



Case Report

1	Case Number	0228/12
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	27/06/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code (Children) misleading/urgency/price minimization
Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a school playground showing children running and playing. The advertisement then focuses upon a couple of boys on a bench. Seeing some seagulls one of the boys breaks a biscuit off and throws it to the birds, resulting in a flock of seagulls fighting over it. The second boy then pulls out his Kellogg's Strawbubbles LCMs bar, breaks off a piece and throws it in the air, however, this time instead of seagulls the children in the playground stop playing and squabble over it.

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 of the Australian Food and Beverage Industry (RCMI) and the AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code).

Breach of the RCMI

We believe the advertisement breaches the RCMI because it is directed primarily to children and because LCM Strawbubbles Bars do not represent a healthy dietary choice consistent with established scientific or Australian government standards. In addition the advertisement does not promote a healthy lifestyle.

This advertisement is clearly a communication activity directed primarily to children within the meaning of the RCMI and associated guidelines. The advertisement features young

primary school-aged children wearing their school uniform and is set in a schoolyard. It shows excited children trying to grab the LCM Strawbubbles Bar and the bar being eaten by one of the boys. The advertisement depicts the LCM Strawbubbles Bar causing great excitement among young children. The voice over would appeal to children and encourage them to ask their parents to purchase the product for them.

LCM bars are a children's snack product. They are of primary appeal to children and are normally marketed to children and are shown in this advertisement being eaten by children. Clearly the advertisement is promoting consumption of LCM Strawbubbles Bars by children. The advertisement has been shown during programs such as *Dancing with the Stars* and *The Big Bang Theory* which are watched by high numbers of children.

In addition the advertisement depicts children stopping sports (i.e. Basketball) to charge towards the LCM bar (an unhealthy snack) that has been thrown up into the air. This message discourages playing sport in favour of unhealthy food consumption and is likely to appeal to children's imaginations with the idea that it is more enjoyable to consume unhealthy snacks than engage in physical activity. It does not promote a healthy lifestyle that encourages good dietary habits and physical activity.

Nutritional content of LCM Bars

According to the *Dietary Guidelines for Children and Adolescents in Australia* care should be taken in relation to children's diets to limit saturated fat and moderate total fat intake and consume only moderate amounts of sugars and foods containing added sugars.

LCM Strawbubbles Bars contain a very high level of sugar (30%) with six different sources of sugars in their ingredients and a medium level of total fat (9%) and saturated fat (3.2%). They are also high in energy containing 1730 kJ per 100 g.

Therefore LCM bars are not a healthy snack choice for children and do not represent healthy dietary choices consistent with the *Dietary Guidelines for Children and Adolescents in Australia*. They should not be promoted for inclusion in children's lunchboxes.

Consumption of energy dense high-sugar snack products such as LCM bars may contribute to weight gain and obesity in children. The OPC believes it is irresponsible for companies to advertise such foods directly to children particularly at a time when children's diets include too many "extra" foods and a quarter of Australian children are overweight or obese.

Breach of the AANA Food Code

We believe this advertisement breaches clause 3.1 of the AANA Food Code

Clause 3.1 of the AANA Food Code states:

"Advertising or Marketing Communications to Children shall be particularly designed and delivered in 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."

The advertisement promotes the LCM Strawbubbles Bars as being made with puffed grains of rice and containing no artificial flavours or colours however it fails to mention that they are high in sugar and unhealthy overall. We believe that children would perceive this product to be healthy and suitable for regular inclusion in their lunchbox. While the voice over refers to LCM Strawbubbles Bars being a delicious lunchbox "treat" the word "treat" is inadequate to communicate to children that the product is unhealthy. Children may perceive "treat" to relate to the taste or price/availability of the product. In addition the reference to "treat" is overwhelmed by the other messages in the advertisement encouraging children to consume LCM Strawbubbles Bars for lunch.

The use of 'selective claims' (i.e. highlighting positive nutrients and failing to acknowledge negative nutrients) to market products to children is of particular concern. Children are particularly vulnerable members of the public and are more likely to be misled by the use of

selective claims than other consumers. Psychological research has found that children are highly vulnerable to advertising messages because they lack the experience and cognitive ability necessary to assess the messages critically (see Kunkel D. Wilcox B.L. Cantor J. Palmer E. Linn S. and Dowrick P. 'Report of the APA Task Force on Advertising and Children. Washington DC: American Psychological Association February 20 2004. Available at <http://www.apa.org/pi/cyf/advertisingandchildren.pdf>). It follows that advertisements for products that are directed to children (such as LCM Bars) must be clear and must not mislead or deceive children.

We ask the Advertising Standards Board to request Kellogg's to withdraw the LCM Strawbubbles Bar advertisement on the basis that it breaches the RCMI and the AANA Food Code.

THE ADVERTISER'S RESPONSE

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

General

Prior to addressing the substantive issues, Kellogg would like to confirm its long-standing support for the Advertising Standards Board and its commitment to uphold the relevant Codes together with its own internal guidelines.

Substantive Response to Complaint

The complaint is made under the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry (RCMI) and the AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code).

RCMI

It is Kellogg's submission that the RCMI does not apply to the advertisement because the advertisement is not directed at children.

The RCMI applies to "marketing communications to children" under 12 "in media". The relevant definitions in the RCMI are set out below:

Advertising or Marketing Communications to Children is defined by the AANA Code for Advertising and Marketing Communications to Children and means advertising or marketing communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

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. In regards to television, this includes all P and C programs; all programs where more than 50% of the audience is children under 12 years; plus those G rated programs that meet the criteria above as being designed for children.

Kellogg strongly contends that the advertisement itself is not directed primarily to children but to adult main grocery buyers (MGBs). Kellogg acknowledges that the advertisement features children in a playground setting. Notwithstanding those themes and visuals, Kellogg did not do this to direct this communication to children but rather to reinforce the message to MGBs in the advertisement that Kellogg Strawbubbles LCMs bars are a tasty treat that may be included in their child's lunchbox. The advertisement is not animated and is intended as a humorous take on children's behaviour, comparing it to that of hungry, swarming, seagulls, which will resonate with parents and other carers of school age children. The advertisement

is not shown from a child's perspective (so the children featured are not the subject of the advertisement but are rather the object of the advertisement.) The voice over is an adult's voice and the language whilst straightforward is not such that it could be argued to be child-focused.

Objectively, Kellogg has gone to considerable lengths to ensure that this advertisement is aimed at MGBs and not children under 12. In particular, we would refer you to the terms of media buy. Further:

- The advertisement has a CAD placement code of "W" which means:
May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in cartoon and other programs promoted to children or likely to attract a substantial child audience.*
- Kellogg's standing instructions to its media buyer are that animated programs be avoided, that Kellogg will not accept bonus spots without prior agreement as to the spot, and that Kellogg does not wish for its media to be placed around programs where less than 75% of the audience is above 14 years of age.*
- Kellogg has internal processes for the review of all externally facing media and within those processes, we do discuss the relevant codes including RCMI and AANA Food Code.*
- We refer you to the enclosed spreadsheet showing information on the media buy for free to air TV with information regarding the proportion of viewers aged 14 years of age or younger for select programs. None of these programs are designed for children or are of primary appeal to children. The complainant raised a particular concern with the advertisement being shown during "Big Bang Theory" and "Dancing with the Stars". For both of these shows the proportion of viewers aged 14 years or younger was under 25%. We note that the profile score for "Big Bang Theory" was much higher than usual (24%) - normally approximately 8-15% of the viewers for this program are aged 14 or under. Demographic data has also been provided for programs which may have some appeal to children, notwithstanding that the program is objectively not designed for children nor directed primarily to a child audience, such as "Australia's Got Talent", "The Nanny", and "The Voice". Only one program fell outside the 25% limit, "School for Scoundrels" where the proportion of viewers aged 14 years and under was 38%. Given the timeslot for this programme (10:53pm) this result was unexpected (the figures that are used for these purposes are based on recent prior airings), although Kellogg notes it is still below the 50% threshold in the definition of "media" in the RCMI.*

AANA Food Code

The complaint alleges that the advertisement breached clause 3.1 of the AANA Food Code, alleging that the use of "selective claims" is misleading to children.

For the reasons stated above in the section dealing with the RCMI the advertisement is not an "advertising or marketing communication to children". Kellogg particularly notes its previous comments regarding why the advertisement itself is not directed to children but rather MGBs. Kellogg's objective intention in targeting MGBs is demonstrated by its media buy (discussed above).

On the basis that Kellogg maintains that the advertisement is not "advertising or marketing communication to children", clause 3.1 does not apply. However, and in recognition that the complaint raises issues under clause 2.1. also, we will deal with the issue together. In respect of the representations alleged to be made about the product, the complainant is, in effect, arguing that Kellogg's silence in failing to highlight certain aspects of the nutrient profile of the product (in particular, the sugar content) amounts to prohibited behaviour. Respectfully, we would argue this interpretation is incorrect which is supported by the courts through case law when they have been faced with such issues.

The advertisement does not make any nutrition benefit claims in relation to the product. Claims that the product contain no artificial colours and flavours and are made with puffed rice are ingredient claims. As such, they do not amount to claims (express or implied) about the nutrition profile of the product but are factual representations as to certain ingredients. In the circumstances, there cannot be any "reasonable expectation" by consumers that the sugar content of the product be highlighted in the advertisement. The focus of the advertisement is on taste, not nutrition.

The advertisement does not breach section 2.1 of the AANA Food Code.

The complaint also alleges that the advertisement:

...discourages playing sport in favour of unhealthy food consumption, and is likely to appeal to children's imaginations with the idea that it is more enjoyable to consume unhealthy snacks than engage in physical activity. It does not promote a healthy lifestyle that encourages good dietary habits and physical activity.

Respectfully, this allegation which arises under clause 2.2 of the AANA Food Code, is entirely without merit. The advertisement shows the children in a playground being active and engaging in a range of physical activities, which in Kellogg's submission, promotes the importance of an active lifestyle. Kellogg further notes that the "squabbling" for the (small) piece of the LCMs bar is depicted as an energetic physical activity, with children running and jumping enthusiastically.

LCMs are a portion-controlled product and are expressly referred to as a "treat" in the advertisement both of which support the position that the advertisement does not encourage excess consumption of the product. Further, the LCMs bar is shown in a lunch box with a variety of other foods (sandwich, banana and water bottle) emphasising the role of this product as a treat food within the context of a varied diet.

For the reasons stated above, respectfully, the complaint should be dismissed in its entirety. Kellogg notes that it is no longer broadcasting the advertisement.

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.

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 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 (AFGC RCMI).

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

The Board noted the complainant's concern that the advertisement presents unhealthy food to children.

First, 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 does not advertise food and beverage products to children under 12 in ‘media’ unless those products represent healthy dietary choices.

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 also noted the Guideline to the RCMI Initiative which provided that advertising or marketing communication activities are captured under the RCMI Initiative if:

1. the audience of the communication activity is predominantly children (under 12);
2. the media in which the communication activity appears is clearly directed primarily to children (under 12)
3. the communication activities are, regardless of the audience, clearly directed primarily to children under 12.

The Board also noted that under the Guideline ‘the key to determining whether the media or communication activities are directed to children is whether the themes, visuals, language and concepts are those that are attractive to children under 12.’ The Board noted, however, that while useful in determining whether the advertisement is directed to children, the requirement is that the advertisement is ‘clearly directed primarily’ to children.

The Board noted the information provided by the complainant that the advertisement was viewed during Dancing with the Stars and The Big Bang Theory. The Board noted that The Big Bang Theory is listed in Appendix II to the AFGC RCMI under ‘Programs not covered by the RCMI’ and considered that whilst Dancing with the Stars could be of appeal to children it is directed at a family audience and is not directed primarily to children. On this basis the Board determined that the advertisement was not broadcast in programs where the audience is predominantly children or the program is directed primarily to children.

The Board noted that the guidelines require that the Board also consider whether the ‘communication activities are, regardless of the audience, clearly directed primarily to children under 12’.

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. The Board considered the theme of the advertisement (children like Strawbubbles LCM bars), the visuals (children on a playground, likened to pigeons, trying to catch a piece of an LCM bar thrown by a boy) and the language used (female voiceover describing the product as having no artificial colours or flavours). The Board considered that the advertisement was aimed at the grocery buyer and that the mention of ‘no artificial colours or flavours’ and the depiction of a lunch box containing a sandwich, banana, bottle of water and LCM bar indicates that the primary audience is parents or those responsible for buying groceries and/or preparing lunch boxes for children to take to school. The Board agreed that the advertisement would be attractive to children because of the playground

setting but overall considered that it could not be said that the advertisement is 'primarily directed to children under 12'. On balance, the Board considered that this advertisement was not clearly directed primarily to children under 12 and did not breach the provisions of the AFGC RCMI.

The Board then considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children' in the AANA Children's Code is largely the same as that in the RCMI. For the same reasons noted above, the Board considered that this advertisement is not primarily directed to children; therefore the provisions of the Children's Code are not applicable in this case.

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 snack 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 snacks is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles.

The Board noted that in this advertisement a boy throws a piece of an LCM bar in the air and then a group of children try to catch this piece. The Board noted that the contents of the boy's lunchbox are consistent with a healthy lunch and that there is only one LCM bar. The Board determined that the advertisement did not depict or encourage excess consumption 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.

Finding that the advertisement did not breach the AANA Code of Ethics, Food Code or AFGC RCMI, the Board dismissed the complaint.

