struggle to see how viewers may see the activities depicted in the advertisement as actual reality."

### **Conclusion**

We are committed to doing our best to comply with the Advertising Standards Codes and always attempt to act with a high level social responsibility towards consumers, our customers and to the public generally.

### **FURTHER RESPONSE FROM ADVERTISER: FRUCOR SUNTORY**

We write in response to your further email of Tuesday 18 July 2017 regarding the complaints received in relation to Frucor Suntory Limited's (**Frucor's**) "outsmart the afternoon" television campaign.

In particular, we write to further address the issue raised by 4 complainants surrounding the aspect of the advertisement that depicts whimsical, miniature characters jumping in a shallow pool of concrete.

#### **The complaints:**

We perceive that the essence of the aforementioned complaints can be summarised as a general allegation that the advertisement shows disregard for health and safety practices on construction sites and in particular disregard for health and safety in respect of concrete pours.

#### **Our response:**

As previously identified in our letter dated 14 July 2017, the advertisement complained of consists of part of a multi-medium campaign advertising our V Energy Drink. The campaign consists of two fictional characters — "After" and "Noon" who personify "afternoon distractions" faced by various individuals.

The characters are:

- Tiny, whimsical individuals who are approximately 6-8 inches tall;

- Are created using special graphic effects; and
- Comically intrude on afternoon work by proving to be a great distraction to individuals who are trying to complete their work.

Code of Ethics - Rule 12:

We do not believe that the depiction of the characters "After" and "Noon" jumping into a shallow pool of concrete presents a dangerous situation that encourages any disregard for safety. In particular:

- The advertisement clearly distinguishes between the real tradesman (i.e. the identifiable "real person" depicted in the story) who is shown to be wearing a safety vest, safety goggles, hard hat and boots (in accordance with construction site safety standards generally) and the figments of his imagination.
- The characters shown over the course of the advertisement are clearly represented as fantastical creatures (i.e. figments of the tradesman's imagination), which evidence the hyperbolic charisma of the campaign. "After" and "Noon" are tiny in stature, and their self-identification as the "afternoon," and its involved distractions, clearly identify to the viewer that they are not, and should not, be equated with human beings to be mimicked or copied in any way.
- It is highly unlikely that any individual would think it at all possible to actually swim or jump into a shallow pool of freshly poured concrete. The nature of the campaign is to reflect to viewers that "afternoon" distractions can have a significant impact on the quality of afternoon work, by depicting the humorous characters ruining the tradesman's concentration. The tradesman in the advertisement is not shown as encouraging this, or wishing to participate. Rather the presentation of these "afternoon distractions" acts as a major hindrance to his day.
- As referred to in our letter dated 14 July 2017, ASA Complaint number 15/319 concerned a complaint whereby a viewer alleged that jumping off of a forklift, if imitated in real life, could result in serious injury or death. The complaint was not upheld in this regard, and the ASA found that:

"the advertisement was clearly hyperbolic and fantastical in nature and was in no way a depiction of reality. It said when considered in its entirety, the advertisement was lighthearted and humorous."

- The "Outsmart the Afternoon" campaign — including in respect of the actions of "after" and "noon" in relation to the concrete pour - is also similarly clearly hyperbolic and fantastical in nature, and is in no way a depiction of reality. The advertisement is a light-hearted and humorous depiction of the frustrations of common afternoon distractions which are faced by most individuals.

• We consider that it is highly improbable that there is any real risk of viewers (particularly given the PG nature of the audience) feeling genuinely encouraged to attempt such an act by virtue of viewing this advertisement.

Code of Ethics — Rule 5:

We are also of the opinion that the advertisement does not cause any serious or widespread offence in its depiction of whimsical characters jumping in a shallow concrete pool, taking into account the context, medium, audience, and the V energy product. In particular:

- The advertisement clearly identifies fantastical characters that are presented as "afternoon distractions," ruining a tradesman's afternoon work by fictionally jumping into his concrete. This concept is aligned with the wider "outsmart the afternoon" campaign and the greater V branding in general which provides consumers with humour through different V Energy Drink advertising campaigns.
- Given the PGR rating granted to the advertisement, Frucor's media agency has taken care to ensure that the advertisement is run within the guidelines of this rating, and does not run during children's viewing times. Therefore the audience must be considered accordingly as not including children.
- It is highly unlikely that any viewer would realistically think it possible to swim in a shallow pool of concrete based on the depiction of miniature fantastical creatures, personifying "afternoon distractions," or seriously consider they were being encouraged to do so as a result of viewing the advertisement.

#### Code for Advertising Food:

For the reasons identified above, and for the reasons provided for in our letter dated 14 July 2017, we are of the opinion that the advertisement clearly demonstrates pure hyperbole, and stretches beyond what is reasonably believable, to render the advertisement socially responsible.

- It is our submission that the depiction of tiny, computer generated, fantastical creatures portrayed in such a shallow concrete pool clearly identifies the hyperbolic and humorous nature of the advertisement.
- In the advertisement, Frucor has taken care to depict the identifiable "real person" as wearing the appropriate safety gear, including a helmet, vest and safety goggles. He is in no way encouraging the fantastical "afternoon distractions" to swim in the shallow pool of concrete, and in fact, their interference presents a challenge to him in that his afternoon's work has subsequently been ruined.
- This humorous element was likely to be recognised by a majority of viewers.

When taking these factors into account, we are of the opinion that the advertisement is not socially irresponsible, and is rather a humorous illusion of a method by which individuals can beat the 'afternoon slump' by drinking a V Energy Drink.

#### **Conclusion**

We are consequently of the opinion that the depiction of tiny, computer generated figures jumping into a shallow pool of concrete does not reach the threshold required to breach the Code of Ethics or the Code for Advertising Food.

The advertisement is clearly fantastical in nature, and depicts whimsical characters who are posing a threat to a tradesman's afternoon work activities (which he is conducting in line with health and safety requirements as exemplified by his wearing of appropriate health and safety gear), As identified in our letter dated 14 July 2017, the advertisement is "light-hearted, farcical, kitsch and pokes fun" at the afternoon drudgery.'

We consider it highly unlikely viewers would seriously interpret the activities of "After" and "Noon" jumping into a shallow pool of concrete as an actual reality which individuals are encouraged to replicate.

We continuously seek to act with a high level of social responsibility towards consumers, our customers, and the public, and are committed to doing our best to comply with the Advertising Standards Codes.

## **RESPONSE FROM MEDIA: COMMERCIAL APPROVALS BUREAU**

We have been asked to respond to this complaint under the following codes:

Code of Ethics – Rule 12

Code for Advertising Food – Principle 1

CAB approved this V Energy Drink commercial on 26/06/17 with a PGR classification. The PGR classification is a restrictive one, limiting broadcast to times and programmes during which parental guidance is recommended. The effect of the PGR classification can be seen in the broadcast times for which the complaints have been lodged: between 7pm and 10pm.

Complaints against the commercial generally site a concern for the portrayal of safety and workplace regulations, with the most salient examples being the use of a nail gun and the treatment of cement.

A pressing consideration in the review of this commercial is its obvious fantastical elements – notably the portrayal of two cartoonish adult men who appear to be 15-20cm tall, approximately the size of a fairy, pixie, or other magical sprite. Most TV commercials contain some element of fiction, but few contain the obvious level of fantasy displayed here.

CAB consulted with the advertising agency on the issues of portraying safety, and as an extra measure applied the PGR classification to make sure any young person without the accompaniment of a parent did not view the commercial. The remaining audience then are adults, who CAB believes are able to delineate between fantastical scenarios and the genuine requirements for safety in a construction workplace.

CAB understands that the advertiser has amended the nail gun scenario, and will defer to their response on that issue. With regards to the concrete scenario, CAB does not believe the audience for PGR programming would interpret that activity as either recommended or desirable.