



Case Report

1	Case Number	0136/11
2	Advertiser	Kraft Foods Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	11/05/2011
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Advertising to Children Code 2.15 Food and beverages
Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The television commercial shows two brothers enjoying an Oreo and milk. The older brother is having innocent fun at his younger brother's expense by watching the younger brother try to combine his cookie with milk – something he is unable to do as his cup of milk has a lid on it. Eventually the younger brother finds a solution to the puzzle by pouring the milk on top of the biscuit.

THE COMPLAINT

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

We believe the advertisement breaches the Responsible Children's Marketing Initiative because it was shown during 'Media' and because Oreo cookies do not represent a healthy dietary choice consistent with established scientific or Australian government standards.

Broadcast during 'Media'

'Media' is defined in the RCMI as 'television radio print cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme visuals and language used are directed primarily to children.'

The advertisement was broadcast during the following programs/movies that are clearly designed for and directed primarily to children:

- 1. Ice Age (G) broadcast on channel 10 on 26 March 2011.*

2. *Alvin and the Chipmunks (G) broadcast on channel 9 on 26 March 2011 and 2 April 2011)*
3. *Bee Movie (G) broadcast on channel 9 on 2 April 2011.*
4. *The Incredible Hulk broadcast on channel 9 on 2 April 2011.*

We would note that Alvin and the Chipmunks is specifically listed in Appendix 2 - Table 1 to the RCMI as a program covered by the RCMI.

Nutritional content of Oreo

As a signatory to the RCMI Kraft Foods Ltd has committed not to advertise its products to children under 12 years in media unless those products represent healthy dietary choices consistent with established scientific or Australian government standards.

The ASB has already found (and Kraft Foods Ltd agreed) that Oreo cookies do not represent a healthy dietary choice consistent with established scientific or Australian government standards (Complaint Ref # 0409/10).

This is the second time Kraft Foods Ltd has contravened the RCMI by broadcasting an Oreo cookie advertisement during programs directed primarily to children (Complaint Ref # 0409/10). We therefore urge the ASB and/or AANA to seek an undertaking from Kraft Foods Ltd that it will refrain from advertising unhealthy products to children in breach of the RCMI in the future and to outline what action will be taken to ensure its ongoing compliance.

THE ADVERTISER'S RESPONSE

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

Further to the complaint received regarding Oreo's new television commercial, we would like to provide the following response in relation to the advertisement's meaning, content and key messages.

Kraft Foods maintains an industry lead position on "Marketing to Children" and enforces the highest standards associated with the protection of children.

Television Commercial Background

Designed for mum, this television commercial is a light hearted portrayal of the way kids make games out of everyday objects and scenarios.

The television commercial shows two brothers enjoying an Oreo and milk. The older brother is having innocent fun at his younger brother's expense by watching the younger brother try to combine his cookie with milk – something he is unable to do as his cup of milk has a lid on it. Eventually the younger brother finds a solution to the puzzle by pouring the milk on top of the biscuit.

Kids create games with lots of things, but especially with an Oreo where all the fun comes from the ritual of twisting, licking and dunking the biscuit in milk.

The television commercial dramatises an innocent and natural part of childhood and that's what we are celebrating.

Kraft Food's Responsible Marketing to Children Initiative

Based on the information provided to Kraft Foods, we understand that a complaint has been received by the Board concerning the placement of the television commercial. The complaint is focused on the following media slots:

<i>Program</i>	<i>Network</i>	<i>Time shown</i>
<i>Ice Age</i>	<i>Channel 10</i>	<i>18:36</i>
<i>Alvin and the Chipmunks</i>	<i>Channel 9</i>	<i>20:40 and 21:20</i>
<i>Bee Movie</i>	<i>Channel 9</i>	<i>20:13, 21:18 and 21:05</i>
<i>Incredible Hulk</i>	<i>Channel 9</i>	<i>22:05</i>

As previously communicated to the Board, Kraft Foods has a clear position on television advertising in that Kraft Foods strives to only advertise Sensible Solutions products to those under 12 years of age and Kraft Foods has a process to maximize its adherence to this policy. However, the nature of the television industry at times presents challenges to advertisers. Three of the above programs appeared during the family movie timeslot post 8.00PM, which requires an extended booking time frame (5-6 weeks before the scheduled air time). At the time of the booking, our media buyers do not know the film title that will be shown during the booked timeslot.

As you would be aware, confirmation from TV networks, at times, only occurs one week prior to the program airing – hence the fluid nature of programming can unfortunately lead to human error.

Kraft Foods proactively took additional precautions in its placement of the Oreo TVC, through applying a ‘W’ (warning) CAD rating (reference WTMJKFOA), which clearly signals to the TV networks that it should be handled with precaution. Kraft Foods is also investigating why the network chose to air the television commercial during the Bee Movie given we previously declined in writing the opportunity for the bonus slot for this program. With regard to the Incredible Hulk– this program attracted an audience of less than 10 per cent under the age of 12 years. Accordingly, Kraft Foods submits to the Board that this program falls outside of the definition of ‘Media’ because it is not primarily directed at children under 12 years of age.

In light of the above, Kraft Foods will place additional checks in our formal process to ensure all spots booked at the 6.30PM or 8.30PM family movie timeslot are re-reviewed in the week before airing to ensure they are not in conflict with the Kraft Foods Marketing Code. Additionally, we have submitted a formal warning to the agency reinforcing 100% compliance with the Kraft Foods Marketing Code is mandatory. Furthermore, we will provide written notice to the TV networks reinforcing the seriousness of our commitment to the code and once again reiterate that bonus spots are not to be placed unless formally approved by Kraft Foods.

We take our commitment to the Kraft Foods Marketing Code with the utmost seriousness; if you require further clarification please don’t hesitate to contact the undersigned.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the AANA Advertiser Code of Ethics (the "Code"), the AANA Code for Advertising and Marketing Communications to Children, and the AFGC Responsible Children’s Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

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

The Board noted the complainant's concern that the advertisement breaches the AFGC RCMI because it appeared in media directed primarily to children, and because Kraft Oreos do not represent a healthy dietary choice.

The Board considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that under the AFGC RCMI the relevant requirement is that the company not advertise food and beverage products to children under 12 in “media” unless those products represent healthy dietary choices. The Board noted that the advertised product, Kraft Oreos, is not a healthier dietary choice. As a result the product cannot be advertised to children under 12 in “media”.

Media is defined as: “Media means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.”

The Board noted the complainant’s concern that the advertisement had been shown during children’s movies, including ‘Bee Movie’ and ‘Ice Age’. The Board considered that these movies are clearly directed primarily to children (regardless of the actual viewing audience of children under 12) and that advertising Kraft Oreos during these movies is a breach of the RCMI. The Board noted the advertiser’s response which indicated the steps taken by Kraft to ensure that its advertisements are not broadcast in contravention of the RCMI. The Board accepted that the broadcast of the advertisement during movies directed primarily at children was in error and also noted the steps that Kraft has subsequently taken to ensure that there is no similar error made. Despite being broadcast in a child’s programme in error, the Board considered that the advertisement breached the RCMI.

The Board then considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (the Children’s Code). To fall within this Code, or Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code), the advertisement must be “having regard to the theme, visuals and language used [...] directed primarily to children and are for product.”

The Board first considered whether the advertisement is directed primarily to children. The Board noted the practice note for the Food and Beverages Code which requires that “in its determination of whether any advertising or marketing communication is directed toward children, the Board will apply the same criteria as used in considering complaints under the [Children’s Code]. The Board will consider the advertiser’s stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted.”

The Board noted that the dictionary definition of “primarily” is “in the first place” and that to be within the Children’s Code the Board must find that the advertisement is aimed in the first instance at children. The Board considered the theme of the advertisement, the visuals and the language. The Board noted the advertiser’s response that the intention of the advertisement is

to appeal to an adult audience. The Board considered that the advertisement was primarily directed to adults but acknowledged that it would be attractive to children.

On balance, the Board considered that the visuals, language and theme of this advertisement create an overall impact of this advertisement that is not specifically directed or designed to be clearly directed primarily to children. The Board considered that the advertisement was primarily directed to adults.

The Board agreed that the advertisement is not, in the terms of the Children's Code, "directed primarily at children."

The Board then considered whether the product is "a good that is targeted to and of principal appeal to children" as required by the Children's Code. The Board considered that this biscuit is a biscuit that, while enjoyed by children, is of appeal to all ages. The Board determined that the product is not a product of 'principal appeal to children'.

As the advertisement is not directed primarily to children and is not for product, the Board considered that the Children's Code and Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) do not apply to this advertisement.

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

The Board noted section 2.1 of the Food Code which provides that: advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...'

The Board considered that advertising a biscuit is not, of itself, something which is contrary to prevailing community standards.

The Board 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 considered that the advertising or promotion of biscuits is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles and that there was nothing in this advertisement that would amount to undermining of a balanced diet or healthy lifestyle.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

The Board determined that the advertisement did not breach the AANA Food Code or Children's Code.

Finding that the advertisement breached the AFGC RCMI, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Further to the Advertising Standards Board's (ASB) determination to uphold a complaint made against the media placement of the Oreo Sippy Cup advertisement, Kraft Foods seeks to formally respond with the following Advertiser's Statement:

Kraft Foods submits to the ASB board its intent to modify the Oreo Sippy Cup advertisement. Specifically, Kraft Foods will modify the advertisement's CAD rating by further restricting its placement from 'W' to 'PG' timeslots.

This modification is in addition to our previous commitment to place additional checks in our formal process to ensure all spots booked at the 6.30PM or 8.30PM family movie timeslot are re-reviewed in the week before airing to ensure they are not in conflict with the Kraft Foods Marketing Code.

As previously communicated, we take our commitment to the Kraft Foods Marketing Code with the utmost seriousness.