



Case Report

1	Case Number	0176/17
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	26/04/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
Food and Beverage Code (Children) 3.2 encourage excess consumption
Advertising to Children Code 2.01 Community Standards
RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

Complainant description: The advertisement commences with a trolley containing Coco Pops at the checkout. The Coco Pops appear to 'come to life', forming a steering wheel which causes the trolley to travel through the supermarket to the milk aisle, whereby the Coco Pops come out of the box to form a 'hand' which puts milk into the trolley. The Coco Pops then steer the trolley back to the checkout where a woman puts both items onto the conveyor belt.

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.

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:

This complaint refers to the broadcast of the Coco Pops advertisement on the Kellogg's Australia YouTube channel.

Placement

The Coco Pops advertisement has been shown on the official Kellogg's Australia YouTube channel since 14 February 2017.

The YouTube Terms of Service currently requires users to be at least 13 years of age. The relevant extracts from the Terms of Service are set out as follows:

1.A. By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service").

.....

12. You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you. We provide these Terms of Service with our Service so that you know what terms apply to your use. You acknowledge that we have given you a reasonable opportunity to review these Terms of Service and that you have agreed to them.

Further, in order to subscribe to the Kellogg's Australia YouTube channel, the user needs to set up either a YouTube or Google Account, which currently requires users to confirm they are 13 years of age or older.

In addition, the actual viewer age analytics provided to us by YouTube provides the following breakdown of viewers based on 'watch time':

<i>Viewer age</i>	<i>Watch time (minutes)</i>	<i>13-17 years</i>	<i>0.1%</i>	<i>18-24</i>
<i>years</i>	<i>0.3%</i>	<i>25-34 years</i>	<i>33%</i>	<i>35-44 years</i>

47%45-54 years

20%55-64 years

0.1%65+ years

0.0%

As you can see, the overwhelming majority of viewers (over 99% - the figures above have been set out exactly as they have been provided to us by YouTube but we assume that the 25-54 year demographics have been rounded up by 0.5% total) fall within 25-54 years, which is consistent with Kellogg's advertising policy and objectives. There are no views recorded in the YouTube analytics for viewers under 13 years of age.

On this basis, Kellogg submits that the Medium (YouTube internet site / Kellogg's Australia YouTube channel) is not primarily directed to Children (as defined in the RCMI), and Children clearly do not comprise 35% or more of the audience of the Medium.

Content

In respect of the content of the Coco Pops advertisement itself, we refer to our submissions relating to ASB Complaint 0117/17 relating to the same advertisement, which sets out Kellogg's response regarding why the advertisement is not primarily directed to children.

From 0117/17

The concept behind the advertisement is twofold: "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 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.

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.

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.

For the reasons above, Kellogg respectfully submits that it complies with the provisions of the RCMI and that the complaint should be dismissed in its entirety.

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 internet sites, specifically 'YouTube', 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 directly 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’s 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 no in terms of its content, it will within the RCMI if it is broadcast in C or P rated programs or other rated programs that are directly primarily to children through their themes, visuals and language;

The Board noted the complainant's concern that the advertisement has been shown on the Kellogg's Australia YouTube channel.

The Board considered the Kellogg's Australia YouTube channel and noted the channel's content which includes product information and videos. The Board considered that this YouTube channel is directed primarily to adults, and that although some of the videos and content may be of interest to children, the channel as a whole is not directed primarily to children.

The Board noted the YouTube Terms of Service – Community guidelines which state that:

12. Ability to Accept Terms of Service

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

Based on the above the Board considered that part 2(a) of the RCMI did not apply.

The Board then considered part 2b relating to where children represent 35 percent or more of the audience of the Medium. The Board considered that the Kellogg's Australia YouTube channel would not have more than 35% of its audience being children under 12. The Board considered the context of where on the Kelloggs Australia YouTube channel it appeared and noted that the advertisement was not prominent amongst other advertisements and there appeared to be no call to action to view that particular advertisement either for children or adults. In this context the Board considered that there was no additional driver for your people to view this advertisement on the YouTube channel and that it would therefore not

have a greater than 35% child audience.

Finding that the advertisement not met point 2 of the Initiative the Board considered that the Core Principles of the RCMI did not apply to the advertisement when broadcast on the Kellogg's Australia You Tube channel.

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 a healthy product within the trolley is not undermining the importance of a healthy or active lifestyle.

The Board noted that the product Coco Pops does meet the criteria for being a 'healthier choice;' product under the RCMI. The Board noted that this assessment is not of particular relevance to whether or not its promotion is permitted under the Food Code. However 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 not breach the AFGC RMCI, the Children’s Code or the Food Code the Board dismissed the complaint.