



Case Report

1	Case Number	0229/11
2	Advertiser	Kraft Foods Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	13/07/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

Four animated cookie characters driving down a road, singing the famous Human league song, "Don't you want me baby." One by one the Cookies are taken from the car by a giant hand from the sky. The voice over says, "New Chips Ahoy! have Real chocolate chips. Hurry Mums. Chips Ahoy! They go fast."

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 Chips Ahoy 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. Happy Feet (Rated G broadcast on 9 April 2011 9.02pm on Channel 9);

2. *Power Rangers: Operation Overdrive* (Rated PG broadcast on 8 May 2011 5.47pm on Channel 7); and

3. *Fantastic Four* (Rated PG broadcast on 14 May 2011 at 7.27pm 7.53pm and 8.22pm in Sydney Perth and Brisbane respectively on Channel 7).

Nutritional content of Chips Ahoy cookies

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.

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.

Chips Ahoy biscuits are clearly not a healthy dietary choice. They are extremely high in fat containing 23.9% total fat and 13.3% saturated fat. They are also high in sugar containing 14.2% sugar.

Chips Ahoy are therefore 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. Accordingly the advertisement should be withdrawn on the basis that it breaches the RCMI.

This is the third time Kraft Foods Ltd has contravened the RCMI by broadcasting an advertisement for a food that does not represent a healthy choice during programs directed primarily to children (Complaint Reference Numbers 0409/10 and 0136/11). This is despite statements by Kraft Foods Ltd to the ASB that it would liaise with broadcasters and place checks on the placement of its advertisements. Kraft Foods Ltd is clearly not committed to its obligations under the RCMI. We therefore urge the ASB and/or AANA to seek a formal undertaking from Kraft Foods Ltd that it will refrain from advertising unhealthy products to children in breach of the RCMI in the future and outline the further action it will take 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:

Kraft Foods maintains an industry-leading position on Marketing to Children and enforces the highest standards associated with both our internal policies and industry codes.

In regard to the complaint received regarding our Chips Ahoy! television commercial, we would like to provide the following response.

The Chips Ahoy! advertisement featuring the "Cookie Guy" forms part of a national Chips Ahoy! cross-media campaign directed to adults in Australia. Kraft Foods believes that this advertisement has not been aired during any programming directed primarily to children or viewed predominantly by children under 12.

Kraft Foods' response to specific programming raised in the letter of complaint to the Advertising Standards Board is set out below.

Happy Feet

The letter of complaint asserts that the Chips Ahoy! television commercial was aired during the Happy Feet movie on Channel 9 on 9 April 2011. This assertion is incorrect. The Chips

Ahoy! television campaign featuring the "Cookie Guy" in the red automobile was not activated until the week commencing 8 May 2011 . Accordingly, the television advertisement was not on air on 9 April 2011 during the Happy Feet movie. Our media agency and Channel 9 have confirmed this in writing (happy to supply on request) so we believe the complainant is mistaken.

Power Rangers: Operation Overdrive

The letter of complaint also asserts that the Chips Ahoy! television commercial was aired during the 'Power Rangers: Operation Overdrive' program on Channel 7 on 8 May 2011. This assertion is also incorrect. Kraft Foods understands that the 'Power Rangers: Operation Overdrive' program was aired from the week commencing 2 January until the week commencing 17 April. As the Chips Ahoy! advertisement did not air until the week commencing 8 May, it could not have aired during 'Power Rangers: Operation Overdrive'. We have received confirmation in writing that no spots were run for Chips Ahoy! During the period from the week commencing 2 January until the week commencing 17 April. Kraft Foods understands that 'Power Rangers' TV programs were also run on Channel 7Two during the period subject to the letter of complaint. As a committed industry leader, Kraft Foods has proactively investigated whether the Chips Ahoy! television commercial was shown during this program on Channel 7Two in the relevant period. In response to our investigation, Channel 7 has confirmed in writing, again, that no advertisement for Chips Ahoy! (or any other Kraft product) was aired during the program in the relevant period.

Fantastic Four

The letter of complaint also asserts that the Chips Ahoy! television commercial was aired during the 'Fantastic Four' movie in breach of the Responsible Children's Marketing Initiative (RCMI). We have confirmed with our media buyer, Carat, that 'Fantastic Four' (rated PG) did air on 14 May and that the Chips Ahoy! advertisement did appear in the three timeslots mentioned by the complainant. We do not consider that the movie 'Fantastic Four' constitutes 'media' under the RCMI, as it is not directed primarily to children, nor did it attract an audience of predominantly children. The maximum percentage audience of children aged 0-12 was only 17% during the relevant period.

The movie 'Fantastic Four' is rated PG, and is clearly directed to families and teenagers older than 12, and not primarily to children under 12. The film includes complex themes and story lines. It follows adult characters who are exposed to material in space that results in their development of abnormal powers, and the consequences of these powers when they return to Earth. The plot includes the breakdowns and developments of adult relationships, and the film includes crime and violence, no doubt the reason it attracted a PG rating. Kraft Foods notes that the ASB has considered similar movies in previous determinations, such as 'Night at the Museum' (rated PG), to not be directed primarily to children.

AANA Codes

Although the complaint relates to the RCMI, you have indicated that you will also consider the AANA Codes. We believe that the Chips Ahoy! advertisement complies with AANA Codes. It is an advertisement directed to adults that does not air during programming directed primarily to children or viewed predominantly by children. The advertisement is light-hearted and does not encourage an unhealthy lifestyle, and it does not contravene any prevailing community standards.

We trust that this information will satisfy the ASB that there has been no breach by Kraft Foods of the RCMI or AANA Codes. Of particular note is that our Chips Ahoy! advertisement had a CAD rating of "W", ensuring that it was placed in non-children viewing slots and the process to prevent any inadvertent breaches of the code, as outlined previously, is proving effective.

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 recent 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 at 9.02pm on a Saturday night. The Board noted that this timeslot is rated MA. On this basis the Board determined that the advertisement was not broadcast in a program where the audience is predominantly children or the program is directed primarily to children.

The Board noted that the revised 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 (biscuits riding in a car), the visuals (cartoon biscuits driving down the road singing) and the language used (adult conversation with a hit 1980s soundtrack). The Board considered that the advertisement was aimed at the grocery buyer and that the call to action in the advertisement to ‘not miss out mums’ indicates that the primary audience is parents or those responsible for buying groceries. The Board agreed that the advertisement would be attractive to children because of the animated nature of the advertisement and the images of biscuits 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 QSR Initiative. 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 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.

The Board noted that in this advertisement the hand takes three biscuits (with an implication that it will soon return for the fourth). The Board considered that there was not a strong inference in the advertisement that one person is eating all of the biscuits. 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 or Children’s Code.

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