



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0052-21</b>
<b>2. Advertiser :</b>	<b>Primo Foods</b>
<b>3. Product :</b>	<b>Food/Bev Groceries</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>14-Apr-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive  
AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption  
AANA Food and Beverages Code\4.1 Must comply with RCMI  
AFGC - Responsible Childrens Marketing Initiative\RCMI 1.1 Advertising Message

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features children in football uniforms with one girl rapping about the 'stackers' product. She continues rapping in the back of the car with two other children. One of the children is seen to hold a large stack of biscuits, cheese and meat.

### THE COMPLAINT

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

*Disguising that fact that processed meat is a carcinogen and definitely doesn't help with childhood obesity.*

*Should be advertising fresh fruit and vegetables*

*The commercial promotes Primo Stackers to children. The themes, visuals and language used primarily target children. There are no adults in the commercial; it just features kids singing a song in youthful language about processed meats. The advert is from the child's perspective.*

*Primarily targets children and promotes an unhealthy food product*



## THE ADVERTISER'S RESPONSE

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

*We write in response to your letter dated 1 March 2021 in relation to Complaint 0052-21 (the "Complaint") made in respect of a television advertisement for Primo Foods and their 'Stackers' product ("Product") (available in in 'Mild Salami', 'Leg Ham' and 'Chicken Breast' variations) (the "Advertisement").*

*Thank you for providing Primo Foods the opportunity to respond to the Complaint.*

*Primo Foods confirms its support for the Advertising Standards Community Panel and its commitment to ensuring that the marketing and advertising of Primo Foods products comply with the relevant laws, industry codes and initiatives.*

*We have set out for your understanding an overview of the Advertisement followed by our overall position and our responses to the specific issues raised in the Complaint.*

### *Advertisement Description*

*The Advertisement depicts a scene where a girl (approximately ten (10) years old) dressed in an Australian rules football uniform performs a hip-hop style 'rap' about the Product. The advertisement's opening scene is set on a sports football oval, where the girl is accompanied with four of her football team mates. The Advertisement transitions from the sports football oval to the back of the car where the girl continues her rap while sitting in between a boy (approximately six (6) years old) sitting in a high chair and another boy (of the same age) eating the Product. The Stackers rap is centered around the theme that the Product is a 'flavoursome snack' that is made up from 'meat', 'cheese' and 'crackers'. At the end of the Stackers rap the Advertisement finishes with the Primo Foods logo and super imposed images of three Product variants, 'Mild Salami', 'Leg Ham' and 'Chicken Breast' (in order from left to right). Copy located at the bottom of the screen, in the form of a Call-To-Action reads 'FIND US IN THE CHEESE AISLE'. The music throughout the advertisement is a modern hip-hop/electronic beat with a guitar riff that plays at the climax/end of the Advertisement. Overall, the tone of the Advertisement is 'fun' and 'playful'.*

### *B. Response to Complaint*

*Primo Foods is Australia's largest supplier of smallgoods and aims to help Aussie families, in the case of this ad, by highlighting food options from Primo Foods for consideration by busy, on-the-go grocery buyers.*

*Primo Foods respectfully does not agree with the complaints and does not believe there has been any non-compliance with any applicable Codes.*



*Primo Foods always bears in mind the Australian dietary guidelines and its products comply with all food health and safety requirements.*

*With respect to the complaints, it is not realistic to think that ham, chicken breast or salami (together with cheese and crackers) are not food options worthy of consideration.*

*The complainants have raised a number of issues that fall within the following Codes:*

*AANA Code for Advertising and Marketing Communications to Children (Children's Code)*

*AANA Food and Beverages Advertising and Marketing Communications Code (Food Code);*

*Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI); and*

*Australian Association of National Advertisers (AANA) Advertiser Code of Ethics (Code of Ethics)*

*(together, the Codes).*

*Set out below is our overarching response regarding the applicability of each of the Codes, together with our response on specific sections of the Codes raised by the Complaint:*

#### *Children's Code*

*The complainants have asserted that the Advertisement "primarily targets children". In order to determine whether the Advertisement targets children it will be necessary to address the AANA's definition of what is considered 'Advertising or Marketing Communication to Children'.*

*The Children's Code definition of 'Advertising or Marketing Communication to Children' states that:*

*"Advertising or Marketing Communication to Children means Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product."*

*The accompanying Practice Note to the Children's Code outlines an objective test based on several factors in order to determine whether the Advertisement has been "directed primarily to children" (in this case under 14 years of age). The Practice Note further outlines that 'it is not the intent of the AANA for the Children's Code to apply to advertising or marketing communication which is directed at adults or older children, or advertising or marketing communication that may be seen by children, but is not directed primarily to them'. The factors are:*



*Primarily  
Nature of the product or service  
Theme of the marketing communication  
Child's perspective  
Visuals  
Language  
Age of actors and characters; and  
Call to action*

*In consideration of the above factors Primo Foods submits that the Advertisement fails to satisfy the test for an advertisement or marketing communication which is "directed primarily to children".*

*The Advertisement was produced and advertised for the purposes of primarily targeting the grocery buyer, specifically being parents purchasing food items for their children. The Advertisement received a 'W' CAD classification, and therefore cannot be broadcast during Preschool (P) and Children's (C) programs or adjacent to Preschool (P) or Children's (C) periods. It is not possible for the Advertisement to appear during broadcasting periods that target children, otherwise it would be in breach of the Commercial Television Industry Code of Practice. Considering that Primo Foods primary target audience for the purpose of the Advertisement is the grocery buyer, 70% of the Advertisement's broadcasting activity has appeared on free-to-air networks (Seven, Nine, Ten and SBS) during times between 6PM-10:30PM. The remaining 30% of the Advertisement's broadcasting activity has appeared during programs that did not primarily target children. The 6PM-10:30PM time slot is suited and predominantly catered towards an adult audience, and certainly does not "primarily" target children. This can also be supported due to the fact that complainants viewed the Advertisement at 7:40PM and 8:55PM respectively. Furthermore, one of the complaints was made during the program 'Married at First Sight', which is not suitable for children's viewing. In consideration of the above, the media placement of the Advertisement does not give any opportunity for children to be "primarily targeted", but rather has been broadcast in times to support the Advertisement's aim of targeting parents of children who are grocery buyers.*

*While the Advertisement contains young actors (approximately between six (6) to twelve (12)) and adopts a 'young and fun' tone, the perspective and main connection the Advertisement creates is with parents. The child actors are dressed and presented in a way that is 'cute' and 'familiar', which prompts parents to put their own children in the shoes of the child actors. Parents can relate to taking their children to weekend sports and driving cars with children in the back seat, and children singing about the things they enjoy and coming up with creative routines. Throughout the active and energy fuelled day that a child has, the Product will serve as a great "tasty" snack that the children will enjoy. These sorts of snack foods are typically purchased, packed and organised by parents. In addition, the colours and lighting of the Advertisement are subdued with low contrast and soft colours and the images portrayed are realistic and everyday, and not animated. In comparison, typically an advertisement specifically*



*attempting to 'capture' a child's attention would incorporate bold and bright colours or animated elements.*

*The language used in the Advertisement as a hip-hop style 'rap' is fun and entertaining and made for all ages to enjoy. It is a common marketing tool for advertisers to use jingles, rhymes, songs or raps to capture the audience's attention. There is nothing in the dialogue to suggest that the characters are communicating their message specifically to a child audience. Primo Foods considers that the language used in the Advertisement is catered towards all ages and does not intend to specifically target children or adults. The mere appearance of children, or the use of themes that may be of interest to children and adults, does not support a finding that the Advertisement is primarily directed to children. Rather the overall themes and language used are those that adults and grocery buyers can relate to. The product itself is suitable for both children and adults.*

*The final shot of the Advertisement contains the Call-To-Action 'FIND US IN THE CHEESE AISLE'. Clearly this communication is targeted towards grocery buyers to help indicate where the Product can be found in a grocery store. The 'CHEESE AISLE' is an area that is familiar to grocery buyers, not children.*

*Primo Foods submits that the Advertisement is directed primarily at grocery buyers, and based on the above factors it cannot be concluded that the Advertisement is directed 'primarily' to children. Due to the fact that the Advertisement fails to satisfy the definition of 'Advertising or Marketing Communication to Children', it will not be necessary to consider the sections contained within the Children's Code as it does not apply. We would submit however that in any case, we do not consider the Advertisement to be in breach of the Children's Code.*

*Primo Foods also submits that this result would be consistent with the Panel's previous determinations. Specifically, in O190/17, the Panel determined that the Children's Code did not apply to Bulla Dairy Foods' advertisement (billboard), despite the advertisement featuring children in combination with their advertised ice-cream products. The advertisement featured an image of young children holding up Bulla Dairy Foods ice-creams with the text, "unfakeable fun". In assessing this complaint, the Panel's report stated:*

*"The Board noted the names of the three varieties of Bulla ice-creams depicted and considered that while Fairy Bread is a food product directed primarily at children and therefore the Fairy Bread flavoured variety would be appealing to children, in the Board's view Custard Tart and Cookies & Cream are both flavours which would be of appeal to people of all ages and are not primarily for children."*

*"The Board noted that the advertisement features an image of two children, each holding an ice-cream, with a third hand visible, also holding an ice-cream and considered that featuring children in an advertisement does not necessarily mean that the advertisement is directed primarily to children."*



*“The Board also noted that the product being promoted is a pack of 6 ice-creams, not a single ice-cream. The Board considered that the promotion of a bulk purchase is generally associated with a call to action to the main grocery buyer.”*

*“Overall the Board considered that although the advertisement would be appealing to children, in its view the advertisement is not directed primarily to children.”*

#### *Food Code*

*The complainants have asserted that the Advertisement “doesn’t help with childhood obesity” and “promotes unhealthy food”.*

*Section 2.1 of the Food Code will be relevant to consider in relation to the complainants’ assertions.*

*“2.1 Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits”*

*The Advertisement does not mislead or deceive the viewer in any way with respect to the representations and or claims made within the Advertisement. No claims are made regarding the nutritional content or ‘healthiness’ of the Product. The script of the Advertisement describes the Product as ‘packed with flavour’ and a ‘real food snack of meat cheese crackers’. None of the aforementioned claims support any assertions that the Advertisement misleads or deceives viewers.*

*Section 2.2 of the Food Code will be relevant to consider in relation to the complainants’ assertions.*

*“2.2 Advertising or Marketing Communication for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as 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 Product is sold in small ‘snack’ sized quantities (45-50g), that contain four (4) crackers, four (4) slices of cheese and four (4) slices of meat. It is intended to serve as small portion food to ‘snack on’ in between main meals, therefore Primo Foods submits that the Advertisement does not encourage excess consumption of the foods contained within the Product. The Product manages to provide a diverse dietary offering and contains foods that cover two (2) of the five (5) essential food groups of the Australian Dietary Guidelines (grains/cereals and milk/yoghurt/cheese). While the Australian Dietary Guidelines do note that eating processed meats should be limited,*



*the quantity of meat contained in each Product variant is reflective of this recommendation while also contributing to the product being a 'good source of protein'. At one part of the Advertisement one of the children is shown with a number of slices stacked, however we submit that this is in the context of fun, and in the sense of playing with the Product's ability to stack, and be transported and consumed easily. There is no suggestion that any one child is to eat all of those items and no encouragement of this.*

*The Advertisement and its central narrative is focused around a 'sports' theme, where the main character is dressed in an Australian rules football uniform and is with her team on the sports football oval. The aforementioned scenes strongly and clearly promote imagery of a 'healthy and active' lifestyle among children. Instead of 'undermining the importance of healthy or active lifestyles', the Advertisement in fact does the opposite through representing children as playing sport on a grass roots level and being a part of a team. In consideration of the above, Primo Foods submits that the Advertisement does not fall in breach of Sections 2.1 or 2.2 of the Food Code.*

*Based on Primo Foods submission that the Advertisement shall not be considered as 'Advertising or Marketing Communication to Children' as per AANA criteria, for the reasons set out above under the Childrens Code, Section 3 of the Food Code will not apply, and therefore shall not be considered for the purposes of this Complaint.*

*Section 4.1 of the Food Code will be relevant to consider in relation to the complainants' assertions. Primo Foods response in relation to aforementioned section shall be addressed in the following paragraph, under 'RCMI'.*

#### *RCMI*

*In order to determine whether the Advertisement must comply with the RCMI it will be necessary to consider the definition of 'Advertising or Marketing Communications to Children' under the RCMI. The RCMI considers that Advertising and Marketing Communications to Children occurs when:*

*"The theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products";*

*"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*

*"Children represent 35 per cent or more of the audience of the Medium".*

*In consideration of element (a), Primo Foods submits that the 'theme, visuals and language used' are not directed 'primarily' to Children (in this case under 12 years of age). Similar to the reasons considered above under the Children's Code, Primo Foods have developed and produced the Advertisement to be primarily targeted towards grocery buyers, specifically being parents purchasing food items for their children. The overall theme intends to resonate with parents the most, as the Product is placed in a*



*context where parents can relate in providing snacks to their children who are 'active' and full of 'energy', and arranging suitable snacks for them that they can transport easily to sports and other activities. While the tone of the Advertisement is 'fun' and 'playful' the visuals or language used does not suggest that the Advertisement is targeted towards any demographic in particular. The language used in the Stackers rap is made to be engaging, entertaining and memorable, however it is not constructed in a way that attempts to 'relate' to children (through slang, modern/trending words, etc.) or target them specifically and there is nothing to suggest that the characters are communicating to children.*

*In consideration of element (b), Primo Foods submits that the Advertisement received a 'W' CAD classification, and therefore cannot be broadcast during Preschool (P) and Children's (C) programs or adjacent to Preschool (P) or Children's (C) periods. Furthermore, 70% of the Advertisement's broadcast activity has appeared on free-to-air networks (Seven, Nine, Ten and SBS) during times between 6PM-10:30PM. The remaining 30% of the Advertisement's broadcast activity has appeared during programs that did not primarily target children.*

*In consideration of element (c), based on the Advertisement's broadcast activity stated above, Primo Foods submits that the Advertisement has not been broadcast in a medium which attracts an audience share of more than 35% of children.*

*Based on the above assessment, Primo Foods submits that the Advertisement fails to satisfy RCMI's definition of Advertising and Marketing Communications to Children, and as a result the RCMI does not apply.*

*Primo Foods also submits that this result would be consistent with the Panel's previous determinations. Specifically, in 0082/19, the Panel determined that the RCMI did not apply to Kellogg's advertisement (TVC). Despite the advertisement featuring children in a tree house that are playing with and eating the advertised product, LCMs (choc chip), the Panel concluded that the overall impression is to be assessed in determining whether an advertisement is directed primarily to children. In assessing this complaint, the Panel's report stated:*

*"The Panel noted the advertiser's response that the concept of the advertisement was to appeal to parents and grandparent's desire to bring joy to their child/grandchild and that the advertisement is shown from the grandmother's perspective, not the children's."*

*"The Panel considered that the overall theme of a grandparent looking after her grandchildren, the nostalgic value of the inclusion of Benita Collins and the call to action directed to the grocery buyer all amounted to an advertisement which was, through themes, visuals and language, attractive to both adults and children but not directed in the first instance to children under 12."*

*In any case we do not consider there to have been a breach of the RCMI given that the Product is featured in the context of an active and sporty lifestyle, and the Product*





*itself offers a range of nutritional benefits as set out above in our comments under the Food Code.*

#### *Code of Ethics*

*Notwithstanding all of the above, if the Panel were to assess whether the Advertisement breaches any section of the Code of Ethics, Primo Foods considers that the Panel would find that no such breach has occurred. Sub-sections of Section 2 of the Code of Ethics relate to, (2.1) discriminating against or vilifying a person or section of the community; (2.2) sexual appeal of minors or sexual appeal used in an exploitative/degrading manner; (2.3) the portrayal of violence; (2.4) sex, sexuality and nudity; (2.5) language; (2.6) Prevailing Community Standards on health and safety; and (2.6) distinguishability as advertising. Primo Foods confirms that in its view the Advertisement does not breach any of these sub-sections.*

#### *Summary*

*In summary, the Advertisement fails to meet any criteria to determine that the Advertisement is 'primarily directed towards children' for the Children's Code, Section 3 of the Food Code and RCMI to apply. Primo Foods have developed and produced the advertisement specifically to primarily target grocery buyers. This is strongly supported by the Advertisement's CAD classification and media placement in combination with the Advertisement's overall theme and marketing communication. All provisions of the Codes that may be considered by the Board to be applicable (except for those which do not apply) have been considered for the purpose of this Complaint and Primo Foods submits that the Advertisement does not fall in breach of the Codes in any event.*

*Primo Foods submits that the Complaint should be dismissed in its entirety and thanks the Panel for the opportunity to respond to the Complaint.*

#### *Additional response*

*We note that in your email you have indicated that the Panel has considered the complaints made in respect of our Primo Foods 'Stackers' TVC ("Advertisement"), and has indicated a preliminary view that the Advertisement satisfies the criteria of the Responsible Children's Marketing Initiative ("RCMI") and therefore is an 'Advertising or Marketing Communication to Children' for the purposes of the RCMI. As per your previous email we understand that that this was "primarily due to the Advertisement's placement in the movies Boxtrolls and Matilda". We note that further information on the reasoning or discussion was provided at this time. We confirm the Advertisement was not placed during or adjacent to C and P programs nor did the programs receive 35% or more of children viewership. It is possible that the Panel assumed that the movies 'Boxtrolls' and 'Matilda' are programs directed primarily to children with respect to "their themes, visuals and language' and for this reason the RCMI has been applied. We note that further information has been requested and we welcome the opportunity to provide further supporting material which we consider to be important for making a final determination.*



*Primo Foods would like to kindly request that the Panel consider the application of the RCMI in light of all of the relevant supporting information and facts, and reconsider this issue based on the following additional information and reasoning:*

*Our research reveals that 'Boxtrolls' and 'Matilda' are movies of the 'Family/Comedy' genre (see attached search extracts in support of this), which implies that while the movie is expected to contain children's themes, it is primarily made to appeal to a broader family audience where adults (particularly parents) can watch and enjoy the film equally as much as children. The Classification Australia website has classification records of both 'Boxtrolls' and 'Matilda' with a PG rating (Parental Guidance). In addition to the movies' PG rating, Boxtrolls specifically cites "Mild themes, violence and infrequent coarse language" (<https://www.classification.gov.au/titles/boxtrolls-1>), and Matilda specifically cites "Low level violence" (<https://www.classification.gov.au/titles/matilda-3>). The Classification Australia website states that the PG rating "may contain content that children find confusing or upsetting and may require the guidance of parents, teachers or guardians" and that "PG-rated content is not recommended for viewing by people under the age of 15 without guidance from parents, teachers or guardians". In consideration of the above, due to the fact that Classification Australia does not recommend children (under 15, let alone under 12) to view the relevant movies without parental guidance it cannot be determined that the films are primarily targeted towards children because this would fall in direct conflict with Classification Australia's rating categories.*

*Primo Foods would like to highlight that the above classification of the relevant movies falls consistent with the viewership statistics, which we have compiled for these movies over the period in question and attach for reference. These statistics demonstrate viewing figures that were well below the 35% threshold (Matilda – only 18%, viewership of children under 12 and Boxtrolls – only 19%, viewership of children under 12).*

*Furthermore, the broadcast times of the movies were after 6pm (Matilda at 7:20pm and Boxtrolls at 6:50pm), which strongly supports the targeted viewership of a broad demographic (including predominantly adults) to suit the PG classification and 'Family/Comedy' genre. These were not in C or P programming, rather they formed part of the overall media placement strategy which was directed to adults and grocery buyers.*

*Primo Foods respectfully submits that the relevant movies do not meet the 'directed primarily to children' criteria under the RCMI and that parents/guardians are the predominant targets, are also attracted to the content and form a predominant portion of the expected (and actual) viewership towards the movies as children.*

*While Primo Foods are not of the position that the RCMI applies in the assessment of the Advertisement's complaint, we acknowledge and understand Ad Standards' request to provide evidence demonstrating that a 'healthier dietary choice' representation in the Advertisement for the purposes of the RCMI. The relevant nutrition criteria that Primo Foods has adopted to determine whether the Primo Stackers products are a 'healthier dietary choice' is the Australian Dietary Guidelines ("ADG"). The Primo Stackers products meets the five principal recommendations of the ADG as per the following:*



*Guideline 1 - To achieve and maintain a healthy weight, be physically active and choose amounts of nutritious food and drinks to meet your energy needs: The Advertisement depicts young active and healthy kids focused around a 'sports' theme, where all young actors are dressed in an Australian rules football uniform. The tone and imagery of the Advertisement strongly and clearly promotes a 'healthy and physically active' lifestyle among children. The Advertisement depicts children playing sport on a grass roots level outside of school, which helps teach kids healthy habits of being physically active to look after one's body. The Primo Stackers products serve as an energy fuelled snack to replenish energy levels of physically active people throughout the day.*

*Guideline 2 - Enjoy a wide variety of nutritious foods from these five groups every day: The Primo Stackers products (of crackers, meat and cheese) manages to provide a diverse dietary offering and contains foods that cover two (2) of the five (5) essential food groups of the ADG (grains/cereals and milk/yoghurt/cheese).*

*Guideline 3 - Limit intake of foods containing saturated fat, added salt, added sugars and alcohol:*

*While the ADG notes that eating processed meats should be limited, the quantity of meat contained in each Primo Stackers product is of a substantially small quantity, and is consistent with the 'limit intake' recommendation. The Primo Stackers products are advertised and marketed as a 'snack' product and are only available to consumers in small quantities (45-50g) to serve as a small snack in a limited portion.*

*Guideline 4 - Encourage, support and promote breastfeeding: N/A*

*Guideline 5 - Care for your food; prepare and store it safely: N/A*

*In moving forward with this case, Primo Foods will ensure that additional precautionary measures are taken concerning future media placement for this particular Advertisement. We sincerely thank Ad Standards for giving us an opportunity to directly respond and participate in the deliberation process of this complaint.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the AFGC RCMI) or the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainants' concerns that the advertisement:

- promotes Primo Stackers to children as the themes, visuals and language used primarily target children. There are no adults in the commercial; it just features kids singing a song in youthful language about processed meats. The advert is from the child's perspective.
- primarily targets children and promotes an unhealthy food product.



- is disguising that fact that processed meat is a carcinogen and definitely doesn't help with childhood obesity.

The Panel viewed the advertisement and noted the advertiser's response.

### **Is this advertisement directed primarily to Children?**

The Panel noted that the Food Code defines Advertising or Marketing communications to Children as 'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product.'

The Panel noted that Children's Food or Beverage Product is defined as 'any food or beverage product (other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code) which is targeted toward and has principal appeal to Children.'

The Panel noted that Children is defined as 'persons 14 years old or younger'.

#### Is the theme of the advertisement directed primarily to children?

The Panel considered the theme of the advertisement is eating the product as a snack after a busy day of sport. The Panel considered that while the theme of sport may be attractive to children, the concept of an easy snack which could be eaten on the go is a concept which would appeal to parents and caregivers whose children participate in out-of-school activities.

The Panel considered that the theme of the advertisement would be mainly attractive to adults and was not directed primarily to children under 14.

#### Is the language of the advertisement directed primarily to children?

The Panel considered that the fast rap style of the advertisement and the language used, such as 'stacks of fun', was easy to understand and would be attractive to children. The Panel considered that the direction 'find us in the cheese isle' was more directed to adult grocery buyers than children.

The Panel considered that overall the language used in the advertisement would be equally attractive to both children and adults and was not directed primarily to children under 14.

#### Are the visuals of the advertisement directed primarily to children?

The Panel considered that the advertisement featured children who had been playing sport and then who were in the backseat of the car. The Panel considered that the use of children would attract the attention of children, however the setting and visuals



would also be familiar to parents and caregivers who take their children to sporting activities.

The Panel considered that the visuals in the advertisement were equally attractive to both adults and children and were not directed primarily to children under 14.

Is the content of the advertisement overall directed primarily to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is directed primarily to children.

The Panel considered that the overall advertisement would be attractive to children, particularly through the use of children actors and the rapping, fast-paced language. The Panel also considered that the theme of an after activity-snack option would be one which was primarily appealing to parents.

The Panel considered that the advertisement, through themes, visuals and language, was attractive to both adults and children but not directed in the first instance to children under 14.

Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are directed to adults and children the Panel determined that the advertisement was not directed primarily to children under 14.

As the advertisement was not directed primarily to children, Section 3 of the Food Code and the AANA Children's Code do not apply.

**AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).**

Food Code 2.1 Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

The Panel noted the complainants' concern that the advertisement is disguising that fact that processed meat is a carcinogen and definitely doesn't help with childhood obesity.



The Panel noted the advertiser's response that the advertisement does not make any statements about the healthiness of the product, and that all statements made are factual.

The Panel noted that the advertisement clearly stated the contents of the product, including processed meat, and that the advertisement was not designed to mislead or deceive.

The Panel noted that Australian Dietary Guideline 3 suggests that intake of processed meat should be limited and are in the 'discretionary foods' category as: "Processed and cured meats can be high in added salt and saturated fat and are not recommended as substitutes for unprocessed meat."  
(<https://www.nhmrc.gov.au/file/10001/download?token=Of-SfTH2>).

The Panel considered that the advertisement makes no statement about the snack being healthy or which would mislead people about the contents of the product. The Panel also noted that there was no suggestion that the product should be consumed in quantities outside of Australian Dietary Guidelines. The Panel considered that there was no requirement that advertisers of processed meats make any statements regarding the product being potentially a carcinogen, and that failure to include this statement is not misleading or deceptive.

#### Section 2.1 Conclusion

The Panel determined that the advertisement was not, and was not designed to be, misleading or deceptive and did not otherwise contravene Prevailing Community Standards, and did not breach Section 2.1 of the Food Code.

Section 2.2 Advertising or Marketing Communication for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as 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 Panel noted the complainants' concerns that the advertisement was promoting an unhealthy product.

In particular, the Panel noted the scene where one child was seen to be holding a large stack of the product and considered whether this could be considered to be promoting excess consumption.

The Panel noted the advertiser's response that the serving size of the product was limited and the scene showing the large stack is in the context of fun, and there is no suggestion or encouragement that any one child is to eat all of those items.



The Panel noted the setting portrayed: that there are three children in the back of the car, and presumably an adult driving. The Panel noted it appeared that the child was holding a stack of about twelve biscuits with cheese and salami and this was an equivalent of about three packets of the product. The Panel considered that this amount would not be in excess of what could be reasonable consumed by the people in the car, and as such was not disproportionate to the settings.

The Panel acknowledged that some members of the community would prefer products of certain nutritional status not to be advertised, however considered that the depiction of these products in itself is not a depiction which undermines the importance of healthy balanced diets.

### Section 2.2 Conclusion

The Panel determined that the advertisement did not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered to be excess consumption through the representation of portion sizes disproportionate to the setting portrayed. The Panel determined the advertisement did not breach Section 2.2 of the Food Code.

Section 4.1 - Advertising or Marketing Communication for Food or Beverage Products, other than fresh fruit or vegetables, must comply with Schedule 1 of the RCMI, where applicable.

The Panel noted that this was an advertisement for food and beverages and therefore must comply with Schedule 1 of the AFGC RCMI.

### **The Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the AFGC RCMI)**

The Panel first considered the provisions of the AFGC RCMI.

The Panel considered the definition of advertising or marketing communications to children within the RCMI. The definition states that '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.' Under this initiative children means "persons under the age of 12 years of age."

The Panel noted the RCMI provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication is, having regard to the theme, visuals and language used, are directed primarily to children (and are for food and/or beverage products) or



2. The placement of the advertisement or marketing communication is in a medium that is directed primarily to children, i.e.:

a. in relation to television, all C and P rated programs and other rated programs that are directed primarily to children through their themes, visuals and language; and/or

b. where children represent 35 percent or more of the audience of the Medium.

Point 1: Is the content of the advertisement directed primarily to children?

With regards to point 1, the Panel considered the theme, content and visuals of the advertisement. The Panel noted the dictionary definition of “primarily” is “in the first place” and that to be within the AFGC RCMI the Panel must find that the advertisement is aimed in the first instance at children under 12.

As discussed above, the Panel considered that the themes, visuals and language of the advertisement were not directed primarily to children under 14, and the Panel considered that this decision did not change when considering children under 12.

Point 2: Is the advertisement in a medium that is directed primarily to children?

The Panel noted the advertiser’s response and evidence that the advertisement had not played in programming with an audience of over 35% children.

The Panel noted the advertiser had provided a spot list of all the programs the advertisement had appeared in and considered that the majority of programs would be directed primarily to adults or families, and were not targeted directly to children under 12.

In particular, the Panel noted the advertisement had been played in two movies, ‘Matilda’ and ‘Boxtrolls’. The Panel noted the advertiser’s response that these movies are targeted to a family genre and would be appealing to both adults and children, and not primarily to children under 12.

A minority of the Panel considered that the overall theme and visuals of both movies would be primarily attractive to children under 12, and although they may be watched by adults with children, this would not be the primary audience.

The majority of the Panel considered that the movie ‘Matilda’ was quite old and would have a nostalgic appeal for people who had first watched it as children and who were now adults. The majority of the Panel considered that ‘Boxtrolls’ was a PG rated film with stop-motion animation as opposed to computer-generated cartoon imagery and this would likely also be attractive to older children and adults.

Overall, the Panel considered that the advertisement did not have an audience of over 35% children under 12, and, as discussed above, the themes, visuals and





language of the shows the advertisement was played in were not directed primarily to children under 12.

#### **AFGC RCMI Conclusion**

Finding that the advertisement did not meet points 1 or 2 of the Initiative the Panel considered that the Core Principles of the RCMI did not apply to this advertisement.

#### **Food Code Conclusion**

The Panel determined that the advertisement did not breach Sections 2.1 or 2.2 of the Food Code.

As the RCMI does not apply to this advertisement, the Panel determined that the advertisement did not breach Section 4.1 of the Food Code.

#### **Conclusion**

Finding that the advertisement did not breach the AFGC RCMI or the Food Code the Panel dismissed the complaints.