

COMPLAINT NUMBER	19/296
COMPLAINANT	E Fowler
ADVERTISER	Unilever Australasia
ADVERTISEMENT	Streets Ice Cream Out of Home
DATE OF MEETING	24 September 2019
OUTCOME	Upheld Advertisement to be Removed

Description of Advertisement

The advertisement for three types of Streets ice creams (Paddle Pop, Magnum and Splice) is located on the outside wall of the Tui Crescent Foodmarket in Whangarei. The advertisement shows images of the three types of ice cream, next to the text: "ICE CREAM MAKES U HAPPY".

Summary of the Complaint

The Complainant was concerned the message "ICE CREAM MAKES U HAPPY" is extremely irresponsible given the obesity and mental health problems that exist in New Zealand. The Complainant said food should not be advertised as a way to improve people's mood, given that ice cream is high in fat and sugar. The Complainant was concerned about the impact of the advertisement on children as well as on their parents.

Issues Raised:

- Social Responsibility
- Health and Well-being
- Targeting Children
- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser said the target audience for the advertisement is adults, ice cream is an occasional food and the advertisement does not condone excessive consumption. The Advertiser said the advertisement is not misleading.

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about an advertisement for Streets ice creams, located on the outside wall of a store in Whangarei. The Board said the advertisement implies there is a link between ice cream and happiness, and this message could potentially undermine the health and well-being of consumers.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility

The Chair directed the Complaints Board to consider the complaint with reference to Principle 1 of the Advertising Standards Code.

Rule 1(h) Health and well-being

Rule 1(h) required the Board to consider whether the advertisement contained anything that might undermine the health and well-being of individuals.

CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

Principle 1 – Social Responsibility - Advertisements should be prepared with and observe a high standard of social responsibility.

Rule 1 (i) Targeting children

Advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience.

Principle 2 – Truthful Presentation - Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children, abuse their trust or exploit their lack of knowledge or without reason play on fear.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 18/418, which was Not Upheld and Decision 19/102 which was Upheld.

The full versions of these decisions can be found on the ASA website

<https://www.asa.co.nz/decisions/>

Decision 18/418 concerned multi-media advertising for BP Oil NZ Ltd. The billboard, bus stop, instore and digital marketing advertisements showed the text 'Good Mood Food'. There were ice cream scoops, doughnuts and food plates in place of the double O letters in each of these three words.

The majority of the Complaints Board found that the advertising was not likely to mislead or deceive consumers or encourage excessive consumption. It said the advertising had been prepared with a due sense of social responsibility. The majority of the Board said the advertising was not in breach of Principles 1 or 2 or Guidelines 1(c), 1(d), 2(b) or 2(c) of the Code for Advertising Food. (NB These Codes differ from the Codes being considered in Complaint 19/296. This is due to the introduction of the new Advertising Standards Code in November 2018).

A minority of the Complaints Board said the advertising made an implicit health claim linking food high in fat, salt and or sugar to well-being. It said the advertising could misled consumers about the nutritive value of food and images showed excessive serving sizes for children.

Decision 19/102 concerned Facebook and Instagram advertisements for Cookie Time biscuits which showed breakfast bowls filled with at least eight Cookie Time biscuits, with milk, and the comment: “The struggle is now over to find the perfect breakfast”.

The Complaints Board agreed the advertisements undermine the health and well-being of individuals. This is because a bowl of biscuits and milk is not a healthy breakfast option and the serving size shown in the photo exceeds the recommended serving size of three biscuits.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was this shop sells ice cream and if you eat ice cream, it will make you happy.

Advertisement under the Children and Young People’s Advertising Code

The first question the Complaints Board had to address was whether the advertisement targeted children.

How is targeting assessed?

‘Targeting’ is determined by the context of the advertisement and the relationship between the following three criteria;

1. Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.
2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
3. Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.”

Does the advertisement target children or young people?

A majority of the Complaints Board said the advertisement did not target children or young people, and therefore the Children and Young People’s Advertising Code did not apply.

This is because although the product has high appeal to children and young people, the majority said the presentation of the advertisement has limited appeal to children or young people. The advertisement doesn’t use any images or characters that would appeal to children or young people specifically. In addition to this, the expected average audience where the advertisement is located does not appear to include a significant proportion of children or young people. The store is also a “Wine and Beer Shop” and all the local schools are at least a kilometre away.

A minority disagreed. The minority said the advertisement targeted children (those below the age of 14 years). This is because the product has high appeal to children, especially the Paddle Pop ice creams. Most children could see and read the advertisement and the use of the letter “U” instead of the word “YOU” would also appeal to children. The minority noted there is a children’s health camp located nearby, less than 100 metres away.

In accordance with the majority, the Complaints Board said the Children and Young People’s Advertising Code did not apply.

Advertisement under the Advertising Standards Code

Does the advertisement contain anything that could undermine the health and well-being of individuals?

A majority of the Complaints Board said the advertisement could undermine the health and well-being of individuals. This is because the advertisement contains an implicit claim that there is a link between ice cream and happiness. The promotion of this link could potentially undermine the health and well-being of individuals because ice cream is a high fat, high sugar food, and the desire to be happy is universal. The majority said the large size of the advertisement and its location on the outside of the store were relevant.

A minority disagreed. The minority said ice cream is widely recognised as an occasional food, a nice treat, and the advertisement is not making any scientific or nutritional claims.

Is the advertisement socially responsible?

A majority of the Complaints Board said the advertisement was not socially responsible because the advertisement could undermine the health and well-being of individuals.

A minority disagreed. The minority said the advertisement was socially responsible and did not undermine the health and well-being of individuals.

In Summary

In accordance with the majority, the Complaints Board said the Children and Young People's Advertising Code did not apply.

In accordance with the majority, the Complaints Board said the advertisement was not socially responsible, taking into account context, medium, audience and product and was in breach of Principle 1 and Rule 1(h) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT FROM E FOWLER

I would like to make a complaint under the advertising standards code (code). The streets advertisement breaches principle 1 and rule 1(h) of the code.

Why am i making this complaint? The advertisement is located on the wall of my local dairy. It is clearly visible from the main road. I see this advertisement every time i drive or walk to town, the pools, library, the doctors, supermarket or park. If you are a parent or have spent time with young children you will know how impressionable children are. You would also know that children learn from what they see around them and how quickly they pick up on things. [abridged...] think this message is extremely irresponsible especially given the obesity and mental health problems we as a country are facing.

How does the advertisement breach the code? Principle 1 social responsibility. The advertisement has not been prepared or placed with a due sense of social responsibility to parents or children.

Preparation: the statement 'ice cream makes you happy' is an irresponsible message to tell parents and children. Foods should not be advertised as way to improve peoples mood. Ice cream is a food that is high in fat and sugar. Eating ice cream to make yourself happy is damaging to ones health.

Placement: the advertisement is on the outside of tui crescent foodmarket. It is visible from the main road. There is a primary school and high school near by (1.3km and 1.0km away respectively). School children and their families stop at the dairy before and after school regularly. School children walk pass the shop before and after school. Due to the placement of the advertisement a large number of children and adults are exposed to it regularly.

Rule 1(h) health and wellbeing. The advertisement undermines the health and wellbeing of children and adults by promoting an unhealthy relationship with food.

The statement 'ice cream makes you happy' is promoting an unhealthy relationship with food. Eating food to make yourself happy is not a healthy relationship to have with food, in particular with a food such as ice cream that is high in fat and sugar. Hence, why this message could be damaging to the health of those exposed to the message regularly.

Appendix 2

RESPONSE FROM ADVERTISER, UNILEVER

A basic, neutral description of the advertisement	Banner advertising Paddle Pop, Magnum & Splice ice creams.
Date advertisement began	The advertisement was installed more than five years ago. The exact date is not known.
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper)	The advertisement was used as outdoor advertisement at multiple locations (more than five years ago). It mainly appeared on

Website	store fronts. Unilever does not have a list of the exact locations.
Is the advertisement still accessible – where and until when?	Yes. It is the decision of the store owner how long the advertisement remains.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Not available as the advertisement was created more than five years ago.
Who is the product / brand target audience?	The advertisement promotes Paddle Pop, Magnum and Splice Ice Cream. The target audience is adults. Although Paddle Pop is a product for children and adults the advertisement does not use any images, characters or slogans that appeal to children.
Clear substantiation on claims that are challenged by the complainant.	<p>Advertising Standards Code - Principle 1, Rule 1(h): Advertisements must not undermine the health and well-being of individuals</p> <p>Ice cream and ice confection products are occasional foods. The advertisement of their availability in a store does not undermine the food and nutrition policies of the Government and Ministry of Health. In particular, the advertisement does not condone excessive consumption or promote an inactive or unhealthy lifestyle.</p> <p>Children and Young People Advertising Code - Principle 1, Rule 1(i)</p> <p>The advertisement does not target children (see above) and is not placed in media where children are likely to be a significant proportion of the expected average audience.</p> <p>A number of schools and education facilities are within 1-2 kms of the advertisements. About 1-2 kms away is Pompellier College and Maunu Primary. An education facility for children (Maunu Health Camp) is about 100 meters away across the road from the advertisement. The advertisement is located at a store</p>

	<p>front and communicates the availability of Streets ice cream products in this particular store. It is comparable with a Streets logo in front of a convenience store. The advertisement does not target children and complies with Principle 1 Rule 1(i).</p> <p>Children and Young People Advertising Code - Principle 2, Rule 2(f)</p> <p>The advertisement does not mislead as to the potential physical, social or mental health benefits from consumption of the product.</p> <p>Paddle Pop, Magnum and Splice products are occasional foods.</p> <p>The statement “Ice Cream Makes You Happy” is a puffery statement that cannot mislead anyone. Puffery is an exaggerated, fanciful or vague statement that no reasonable person could possibly treat seriously or find misleading.</p> <p>The statement represents that eating Paddle Pop, Magnum or Splice ice cream is an enjoyable experience. Consumers will not reasonably interpret the advertisement that eating Paddle Pop, Magnum or Splice increases their level of happiness in a measurable way, or that it provides nutritional value that is beneficial to their health.</p> <p>A comparable example of a puffery statement in the market is the statement that “Red Bull gives you wings”. Consumers will not expect that the product will lead to an improvement of their physical abilities or that the statement is supported by any scientific evidence.</p>
<p>The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.</p>	<p>Agreed</p>