



Case Report

1	Case Number	0044/12
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	Print
5	Date of Determination	22/02/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

AFGC - Personality/Characters - AFGC - Personalities/Characters
Advertising Message - AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

Print advertisement featuring cartoon animals standing on a beach with jungle scenery behind them. The text reads, "Are you ready to ride the wild slide? The world's longest slip n slide. The Paddle Pop Adventure Park comes to Sydney these school holidays."

THE COMPLAINT

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

We believe this brochure is advertising Paddlepops to children and therefore breaches the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry Advertising Messaging

Participants will not advertise food and beverage products to children under 12 in media unless:

1. those products represent healthy dietary choices consistent with established scientific or Australian government standards.

And

Use of Popular Personalities and Licensed Characters

According to the Australian Guide to Healthy Eating ice creams are an extra food which should only be consumed sometimes or in small amounts. The Dietary Guidelines for Children and Adolescents in Australia state that care should be taken in relation to children's diets to consume only moderate amounts of sugars and food containing added sugars.

The use of the Paddlepop Lion which is a licensed character is against the 'advertising messaging' provisions of the RCMI.

As this advertisement does not "represent healthy dietary choices" and paddlepops are a product targeted to and of primary appeal to children please also assess this advertisement in respect to the AANA Code for Advertising & Marketing Communications to Children.

THE ADVERTISER'S RESPONSE

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

The complaint

The complaint claims that the flyer advertises food to children and breaches the Responsible Children's Marketing Initiative.

We comment as follows:

The RCMI requirements

The basic requirement under the RCMI Core Principles is that

Participants will not advertise food and beverage products to children under 12 in media unless:

those products represent healthy dietary choices, consistent with established scientific or Australian government standards

And

the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

*good dietary habits, consistent with established scientific or government criteria
physical activity.*

Media is defined under the RCMI as:

Media means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children. In regards to television, this includes all P and C programs; all programs where more than 50% of the audience is children under 12 years; plus those G rated programs that meet the criteria above as being designed for children.

In addition to the RCMI Core Principles, each participant to the RCMI develops its own action plan clearly setting out the way in which it will comply with the requirements of the RCMI. These company action plans are approved by the AFGC in order to comply with the Core Principles.

Unilever's company action plan specifically refers to a commitment not to market food to children aged under 6 years, and to only market food to children aged between 6 and 11 if the products follow the strict nutrient criteria as set out in both:

Fresh Tastes @ School NSW Health School Canteen Criteria; and

Unilever's global internal nutrient criteria as published in the peer-reviewed European Journal of Clinical Nutrition (Nijman CAJ et al 2006 EJCN. 1-11) and updated regularly.

Unilever is committed to high standards of responsible marketing across its food and beverage range and all of our advertising is carefully considered and assessed against our

core principles as defined in the “Unilever Global Principles for Responsible Food and Beverage Marketing”.

Nutritional values of Paddle Pops

Unilever is committed to helping people make healthy food choices and we continually work to improve the taste and nutritional quality of all our products.

Through our Paddle Pop range we offer families a treat option that is more nutritionally sound than many snack alternatives. Our core Paddle Pop range meets strict canteen guidelines in every state across Australia, contains less than 110 calories per serve, is 70% milk, is a source of calcium with each serve providing 10% RDI, is reduced fat, and contains no artificial colours.

Additionally Unilever has strict internal guidelines around marketing to children.

The core Paddle Pop range of Chocolate, Banana and Rainbow are all approved for sale in school canteens in every State and Territory in Australia as Amber products based on strict nutritional standards (Qld Smart Choices, NSW Fresh Tastes. Vic Go For Your Life, WA Star Choice, SA Right Bite). The products also meet the recently released National Healthy School Canteen Guidelines.

The products also meet the following accredited school canteen criteria for the sale of ice cream, milk-based ice confection products in Australian schools:

Healthy Kids (NSW)

FOCiS (QLD)

According to the Fresh Tastes @ School NSW Guidelines, Amber rated products are products which have some nutritional value and have moderate levels of saturated fat and/or added sugar and/or salt. Amber products can be included on school canteen menus subject to avoiding large serving sizes.

Paddle Pop products are sold in portion controlled single serve sizes of approximately 68g per serve.

We further confirm that the products meet Unilever’s global internal nutrient criteria as a product suitable for children.

Paddle Pop advertisements on television and internet were previously considered by the Advertising Standards Board in cases 75/10, 76/10 and 454/11. We note that issues were raised in relation to compliance with the Responsible Children’s Marketing Initiative in those cases. The Advertising Standards Board and an independent arbiter confirmed that the products do in fact satisfy all nutritional guidelines for advertising as a “healthy dietary choice”.

Unilever is dedicated to developing nutritionally balanced products and employs a number of in-house accredited dietitians and nutritionists to oversee the development of new products. The Paddle Pop product ensure that parents and children who want to have an ice cream / ice confection product will have a nutritionally approved option.

Not an advertisement for Food

The RCMI is intended to, and has the effect of, regulating the advertising of food and beverage products to children. The first consideration must therefore be whether or not a particular piece of advertising is in fact an advertisement for a food or beverage product. The present advertisement is an advertisement for an adventure park and does not make any direct reference to any food products apart from references to “Streets Paddle Pop” within the name of the “Streets Paddle Pop Adventure Park”.

All text contained in the advertisement relates to the adventure park and the advertisement does not contain any images of Paddle Pops or any call to action to purchase or consume a Paddle Pop.

Whether or not an advertisement is “advertising and marketing communication for food” depends on the definition and scope of “advertising and marketing communication”. The RCMI does not specifically define “Advertising and Marketing Communication”. The RCMI defines “Advertising or Marketing Communications to Children” by reference to the definition under AANA Code for Advertising and Marketing Communications to Children (“AANA Children’s Code”). It is appropriate to extend the definition of “Advertising and Marketing Communications” under the AANA Children’s Code to the same phrase under the RCMI. The AANA Children’s Code applies the same definition for “Advertising and Marketing Communications” as the AANA Code for Food and Beverage Advertising and Marketing Communications (“AANA F&B Code”).

The AANA Children’s Code and the AANA F&B Code defines “Advertising and Marketing Communications” as:

matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it, to a product, service, person, organisation, or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct; [or]

any activity which is undertaken by or on behalf of an advertiser or marketer for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct, but does not include Excluded Advertising or Marketing Communications.

An advertisement is therefore only considered “advertising and marketing communications for food” if the advertisement:

draws attention to food; and

does so in a manner calculated to promote or oppose directly or indirectly food.

The fact that the present advertisement clearly draws attention to an adventure park and does not contain any references to or images of food demonstrates that the advertisement does not draw attention to food, and is therefore not an advertisement for food.

We note the Board’s decision in determination 0388/10 with respect to advertising for the “RSPCA Approved” endorsement program. The “RSPCA Approved” advertisements were advertisements for the “RSPCA Approved” endorsement program for foods which are approved by the RSPCA. The advertisements contained imagery of eggs and pork products.

We note that despite the fact that the RSPCA program is a food endorsement program which indirectly promotes foods endorsed by the “RSPCA Approved” program, the Board determined that the advertisements were “not advertising food products and that the AANA Code for Food and Beverage Advertising and Marketing Communications does not apply”.

The determination in 0388/10 suggests that the Board’s view is that an advertisement is only an advertisement for food if it primarily draws attention to a food product.

We therefore submit that the use of the “Streets Paddle Pop” brand as part of the name of the “Streets Paddle Pop Adventure Park” event does not constitute an advertisement for food as it is an advertisement for an adventure park. The fact that there are no product images and no call to action to purchase or consume the food product further confirms this position.

On the basis that the flyer is not an advertisement for food, the RCMI and the AANA F&B Code do not apply.

Target Audience

Whilst we do not believe that this advertisement constitutes an advertisement for food, we recognise that an adventure park consists of children’s activities.

The advertiser’s intention was to advertise to parents an event that is suitable for children, and not directly to children themselves. This is reflected in the numerous controls put in place

to confirm parental consent and supervision at all times both in the purchasing of tickets and in the operation of the Adventure Park.

Firstly, where the flyer is distributed as a letterbox drop, the primary recipient is unlikely to be aged under 12 years of age. Where the flyer was distributed by hand, distributors were given specific instructions to only hand the flyers to parents.

We note the Board's determination in case 467/08 where the Board noted that the very nature of letterbox flyer marketing communications was such that the target audience would generally be parents despite the cartoon-style images on the flyer.

Given that the primary recipient of the advertisement is most likely an adult, particular themes and visuals were used to communicate that the event is suitable for children, particularly given the timing of the event during the school holiday period.

We note that the fact that an advertisement communicates that the advertised product or event is suitable for children, does not deem the advertisement to be directed at children. Secondly, the Adventure Park is promoted as a family event. Children under the age of 16 are not permitted into the Adventure Park unless accompanied by an adult aged over 18. Such age restrictions are communicated at the time of purchase of tickets.

Thirdly, credit card was the only accepted method of payment to purchase tickets to the Adventure Park. Children are therefore unable to purchase tickets to the Adventure Park without parental consent.

Encouragement of Good Dietary Habits and Physical Activity

As mentioned above, the advertisement is not an advertisement for food and therefore the RCMI does not apply in this instance. In any event, as a responsible advertiser, Unilever has, where relevant, sought to apply the principles of the RCMI.

Given that the advertisement is not an advertisement for food, the encouragement of good dietary habits is not immediately relevant to the advertising message. The advertisement does not encourage the consumption of any food. It is therefore irrelevant and unreasonable to suggest that an advertisement for a non-food product must be presented in the context of a healthy lifestyle that specifically and positively encourages good dietary habits.

The RCMI requires that advertisements for food encourage physical activity. Despite the present flyer not being an advertisement for food or bound by the RCMI, we note that the message is consistent with the principles of the RCMI by comprising numerous references to physical activities such as "jump, dive, bounce, run and slide". The advertised adventure park event is an outdoor event which inherently encourages physical activity for participating children.

Compliance with other relevant standards

Unilever is confident that the advertisement satisfies all requirements under all relevant standards relating to advertising to children. We note that no other issues were raised in the complaint. Should the Board consider that there are other serious issues to be considered, we request the opportunity to formally respond to those concerns.

Conclusion

We submit that we are not in breach of the terms of the Responsible Children Marketing Initiative.

Please contact me should you require any further information.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the AANA Advertiser Code of Ethics (the "Code"), the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (RCMI), the AANA Food and Beverages Advertising and Marketing Communications Code and the AANA Code for Advertising and Marketing Communications to Children.

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

The Board noted the complainant's concern that the advertisement breaches the RCMI because it is an advertisement directed primarily to children and because Unilever Paddle Pops do not represent a healthy dietary choice, and that it uses licensed characters.

The Board considered whether the advertisement met the requirements of the RCMI.

The Board first considered whether the advertisement is an advertising or marketing communication for food or beverages.

The Board noted the definition of advertising or marketing communication:

Marketing Communications means

a. matter which is published or broadcast using any medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it, to a product, service, person, organisation, or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct.'

In particular the Board noted that the definition includes any 'indirect' promotion of a product. In the Board's view the advertisement, although for a water park, is also, by use of the Paddle Pop lion references, an indirect advertisement for Paddle Pops.

The Board also noted that the advertisement was a flyer and that the RCMI applies to advertisements in Media. Media, for the purposes of the RCMI, 'means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.'

The Board noted that the advertisement was a flyer and was within the scope of the RCMI.

The Board noted that under the RCMI the relevant requirement is that the company not advertise food and beverage products to children under 12 in "media" unless those products represent healthy dietary choices.

The Board first considered whether the product is a healthy dietary choice.

The Board noted the advertiser's response that the Board had recently determined that Paddle Pops did represent a healthy dietary choice (0454/11). In that instance the Board noted the

independent arbiter's confirmation that the advertised product, Unilever Paddle Pops, does meet the requirements for a healthier dietary choice:

"...in terms of the nutrition criteria of the advertised products, they do comply with the nutrition criteria set out in the Fresh Tastes @ School NSW Healthy School Canteen Strategy and Unilever's own global internal nutrient criteria as published in Nijman et al (2007). The advertised products are therefore consistent with the nutrient criteria detailed in Unilever's Company Action Plan under the Australian Food and Grocery Council's Responsible Children's Marketing Initiative."

The Board then considered whether the advertisement itself, in accordance with the Scope of the RCMI (as set out above) is itself directed primarily to children. The Board considered that the advertisement was not published where the audience is predominantly children, nor was it published in a medium primarily directed to children.

The Board noted the features of the advertisement in particular, the cartoon style and the 'adventure park' references. In the Board's view the overall theme and content of the advertisement creates an advertisement which is clearly direct primarily to children.

The Board determined that the advertisement is primarily directed to children and that therefore the RCMI does apply.

As the advertised product is a healthy dietary choice, the RCMI permits such products to be advertised to children provided the advertisement meets specific requirements. The Board noted that the RCMI allows healthy dietary choices to be advertised to children provided that:

"...the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

- Good dietary habits, consistent with established scientific or government criteria
- Physical activity.

The Board noted the two requirements of this provision: encouraging good dietary habits AND physical activity.

The Board noted that the RCMI obligation is a positive obligation for the advertisement to 'reference or be in the context of a healthy lifestyle...through messaging that encourages good dietary habits.' The Board noted that although the Paddle Pop branding appears on the advertisement there is no depiction of the product and no mention of consuming the product. The Board considered that the advertisement did not discourage good dietary habits as it makes no mention of consumption and that in the context of this advertisement this did meet the requirements of the RCMI.

The Board then considered whether the advertisement referenced or was in the context of encouraging physical activity. In the Board's view the fact that the advertisement is for an

Adventure Park and shows animated characters using a slide amounts to a depiction which encourages physical activity.

The Board determined that the advertisement did meet the ‘Advertising Messaging’ requirements of the RCMI.

The Board also considered the provision of the RCMI relating to ‘Use of Popular Personalities and Characters’. The Board noted the images of the Paddle Pop lion in the printed material and considered that the use of the licensed character in an advertisement which did meet the ‘Advertising Messaging’ requirement of the RCMI was not a breach of the RCMI.

The Board determined that the advertisement did not breach the ‘Advertising Messaging’ and ‘Use of Popular Personalities and Characters’ provisions of the RCMI.

The Board then considered whether the advertisement complied with the AANA Code for Advertising and Marketing to Children (Children’s Code).

The Board determined that the advertisement is primarily directed to children (for the reasons stated above) and also determined that Paddle Pops are a product targeted towards and of principal appeal to children. On this basis the Board determined that the Children’s Code did apply to the advertisement.

The Board first considered whether the advertisement complied with section 2.1 of the Children’s Code which requires that ‘Advertising or marketing communications to children must not contravene Prevailing Community Standards.’ The Board noted that the advertisement is for a healthier choice product and that development of such products is positive. The Board considered that, while there is some concern among sectors of the community about whether or not such products should be advertised directly to children, in the Board’s view the advertisement presents a healthier product and does so in a responsible manner. The Board considered that advertising such products is not contrary to current prevailing community standards.

The Board also considered whether the advertisement complied with section 2.7 of the Children’s Code which requires that:

‘Advertising or marketing communications to children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers
- (b) Must not contain an appeal to children to urge their parents or carers to buy a product for them.’

The Board considered that the advertisement is designed to encourage people to purchase a ticket to the Paddle Pop Adventure Park but that it does not contain any explicit or inappropriate wording or context that would amount to a direct appeal to children to urge their parents to buy the product, Paddle Pop, for them. The Board determined that the advertisement did not breach section 2.7 of the Children’s Code.

The Board considered whether the advertisement complied with section 2.15 of the Children's Code. Section 2.15 requires that:

'Advertising or marketing communications to children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.'

The Board considered that the advertisement does not promote an inactive lifestyle or unhealthy eating habits. The Board determined that the advertisement does not breach section 2.15 of the Children's Code.

Having considered the other provisions of the Children's Code, the Board determined that the advertisement complied with the provisions of the AANA Children's Code.

The Board noted that the advertisement must also comply with the AANA Food and Beverages Advertising and Marketing Communications Code.

The Board determined that the advertisement did not contravene prevailing community standards (for the reasons above) and did not breach section 2.1 of the Food Code.

Having considered the other provisions of the Food Code, the Board determined that the advertisement complied with the provisions of the AANA Food Code.

Finding that the advertisement did not breach any of the Codes the Board dismissed the complaint.