



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
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Case Report

1	Case Number	0213/19
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	10/07/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive
Food and Beverage Code (Children) 3.1 misleading/urgency/price minimization
Food and Beverage Code (Children) 3.5 pester power
RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement is for Nutrigrain and features a man moving 'parkour style' over a giant bowl of cereal and onto the giant cereal packet.

THE COMPLAINT

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

I recently complained about this ad and was told by you that my complaint was based on my dislike of the product. This was not the case. My complaint is about false advertising to vulnerable children. This cereal is loaded with sugar. Little children believe the ad and pester their parents to buy the product.

THE ADVERTISER'S RESPONSE



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

The CAD reference number is W77LZFBA. The CAD rating is "W". We confirm that the advertisement was not advertised in or adjacent to any "C" or "P" rated programs, in compliance with the CAD rating.

Prior to addressing the substantive issues, Kellogg would like to confirm its long-standing support for Ad Standards and the Advertising Standards Community Panel, and Kellogg's commitment to uphold the relevant Codes

Description of Advertisement and Summary of Complaint

The concepts behind the advertisement are as follows:

To appeal to the main grocery buyer, particularly adults aged 30 - 54 years, with a reminder of the protein credentials of Nutri-Grain Original cereal, being one of the highest protein cereals in the category. The advertisement is also designed to inform the main grocery buyer of the versatility of the product, with 'on the go' multi-packs now available;

To appeal to the demographic of 18 - 36 year old males, who are typical consumers of Nutri-Grain Original cereal, through a dynamic and on-trend (in this demographic) "Parkour-style" delivery. For reference, Parkour is a training discipline using movement that developed from military obstacle course training. Practitioners aim to get from one point to another in a complex environment, without assistive equipment and in the fastest and most efficient way possible[1].

Further, as a long time sponsor and supporter of the sport of surf ironman/ironwoman in Australia for the last 40 years, including the iconic Nutri-Grain IronMan and IronWoman Series, Kellogg normally features IronMen and IronWomen in its Nutri-Grain advertising. By breaking from tradition and employing "Parkour-style" execution, as well as featuring a 25 year old male who does not have the typical "IronMan look", this advertisement was intended to have the added advantage of being disruptive.

The 15 second advertisement is set on a kitchen table. It features a breakfast set up including a bowl of Nutri-Grain cereal, a box of Nutri-Grain cereal, milk, a glass of water and a half eaten banana. The actor, a 25 year old male, jumps up the side of the bowl. He then jumps off the spoon handle across the bowl and leaps from the bowl to the box of cereal. He climbs his way to the top of the box, Parkour-style.

At the same time, an adult male voiceover states, "Protein supports muscle development. Nutri-Grain, one of the highest protein cereals". The advertisement shows a close up of the cereal with milk. The male actor reaches the top of the box



and stands, raising his arms, letting out the famous Nutri-Grain roar.

The supers on screen during these scenes are, “Protein contributes to the growth of muscle mass as part of a healthy varied diet”, and, “^Based on protein per 100g of RTE cereals sold in major Australian and New Zealand supermarkets, November 2018”.

The advertisement then moves to a close up of the male actor’s head, where he proceeds to eats a spoonful of Nutri-Grain cereal and milk. The male voiceover continues over this scene, stating, “Now available in convenient multi-packs”. The advertisement then shows a product image of the multi-packs with the “New” super.

The complaint is made under the AANA Food and Beverages Advertising and Marketing Communications Code (the Code). The substance of the complaint is that the advertisement is false advertising because, “An athlete or iron man is eating this cereal and performing super hero feats... This cereal makes the eater into a super athlete.” The complaint refers to the cereal being “loaded with sugar” and that “little children believe the ad and pester their parents to buy the product”.

Our response to the substantive complaint is set out below.

AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) – Section 2

2.1 Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

2.3 Advertising or Marketing Communication for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

2.4 Advertising or Marketing Communication for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a nonmisleading and non-deceptive manner clearly understandable by an Average Consumer.

2.6 Advertising or Marketing Communication for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.



Kellogg respectfully submits that the advertisement is truthful and is not misleading or deceptive, or otherwise in contravention of Prevailing Community Standards.

All statements and claims made in this advertisement, both on screen and via voice over, are accurate, substantiated and comply with the requirements of the Australia and New Zealand Food Standards Code (Food Standards Code). They are made in a manner that is clear, succinct, straightforward and understandable by an average consumer. Further the statements and claims are plainly specific to the promoted product, Nutri-Grain Original cereal.

The statements and claims in this advertisement are as follows:

“Protein supports muscle development”

This is an approved general level health claim permitted under Section 1.2.7 of the Food Standards Code. Section 1.2.7-18 of the Food Standards Code provides that health claims may be made in relation to a food that meets the Nutrient Profile Scoring Criterion (NPSC). The health claim must refer to a property of food and corresponding health effect contained in the general level health claims table in Schedule 4 of the Food Standards Code, and the food must comply with the stipulated conditions. For protein, Schedule 4 provides the following relevant health effects:

protein contributes to the growth of muscle mass; and

protein contributes to the maintenance of muscle mass.

“Protein supports muscle development” is a clear and simple consumer articulation of the above health claims.

In addition, Schedule 4 states that the food must contain at least 5g protein per serve. Nutri-Grain Original cereal meets NPSC and contains 8.5g of protein per serve. It is worth noting that the food also meets the conditions for a “source of protein” nutrient content claim under Standard 1.2.7. The accompanying on-screen super states, “Protein contributes to the growth of muscle mass as part of a healthy varied diet”.

Accordingly the claim, “protein supports muscle development”, is accurate and substantiated.

“One of the highest protein cereals”

The substantiation for this claim is based on a systematic comparison of the protein per 100g of the SKUs in the Australian breakfast cereals category over a 12 month period.



Attachment 1 demonstrates that for the 12 month period as at November 2018, Nutri-Grain was in fact the highest protein cereal of the SKUs in the category, containing 21.2g of protein per 100g. We have made this claim on our Nutri-Grain packaging since 2017. Further, Kellogg regularly reviews all claims, particularly comparison claims, to ensure they continue to be accurate at all times. As at the date of this response, the claim, “One of the highest protein cereals”, continues to hold true.

“Now available in convenient multi-packs”

This statement is intended to notify the main grocery buyer that the same food can now be purchased in ‘on the go’ sachets, each containing one serve (40g), in order to appeal to purchasers wanting convenience and/or portion control.

Moreover, we contend that the advertisement and the claims contained therein, are communicated in a manner appropriate to the level of understanding of the main grocery buyer, with an accurate presentation of those claims. The statements are made in a very factual, succinct and straightforward manner, adopting the language of the Food Standards Code where applicable, and are not further exaggerated or elaborated upon in any way.

The claims made in this advertisement are consistent with the information on the packaging of the food. In fact, all claims made in this advertisement have been made in respect of this food previously, either on pack or in accompanying advertising materials, so such statements are not new to consumers of the food.

Advertisement visuals

In terms of the physical activity depicted throughout the advertisement, we note that the complainant alleges that the advertisement is false advertising because “An athlete or iron man is eating this cereal and performing super hero feats... This cereal makes the eater into a super athlete.” The complaint refers to the cereal being “loaded with sugar”.

The parkour-style execution from the male actor is set on a scale that is clearly not a real environment – where the breakfast items and the actor are disproportionate in size – either the breakfast items are super-sized or the actor has been shrunk. The actor jumps onto the bowl, from the spoon to the other side of the bowl, leaps onto the box and climbs up a cereal box. Whilst entertaining, this is designed to clearly constitute puffery and we contend that no average consumer would reasonably believe that such feats on a breakfast table are possible. The sequence is highly stylised, combining ordinary breakfast items with ordinary parkour movements (jumping, climbing, leaping), in a clever way. The stylised combination is not realistic and it is unlikely that an average consumer would reasonably or logically infer that



eating the cereal makes the eater into a super athlete. Further, we note that the actor is shown eating a spoonful of Nutri-Grain after completing the physical activity, not before.

We note also that Nutri-Grain Original contains 10.7g sugar per serve which is equivalent to 12% of the recommended daily intake for sugar – far from being “loaded with sugar”. The daily intake guide or % DI is a set of reference values for an acceptable intake of nutrients (including sugar), set out in Standard 1.2.8 of the Food Standards Code, and derived from the Nutrient Reference Values (NRVs) for Australia and New Zealand. The NRVs is a joint initiative of the Australian National Health and Medical Research Council and the New Zealand Ministry of Health.

In addition, Nutri-Grain original cereal contains 2g dietary fibre per serve, which meets the conditions for a “source of fibre” nutrient content claim under Standard 1.2.7 of the Food Standards Code.

We respectfully note that in this advertisement, all statements made are statements of fact, very specific and supported by clear substantiation. The advertisement does not make any broad or general statements regarding healthiness. The depiction of the parkour activity from the actor is clearly puffery and highly stylised, such that an average consumer would not logically or reasonably infer that such feats are possible from eating the product.

2.2 Advertising or Marketing Communication for Food or Beverage Products shall not shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as 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.

In addition, and although not expressly raised by the complainant, Kellogg submits that the advertisement does not breach section 2.2 of the Code. The advertisement does not at any point undermine the importance of healthy or active lifestyles. Indeed, the majority of the 15 second advertisement features the male actor engaging in intense physical activity.

Further, the advertisement does not in any way undermine the promotion of healthy balanced diets or encourage overconsumption. A balanced breakfast scene is depicted from the outset, with milk, water and a partially eaten banana shown at the breakfast table together with the Nutri-Grain cereal. In the consumption shot, the actor is shown eating just one mouthful of the product. At no point does the advertisement exaggerate any claims, nor imply that this food should replace a healthy diet.



Additionally, and consistent with previous decisions of the Panel, advertising the product in and of itself is not, per se, undermining the important of a healthy or active lifestyle (for example, case numbers 0345/17, 282/11 and 0550/17).

AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) – Section 3

3.1 Advertising or Marketing Communication to Children shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience.

3.4 Advertising or Marketing Communication to Children shall not aim to undermine the role of parents or carers in guiding diet and lifestyle choices.

3.5 Advertising or Marketing Communication to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

Kellogg respectfully submits that this advertisement is not an Advertising or Marketing Communication to Children. In any event, as set out above, we contend that the advertisement is not misleading or deceptive as to nutritional or health claims and at no stage does it employ a sense of urgency or feature price minimisation. Further, the advertisement does not seek to undermine the role of parents or carers, nor does it include any appeal to children to urge parents or carers to purchase the product.

We draw the Panel's attention to the fact that the advertisement does not feature any children, and the theme, visuals and language used are not remotely childlike. For example:

the actor is clearly an adult (he was 25 years old at the time of filming);

the theme and visuals are dark and moody in terms of colour (no bright colours);

the tone is dramatic (the music is heavy, with deep low tones and mechanical sounds);

the voice over is an adult male voice with a serious tone;

the language is factual, succinct and employs terminology ("protein supports muscle development", "one of the highest protein cereals", "now available in convenient multi-packs") that seeks to appeal to the main grocery buyer.



Therefore, whilst the product may appeal to a range of people including from teenagers to those in their mid-30s as well as very active people, the advertisement is directly addressed to adults.

As demonstrated in the above paragraphs relating to Section 2 of the Food Code, the advertisement is not misleading or deceptive, nor does it employ a strategy of urgency. Price minimisation is not mentioned and the role of parents/carers are not undermined in any way. Children are not even addressed in this advertisement, expressly or impliedly, and at no stage are children encouraged to urge parents to buy the product. There is no call to action or directive to act.

As the advertisement is unlikely to appeal to children, it is difficult to see how the complainant can reasonably make this connection with false advertising to children and pester power.

Conclusion

For the reasons outlined above, Kellogg respectfully submits that the complaint should be dismissed.

Kellogg is pleased to have had the opportunity to respond to this complaint and to confirm its support for the Advertising Standards Community Panel and the codes to which Kellogg has committed to uphold.

[1] <https://en.wikipedia.org/wiki/Parkour>

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches 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 Panel noted the complainant's concern that the advertisement is targeted towards children, is for a product which is high in sugar and which gives the misleading impression that eating the product will make the eater into a super athlete and that children will pester parents to buy the product.

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



The Panel noted that this television advertisement features a young man jumping across a bowl of cereal and climbing a packet of Nutrigrain 'parkour' style. The voice over states "protein supports muscle development. Nutrigrain, one of the higher protein cereals. Now available in convenient multi-packs" Supers on the advertisement states: "Protein contributes to the growth of muscle mass as part of a healthy varied diet." And "Based on protein per 100g of RTE cereals sold in major Australian and New Zealand supermarkets November 2018". A shot of the 6x40g multi pack package is shown.

The Panel first considered the provisions of the AFGC RCMI.

The Panel noted that the medium the subject of complaint is television, and that this falls within the scope of the AFGC RCMI.

The Panel 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 Panel considered the theme, content and visuals of the advertisement. The Panel noted the dictionary definition of 'primarily' is 'in the first place' and that to be within the AFGC RCMI the Panel must find that the advertisement is aimed in the first instance at children under 12.

The Panel first considered the theme of the advertisement. The Panel noted that the advertisement features a man moving parkour-style over a large bowl of cereal and then climbs a large cereal packet. The Panel considered that the advertisement is promoting the amount of protein in the cereal compared to other cereals. The Panel considered that this is not a theme that would be attractive to children and that the theme would be of principal appeal to adults and the grocery buyer.

The Panel then considered the language of the advertisement. The Panel considered the language in the advertisement used adult terms and was primarily related to



protein content and the advertised product. The Panel considered that the language in the advertisement would be of principal appeal to adults.

The Panel then considered the visuals in the advertisement. The Panel considered that the actor moving through an over-sized landscape of a cereal bowl and packet would be attractive to children. The Panel considered that the parkour style movements of the actor would be recognized by teenagers and young adults and would be more attractive to this audience. The Panel considered that the actor used in the advertisement was clearly not a child and would relate more towards an older youth/adult audience. The Panel considered that the visuals in the advertisement may be attractive to children, however would be of principal appeal to teenagers and young adults.

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 clearly directed primarily to children.

The Panel considered that the overall theme of the protein content of the product, the practical language used and the visuals of a man moving parkour-style through an over-sized breakfast landscape amounted to an advertisement which was, through themes, visuals and language, attractive to both adults and children but not directed in the first instance to children under 12. The Panel found that the advertisement did not meet point 1 of the initiative.

The Panel then considered part 2 in relation to television and noted that a copy of the television spot placement list was provided by the advertiser. The Panel considered that the advertisement was not broadcast in any C or P rated programs.

The Panel noted that the spot list indicated twenty-two programs where the child audience was recorded as being over 35% in the programs 'Friends', 'Lego Masters', 'Bride & Prejudice', 'Blood Father', 'Iron Chef America', 'Giada at Home', 'Cake Wars', 'Guy's Grocery Games', 'Taco Trip', 'Big Food Truck Tip', 'Ridiculous Cakes', 'M*A*S*H', 'The Pioneer Woman', 'Chopped' and 'Mystery Diners'.

The Panel noted the advertiser's response that the audience data was surprising and unpredictable considering that the audience data for 'Friends' and 'Bride & Prejudice' usually show a child audience of less than 10%. The Panel noted the advertiser's response that repeat episodes of 'Lego Masters' typically recorded an audience share of 29% in Melbourne and 16% nationwide.

The Panel noted the advertiser's response that the 22 spots represent only 0.16% of the total placements for this TVC.



The Panel considered that the advertiser had taken every precaution to ensure the advertisement had not been placed in media where the audience was likely to have an over 35% child audience and that the placements that had recorded an over 35% audience could not have been predicted and likely represented an anomaly in data.

Finding that the advertisement did not meet point 2 of the Initiative the Panel considered that the advertisement was not directed primarily to children under 12 and the Core Principles of the RCMI did not apply.

The Panel noted that the product advertised is a packaged food product and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Panel considered section 2.1 of the Food Code which provides:

“Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”

The Panel noted the complainant’s concern that the advertisement contains a false impression that eating the cereal will make someone into a super athlete.

The Panel noted the advertiser’s response that the scenario featured in the advertisement is designed to clearly constitute puffery and that the visual of an athlete displaying parkour skills through a bowl of cereal is highly stylised and not realistic.

The Panel considered that most members of the community would understand that eating the product in isolation would not enable them to perform the same exaggerated feats as the actor.

The Panel noted the complainant’s concern that the advertisement is for a product which is loaded with sugar and that this is not clear from the content of the advertisement.

The Panel noted the advertiser’s response that all statements and claims made in the advertisement are accurate, substantiated and made in a clear manner. The Panel also noted the advertiser’s response that the cereal is not ‘loaded with sugar’ and contains 10.7g of sugar per serve, 12% of the recommended daily intake of sugar for an adult.

The Panel considered that the advertisement did not contain any statements about



the content of sugar in the product, or any broad claims about the healthiness of the product.

The Panel noted that the target audience of the product was 18-36 year old males who are the typical consumers of the product.

The Panel considered that the advertisement did not contain any misleading or deceptive claims about the sugar content of the cereal.

The Panel considered that the advertisement was not misleading or deceptive and was communicated in a manner appropriate to the level of understanding of the target audience and did not otherwise contravene Prevailing Community Standards.

The Panel determined that the advertisement did not breach Section 2.1 of the AANA Food Code.

The Panel noted the complainant's concern that the advertisement will cause children to pester parents to buy the product.

For the same reasons noted above the Panel considered that this advertisement, considering its overall impact and the theme, visuals and language used are not directed primarily to children and it is not for a Product of principal appeal to Children. The Panel therefore considered that Section 3 of the Food Code, which deals with the marketing of food and beverage products to children, including the pester power provisions, did not apply.

Finding that the Core Principles of the RCMI did not apply to this advertisement, and that this advertisement did not breach the Food Code the Panel dismissed the complaint.

