

<b>COMPLAINT NUMBER</b>	17/111
<b>COMPLAINANT</b>	L Lemalu
<b>ADVERTISER</b>	Frucor Beverages Ltd
<b>ADVERTISEMENT</b>	Frucor Beverages Ltd, Out of home
<b>DATE OF MEETING</b>	26 April 2017
<b>OUTCOME</b>	Settled

## **SUMMARY**

The Frucor Beverages advertisement for V Spiked Punch covered the back of a school bus and included an image of the product and the words “Spiked like an 80’s haircut” and “Life just got spiked.”

The Complainant considered the word “spiked” offensive, especially linked with a beverage since “spiked” could mean a beverage tainted with drugs including alcohol. The Complainant’s view was the advertisement could have a potentially dangerous impact on vulnerable women and children.

The Complaints Board said it did not have jurisdiction to consider the energy drink’s name, V Spiked Punch.

The minority said in its view the references to “spiked” in the beverage advertisement would be considered by most to mean adding alcohol or drugs to non-alcoholic drinks. The minority said the use of an untargeted advertising medium in this context was not responsible.

The majority of the Complaints Board agreed under the principles of self-regulation to settle the complaint, as the advertisement had been removed from the back of the school bus.

Accordingly, a majority of the Complaints Board ruled the complaint was Settled.

### **[No further action required]**

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 Basic Principle 4 and Rule 5 of the Code of Ethics and Principle 1 of the Code for Advertising Food. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society and whether it contained anything which in the light of generally prevailing community standards was likely to cause serious or widespread offence taking into account the context, medium, audience and product (including services). The Complaints Board was also required to consider whether, if the advertisement contained nutrient, nutrition or health claims, it

observed a high standard of social responsibility. The Chair ruled that the Code for People in Advertising was not relevant.

### **Precedent**

To assist in coming to its decision the Complaints Board reviewed a precedent decision, Complaint 09/083, which was upheld. The precedent decision concerned a poster advertisement for Cocaine energy drink. The advertisement showed an image of a can of the drink and said: "Warning. You are about to experience the highest energy content of any energy drink on the market today. Energy drink. Cocaine. Be smart do the drink." The Complaints Board noted that under current legislation it was permissible to name a product "Cocaine" but the Board was able to make a ruling on the content of the advertisement when taking into account the context, medium, audience and product. The Complaints Board noted the poster was widely visible, including to children.

The majority view was that there was an inseparable connection between the wording and innuendo in the precedent advertisement and the Class A drug cocaine as well as the drug-taking culture generally. The majority accepted there was a level of hype in advertising energy drink that was acceptable but that the poster went further and could be said to trade off the properties of drugs and drug culture to promote its product. The majority perceived the large word "Warning" at the top of the advertisement as alluding to something illicit or illegal and the large font used for the word "Cocaine" as emulating the appearance of the powdery formation of the drug further referencing it rather than the energy drink.

### **The Complaint**

The Complaints Board then turned to the Complainant's concerns. The Complainant found the use of the word "spiked" in the advertisement for V Spiked Punch on the back of a school bus offensive, especially linked with a beverage. The Complainant said an online definition of "spiked" was "...beverage can be tainted with drugs." The Complainant said in part: "In light of the whole Wellington College, and previously Roast Busters incidents, coupled with women victimised due to having their drinks spiked, it is surprising that this advert from Frucor was not questioned. Women are already vulnerable and trying to combat a rape culture that seems to be normalised. This type of V drink advertisement has potentially dangerous impact to vulnerable women and children."

### **The Advertiser's response**

The Complaints Board then considered the Advertiser's response. The Advertiser, Frucor Beverages Ltd, noted the Complainant held the view that the name "Spiked Punch" encouraged and normalised the practice of tainting beverages with drugs and therefore encouraged the victimisation of women. The Advertiser said the complaint referred to one dictionary definition of "spiking" but the campaign was referring to another which was joking, or 'pulling someone's leg' in a way that's consistent with the fun-loving attitude and spirit of V.

The Advertiser said the placement of the advertisement on a school bus was an isolated error by the bus company and the Advertiser's policy was not to target anyone under 18. Once the Advertiser became aware of the advertisement on a school bus immediate instruction was given for the removal of the bus from the route and a guarantee sought from the advertising company, QMS, that all buses carrying V advertising would have their routes checked to ensure no further inadvertent placement.

The Advertiser said they did not market energy drinks to children and the V Spiked Punch campaign was targeted at 18 to 24-year-olds. The Advertiser noted that people did not feature in the advertisement and vulnerable women and children or other groups were not "called-out." The Advertiser said the only call-out, if any, was on V Energy and its fans and the intention of the campaign was to promote V Energy's limited edition flavour V Spiked

Punch and reflect the energy and fun-loving attitude associated with the V brand. The campaign had been carefully managed to target only appropriate audiences and so that spiking of drinks was not promoted or condoned.

### **The Complaints Board discussion**

The Complaints Board noted the Advertiser said the placement of the V Spiked Punch advertisement on a school bus had been an error by the media company and action had been taken to address this.

The Complaints Board confirmed it did not have jurisdiction over product names and turned to consider the advertisement.

### **What is the meaning of the word “spiked”?**

The Complaints Board accepted there were different meanings for the word “spiked” other than that of a beverage being spiked with drugs or alcohol but considered this was the most common meaning.

### **Is there an issue with media placement?**

The minority of the Complaints Board said the Complaint should be upheld. The minority said in its view the reference to “spiked” in the advertisement would be considered by most to mean adding alcohol or drugs to non-alcoholic drinks.

The minority said the use of an untargeted medium to promote a beverage with a term that could refer to a dangerous practice was not socially responsible and in light of generally prevailing community standards would cause serious or widespread offence. It said the advertisement was in breach of Rules 4 and 5 and Basic Principle 4 of the Code of Ethics and Principle 1 of the Code for Advertising Food.

### **Removal of the advertisement from the school bus**

The majority of the Complaints Board agreed under the principles of self-regulation to settle the complaint, as the advertisement had been removed from the back of the school bus. The Advertiser had sought assurances from the media company that the placement error would not happen again.

In accordance with the majority, the Complaints Board ruled the complaint was Settled.

**Decision:** Complaint **Settled**

## **DESCRIPTION OF ADVERTISEMENT**

The V Spiked Punch advertisement covered the back of school bus with an image of a V Spiked Punch can almost full height on the left of a blue background. Under the can was “#spikedV.” Red lettering to the right of the can began with the word “spiked” and ended with the words “Life just got spiked.” The red lettering appeared to contain the words: “like and 80s hair cut” but this was largely obscured with a “School” sign.

## **COMPLAINT FROM L LEMALU**

Back of a School Bus. V SPIKED PUNCH. Spiked is offensive, especially linked with a beverage. An online definition of SPIKED is; “...beverage can be tainted with drugs.” In light of the whole Wellington College, and previously Roast Busters incidents, coupled with women victimised due to having their drinks spiked, it is surprising that this advert from Frucor was not questioned. Women are already vulnerable and trying to combat a rape

culture that seems to be normalised - this type of V drink advertisement has potentially dangerous impact to vulnerable women & children.

## CODE OF ETHICS

**Basic Principle 4:** All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

**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).

## 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.

## CODE FOR PEOPLE IN ADVERTISING

**Basic Principle 2:** Advertisements should not portray people in a manner which is reasonably likely to cause serious or widespread hostility, contempt, abuse or ridicule.

**Basic Principle 3:** Advertisements should not portray people in a manner which, taking into account generally prevailing community standards, is reasonably likely to cause serious or widespread offence on the grounds of their gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; marital status; family status; education; disability; occupational or employment status.

## RESPONSE FROM ADVERTISER: FRUCOR BEVERAGES LTD

Thank you for bringing to our attention the complaint and possible breach of the following:

- Code of Ethics – Basic Principle 4, Rule 5;
- Code for Advertising Food – Principle 1;
- Code for People in Advertising – Basic Principle 2, Basic Principle 3;

The complaint (17/111) relates directly to placement of an advertisement for V Spiked Punch on the back of a school bus. The response to the complaint below is the view of Frucor Beverages Ltd.

### Code of Ethics— Basic Principle 4, Rule 5;

Basic Principle 4 states that: "All advertisements should be prepared with a due sense of social responsibility to consumers and to society", and Rule 5 refers specifically to decency and that context, audience, medium and product (including services) should be considered. In this case the name of the product is has been called into question, with a view being taken that the name 'Spiked Punch' encourages tainting beverages with drugs, normalises this practice, and therefore encourages the victimisation of women. Specifically, the complaint refers to one dictionary definition of 'spiking'.

However, it's worth noting that there are numerous definitions of spiked / spiking, and as is the case with this campaign we are referring to joking, or another way of saying 'pulling someone's leg', in a way that's consistent with the fun-loving attitude of V and the spirit of this product. The application of how we've applied this can be seen throughout the campaign, notably by the way we launched V Spiked Punch with a prank and our social media activity where we encourage V fans to alter, or 'spike', everyday images online to make them more interesting.

In reference to the context of this complaint, more specifically that the advertisement was placed on a school bus, this was an isolated error by the bus company. The advertising company, QMS, was instructed in advance of the advertising being booked and placed that no advertisements should be placed on school buses or on buses allocated to school routes. This is in accordance with our policy of not targeting anyone under the age of 18 years.

When we became aware that a bus featuring the Spiked Punch advertisement had been placed on a school route on the 3rd of April immediate action was taken. We sought confirmation with QMS that this had happened, and upon confirmation that incident had happened, we instructed that the bus be removed immediately from this route. As a further precautionary action, we sought a guarantee from QMS that all buses carrying V advertising would have their routes checked to ensure that they hadn't inadvertently been placed on a school route.

#### **Code for Advertising Food — Principle 1;**

Our understanding of the Code for Advertising Food — Principle 1 is that it relates to the socially responsible marketing of food. In this instance, as with all V campaigns, we take care to ensure that our advertising complies to this principle.

Our company values also mean that we do not market our energy drinks to children. The V Spiked Punch campaign and its messages are targeted at an 18 to 24-year-old audience. Although we are constantly working to make sure our marketing campaigns are current, and in line with current pop culture, we have worked hard to ensure that our media placement is in areas frequented by those within the 18 24-year-old demographic. And in the rare instances that errors are made, as outlined above, we move quickly to remedy the situation.

#### **Code for People in Advertising — Basic Principle 2;**

Basic Principle 2 states that 'advertisements should not portray people in a manner which is reasonably likely to cause serious or widespread hostility, contempt, abuse or ridicule. In the case of the V Spiked Punch bus back creative, people do not feature in any way nor do the advertisements reference people. People are featured in a selection of targeted social posts but we don't believe that these execution promote or encourage 'serious hostility, contempt, abuse or ridicule'.

#### **Code for People in Advertising — Basic Principle 3;**

Our understanding of Basic Principle 3 under the Code for People in Advertising is that advertisements should not portray people in a manner which is reasonably likely to cause serious or widespread offence, on the grounds of certain demographic markers. While the complainant alleges the V Spiked Punch advertisement poses a potentially dangerous impact to vulnerable women and children, these groups do not feature in any of the assets produced by Frucor or its agencies, nor do the advertisements call-out these or any other groups. The advertisement referenced in the complaint features V Spiked Punch product and text.

As previously mentioned, the intent of this campaign is to celebrate the fun-loving attitude of V Energy and the spirit of the V Spiked Punch product. With campaign launch activities taking a 'jokes on us' approach, and fans altering or 'spiking' images of their everyday experiences, the only call-out if any, is on V Energy and its fans.

The intention of this campaign was to assist the promotion of V Energy's limited-edition flavour V Spiked Punch, with the campaign reflecting the energy and fun-loving attitude associated with the V brand. While the complainant refers to one of many definitions of spiking the V Spiked Punch campaign has been carefully managed in both its targeting and behaviour to ensure that only appropriate audiences are targeted and that to ensure that the spiking of drinks has not been promoted or condoned.