



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0135-22
2. Advertiser :	Mondelez Australia
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	13-Jul-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\3.1 Must not target children

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man and child walking through a train station. The child starts to dance to a busker and notices the man is looking at his phone. She places a packet of Oreos on top of his phone and he looks up before eating one of the biscuits and dancing with the child. The child then gives a packet of biscuits to the busker and the man and child walk away together. The tagline "stay playful" appears at the end of the ad with an animated Oreo.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

We consider that this advertisement breached section 3.1 of the Food & Beverages Code. This is because the advertisement was for an occasional product and targeted children.

Occasional product

The Code provides that a product will be an occasional product if it does not meet the Food Standards Australia New Zealand (FSANZ) Nutrient Profile Scoring Criterion (NPSC). We used the nutrition information of the Original Oreo Cookies as displayed on



the Woolworths website and entered this into the NPSC calculator linked from the FSANZ website. Although we did not have the product's fibre content available, the score obtained (31) is well above the score that the product must be under to meet the NPSC (4). Based on this, original Oreo cookies do not meet the NPSC and are an occasional product according to the Code.

Target children

The Code provides that advertising (including sponsorship advertising) of occasional food and beverage products must not target children, with children being persons under the age of 15.

The Code says that target children will be determined by the context of the advertisement and the following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children.*

We consider that this advertisement targets children for all three reasons.

The AANA Food & Beverages Code Practice Note says that all three criteria will be considered by the Community Panel in determining whether or not advertising targets children, and that the weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis.

1. Product significantly appealing to children

The advertisement is for Oreo cookies. The word significantly is not defined by the Code, however is defined by the dictionary (Oxford Languages) as 'in a sufficiently great or important way as to be worthy of attention.' We argue based on that definition and on the common usage of the word that Oreos are significantly appealing to children. This is because children are highly likely to want to eat sweet chocolate biscuits, with this likely to be even more so in the case of the extremely popular and well-known brand Oreo, particularly given it is marketed as fun and for consumers to 'twist, lick and dunk'. This is further supported in the advertisement itself, showing a child and adult dancing with the cookie, with the tagline 'stay playful.'

2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children

We argue that the theme, images and language of the advertisement is principally appealing to children. The word 'principally' is not defined in the Code, however



dictionary definitions include 'for the most part, chiefly' (Oxford Languages), 'more than anything else' (Collins) or 'mainly' (Cambridge). The advertisement shows a young child and a man (presumably her father) dancing in public to music played by a band, while eating Oreos. The advertisement is focused on the young girl's perspective and shows her opening the Oreos, attempting to engage the man in play and dance when he is distracted using his phone, and enjoying dancing. It ends with a tagline 'stay playful'. In our view the presentation of this advertisement, while it may appeal to adults and older teens and a broader family audience, is mostly appealing to children aged under 15. Children are likely to identify with the girl's perspective and the effort she makes to engage her parent in play, along with the eating of the cookie.

3. *Expected average audience at the time or place the advertisement appears includes a significant proportion of Children*

In our view the expected average audience at the time or place the advertisement appears, includes a significant proportion of children. The AANA Food & Beverages Code Practice Note says that measures to determine this may include one or a combination of several factors that include where 25% or more of the predicted audience will be children, and programs with significant appeal to children. The Practice Note says that where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown.

In our view, Lego Masters is clearly a program with significant appeal to children as it is a program based around a children's toy. This is supported by the television ratings data, which for Melbourne show that this episode was the highest rating free to air commercial TV program for children on the day it was screened, with a projected viewing audience of more than 40 000 children aged 15 years or under in Melbourne alone. For this reason the expected average audience during the finale episode of Lego Masters includes a significant proportion of children.

For each of these three reasons, and when considering all three factors together overall, we argue that the advertisement targets children and that its broadcast breached the AANA Food & Beverages Code.

THE ADVERTISER'S RESPONSE

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

Thank you for providing us with the opportunity to respond to the complaint regarding the creative and placement of our Oreo television advertisement.



As one of Australia's largest food manufacturers and advertisers, Mondelez International (MDLZ) has a significant role that we take very seriously in marketing and advertising our products responsibly and appropriately.

We have our own internal Marketing to Children Policy that governs how we advertise and promote our products to avoid targeting children. It sets standards in how we create and communicate marketing materials that promote our products. This policy is aligned with all of our marketing team members, as well as our creative and media buying agencies.

As well as our own internal policy, we comply with all external requirements to ensure our advertising creative and media placement reflects prevailing community standards.

On review of the complaint received and close examination of the advertisement, we believe that the creative and placement is consistent with the principles outlined under Section 2 of the Australian Association of National Advertisers Code of Ethics, as well as the AANA Food & Beverages Advertising Code.

In relation to Section 2 of the Code of Ethics, we believe the Oreo advertisement complies with – and through its messaging, in fact supports the definition and intent of – the Code of Ethics:

- *2.1 - Discrimination or vilification*
- *2.2 - Exploitative or degrading*
- *2.3 – Violence*
- *2.4 - Sex, sexuality and nudity*
- *2.5 – Language*
- *2.6 - Health and Safety*
- *2.7 - Distinguishable as advertising*

In relation to the specific provisions of the AANA's Food & Beverages Advertising Code, the creative and placement complies with the stringent requirements of the Code.

Our Oreo cookies are an iconic product that has broad appeal to Australians of all ages. They do not have principal appeal to children, nor do they have significantly greater appeal to children than people of any age. Oreo is the world's top-selling cookie, and is widely recognised as a treat enjoyed by generations of people of all ages and backgrounds. When developing advertising for Oreo, we want the creative to appeal to this broad base of people that enjoy the product.

Similarly, the Oreo TV advertisement referred to in the complaint was designed to have broad appeal to a diverse audience, and the creative is not directed primarily to children. The treatment of the creative has been carefully considered to ensure it communicates a message that has broad appeal to people of all ages. This is evidenced by the creative choices made in developing the advertisement, including:

- *The use of music with primary appeal to adults.*



- *A message that focuses on sharing a moment between people of different ages, rather than a focus solely on product consumption or consumption by children.*
- *The overarching colours and themes used throughout the creative do not have particular appeal to children (busy train station full of commuters, adult busker, darker lighting and muted colours, etc).*
- *The end-frame call out – ‘Stay Playful’ – is designed to overtly appeal to an adult audience, and this theme is reflected in the creative treatment of the advertisement.*

In relation to the media placement associated with this advertisement, the attached list of spots shows that care has been taken to avoid programs where more than 25% of the audience is under the age of 15.

Audience data for the particular spot highlighted in the complaint – the Melbourne broadcast of the Lego Masters final episode – shows that 17% of the audience was people aged under 15. For further information on the approach Mondelez and our media buying agency takes to ensure occasional food advertising does not target children, please see the response from our media buying agency- Wavemaker – below:

Response from Wavemaker

Wavemaker (the Media Agency team) have strict processes and guidelines in place to ensure Marketing to Children guidelines are followed and all media placements are in programs addressing a 15+ audience (audience profile 15+ must make up minimum 75% of the total viewing audience) whilst also avoiding Children focused properties. Wavemaker undertakes regular reviews of audience profiles to ensure spot placement is within appropriate programs.

Lego Masters is a property that airs in family viewing timeslot of 19:30hrs and who’s regular audience appeals to people 15+ with average audience profile of 83% being over 15+yrs across markets. This is a property that we deem family viewing and appropriate for Mondelez messaging. It is not a “C” (children’s programming rated) rated property.

TV Ratings statistics summarised in the attachment by market and Total metro audience for the finale of Lego Masters (as aired 16th May; 2022). From this we can see that that 83% of the audience viewing this property nationally was people aged 15+.

As it pertains specifically to the OREO spot that aired in Melbourne – the Melbourne only statistics again show 83% of the audience watching were P15+ with 38,626 (17%) being aged 0-14.

Mondelez takes seriously its obligations to avoid marketing occasional food products to children. Our people work hard to manage this process from the earliest stages of creative development, right through to the end media placement decisions we make.



THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising Code (the Food Code).

The Panel noted the complainant's concern that the advertisement is for an occasional product and targeted children by being placed in the finale of Lego Masters.

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

Is the advertisement for an Occasional Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: "food or beverages products which do not meet the Food Standards Australia Nutrient Profile Scoring Criterion as published from time to time by Food Standards Australia New Zealand".

The Panel noted the advertisement is promoting Oreos. The Panel noted that the advertiser had not provided information about whether the product meets the FSANZ criteria. The Panel considered that it was appropriate to proceed on the basis that the Oreo product does not meet the FSANZ criteria and is an occasional food product.

Section 3.1 Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children.

The Panel noted that the Food Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

- *Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- *Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears."



“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that is incidental to the ad placement, the audience of that incidental Children’s concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that Oreo is a long established brand and product that is of appeal to both adults and children alike. The Panel noted the advertiser’s response that the product does not have principal appeal to children, nor does it have significantly greater appeal to children than people of any age. However the Panel considered that the test is whether the product is significantly appealing to children, not whether it has significantly greater appeal to children than other age groups.

The Panel considered that chocolate biscuits are generally a product which children enjoy and considered that the product was not principally appealing to children, but was significantly appealing to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel noted that to be within Section 3 of the Food Code the Panel must find that the advertisement is aimed in the first instance at children under 15.

Is the theme of the advertisement principally appealing to children?

The Panel considered that advertisement depicted a child encouraging her father to be more playful and spontaneous. As they walk together and he is looking at his mobile phone, she places the product across his screen and the two of them dance to street musicians.



The Panel considered that the theme is aimed at parents and adults more than children, by reminding them to “stay playful” and engage with their children rather than their phones. The Panel considered that while the theme of dancing with a parent might be appealing to children, it is not principally appealing to children.

Are the visuals of the advertisement principally appealing to children?

The Panel considered that the advertisement was fairly muted in its imagery. The Panel considered that while the advertisement does show an adult and child dancing together, there are no bright colours, effects or animations that would be likely to gain the attention of children.

Is the language/wording/music of the advertisement principally appealing to children?

The Panel noted that the advertisement did not feature any speaking, only the music by the street musicians. The Panel considered that the music is upbeat and catchy, however considered that it is not jingle-like and, in particular with the saxophone, would be of more appeal to adults rather than children.

Is the content of the advertisement overall principally appealing to children?

The Panel reiterated that it is essential that they 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 principally appealing to children.

The Panel considered that the overall impression of the advertisement was a child encouraging her father to dance, live in the moment and “stay playful”. The Panel considered that such messaging, in combination with the unchildlike visuals and music, would be unlikely to be considered by most members of the community to be principally appealing to children under 15.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted the complainant’s comments that the program Lego Masters is of significant appeal to children as it is based around a children’s toy. The Panel further noted comments that the episode was the highest rating free to air television program on that day with a projected viewing audience of more than 40,000 children in Melbourne, and that for this reason the expected average audience includes a significant proportion of children.

The Panel noted evidence provided by the advertiser that shows that in the Melbourne market specifically, the audience of viewers aged under 15 was 17%. The Panel noted the evidence from a national perspective which confirmed that none of the placed spots had an audience of over 25% of children.



The Panel noted the advertiser's response that the regular audience of Lego Masters is aged over 15 (83%) and considered that it was reasonable to consider that the expected audience would be consistent.

The Panel considered that both the expected audience and the actual audience of the program did not meet the threshold of being 25% children aged under 15.

Section 3.1 conclusion

The Panel determined that the advertisement did not breach Section 3.1 of the Food Code.

Conclusion

Finding that the advertisement did not breach any other section of the Food Code the Panel dismissed the complaint.