



## Case Report

1	Case Number	0117/17
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/04/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards  
Food and Beverage Code 2.2 - healthy lifestyle / excess consumption  
Food and Beverage Code (Children) 3.2 encourage excess consumption  
RCMI 1.1 - Advertising Message AFGC - Advertising Message

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a box of Kellogg's Coco Pops in a shopping trolley. The box bursts open and the Coco Pops fly out and form a steering wheel and drives the trolley to the mild aisle before transforming to a hand which takes a container of milk from the shelf and places it in the trolley. The Coco Pops then transform back in to a steering wheel to drive to the checkout before going back in the box. We then see a woman at the checkout reach to take the milk and Coco Pops out of the trolley to pay for them, followed by an image of milk being poured in to a bowl of Coco Pops. A male voiceover says, "Coco Pops and milk. Just like a chocolate milkshake. Only crunchy".

### THE COMPLAINT

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

*We are writing to complain about an advertisement for Coco Pops that is featured on the Kellogg's Australia YouTube channel and has been broadcast extensively on free to air television since March 2016.*

*As you are aware, Kellogg's Australia Pty Ltd is a signatory to the Australian Food and*

*Grocery Council (AFGC) Responsible Children's Marketing Initiative (RCMI), has agreed to be bound by this initiative and has submitted a Company Action Plan to the AFGC, which is publicly available on the AFGC website.*

### *Breaches of the RCMI*

*We submit that this advertisement breaches Core Principle 1.1 of the RCMI. In our view, this advertisement for a food product falls within the jurisdiction of the RCMI in that it is featured on an internet website and therefore is covered by the RCMI definition of 'medium.'*

#### *1. Advertising or Marketing Communications to Children*

*The RCMI defines 'Advertising or Marketing Communications to Children' as communications which, having regard to the theme, visuals and language used, are directed primarily to children. The term 'children' is defined to include persons under 12 years of age.*

*We submit that this advertisement is clearly communication directed primarily or 'in the first instance' to children under the age of 12 years. This conclusion has been drawn with reference to the following factors:*

*Storyline/theme and visuals - The advertisement draws the viewer into a fast-paced and exciting animated scene, drawing upon a child's sense of imagination. These animations are highly evocative and are likely to attract the attention of children, in that the contents of the cereal box cause the box to shake before exploding out to form a steering wheel and later a giant hand. The Coco Pops box and the milk bottle are brightly coloured, as is the Coco Pops box that features at the end of the ad, depicting the Coco Pops monkey.*

*Language and child's perspective – The only language used in the advertisement is the Coco Pops jingle - 'just like a chocolate milkshake, only crunchy,' (the words 'only crunchy' are highlighted in that they also appear in text) - which is likely to appeal to children given that it is simple and playful. The advertisement may also resonate with a child's own experience of sitting in the trolley. The catchy and jingly music that features during the advertisement is clearly designed to appeal to children in that it is akin to background music that would feature in a children's cartoon or computer game.*

*Nature of the product – The targeted marketing approach outlined above is consistent with the Kellogg's Australia website description of Coco Pops as the 'tasty cereal that kids have loved for generations.'*

*Placement – As noted above, this advertisement has been broadcast on television on over a thousand occasions since March 2016. It has been aired during a great many daytime and weekend programs, including the following programs where children would represent 35% or more of the audience:*

- 12 November 2016 19:56 – Harry Potter and the Chamber of Secrets (PG) on Channel 9*
- 8 January 2016 at 15:15 – Spirit: Stallion of the Cimarron (G) on Channel 9*
- 9 January 2017 at 13:15 – Harriet the Spy (PG) on Channel 9*

- 14 January 2017 at 15:17 – *Little Big League (PG) on Channel 9*
- 14 January 2017 at 15:39 – *We Bare Bears (PG) on GO*
- 29 January 2017 at 10:40 – *The Avengers (PG) on GEM*

*We note that several of these programs are animated and broadcast during the Christmas school holidays.*

*We also note that Kellogg's is likely to argue that the advertisement features and is aimed at the grocery buyer, however we submit that the primary focus of the advertisement would be to attract children given emphasis on the animated Coco Pops steering the trolley.*

## *2. Healthier Dietary Choice*

*As you are aware, Core Principle 1.1 stats that advertising and marketing communications to children must:*

*(a) Represent healthier dietary choices, consistent with established scientific or Australian Government standards, as detailed in Signatories' Company Action Plans; 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.*

*We submit that Coco Pops do not represent a healthier dietary choice consistent with prevailing scientific and government standards. The Kellogg's Australia website provides details of the product depicted in the advertisement. Per serve, Coco Pops contains 11g of sugar, which amounts to 36.5%.*

*The product also contains moderate levels of salt and is very low in fibre.*

*The Australian Dietary Guidelines (ADGs) stipulate that all Australians, and particularly children and adolescents, should take care to limit intake of foods and drinks containing added sugars and salt.*

*We submit that the advertisement does not reference a healthy lifestyle through messaging that encourages good dietary habits or physical activity. In ASB decision 0454/11, the Board found that subsection (b) of Core Principle 1.1 denotes a 'positive obligation on the advertiser to ensure that the advertisement encourages both good dietary habits and physical activity.' The Board noted further in this matter that omitting references to unhealthy dietary habits was not sufficient to discharge this obligation and that the mere suggestion of 'adventure' in advertisement 'did not amount to an implication or encouragement of physical activity.' We submit that the advertiser has made no attempt to act in accordance with this obligation, given that:*

*I. Coco Pops are widely understood to be a breakfast cereal. Breakfast is consumed daily and children are therefore very likely to infer that Coco Pops are appropriate for daily consumption;*

*II. There is nothing in the advertisement to suggest to children viewing the advertisement that Coco Pops should be consumed only occasionally;*

*III. There is nothing in the advertisement to suggest that frequent consumption may not be consistent with healthy dietary choices*

*IV. In matter 0144/13, the Board found that the depiction of Coco Pops in association with low fat milk was not sufficient to establish a context of good dietary habits.*

*V. The advertisement does not include a depiction of any characters or children participating in physical activity.*

#### *Determination*

*We submit that this advertisement breaches the RCMI, and request that the Board require the advertiser to remove it from the Kellogg's Australia YouTube channel and cease television broadcasting immediately. An urgent determination in relation to this advertisement is needed and a finding made following cessation of the promotion will be futile.*

## **THE ADVERTISER'S RESPONSE**

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

*The concept behind the advertisement is two fold: "to remind mums that Coco Pops and milk are made for each other" and "to appeal to mum's sense of nostalgia". The consumer insight behind the advertisement was that for mums, the functional benefit of breakfast is that it is often the only time of the day that her kids have calcium. In addition, the consumer insight showed mums' love for the iconography of the brand.*

*The complaint is made under the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI). The substantive complaint is that:*

- the advertisement is a marketing communication directed primarily to children; and*
- the advertisement was placed in media directed primarily to children and/or where children represent 35% or more of the audience.*

*Our response to the substantive complaint is set out below.*

#### *Advertising to Children*

*Kellogg submits that the advertising messaging section of the RCMI does not apply in this instance as the advertisement is not directed at children.*

*The RCMI only applies to "marketing communications to children". The relevant definitions in the RCMI are set out below:*

#### *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.*

### *Theme, visuals, and language*

*Kellogg submits that the advertisement is not a “marketing communication to children” because, having regard to the theme, visuals and language used, it is not directed primarily at children.*

*The concept behind the advertisement is to “remind mum that Coco Pops and milk are made for each other”. It is based upon the target audience insight that for Main Grocery Buyers (MGBs), a functional benefit of breakfast is that it is often the only time of the day that their kids consume calcium. This time of day can be busy and frenetic for MGBs – getting the kids out of bed, washed, dressed, fed and out the door for the day on schedule, while still ensuring the kids eat their breakfast and get their calcium intake. Target audience insights indicate that the majority of MGBs take a pragmatic approach and know that food choices in the mornings are to be viewed as part of the greater whole of their child’s diet on balance. The secondary target audience insight was that MGBs love the iconography of the brand. The advertisement therefore also aims to appeal to the MGB’s sense of nostalgia.*

*Kellogg draws the Board’s attention to the following factors that Kellogg submits demonstrate that the advertisement is not directed primarily at children:*

- the entirety of the advertisement is set in the supermarket, an environment familiar with the MGB and not a setting of primary or particular appeal to children;*
- the advertisement deliberately features a number of generic but familiar elements that would not have specific attraction to children – supermarket shelves, checkout register, supermarket trolley, standard household groceries on the register including green vegetables, even the carton of milk;*
- the advertisement is not animated and consists real actors and scenery, with real cereal pieces used and then duplicated to create the action sequences of the steering wheel and hand;*
- the advertisement is not shown from a child’s perspective, nor are children shown or depicted in the advertisement. The only person shown in the advertisement is an adult, to represent the MGB;*
- the music has been deliberately chosen to draw attention to the advertisement and is appropriate to the scene and setting, but is not overly child-like or of primary attraction to children;*
- the product packaging has been updated to ensure that the health star rating is clearly displayed whenever the product is shown. The health star rating system is a voluntary front-of-pack labelling system that rates the overall nutritional profile of food, and has been developed by the Australian, state and territory governments in collaboration with industry, public health and consumer groups;*
- the voiceover, ‘just like a chocolate milkshake only crunchy’, is an iconic trade mark that we have used in association with the brand since at least 1972 in Australia. Its inclusion in the voiceover is designed to appeal to the MGB’s sense of nostalgia, as it is a recognisable brand icon that MGBs recall from over the decades. We note that the Practice Note to the AANA Code of Advertising and Marketing Communications to Children states that, “Marketing communication which appeals to an adult using imagery reminiscent of*

*childhood may be directed to adults and not to children”*; and

- *moreover the voiceover has been deliberately chosen as an adult's voice and the language used, whilst straightforward, is not such that it could be argued to be child-focused. The voiceover is directed to MGBs, not children.*

*Kellogg acknowledges that the advertisement contains a sense or element of fun, such as the steering wheel and hand made of cereal pieces, the live trolley moving through the supermarket and the music. However, this in and of itself is an insufficient basis for a finding that the advertisement is primarily directed at children, as this sense or element of fun is a quality that appeals to people of all ages. Further, as held in case number 0258/13, the fact that an advertisement may be attractive to children does not necessarily mean that an advertisement is primarily directed at children.*

*Lastly, we note that the advertisement was broadcast on national free to air television during most of 2012 and part of 2013, which is a relatively lengthy period for a short FMCG advertisement. At no point during the history of its broadcast was any complaint raised against this advertisement in respect of the self regulatory codes (but for this present complaint), nor has our consumer contact centre received any complaint regarding this advertisement. With this in mind, Kellogg proceeded to re-commence the use of the advertisement in 2016, with some amendments (advertisement was shortened, jingle was removed, packaging updated to current packaging showing health stars, and entirety of voiceover amended to one male voice).*

#### *Media Buy*

*Objectively, Kellogg's media buy for this advertisement is targeted at MGBs (specifically, adults aged 18-54 years) and Kellogg has strived to ensure that the advertisement was not placed in any media directed primarily to children. As stated in the Practice Note to the AANA Code of Advertising and Marketing Communications to Children, it is not the intent of the AANA for the Code to apply to advertising or marketing communication that may be seen by children, but is not directed primarily to them. This reasoning is equally applicable to the RCMI.*

*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 cartoon and other programs promoted to children or likely to attract a substantial child audience”.*

*Kellogg’s standing instructions to its media buyer are:*

- *Strive to buy into TV programs with audience profile of less than 25% against children 0-14 and avoid animations or family movies (based on historical ratings data).*
- *Do not buy Preschool or Children’s time on Free to air TV, consistent with our CAD requirements.*
- *Do not accept bonus or makegood activity that is not guaranteed to avoid children’s programming.*
- *Do not buy children targeted Pay TV channels e.g. Nickelodeon, CBeebies.*

*We refer you to the enclosed media buy information for free-to-air television from November 2016 – February 2017. This demographic information was sourced from Oztam data which records post viewing data provided by a panel of representative households in each area, against audience characteristics.*

*The information shows that the proportion of viewers in the 5-12 demographic for the vast majority of the slots that the advertisement was broadcast in was under the 35% threshold.*

*We note that a few of the 1073 booked slots between Nov-Feb exceed the 35% child audience share, however, this was absolutely unintended, with each of these programs typically recording an audience share of less than 35% in the 5-12 demographic:*

- Balls of Steel (Thursday 26 Jan 17 at 22:47 on Go! Adelaide): the Oztam data shows that the 5-12 demographic audience share was 52%. This was unexpected given that Oztam provides that the average 5-12 demographic audience share in this timeslot is normally 0% (hence why the media agency and network placed the advertisement in this timeslot). The media agency and network query whether there was an anomaly in the data since it seems anomalous that such a high percentage of children would be watching this type of show which is rated "M" (British comedy show with adult themes) so late in the evening.*
- Dalziel And Pascoe (Friday 10 Feb 17 at 0:20 on GEM-9 Perth): the Oztam data shows that the 5-12 demographic audience share was 55%. Again, this was highly unanticipated, given the Oztam data for this timeslot is on average 0% for 5-12 demographic. Logically, it appears erroneous that so many children would be watching a BBC detective drama rated "M" for mature audiences, after midnight on a weeknight.*
- Science of Stupid (Monday 30 Jan 17 at 19:54 on Go! Adelaide): the Oztam data shows that the 5-12 demographic audience share was 54%. This was unexpected, given the data for this timeslot is on average 23% for 5-12 demographic and the program is targeted to adults, hosted by Richard Hammond and has a "M" rating for mature audiences.*
- Kevin Can Wait (Thursday 12 Jan 17 at 19:58 on Go! Perth, Thursday 19 Jan 17 at 19:37 on Go! Brisbane): the Oztam data was 37% and 36% respectively, whereas the average for this timeslot was 21% and 23% respectively. The program is rated "PG".*
- The Middle (Tuesday 10 Jan 17 at 19:19 on Go! Sydney, Thursday 26 Jan 17 at 19:10 on Go! Brisbane, Wednesday 1 Feb 17 at 19:27 on Go! Melbourne): the Oztam data was 39%, 55% and 44% respectively, with the average for this timeslot again being less than the 35% (30%, 33% and 30% respectively). The program is rated "PG".*
- Bomb Hunters (Thur 10 Nov 16 at 16:37 on ATN-7 Mate Sydney): the Oztam data shows that the 5-12 demographic audience share was 44%. Again, this was unforeseen, given the data for this timeslot is on average very low at 14% for 5-12 demographic. The program itself is rated "PG", a documentary exposing the dangers of unexploded bombs buried across Canada.*
- We Bare Bears (Saturday 14 Jan 17 at 15:37 on Go! Brisbane): the Oztam data unusually shows that the 5-12 demographic audience share is 100%. In addition, it is impossible that of the panel households watching this program, there were no adults watching. The program itself is rated "PG", is an animated sitcom and is not primarily directed to children.*
- Wipeout USA (Thursday 26 Jan 17 at 14:22 on SAS-7 Mate Adelaide): the Oztam data shows that the 5-12 demographic audience share was 42%. The program is rated "PG" and as per the pattern above, the average audience share for this demographic in this timeslot is typically 0%, hence the media agency and network's decision to place the advertisement.*

*Given the serious anomalies in some of this data, we are very concerned about the integrity of the data – for example, it seems impossible that 55% of audience share for Dalziel & Pascoe (rated M for mature audiences) after midnight on a weeknight comprised the 5-12 yo*

*demographic. We are currently investigating this matter.*

*Whilst these anomalies represent a very small percentage of total media bookings (0.88% of total bookings since commencing airing the advertisement in 2016), Kellogg nevertheless takes this matter very seriously. Kellogg has carefully examined each of the spots and is addressing the issue proactively, including reinforcing our standing instructions to our media agency and the networks.*

*Kellogg respectfully submits that the instances above were inadvertent and do not comply with Kellogg's agreements with our media agency and the networks. We are investigating the accuracy of the 'actuals' data. In terms of processes, by targeting media buy to programs where the proportion of children under 14 years of age is below 25%, Kellogg goes further than required of it under the 35% threshold contained in the RCMI's placement rules. In addition, Kellogg maintains an internal approval process for the review of all externally facing media. Within those internal processes, we discuss the requirements of the RCMI and other applicable advertising codes and will take all steps to ensure that Kellogg complies with the requirements and the spirit of the codes.*

*Given the above, we respectfully submit that there is insufficient information for the ASB to make an adverse finding in respect of placement.*

*AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) In addition, and although not expressly raised by the complainant, Kellogg submits that the advertisement does not breach section 2.2 of the Food Code. For the reasons stated above it is Kellogg's submission that the advertisement is not directed primarily to children, nor does the advertisement undermine the importance of healthy or active lifestyles. The product is not shown to be consumed during the advertisement. Kellogg has been careful to ensure that the short scene in which Coco Pops with milk is shown comprises a 30g serve of Coco Pops with reduced fat milk. The advertisement does not in any way encourage overconsumption.*

#### *Conclusion*

*Kellogg is pleased to have had the opportunity to respond to this complaint and to confirm its support for the ASB and the codes to which Kellogg is subject.*

#### *Further response 27 March 2017:*

*As requested, we set out below further information regarding Kellogg's media placements.*

*Kellogg's media buy for this advertisement is targeted at MGBs (specifically, adults aged 18-54 years) and Kellogg has strict instructions to its media buyer and the networks to ensure that the advertisement is not placed in any media directed primarily to children.*

*Specifically, Kellogg's written standing instructions to its media buyer are:*

- Only buy into TV programs with audience profile of less than 25% against children 0-14 and avoid children's programming such as animations or family movies.*
- Do not buy Preschool or Children's time on Free to air TV, consistent with our CAD requirements.*
- Do not accept bonus or makegood activity that is not guaranteed to avoid children's programming.*
- Do not buy children targeted Pay TV channels.*

*Kellogg has analysed the media placement data with its media buyer and confirms that it was certainly not Kellogg's intent to place the advertisement in any of the programs raised in the complaint, nor in any of the programs that unusually reported a 35%+ child audience share (as the average for those time slots/programs is less than 35%, as addressed in our submissions). We note that the majority of the programs raised in the complaint had a rating*



*of PG (parental supervision required), and none of the programs raised in the complaint or that reported what we contend to be anomalous audience data, were rated as a C or P program. As part of the investigations, our media buyer and the network verified that the placements were inadvertent and did not comply with Kellogg's standing instructions to the media buyer nor our agreements with the media buyer and networks. These placements represent a very small percentage of total media bookings (0.88% of total bookings since commencing airing the advertisement in 2016). Nevertheless, Kellogg has taken the matter very seriously and is addressing the issue proactively with our media buyer and the networks, with the instructions around programming to be strictly reinforced and monitored.*

*We note that as represented in our submissions, in terms of processes, Kellogg maintains an internal approval process for the review of all externally facing media. Within those internal processes, we discuss the requirements of the RCMI and other applicable advertising codes and take all steps to ensure that Kellogg complies with the requirements and the spirit of the codes.*

## **THE DETERMINATION**

The Advertising Standards Board (the "Board") considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the "Children's 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 (the "AFGC RCMI").

The Board noted the complainant's concern that the advertisement breaches the RCMI because it is an advertisement directed primarily to children, Coco Pops is not a healthy dietary choice and the advertisement does not reference a healthy lifestyle encouraging good dietary habits and physical activity.

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

The Board noted that the medium the subject of complaint is a television advertisement and that this 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.

With regards to point 1, the Board considered the theme, content and visuals of the advertisement. 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.

The Board noted that the advertisement features a box of Coco Pops in a shopping trolley. The box opens and the Coco Pops fly out and form a steering wheel and then drives the trolley around, getting some milk and returning to the checkout aisle where the woman takes the milk and cereal out of the trolley to pay for them.

The Board noted the theme of the advertisement. The Board noted that the theme of an adult shopping for groceries is not a theme that appeals to children. The Board noted that young children are often involved in the shopping experience but considered that in this advertisement they would be more interested in the product rather than the advertisement itself.

The Board noted the language of the advertisement. The Board noted there was no communication between the woman and the cereal and that the male voiceover at the end of the advertisement says, "Coco Pops and milk. Just like a chocolate milkshake. Only crunchy." The Board noted that the tagline is familiar to viewers but is spoken by an adult voice and there are no children speaking in the advertisement or language that is child-like.

The Board noted the visuals of the advertisement. The Board noted that the cereal product comes to life in a magical way and drives the trolley as well as manage to take milk from the fridge etc. The Board noted that the cereal takes on a genie like quality as it manoeuvres the trolley around the shop.

The issue of animation is one where the Board has previously stated that animation per se does not mean that an advertisement will be considered to be directed primarily to children. Specifically the Board noted scenes in advertisements for Kellogg LCMs (0179/13 and 0180/13) (which predominantly featured real life images of children at school but also included images of cartoon snails and dinosaurs) and for Kellogg's Coco Pops (0144/13)(which predominantly featured the image of a cartoon bowl of Coco Pops playing a well-known pool game). By contrast however in a number of other advertisements including animated characters (eg: Kraft 0229/11 and Smiths Chips 0190/13) the Board had considered that the advertisements were not directed primarily to children on the basis that the animation was in the context of a theme, music or text that be attractive to an older audience of either teenagers or adults or both.

IN the current advertisement, a minority of the Board felt that the magical qualities of the cereal in combination with the music creates a mystical fantasy scenario that, in conjunction

with a popular children's product, would have strong appeal to children. For this reason, the minority of the Board felt that the advertisement was directed primarily to children.

The Board reiterated that it is essential for the Board to consider all elements of the advertisement and to 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 clearly directed primarily to children.

The majority of the Board however considered that the advertisement was attractive to a broad audience and was not clearly directed in the first instance to children under 12. The Board noted that the animated cereal returns to collect milk and considered that this is in conjunction with the depiction of a woman grocery shopping was the primary focus and not of primary appeal to children. The majority of the Board noted that there is an adult voiceover and no call to action to children. The majority of the Board considered that the overall theme, visuals and language used were of appeal to children of all ages and to adults and considered that the advertisement not directed in the first instance or mainly to children under 12.

The Board then considered part 2a in relation to television and noted that, regardless of whether the advertisement is directed primarily to children or not in terms of its content, it will fall within the RCMI if it is broadcast in C or P rated programs or other rated programs that are directed primarily to children through their themes, visuals and language;

The Board noted the complainant's complaint that the advertisement has been shown in the following programmes:

Harry Potter and the Chamber of Secrets (PG) on Channel 9  
Spirit: Stallion of the Cimarron (G) on Channel 9  
Harriet the Spy (PG) on Channel 9  
Little Big League (PG) on Channel 9  
We Bare Bears (PG) on GO  
The Avengers (PG) on GEM

The Board noted the ratings given to the programs by CAD and noted that these ratings are not determinative of whether or not a programme is directed primarily to children under 12.

In the Board's view, considering members' own understanding of the programmes, and information available about the themes and audience of the programs, all of the programs were considered to be directed primarily to children under 12 apart from the Harry Potter movie and The Avengers. The Board noted that adults and older children are likely to watch the programmes, but that the programmes are directed in the first instance to children under 12.

The Board then considered part 2b relating to where children represent 35 percent or more of the audience of the Medium.

The Board noted the advertiser's response that the proportion of viewers in the 5-12 demographic for the vast majority of the slots that the advertisement was broadcast in was under 35% threshold and that this is the information that the advertiser's media agency is asked to ensure. The advertiser also confirmed that between November and February some of

the booked slots exceeded the 35% child audience which was unintended.

The Board noted these figures and proactive manner in which the advertiser is addressing these anomalies. The Board also agreed with the advertiser that there is some uncertainty about the integrity of some of the data.

The Board noted that as, the advertisement was broadcast in programmes that were directed primarily to children under 12, the RCMI applied, regardless of the integrity of the data relating to audience share.

Finding that the advertisement met point 2 of the Initiative the Board considered that the Core Principles of the RCMI applied.

The Board noted Schedule 1 of the Code that states that:

S1.1. 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 noted s1.1a regarding the representation of healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in Signatories' Company Action Plan.

The Board noted that it had previously sought the advice of the independent arbiter regarding the nutritional content of Coco Pops and its compliance with the company initiative. The Board noted the arbiter's response that: "...in the opinion of the arbiter, the Coco Pops product served with or without milk is consistent with the nutrient criteria detailed in the Kellogg Global Nutrient Criteria, which are themselves consistent with established scientific standards. Therefore, the advertising of Coco Pops does not breach the nutritional standards that Kellogg (Aust.) Pty Ltd committed to under the Australian Food and Grocery Council's Responsible Children's Marketing Initiative."

The Board noted this advice from the Independent Arbiter from 2013 and noted that the nutrition information on the Kellogg website indicates that the composition of Coca Pops has not altered since 2013. In the Board's view therefore the product Coco-Pops is able to be advertised directly to children. The Board then noted that under s1.1b the advertisement must 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 noted that there is a small disclaimer on screen that states "enjoy as part of a

balanced diet and active lifestyle.” The Board considered that the disclaimer is very small and is not on screen for a long period of time. The Board noted that the use of text in this way is unlikely to draw the attention of children to the message and would be unlikely to be able to be read by young children

The Board noted that the Coco Pops is in the trolley with milk. The Board considered that the image of milk and the on screen text did not amount to messaging that encourages good dietary habits. The Board also considered that the action of a trolley moving magically around the shop in conjunction with the on screen text does not amount to messaging that encourages physical activity.

Based on the above, the Board considered that the advertisement did not meet the messaging requirement of the RCMI and breached the RCMI.

The Board then considered whether the advertisement complied with the Children’s Code. The definition of “advertising and marketing communications to children’ in the AANA Children’s Code is: Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. ’

For the same reasons noted above the Board considered that this advertisement, considering its overall impact and the theme, visuals and language used is not directed primarily to children. The Board therefore considered that the AANA Children’s Code and Part 3 of the AANA Food Code do not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the Food Code.

The Board considered section 2.1 of the Code which requires that ‘ 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..’ The Board considered that advertising the product Coco-Pops is not of itself contrary to prevailing community standards and that the advertisement did not breach section 2.1.

The Board then considered 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 Coco Pops – a breakfast cereal. The Board noted that the box of Coco Pops is already in the trolley and that the trolley is guided to collect an additional healthy product – milk to go with the cereal. The Board noted that the inclusion of another healthy product within the trolley is not undermining the importance of a healthy or active lifestyle. 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 box of cereal is shown in a trolley with a container of milk and considered that the likely interpretation of the advertisement is that the product advertised is intended to be shared at home by the family and that there is no suggestion of frequency of consumption.

The Board considered that the advertisement did not encourage excess consumption. 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**

Kellogg notes the Board’s finding that the content of its Coco Pops TVC was primarily directed to a broad audience, and was not directed in the first instance or mainly to children under 12.

Kellogg acknowledges that the Board’s ultimate decision to uphold the complaint was based on the TVC’s inadvertent placement in four television programs containing child themes, which was a result of genuine network broadcast error. This represents less than 1% of all media placements for this TVC. Nevertheless, Kellogg has a strict media placement policy to avoid any children’s programming and we have taken steps to reinforce these instructions with the media agency and networks.

A revised version of the TVC will be aired in the near future, with a modified media placement schedule in place immediately.