

Alcohol Advertising Review Board

Determination Report

Reference number: 794/19
Product: Skinny Freezers
Advertiser: Slim Chillers

The complaint is **upheld**.

22 August 2019

This determination by the Alcohol Advertising Review Board Panel (“the Panel”) concerns an advertisement for Skinny Freezers by Slim Chillers which was the subject of a complaint received on 12 July 2019.

The Advertisement

The complaint was in relation to the product packaging of Skinny Freezers, and content on the Slim Chillers website (www.slimchillers.com.au) and Facebook page (<https://www.facebook.com/slimchillers.com.au/>).

The complainant provided screenshots of the website and Facebook page:

- A news update dated 12 January 2018 on the Slim Chillers website (labelled Appendix A by the complainant) that stated:
“Order Now For Your Australia Day Party
Slim Chillers lower calorie alcohol is perfect for Australia Day celebrations. If you’re planning a party then now is the time to place an order. Our Skinny Freezers are like zooper doopers and fantastic for enjoying around the bbq. Likewise, our Blenderfulls can help you kick well into the night. Add 4 shots of tequila to one pouch and you’ve got a cocktail that can’t be beat!
Australia Day this year is Friday 26th January so get in quick! Lamb is a staple on our nations great day. Make Slim Chillers a staple too!”
- An image of several hands holding Skinny Freezers over a pool and an image from the Zooper Dooper AU Instagram account of a pair of hands holding several Zooper Doopers. The complainant labelled the images Appendix B and stated “Compilation image showing comparison between Skinny Freezers and Zooper Doopers”.
- A post from the Slim Chillers Australia Facebook page on 7 December 2018 at 14:50 that featured the image of several hands holding Skinny Freezers over a pool, an image of the front of a Costco store, and a close up of a hand holding a red Skinny Freezer. The caption of the post stated “Head into Costco Wholesale Australia (VIC & ACT) this weekend for your 100 Calorie

FROZEN Vodka Martini Costco Club Pack (12x100ml). Just FREEZE & eat... yum.” (labelled Appendix C by the complainant).

- Several posts from the Slim Chillers Australia Facebook page, including selected comments (labelled Appendix D by the complainant). The first post was from 25 January 2019 and featured an image of a hand holding two Skinny Freezers in front of a pool. The caption stated “Beat the heat with “100 Calorie Frozen Vodka Martini’s” ... order online @ www.slimchillers.com.au for FREE delivery Australia wide ... Happy Australia Day weekend ...”. The second post was from 15 January 2019 and featured an image of several hands holding Skinny Freezers over a pool. The caption stated “Get your orders in asap to enjoy your Frozen Vodka Martini’s for Australia Day festivities & the long weekend coming soon ... check out www.slimchillers.com.au FREE delivery ... cheers.”

The Complaint

The complainant believes the advertisement contravenes the Code. The complainant stated:

“Skinny Freezers by Slim Chillers

Packaging, Website, Facebook page

Mid-January 2019 between the hours of 9am and 5pm; 1 May 2019 between the hours of 9am and 5pm. Facebook: <https://www.facebook.com/slimchillers.com.au/>; Website: www.slimchillers.com.au

The complaint relates to the general marketing of the product including its packaging, and marketing communications seen on the internet including on the Slim Chillers website and Facebook page. Images are included in the attached document.

There are two parts to the complaint:

1. That the product’s packaging and some of the marketing materials are likely to appeal strongly to minors, and/or create confusion with confectionary or soft drinks, specifically the popular children’s treat Zooper Doopers. And that user comments on Facebook clearly show that the product could be easily confused with Zooper Doopers. This breaches section 4(a)(i)(1) and section 5(1-3) of the AARB Code.
 2. That marketing communications on the company’s Facebook page depict consumption of the product before or during swimming, and that user comments clearly show that this is how the marketing communications were interpreted. This breaches section 3(d) and section 4(h) of the AARB Code.
- Further details are outlined in the attached document.”

The attached document stated:

“There are two parts to the complaint:

1. That the product’s packaging and some of the marketing materials are likely to appeal strongly to minors, and/or create confusion with confectionary or soft drinks, specifically the popular children’s treat Zooper Doopers. And that user comments on Facebook clearly show

that the product could be easily confused with Zooper Doopers. This breaches section 4(a)(i)(1) and section 5(1-3) of the AARB Code.

2. That marketing communications on the company's Facebook page depict consumption of the product before or during swimming, and that user comments clearly show that this is how the marketing communications were interpreted. This breaches section 3(d) and section 4(h) of the AARB Code.

In making this complaint, I note that Ad Standards considers that Facebook content generated by the page creator as well as material or comments posted by users or friends falls under the Advertiser Code of Ethics and falls within reasonable control of the advertiser. See cases 0271/12 (<http://ms.adstandards.com.au/cases/0271-12.pdf>) and 0272/12 (<http://ms.adstandards.com.au/cases/0272-12.pdf>).

Detail

1. Strong or evident appeal to minors and potential for confusion with non-alcoholic product
This product is designed to be consumed as an icy pole in frozen form. It bears a distinct resemblance to non-alcoholic icy poles, such as "Zooper Doopers", a similarity that the company points out and deliberately appeals to in a press release. An image of this release is included in Appendix A.

Zooper Doopers (and other icy poles) are popular summertime treats consumed by, and marketed at, children. They feature bright colours and appealing flavours of both fruit and confectionary, with flavours such as 'lemonade', 'lime' and 'orange sherbet'. Skinny Freezers have very similar packaging, colours and styling, with flavours such as 'watermelon lemonade', 'appletini' and 'lemon drop'. In fact, it is likely, given the nature of the marketing material, that the similarities between the two products was a deliberate marketing tactic. A comparison image showing the similarities of these two products is included in Appendix B.

The similarity between this alcoholic product and an iconic children's treat is both irresponsible and dangerous. It has obvious appeal to children and could easily be confused with a non-alcoholic product. User comments on Facebook clearly show that the product could be easily confused with Zooper Doopers or other icy poles, and that children would not understand the difference. For example:

- Facebook user 1: "Kids will never no lol they will just think I got an icy pole too hahaha"
- Facebook user 2: "wow that would be easy but the boys would think they are for them lol"
- Facebook user 3: "ramped up Zooper Doopers lol"
- Facebook user 4: "imagine if I had these at work instead of Zooper Doopers"

Facebook user comments are included at Appendix D to support both parts of the complaint.

2. Depiction of the product being consumed before or during swimming

The association of Skinny Freezers with summer, swimming, pools and beaches is a deliberate marketing strategy. This is evident in the imagery used in the marketing communications (included in Appendix C), and the description of the product on the company website which says that the product “CAN however hit the POOLSIDE, BEACHSIDE [...]”.

It is not always clear in the images whether the people holding the Skinny Freezers are in or beside the pool. There is certainly room for interpretation that they are in the pool. It is also clear in the pictures that the products have been opened and therefore there is a clear implication that they are being consumed. Furthermore, it is evident from some of the Facebook user comments that their interpretation, and subsequent intention, is to consume the product in the pool. For example:

- Facebook user 1: “for our next pool day”
- Facebook user 2: “when your pool gets fixed”
- Facebook user 3: “we need to find these and float in the pool”

Facebook user comments are included at Appendix D to support both parts of the complaint.”

The Code

The advertisement was reviewed against the Code, and in particular:

Section (3)(d) of the Content Code:

3. General provisions:
 - d. Safety

Alcohol Advertisements must not depict situations that might reasonably be interpreted as encouraging unsafe or dangerous practices or acts.

Section (4)(a)(i)(1) of the Content Code:

4. Alcohol-specific provisions:

- a. Young people
 - i. Alcohol Advertisements shall not:
 1. be directed at, or have a strong or evident appeal to, Young People;

Section (4)(h) of the Content Code:

4. Alcohol-specific provisions:

- h. Operation of vehicles, skilled activity, sport

Alcohol Advertisements may not portray Alcoholic Beverages in such a way as to associate the product with the operation of any vehicle or with any activity requiring a significant degree of skill, care or mental alertness, including sporting and physical activities.

Section (5)(1) – (3) of the Content Code:

5. Standards to be applied to the naming and packaging of Alcoholic Beverages

Without limiting the application of the other provisions in this Code, labels, graphics, artwork, brand names, packaging, containers and other marketing materials and techniques shall not:

1. have an appearance of special appeal to Young People by way of designs, motifs, cartoon characters or other devices that predominantly appeal to Young People;
2. lead to confusion with confectionary or soft drinks;
3. lead to confusion as to the alcoholic nature and/or alcoholic strength of the product;

The Advertiser's Comments

The Advertiser was contacted for comment on 16 July 2019. No response was received.

Panel's determination

The complaint was referred to three Panel members for review. The Panel determined:

1. The advertisement contravened sections (3)(d) and (4)(h), on the basis that the majority of the Panel believed that several of the Facebook posts suggested that consumption of the product before or after swimming, and while next to bodies of water, is appropriate. A Panel member commented that the Facebook user comments indicated that people had interpreted the ad as suggesting they consume them in the pool, with one comment stating "we need to find these and float in the pool." The majority of the Panel believed the consumption of the product in or around water was unsafe or dangerous.
2. The advertisement contravened section (4)(a)(i)(1) of the Content Code, on the basis that the advertisement was highly likely to have a strong or evident appeal to young people.
3. The advertisement contravened sections (5)(1) – (5)(3) of the Content Code, on the basis that the product would have strong appeal to young people, as it is very similar to the popular icy pole product Zooper Doopers, which a Panel commented are predominately marketed for children. A Panel member noted that given the appearance is very similar to Zooper Doopers, there is likely to be confusion over the alcoholic strength of the product.

The complaint is **upheld**.

Further action

The Alcohol Advertising Review Board requests the Advertiser remove the Facebook posts, and modify the product packaging in line with the Panel's concerns.