



Case Report

1	Case Number	0511/15
2	Advertiser	Patties Foods Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	20/01/2016
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement features a family of four at home during an afternoon snack time occasion. The Advertisement begins with images of the mother in the kitchen removing a tray of Patties Party Pies from the oven. After inspecting the tray of Patties Party Pies, the mother calls out, "Daniel, Party Pies are ready". The Advertisement then cuts to the father of the family sitting in the family room who spontaneously bursts into the tune of "2001 A Space Odyssey". The mother and grandmother also join in singing the same tune. Their son, Daniel, then appears dressed as an astronaut and in slow motion, walks down the stairs to join the family. The family then sits down at the table to enjoy Patties Party Pies. The end voice over states "Patties Pies - The party pies they eat in outer space". The end frame of the Advertisement is inspired by the space theme and depicts a box of Patties Party Pies with the words "Best. Snack. Ever" which is also read out by the voiceover.

THE COMPLAINT

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

Patties Foods is a signatory to the Responsible Children's Marketing Initiative (RCMI). As a signatory to the RCMI, it has committed not to advertise its food products to children under 12 years in media unless those products represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in its Company Action Plan (CAP). In our submission the advertisement breaches the RCMI because: - 1. It is a communication directed primarily to children; 2. Party Pies do not represent a healthy

dietary choice consistent with established scientific or Australian government standards; and 3. It does not promote good dietary habits or physical activity. It is a communication directed primarily to children. According to the Patties Foods CAP, no Patties Foods are targeted at children and as such, its advertising is targeted at main grocery buyers. The CAP also states, 'Patties Foods does not, and will not, advertise the use of popular personalities, program characters and licensed characters to children under the age of 12'. Yet clearly this advertisement is directed primarily to children: • It features a child's voice, child directed language ("The party pies they eat in outer space" and "Best Snack Ever") and children's themes (outer space, astronauts and thumping the table in anticipation of food) that would appeal primarily to children. The music would also be incredibly engaging to young Star Wars fans. • Party pies, while also enjoyed by parents, are primarily a children's product commonly consumed at children's parties or as a snack or part of a children's meal. This is not an advertisement directed to main grocery buyers, the child's voice and children's themes appeal directly to children and will influence children to pester their parents to purchase the product for them. Given Patties Foods commitment not to use popular personalities, program characters and licensed characters to market to children under the age of 12 it is disappointing that it would try to avoid their commitments by dressing the child as astronaut, which is nevertheless clearly of primary appeal to children. Furthermore, this advertisement was broadcast on channel 7 during the movie Frozen, which was broadcast on 28 November 2015 at 7pm. It is well known that this has been the most popular movie among children in recent years. It is not a family movie, it is movie with themes, visuals and language directed primarily to children and would have been watched on channel 7 by large numbers of children. It therefore follows that the advertisement's content and placement was directed primarily to children. The party pies advertised do not represent a 'healthier dietary choice' consistent with established scientific or Australian government standards (S.I.I.a); According to nutrition information provided on the Patties Food website, Patties Party Pies contain 945 kilojoules, 7.6g of protein, 11.7g of total fat (including 6.1g of saturated fat) and 430mg of sodium per 100g. Two party pies would weigh approximately 100g and would likely be the minimum number of party pies consumed by a child as a snack or within a meal. While per serve information is provided on the website, based on a one party pie serve (48g), we consider this to be potentially misleading given the unlikelihood of a child consuming only one party pie as a snack or within a meal. With only 22% beef, this product is predominantly pastry, fat, additives and flavours. The Patties Foods' CAP states that while Patties Foods does not market its products to children it does have a range of products that meet the National Heart Foundation Tick of approval, yet Patties Party Pies are not listed as one of these products. It also states that it relies on standards developed under the Tick program as well as school canteen guidelines across a number of states (including Victoria) and independent scientific testing. No specific guidance on what it considers to be a healthier choice is provided. Clearly, this is not a healthier dietary choice for children on any measure. The Australian Dietary Guidelines recommend that children (and adults) limit their consumption of products such as these which are high in energy, fat (particularly those that are predominantly saturated fat) and sodium. According to the Australian Dietary Guidelines, total fat should not exceed 35% of total energy intake, yet the kilojoules from total fat in party pies comprises almost half of the total kilojoule content, and would contribute an excess amount of saturated fat to a child's diet. Furthermore, the Australia's Nutrient Reference Values recommend that children aged between 7 and 12 consume no more than 30g of total fat per day. Two Patties Party Pies would equate to over a third of this daily recommended limit. Under Victoria's School Canteens and Other School Food Services Policy, pastry based hot foods such as pies are classified as a red food for occasional consumption only. It does not promote good dietary habits or physical activity The advertisement features a family

of four sitting down to a snack or meal of approximately 15 party pies, or in other words, almost 4 party pies each. Clearly this is promoting over consumption of a product that does not represent a healthier dietary choice. In addition, there are no salad or vegetable foods on the table to promote good dietary habits. The advertisement does not in any way promote physical activity. Request for action We submit that this TV advertisement breaches the RCMI and ask that the Board require the advertiser to withdraw it from all TV schedules in Australia immediately.

THE ADVERTISER'S RESPONSE

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

Before providing a response to the substantive issue, Patties would like to confirm its dedication to uphold the relevant Codes. We also confirm that the audit of television advertising data for the 2015 RCM Initiative Annual Compliance Report (which includes March, July and December) has been completed by the Australian Food and Grocery Council. This report states that Patties was 100% compliant.

Codes

We submit that the Advertisement is not in breach of the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCM Initiative), the AANA Code for Advertising and Marketing Communications to Children (AANA Children's Code) or the AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code) (together, the Codes).

Our reasons are set out below.

RCMI Initiative

The Complaint is made under the RCM Initiative. It is our submission that the Advertisement is not directed primarily to children under 12 and accordingly, does not fall within the realm of the RCM Initiative.

The Advertisement would only be caught by the RCM Initiative if it could be considered that:

- the medium is directed primarily to children;*
- the medium attracts an audience share of greater than 35% of children (children are defined by the RCM Initiative as under 12 years of age); or*
- the Advertisement is directed primarily to children (irrespective of placement).*

We submit that neither of the above thresholds are met. The overall content of the Advertisement is not directed primarily to children and is directed to the grocery buyers of the household such as parents and/or guardians.

Medium is not directed primarily to children and does not attract an audience of greater than 35% of children

The Advertisement was featured on free-to-air television from 1 September 2015 until 2 January 2016. The media placement did not air during any C or P rated programs. The Advertisement has a CAD placement code of "W" which means "may be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children". We refer you to the enclosed Spot Schedule for the Patties Party Pies activation. You will note from the Spot Schedule that it is clear the media buy for the Advertisement was to the main grocery buyer, and included such programs as the Today Show, Revenge and the NFL.

We note that the complainant viewed the Advertisement during the coverage of the film Frozen which is a family film classified as Parental Guidance (PG). According to the Australian Classification Board, films that are classified PG are not recommended for

viewing by persons under the age of 15 without guidance from parents or guardians. Figures provided by AdQuest eTAM Analyzer show that only 17% of the audience share of Frozen were children 0 -12 years old.

We further note that the film Frozen aired at 7pm on a Saturday night which is prime family movie viewing time, whereby families would enjoy coming together to watch such films, in much the same way that the family is depicted coming together in the Advertisement, and hence why such viewing time was selected. The aim of the Advertisement was to bring to life a scenario that is familiar to all parents and guardians; a shared family snacking occasion, where the charming quirks of the individual members of the family are highlighted in how they interact together.

Advertisement is not directed primarily to children (irrespective of placement)

As per our RCM Initiative Action Plan, children are not the primary target market for the Patties brands. While our media mix changes from campaign to campaign, none of our media is, or will be, directly targeted at children under the age of 12.

The Advertisement was created specifically to target grocery buyers with children (aged 5 - 17). The key objective for this Advertisement was to deliver awareness and engagement to the grocery buyer that Patties Party Pies are a great snack for all people during a night in with the family. The rationale of the Advertisement was to create a family scenario that would resonate with Australian mothers and families.

The overall look and feel of the Advertisement and its theme, language and visuals were all used to create a spark with the main grocery buyer of "that's just like my family", and therefore not directed to children.

1. Theme

It is clear that the theme of the Advertisement is not directed primarily to children and instead depicts a family meal occasion. The Advertisement features a family setting with the mother, father, son and grandmother. There are no children's themes or characters depicted in the Advertisement, however Daniel has clearly been playing in his room and is dressed as an astronaut. We disagree with the Complainant's views that we are trying to avoid our commitments with respect to not using popular personality, program or licensed characters to market to children. The scenes depicted are scenes that are common to most family households, and not of principal appeal to children.

The assertion made by the Complainant that "Party Pies, while also enjoyed by parents, are primarily a children's product commonly consumed at children's parties or as a snack or part of a children's meal" is incorrect. Patties Party Pies are in fact consumed largely by adults in many different settings on many different occasions, including family and social events. The Advertisement shows that Patties Party Pies can be enjoyed by people of all ages, including adults (3 of the four people featured in the Advertisement are adults) in many settings and occasions, and a family meal occasion is one such occasion. It is a food item that brings three generations of a family together and not just for children.

2. Visuals

In our view, the Advertisement does not feature any animation or visuals that appeal to a child's imagination and sense of play and wonderment. We submit that the visuals of the family setting and household activity appeal to a broad audience. The inclusion of the entire family enjoying a Patties Party Pie is directed to the grocery buyer and not children.

Whilst we note that Daniel is wearing an astronaut's outfit, the Advertisement predominantly features the adults in the family or the entire family (not just Daniel). In the Advertisement, the adults are enjoying themselves and are all clearly looking forward to having a Patties Party Pie just as much as Daniel. The Advertisement is shown primarily through the adults' perspective, which is unlikely to appeal to children.

Daniel's obsession with space is an idea stemmed from the insight that parents, guardians

and families as a whole enjoy finding common interests and bonding over things that one family member may find interesting. One family member's keen interest in an activity or topic can generally bring the family together in a light-hearted way. In this execution, the obsession is space. We picked this as a theme that most families can relate to as it is a common topic taught at all levels of schooling, and many parents generally encourage extending the theme and learning throughout the family home.

3. Language

While the final voice over of the Advertisement is clearly Daniel, we submit that there is no call to action to children to purchase Patties Party Pies.

The use of the music ties in with the astronaut theme, and was carefully chosen as to not have principal appeal to children. The track selected for the Advertisement was most famously used in the movie "2001: A Space Odyssey" which was released in 1968. It is unlikely that children would be able to relate to this music track and its links to space as it was specifically chosen to resonate with adults who are able to make this link due to the cult status of this music and film. Additionally, the music is of a classical nature, which is unlikely to appeal to children. Finally, it is clear that only the adults in the family join in on the creation of the music.

The language and tone used in the tagline "Best. Snack. Ever." is commonly used by adults, particularly in social media, when used to describe something as being great. The use of full stops between each word deliberately conveys how an adult might talk when describing something in this way, when genuinely showing a liking of something, but wanting to jokingly exaggerate their reaction. Finally, we submit that the overt but vague superlative is clearly puffery and not a product claim of any sort.

AANA Children's Code and AANA Food Code

We note that the AANA Children's Code and AANA Food Code define children as 14 years or younger (in comparison to "under 12 years of age" in the RCM Initiative). Notwithstanding this difference, it is our submission that the Advertisement is not in breach of either the AANA Children's Code or the AANA Food Code for the same reasons as outlined above.

We further submit that the Advertisement does not undermine the importance of a balanced diet or healthy lifestyle or encourage excessive consumption by means contrary to prevailing community standards. While there are approximately 15 Patties Party Pies featured on the plate in the middle of the table, there is no suggestion that each Patties Party Pie is consumed (or that they are to be consumed equally among the members of the family).

Further, the family night in setting of the Advertisement provides that the consumption of the Patties Party Pies is under the supervision of adults and there is no evidence that Daniel is consuming a large quantity of the Patties Party Pies (the Advertisement only shows him taking one bite of a Party Pie and no more Party Pies are visible on his individual plate).

Conclusion

We submit that the Advertisement is not in breach of the Codes and the Complaint should be dismissed.

Patties Foods takes its responsibilities under the Codes very seriously and is committed to ensuring ongoing compliance. We are grateful to the Board for allowing us to respond to the Complaint and we look forward to hearing of the outcome. Patties thanks the Board for providing us with a further opportunity to respond to the Complaint.

While we re-iterate our submissions that the Advertisement was not directed at children and therefore not in breach of the Codes, our further responses to your queries are set out below. Patties Party Pies (the featured product in the Advertisement) achieves a 3 star rating under the Health Stars system (based on historical NIP values). However, the Health Stars system is not currently listed in Patties' Action Plan as Patties is currently transitioning to this system. Therefore, the Patties Party Pies may not "represent healthier dietary choices, consistent

with established scientific or Australian government standards, as detailed in Signatories' Company Action Plan”.

However, it is our view that the Advertisement does encourage good dietary habits, consistent with established scientific or government standards as per the Health Stars system. Finally, we submit that the Advertisement encourages physical activity demonstrated by Daniel playing in his room.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI). 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 advertises an unhealthy food choice to children and was aired in children's programming. The Board considered whether the advertisement met the requirements of the AFGC RCMI. The RCMI applies to advertising or marketing communications to children (under 12 years of age). The Board noted the RCMI Initiative provides that advertising or marketing communication activities are captured under the RCMI if they are: Content Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products Placement Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium. The Board also noted that the definition of Children in the Initiative means persons under 12 years of age. The Board first considered the programming in which the advertisement was broadcast. The Board noted the information provided by the advertiser outlining the program in which the advertisement had been aired. The Board noted that the program was the movie, Frozen, and that the advertiser's response stated that this movie had been rated 'PG' and was therefore directed at a family audience and not specifically at children. The Board acknowledged that a PG rated movie would attract a broad family audience but considered that most members of the community would agree that Frozen is a movie which is directed primarily at children. The Board also noted the information provided by the advertiser that the program in which the advertisement was broadcast did not have an audience where children represented 35 percent or more of the audience of the Medium. The Board noted however that the provision for placement is the programming and/or the audience and considered that although children represented 17% of the audience share for the Frozen movie, in the Board's view the movie is directed primarily at children so therefore the advertisement does fall under the RCMI with regards to Placement. The Board considered whether the Advertising or Marketing Communications, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products. The Board noted the dictionary definition of "primarily" is "in the first place" and that to be within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children under 12 years. The Board noted the theme of the advertisement and considered that a promotion of snack sized pies which can be cooked from frozen in the oven is not a theme which would be of principal appeal to children. The Board noted the complainant's concern over the use of the 2001 Space Odyssey theme and that this would be "engaging to young Star Wars fans". The Board noted that the child in the advertisement is dressed as an astronaut and considered that whilst the adults do hum along to the music in the Board's view 2001 Space Odyssey and the Star Wars movies are directed at a broad audience.

The Board noted the complainant's concern that by dressing the young boy as an astronaut the advertiser is trying to avoid their commitments to not use popular personalities, program characters and licenced characters. The Board noted that the boy's astronaut costume is home-made and considered that there is no obvious link to a specific program or licenced character but rather the boy is engaging in activity common amongst children by dressing up as an astronaut. The Board noted the overall space theme to the advertisement and considered that advertisers are free to use whichever theme they wish in an advertisement and in the Board's view the use of a space related theme in the current advertisement is not directed primarily to children. With regards to visuals the Board noted that the advertisement opens on a mother taking a tray of Patties Party Pies from a hot oven then calling out to her family that they are ready. The Board noted that the family members included a mum, dad, grandmother and young son. The Board considered that the inclusion of a child in an advertisement does not of itself make the advertisement attractive to, or of principal appeal to, children. The Board considered that the visuals of the advertisement are reflective of a normal household situation and that showing a mum cooking then serving food to her family does not amount to visuals which are directed primarily at children. With regards to the language the Board noted that the voiceover at the end of the advertisement, "the party pies they eat in outer space. Best snack ever!" The Board noted the complainant's concern that the use of a child's voice makes the advertisement attractive to children. The Board considered that the use of a child's voice does not automatically make the advertisement of principal appeal to children. The Board noted that the main audio in the advertisement is the music with the call to action being a minor part and considered that most members of the community would consider the advertisement to be primarily directed at the main grocery buyer who would likely have a family, including children, to feed. The Board determined that the advertisement is not directed primarily to children under 12, but that it does appear in media directed primarily to children and therefore does come within the AFGC RCMI. The Board noted that as the advertisement is directed primarily to children and includes the signatory's brand, it must comply with core principle s1.1 of the AFGC RCMI. S1.1 requires that Advertising and Marketing Communications to Children for food and/or beverages must: a. Represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in Signatories' Company Action Plan; And b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages: i. good dietary habits, consistent with established scientific or government standards; and ii. physical activity

The Board first considered whether the product is a healthy dietary choice. The Board noted that Party Pies are not listed under the Healthy Choice options on the advertiser's Action Pan. The Board noted that the advertiser had responded to say that the Party Pies are listed under the Health Star system as having 3 stars, but this system is not currently listed in Patties' Action Plan therefore the Party Pies do not represent healthier dietary choices consistent with the established scientific or Australian government standards as detailed in their Action Plan. Based on the information provided by the advertiser, the Board considered that the advertised product does not meet the requirements of a healthy dietary choice. The Board considered that the advertisement is advertised in media directed primarily to children and does not feature a healthy dietary choice and determined that the advertisement did breach S1.1 of the AFGC RCMI. The Board then considered whether the advertisement complied with all relevant provisions of the AANA Food and Beverages Code. The Board noted in particular Section 2.2 which states: "the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by

means otherwise regarded as contrary to prevailing community standards.” The Board noted that the advertised product is a party pie. The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle. The Board noted the AANA Food and Beverages Advertising and Marketing Communications Code – Practice Note which provides that: ‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’ The Board noted that the plate of party pies is shown being shared between family members and considered that the likely interpretation of the advertisement by the target audience of families of grocery buyer is that the product advertised is intended to be shared. The Board considered that the advertisement did not encourage excess consumption or otherwise undermine the importance of a healthy active lifestyle. The Board determined that the advertisement did not breach Section 2.2 of the Food Code. Finding that the advertisement did breach the AFGC RMCI, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Patties is committed to responsible marketing to children. We note that the Board upheld the Complaint in part on the basis that although the advertisement is not directed primarily to children under 12, Patties Party Pies did not represent healthy dietary choices, consistent with established scientific or Australian government standards, as detailed in Patties’ Company Action Plan and appeared in programming deemed by the Board to be directed primarily to Children. While Patties accepts the Board’s decision and will abide by it, it maintains that it did not deliberately set out to market to children as per its Action Plan. Patties re-affirms its pledge that none of its media is, or will be, directly targeted at children under the age of 12. In light of the Complaint, Patties will work further with its media buyer and the broadcasters to address this issue to prevent the Advertisement and future campaigns being screened at inappropriate times (where the television program is primarily directed to Children and not adhering to S1.1 of RCM Initiative). Additionally, Patties will provide more specific media briefs to its media buyer and provide further training to its marketing team.