



Case Report

1	Case Number	0089/14
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	09/04/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

Website for Paddle Pops: www.paddlepop.com.au

THE COMPLAINT

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

The website breaches the Responsible Children's Marketing Initiative (RCMI):

In summary, the website breaches the RCMI because: -

4. It is an advertising and marketing communication for food/beverages (S1.1);

5. It is directed primarily to children (S1.1);

6. Paddle Pop products do not represent a healthier dietary choice consistent with established scientific or Australian government standards (S1.1(a));

7. It does not reference healthy lifestyle through messaging that encourages good dietary habits (S1.1(b)(i) or physical activity (S1.1(b)(ii)).

The advertising communication for food and/or beverages is directed primarily to children:

The new RCMI covers "advertising and marketing communications" which include any material published or broadcast in any "medium". The definition of "medium" expressly includes "internet sites", a definition which has been expanded from the current RCMI's predecessor (March 2011), which covered only third-party internet sites. The Paddle Pop website is, on any analysis, an "internet site", which has been created by, or on behalf of, the advertiser, to promote products.

As well as containing interactive games, the website promotes “products” with animated pictures of Paddle Pops (chocolate, rainbow, vanilla, banana, icy twist, cyclone) depicted with large bites taken out of them. The launching page (or homepage) for the site prominently displays a “featured product” of a chocolate paddle pop: “choose a chilled chocolate paddle pop next time you’re looking for a treat!” Clearly the website is an advertising and marketing communication, within the meaning of the RCMI, which is for “food and/or beverages”.

When regard is had to the themes, visuals, and language used, the website is obviously a marketing communication directed primarily to children, providing childish cartoons, adventure themes, dinosaurs, animals and games. It is understood the advertiser accepts that this material is aimed directly to children, consistent with its submission in response to a complaint about similar material on television (decision 0410/13) where it noted: “We agree that the TVC for the Paddle Pop Trop-o-saurus Slime (Product) is a marketing communication directed primarily to children.”

The Paddle Pop Products advertised on the site do not represent healthier dietary choices: Paddle Pop products have previously been found to represent “healthier dietary choices”, which the advertiser considers appropriate for advertising to children within the standards set out in its Company Action Plan (CAP) (decision 0410/13). We submit that this should not preclude consideration of the issue, where the accepted scientific evidence and Australian Government recommendations around consumption of sugar are not consistent with the advertiser’s position. The National Health and Medical Research Council, through the Australian Dietary Guidelines 2013 (Guidelines) recommends avoiding foods and drinks high in added sugars, and the Dietary Guidelines for Children and Adolescents in Australia recommends the consumption of only moderate amounts of sugars and foods containing added sugars, as excessive consumption is a risk factor for obesity.

A rainbow Paddle Pop contains almost 20% sugar, delivering 13.5g (3 teaspoons) of sugar per serving. Other Paddle Pop products featured on the site include Cyclone, Trop-o-saurus and Icy Twist, which contain even higher levels of sugar and/or contribute no valuable nutrients to children’s diets whatsoever (apart from water). That is, they are energy dense and, particularly in the case of the ‘icy-pole’ style products like the Cyclone, are nutrient poor. These are features that are characteristics of unhealthier choices, not healthier choices.

The Guidelines note that foods with a higher energy density encourage energy intake above requirements and tend to be highly palatable, which is associated with increased food intake in single-meal studies. Sugar is positively associated with energy density, while water and dietary fibre are negatively associated (Guideline 1.3). A small, persistent energy imbalance is enough to cause excess weight gain in both children and adults. These high sugar foods, particularly those contributing no nutrients such as Paddle Pop Cyclones, are precisely the kind of food that the Guidelines suggest be minimized as part of a healthy diet.

Australian School Canteen Guidelines have been previously argued strenuously by the advertiser to be determinative on the issue of whether Paddle Pops are a “healthier choice”. This is not decisive on the issue, however, as the dietary guidelines assess products by reference to energy per serve which means that small serving sizes are rated “amber” and are acceptable within schools, even when they are for products that are very energy dense or high in sugar. Products like Paddle Pop Cycle which add significant quantities of added sugar to the diet cannot reasonably be considered to be “healthier” choices unless “healthier” simply means “healthier than eating a larger portion of this product”.

In considering what products are “healthier”, we submit that the advertiser and the Board must consider that currently around 25% of children and adolescents are currently overweight or obese. Overweight in childhood is linked to heightened risk of overweight and

obesity in adulthood. Obesity, in turn, is a leading risk factor for diabetes, heart disease and several types of cancer including endometrial, oesophageal, gallbladder and bowel. This means

Australia's children face a future of high rates of non-communicable disease and disability related to overweight and obesity and it is not consistent with current evidence to define high sugar products, particularly those contributing no nutrients such as Paddle Pop Cyclones, as "healthier choices".

To maintain the advertiser's position that sugary products represent "healthier choices", regardless of serving size, would run contrary to current research, government recommendations and the health and interests of Australian children. Paddle Pops should not be consumed by children on a regular basis. Paddle Pops provide few valuable nutrients (especially the water and sugar based ones like Cyclone and Tornado) and are higher in sugar than many other snack choices. When evidence shows that most Australian children's diets do not contain enough fresh foods such as fruits and vegetables which are needed for good health, yet their diets are often too high in sugar, the term "healthier dietary choices" should be defined by reference to the healthy fresh foods missing from many children's diets. On the basis of the government standards set out in the Dietary Guidelines, discussed above, Paddle Pops should not reasonably be considered a healthier dietary choice within the meaning of the RCMI.

The advertisement does not promote good dietary habits or physical activity:

Even in the case of products that (unlike Paddle Pops) represent healthy dietary choices, the RCMI provides the advertiser may only promote the products to children if 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, and physical activity.

The website does not reference healthy lifestyle messages as required under the RCMI. The Board has previously noted, in its decision 0454/11, that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, this advertiser does not do.

Relevantly, the Board has also previously found that the mere suggestion of "adventure" in advertising does "not amount to an implication or encouragement of physical activity" (decision 0454/11). Consistent with that precedent, it is submitted that although the website and games show fictional characters swinging between trees and around dinosaurs may promote "adventure" this does not meet the test of positively promoting participation in actual physical activity to children. Further, there is nothing in the marketing website to effectively promote good dietary habits. The marketing website therefore breaches the RCMI. Breach of the Australian Association of National Advertisers Food and Beverage Code (AANA Code):

Further and in the alternative, we submit the website breaches the AANA Code, which applies to commercial messages in media (including the internet), and provides that advertising shall not contravene "Prevailing Community Standards". The website is a platform over which the advertiser has control, which draws the attention of the public in a manner calculated to promote a product (Paddle Pop).

Children are vulnerable consumers and are susceptible to advertising, particularly advertising featuring, fantasy, adventure, animals, activities or other themes that appeal to children's imagination. Marketing through websites and interactive games is of particular concern because children may not perceive the promotional or commercial nature of the communication, as they lack the experience and cognitive ability necessary to interpret

advertising messages critically (see Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. and Dowrick, P. 'Report of the APA Task Force on Advertising and Children. Washington, DC: American Psychological Association, February 20, 2004).

Australian children spend significant amounts of time engaged in online activities, often unsupervised. Children may be engaged in the games on the site or the associated app referred to on the website ("Rise of the Lions", which rated on the iTunes store for ages 9+) for significant periods, reinforcing young children's positive brand associations and preferences.

Community standards are generally understood to be norms bounding acceptable conduct. We submit the Paddle Pop website contravenes prevailing community standards by promoting food items that are not healthy dietary choices to children using beguiling, interactive activities, when evidence shows this type of marketing influences their food preferences and diets. The saturation of kids' recreation time by commercial interests promoting unhealthy products when many Australian children fail to eat enough healthy foods, is certainly the type of poor conduct contemplated by the AANA Code.

The use of licenced characters is particularly concerning in light of the known impact these marketing devices have on food preferences and diets. (see coverage of latest research on impacts of licenced characters in food packaging: <http://www.cass.city.ac.uk/news-and-events/news/2014/january/is-tony-the-tiger-making-you-fat>)

Conclusion:

The website breaches the RCMI and / or the AANA Code and we ask that the Board require the advertiser to remove the Paddle Pop website immediately.

THE ADVERTISER'S RESPONSE

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

Our Response

Please refer to www.paddlepop.com.au, our website that is subject of the complaint. For your reference, we also enclose screen-shots of the website pages that are relevant to the complaint as Annexure A –D to this response.

Marketing communication directed primarily to children

Unilever is a responsible advertiser and confirms its commitment with the RCMI. We agree that the website is a marketing communication directed primarily to children.

Under our RCMI commitment, marketing communication such as the website can be directed at children, provided it represents products that are healthy dietary choices and that the marketing communication references, or is in the context of, a healthy lifestyle through messaging that encourages good dietary habits and physical activity.

As a responsible advertiser, Unilever regularly reviews our websites and their content; and strives to continuously improve and enhance all aspects in compliance with its internal guidelines and also its commitment to the RCMI.

Consequently, as a part of our 2013/2014 review and update of the website, Unilever has

initiated communications with its digital agency regarding further enhancements to the positive healthy eating and physical activity messaging contained on the website, which will include but may not be limited to:

Visibly placing the “clear and positive...encouragement of a healthy life style” (Case Report 0410/13) on-screen messages of “paddle pops should be enjoyed as a treat within a balanced diet” and “true heroes balance energy intake and activity” on every page of the website to encourage good dietary habits and physical activity in children visiting the website. We note to the Board that this has been initiated and is currently live on the website;

Including in the character descriptions, references to the characters’ favourite healthy food and activity; and

Creating a pop-up message that will interrupt a user where they have been on the website for more than 15-20 minutes. This message will be a positive message that encourages the user to engage in outside play.

We have also reviewed the content of the product page on the site to ensure that it is fully compliant with our RCMI obligations and will be making some adjustments to this page also
2.2 Paddle Pop ice-cream products do not represent a healthier dietary choice consistent with established scientific or Australian government standards

Unilever is committed to helping people make healthier food choices. 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 portion controlled and more nutritionally sound than many other comparable treats.

Our Unilever Sustainable Living Plan target to have 100% of our Paddle Pop products contain 110 fewer calories per portion by 2014 has already been achieved. In addition, as part of Unilever internal nutritional guidelines for products children’s ice cream products, the entire Paddle Pop range also complies with the following criteria:

110 calories or fewer per portion;

less than 3g saturated fat per portion; and

less than 20g added sugar per 100g.

Compliance with the nutrition criteria above constitutes a healthier dietary choice within the ice cream category. We recognise the Australian Dietary Guidelines 2013 classification of ice creams as an occasional food which is why we refer to the products as a treat to be enjoyed occasionally and in moderation.

To illustrate our commitment to offering families a healthier dietary choice comparative to other treats on the market, we note that our iconic Paddle Pop brand has also recently been reformulated so the Chocolate, Caramel and Banana Paddle Pop core range (Paddle Pop Core Range) contain an average of 34 per cent less saturated fat per serve as well as an average of 27 per cent less kilojoules per serve.

The Paddle Pop Core range contains less than 110 calories per serve, is reduced fat,

provides a source of calcium and contains no artificial colours. The Paddle Pop core range also meets strict canteen guidelines in every state across Australia.

Unilever has strict internal guidelines around marketing to children. Unilever's Company Action Plan under the RCMI 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 meet 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 is updated regularly.

In support of our submission that the Paddle Pop range is a healthier dietary choice compared to other treats and snacks, we note that the Paddle Pop Core range complies with Unilever's global internal nutrient criteria as published in Nijman et al (2007), and as detailed in Unilever's Company Action Plan. The Paddle Pop Core range, Icy Twist and Tornado meet nutrition criteria set out in the Fresh Tastes @ School NSW Healthy School Canteen Strategy. We note that the Trop-o-saurus slime has been noted by the Board to be a healthier dietary choice in Case Report 0410/13. Paddle Pop Cyclone is the only product of the Paddle Pop range which doesn't meet the Fresh Tastes @ School NSW Healthy School Canteen Strategy.

Although the Paddle Pop Cyclone meets the aforementioned Unilever internal nutrition guidelines, understanding that does not meet the stricter Fresh Taste @ School NSW Healthy School Canteen Strategy, Unilever has removed this variant from the Paddle Pop Products Page (the only page it features in), as a part of its ongoing review and enhancement of the website.

Unilever submits that apart from the 'Featured Products' box on the landing page (which only displays the Chocolate Paddle Pop), the only other page where the other Paddle Pop products can be viewed is on the Products Page. Unilever notes that for complete transparency, we make available nutrition and ingredient information on the entire Paddle Pop range so as to allow the grocery buyers to make an informed decision when purchasing suitable treat option for children. Unilever notes that careful consideration was given as to the placement of the products on the Product Page whereby Unilever consciously displays the Paddle Pop Core Range before other variants, and has designed the page so that the viewer has to manually scroll across the page to view the other variants (Annexure A). Similarly, we have arranged it so that the Chocolate Paddle Pop is the only Paddle Pop that is on the "featured products" box on the landing page.

Unilever understands that as the website is marketed primarily to children, it is likely that children will view the Products Page as part of their navigation of the website. However, we wish to note to the Board that our analysis of site traffic and behaviour shows that out of the 5 million (5,098,701) total number of website views during the period March 2013 to March 2014, only 0.6% of the website views were of the Products Page.

Regardless, in line with Unilever's commitment to helping people make healthier food choices, we state our clear and positive message, "True heroes balance energy intake with activity. Enjoy Paddle Pop as a treat within a balanced diet" in conjunction with all product

nutrition information on the Products Page, as well as elsewhere on the site, to positively encourage a healthy lifestyle and good dietary habits (Case Report 0410/13) of our website visitors (Annexure B).

We note that through our efforts in creating healthier dietary treat choices, the Paddle Pop Core Range 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, WA Star Choice, SA Right Bite as well as the National Healthy School Canteen Guidelines). The Paddle Pop core range also meets the following nationally accredited school canteen criteria for the sale of ice cream, milk-based ice confection products in Australian schools:

Healthy Kids Association (NSW); and

FOCiS (QLD).

We refer to the complainant's reference to the sugar content of the products featured on the website. We submit that it is more appropriate to have regard to the sugar content of the Product per serve. We note that the nature of Paddle Pop products is that they are sold in a portion controlled single serve size in the range of approximately 53-92g, dependent on the product concerned. Based on the controlled single serve of the Product, it is unlikely that consumers consume more than one single serve of the Product consecutively. For this reason, we believe that the Product ought to be profiled based on the nutrient content per serve, rather than regarding the percentage sugar content of the Product in isolation. This is consistent with all school canteen criteria in Australia and consistent with the requirement that Amber products are to be portion controlled in order to be sold in schools.

We submit to the Board that, as one of the few ice cream or ice confection products in Australia that are approved for sale in school canteens, the Paddle Pop Core Range are in fact lower in sugar per serve than many other higher calorie ice cream choices, as well as many other milk-based treat and snack products and, therefore, is a healthier dietary option. We note that the nature of Amber rated products is that these products should be 'selected carefully', should not dominate the menu and should be avoided in large serve sizes. Amber products may be sold in schools and should be eaten less often than Green foods and as part of a balanced diet.

In support of the above, we refer to the Boards' previous considerations of Paddle Pops in relation to compliance with the RCMI in Case Reports 0410/13, 75/10 and 76/10 where the Board did not have any concerns in relation to the products' compliance with the relevant standards. In particular, we refer to Case Report 0410/13 and 0454/11 where the Board accepted that the variations of Paddle Pop under consideration in those decision, as well as the Paddle Pop Core Range, did in fact meet the requirements for a healthier dietary choice and that Unilever's development of a healthier choice of the Paddle Pops "is positive".

Unilever is dedicated to continuously developing nutritionally balanced products and employs a number of in-house Accredited Practising Dieticians and Nutritionists to oversee the development of new products. The Paddle Pop Core Range ensures that parents and children who want to have an ice cream / ice confection product will have a nutritionally approved option.

We therefore submit to the Board that Paddle Pop, as an occasional treat, are in fact lower in sugar and saturated fat per serve than many comparable treat choices and are therefore a healthier dietary option.

Website does not promote healthy dietary habits or physical activity

Healthier Dietary Habits

We submit that the website does promote healthier dietary habits in the following ways (Annexure C):

The only other reference to a Paddle Pop product outside of the Products page is in the 'featured product' box located on the landing page, where it refers to the Paddle Pop as 'treat':

"Choose a Chilled Chocolate Paddle Pop next time you're looking for a treat!" (Emphasis added).

We submit that the word 'treat' is indicative and supportive of the idea that the product would be consumed occasionally, rather than, as suggested by the Complainant, as an entire meal, on a regular basis or that it should be consumed in excess (Case Report 0410/13). We note that the Board has consistently considered that advertising "snacks" and "treats" does not of itself amount to the undermining of important messages around healthy eating, balance diets or active lifestyles (for example see Case Reports 0190/13, 1258/13, 0229/11 and 0443/10) and that the provision of a special "treat" on an irregular basis to a child would not encourage or promote an inactive lifestyle or unhealthy eating habits (Case Report 0443/10);

One of the characters featured on the website, "Spike", is shown to be eating apple which has a big bite taken out of it;

We positively show the message "paddle pops should be enjoyed as a treat within a balanced diet" and "true heroes balance energy intake and activity":

o Throughout the Lick-A-Prize page initially and now on every page of the website following our recent review and enhancement of the website; and

o On the nutritional panel of all the products on the Products Page (Annexure B).

We reference Case Report 0410/13 whereby the Board considered that this message is a "clear and positive ...encouragement of a healthy lifestyle and would encourage good dietary habits";

We openly display the nutritional characteristics of the Paddle Pop products displayed on the 'Products' page where the sugar and fat content is clearly disclosed so that grocery buyers can make an informed choice when purchasing an appropriate treat option for children; and

We positively reference our commitment to the RCMI, despite at the time of its creation the website did not fall within the ambit of the RCMI, by noting that "Content [of the website] is consistently being updated, with a focus on promoting healthy lifestyles, and good dietary

choices” in the FAQ section of the website.

Physical Activity

We submit that the website encourages physical activity through the 5 ‘Active Adventure’ videos which depict undergoing a number of physical indoor and outdoor activities, as well as through the imaginative play encouraged through the online adventure games and videos.

The website contains a video section where visitors can view a series of videos entitled “Active Adventure”. Each Active Adventure episode features a boy participating in and instructing viewers on various forms of indoor and outdoor physical activity such as indoor rock climbing and using outdoor playground equipment, encouraging children visiting the website to participate in both structured sporting activities and also general outdoor play (Annexure D).

In conjunction with the physical and outdoor play which is portrayed through the Active Adventures videos, we submit that the online adventure games and videos also positively encourage physical activity through imaginative play. In each online adventure, the child imagines that they are the character in the game or video and runs and jumps through various obstacles and terrains to navigate and complete each adventure. All aspects of the games and videos illustrate obvious scenes of physical activity. We refer to the Board’s decision in Case Report 0410/13 whereby the Board noted that “physical activity did not have to be portrayed as structured or formal sporting activity but participating in outdoor play and imaginative play was a positive message encouraging children to take part in physical activity” (emphasis added). Furthermore, in the same decision, the Board noted that the fact that a medium “depicted and described an adventure did amount to encouragement of physical activity.”

AANA Code

We refer to the complainant’s reference to AANA Code, clause 2.1 of which states:

"Advertising or Marketing Communications 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."

With regards compliance with clause 2.1 of AANA Code, we would like to note that in Case Reports 0410/13, 55/10 and 0443/10 the Board affirmed that it “...is not yet community standards that treat foods should not be advertised at all”. As such, the website, through the mere depiction of the Products via the Products page, cannot be said to contravene prevailing community standards.

With regards to the other clause of the AANA Codes, Unilever does not think they apply in this instance.

Unilever is actively committed to and conscious of its obligations under the AANA Codes and the RCMI, and we aim for best practice in this regard. We submit that our website is

reviewed and updated each year to ensure compliance with not only our own strict internal guidelines but also these instruments, being aware of the changing community standards with regards to advertising to children.

We are conscious this is the first year that advertiser's own websites fall within the ambit of the RCMI and note that Unilever has been, and will continue to be, committed to make further additions to the website to ensure that it's compliance with the new obligations under the AANA Codes and the RCMI.

Unilever's Company Action Plan

Finally, we would like to draw attention to Unilever's Company Action Plan, in which Unilever explicitly states that: "Our aim is to help parents and their children make healthier and more informed choices". Under the Company Action Plan, Unilever also actively seeks to promote good dietary habits and physical activity:

"Advertising Messaging .1 Only advertising food and beverage products to children under 12 which meet the Fresh Tastes @ School NSW Healthy School Canteen Criteria AND Unilever's global internal nutrient criteria;

Advertising Messaging .2 Such advertising to children under 12 will be used to support, or will portray, good dietary habits and / or physical activity".

Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever's Legal, Nutrition and Corporate Relations Departments to critique all advertisements to ensure compliance with legal and ethical considerations.

Conclusion

Unilever is pleased to have had the opportunity to respond to this complaint and confirms its support for the Board and its commitment to both the RCMI and AANA Code.

For the reasons stated above, we submit that the website:

- 1. Represents healthier dietary choices, consistent with established scientific or Australian government standards, and as detailed in Unilever's Company Action Plan; and*
- 2. Encourages good dietary habits, consistent with established scientific or government standards; and physical activity.*

We submit that the website therefore complies with both the RCMI and AANA Code and the complaint should therefore be dismissed in its entirety.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Kids Code), the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code), and the AFGC Responsible Children's Marketing Initiative of the Australian Food

and Grocery Council (AFGC RCMI).

The Board noted the complainant's concern that the advertisement breaches the RCMI because it appeared in media directed primarily to children, is an advertisement directed primarily to children and because there are some Paddle Pop products that do not represent a healthy dietary choice within the meaning of the RCMI.

The Board noted that it had previously dismissed complaints regarding television advertisements for Unilever (0454/11 and 0410/13) however the specific products differ to those on the current website.

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

The Board firstly considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that previously under the AFGC RCMI the advertiser's own website did not fall within the definition of media that could be considered by the Board. However, changes to the RCMI effective from 1 January 2014 has broadened its coverage to include these sites and therefore the relevant requirement is that the company does not advertise food and beverage products to children under 12 in 'media' unless those products represent healthy dietary choices.

Medium is defined as: 'Television, radio, print, cinema, internet sites'.

The Board noted that the medium the subject of complaint includes the entire website, including interactive games, and that this now falls within the scope of the AFGC RCMI.

The Board noted the RCMI Initiative 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, ie:
 - 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.

The Board noted Core Principle 1.3 which states:

'Signatories must ensure that any interactive game directed primarily to children which includes the signatory's food and /or beverage products is consistent with s1.1.'

The Board noted that s1.3 requires that the Board consider whether the 'communication activities are, regardless of the audience, clearly directed primarily to children under 12'.

The Board considered the theme, content and visuals of the entire website including the interactive games. 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. The Board considered the theme of the advertisement (playing interactive games Dinoterra), the visuals (animated movies, characters and games) and the language used (character animation in connection with text and voices of heroes and villains).

The Board noted that the advertisement is featured on the advertiser’s website page for Paddle Pop (www.paddlepop.com.au). The Board noted that the website includes interactive games that involve different themes such as Dino Charge, Dino Flight and Dino Roar.

The Board noted that the website gives sign in/registration instructions, that provide the player with a nickname and password. The Board considered that this level of signing in is good practice but does not, in this instance affect whether or not the interactive game is directed primarily to children and does not prevent the playing of games if the player has not registered.

The Board considered that the website is clearly directed primarily to children under 12 and that the first part of s1.3 is satisfied.

The Board noted that the website has a products page that features paddlepop flavours and paddlepop icy twist but noted that the entire website features the paddlepop Lion and other characters and that this factor means that the signatory’s food product brand is included in the interactive games and that it must therefore comply with the second component of s1.3.

The Board noted that as the interactive game 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 the advertiser’s response that the advertised products that are included on the website under the products tab do meet the requirements of the company action plan for a healthier dietary choice. The Board noted the advertiser’s response that the Paddle Pop Cyclone was removed from the website as it did not meet the relevant company criteria.

Based on the information provided by the advertiser, the Board also noted that the

independent arbiter is required to provide confirmation about the nutritional integrity of the product with regard to whether the product meets the requirements for a healthier dietary choice:

The Board noted the independent arbiter's comments:

“in terms of the nutrition criteria of the advertised products, the products currently featured on the Dino Terra website 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. 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 RCMI.”

On the basis of the confirmation by the Independent Arbiter that the products meet the criteria for a healthier choice product, the Board considered that the product is a healthier dietary choice and is permitted to be advertised to children under 12.

The Board noted the complainant's concern that there are other Paddle Pop products that would not meet the healthier choice criteria but are associated by brand. The Board noted that as these products do not appear on the website, it is beyond the scope of the Initiative and the Board's charter to consider these products as part of the current matter.

The Board then considered whether or not the advertising and/or marketing communication activities, reference, or are in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:

Good dietary habits, consistent with established scientific or government standards; and

Physical activity

The Board noted that that requirement is a positive obligation on the advertiser to ensure that the advertisement encourages both good dietary habits and physical activity.

The Board noted the change to the RCMI effective from 1 January 2014 that specifically states that the marketing communication activities reference or are in the context of, a healthy lifestyle, designed to appeal to children (rather than the intended audience) through messaging that encourages:

Good dietary habits, consistent with established scientific or government standards; and

Physical activity

The Board acknowledged that there is considerable difficulty for advertiser's on a website platform to reflect this type of messaging and considered that in this matter there was sufficient information around good dietary habits.

The Board noted that the website, incorporates on-screen messages of “Enjoy Paddle Pops as a treat within a balanced diet” and “true heroes balance energy intake with activity” on every page of the website. The Board noted that the messaging is written in simplified language that could be understood by children.

The Board then considered the issue of physical activity.

A minority of the Board considered that the content of the website with games and infrequent content that specifically encouraged children to take a break or go and do exercise was not sufficient to meet the threshold test of messaging that would encourage physical activity.

However, the Board carefully considered the games and associated material on the site. The Board noted that the activity itself of playing the game on the computer was not a game that required a lot of physical activity per se.

The Board considered the advertiser's response and noted that there are measures in place to ensure that players were not spending excessive amounts of time on the site and to encourage a change in activity by including a pop-up message that will interrupt a user when they have been on the website for more than 15-20 minutes.

The Board considered that the games themselves did not have to include intense physical activity for the player but that the message that the games were delivering was a positive message. A majority of Board considered that consistent with a previous case for Paddle Pop (ref: 0410/13), the physical activity depicted did not have to be portrayed as a structured or formal sporting activity, but that participating in outdoor play and imaginative adventure play was a positive message that encouraged children to take part in this style of play away from the online environment.

The Board considered that the fact that the website depicted and described an 'adventure' that it did amount to encouragement of physical activity in line with the requirements of the RCMI.

The Board further considered the provision of the RCMI relating to "Use of Popular Personalities and Characters". The Board noted the images of the Paddle Pop Lion throughout the website 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 Communications to Children. The definition of what is 'advertising and marketing communications to children' in the AANA Children's Code is largely the same as that in the RCMI. For the same reasons noted above, the Board considered that this advertisement is primarily directed to children.

The Board noted that for the provisions of the Children's Code and Part 2 of the AANA Food and Beverages Code to apply the product must also be a children's product. "Product" is defined in the Children's Code as meaning;

"goods, services and facilities which are targeted toward and have principal appeal to Children".

The Board noted that it had previously dismissed complaints regarding a television advertisement for Unilever, (ref: 0410/13) and noted that in that advertisement, the ice confection was considered under the provisions of the Children's Code as it was considered to be for product.

Consistent with the above, the Board determined that although Paddle Pops are not only consumed by children, it is a snack that is targeted toward and has principal appeal to Children and accordingly meets the definition of Product.

The Board agreed that in this instance the advertisement was directed to children, that the product is of principal appeal to children and therefore that the provisions of the Children's Code and of Part 3 of the AANA Food and Beverages Code are applicable in this case.

The Board considered whether the advertisement complied with Section 2.14(a) of the AANA Code for Advertising and Marketing Communications to Children. Section 2.14(a) states 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 determined that promoting the consumption of Paddle Pop as a snack as part of a balanced diet is not of itself encouraging or promoting unhealthy eating habits and that the advertisement does not promote an inactive lifestyle.

The Board considered that the advertisement did not breach section 2.14(a) of the Children’s Code or any other provision of the Children’s Code.

The Board lastly noted section 2.2 of the Food Code which provides that: ‘advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...’

Consistent with previous decisions, the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising Paddle Pop is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.

The Board also noted 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 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

‘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 it had dismissed complaints regarding the website for Lion – Yogo (ref: 0075/14) and noted that in that case the website showed messages regarding eating Yo-go as part of a healthy balanced diet rather than the promotion of the product as an everyday meal option. The Board agreed that this website was indicative and supportive of the idea that Yo-go would best be consumed as a snack rather than as the entire meal or that it should be consumed in excess.

Consistent with the decision above, the Board considered that the advertising or promotion of flavoured Paddle Pops is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board also considered that there was nothing in the advertisement which suggested or promoted excess consumption.

The Board determined that the advertisement did not undermine the promotion of a healthy balanced diet and did not encourage excess consumption and therefore did not breach Section 2.2 of the Food Code.

The Board determined that the advertisement did not breach Section 2.2 or any other provision of the AANA Food Code.

Finding that the advertisement did not breach the advertising messaging requirements of the AFGC RCMI, the Children’s Code or the Food Code, the Board dismissed the complaint.