



Case Report

1	Case Number	0258/13
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	14/08/2013
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
RCMI a - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a boy in a classroom setting unwrapping his LCM's Split Stix. He splits the Split Stix in half and takes a bite, at the same time throwing a paper aeroplane out the window. The advertisement then follows the paper aeroplane on its journey through the school yard and over the roof of the classroom, eventually re-entering the room and landing inside the boy's lunchbox that is sitting on his desk. Surprised, the boy picks up the paper aeroplane and the other half of the Split Stix, and the scene repeats with the boy throwing the paper aeroplane out the window and taking a bite from the second half of his Split Stix. The advertisement ends with the voiceover "LCM's Split Stix. Splits in two so it's fun they can have all over again". The final scene is a pack shot with the super "Mum's sure fire lunchbox hit".

THE COMPLAINT

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

The OPC submits the advertisement breaches the Responsible Children's Marketing Initiative ('RCMI') and the AANA Food and Beverages Advertising and Marketing Communications Code ('AANA Code').

Breach of the RCMI

As a signatory to the RCMI, Kellogg's has committed not to advertise its products to children

under 12 years in media unless those products represent healthy dietary choices, consistent with established scientific or Australian government standards. The Obesity Policy Coalition ('OPC') submits these advertisements breach the RCMI because: -

- 1. It is a marketing communication directed primarily to children;*
- 2. LCM Split Stix do not represent a healthy dietary choice consistent with established scientific or Australian government standards; and*
- 3. The ad does not promote healthy dietary habits or physical activity.*

The advertisement is directed primarily at children

We submit this advertisement is directed primarily to children within the meaning of the RCMI because it combines the viewpoints of happy young children with ideas of adventure, whimsy and fun. The advertisement's targeted appeal to children begins with the depiction of a young boy consuming the product. Closer inspection shows detailed and elaborate visual and musical themes that are of primarily appeal to children. The ad uses numerous subtle visual elements to evoke a very detailed and accurate classroom scene. The elements include depiction of small classroom chairs and desks, other children in school uniforms, lunchboxes, pin-up boards with children's work on display, folders, books and colourful cardboard posters showing flowers and light bulbs. These features, which may not stand out to adult viewers, are immediately identifiable and familiar to primary age children, and the scene is clearly designed to create a favourable emotional response and strong sense of familiarity among children. The same response is not induced in adults.

The experience of the young boy unwrapping an LCM Split Stix bar and looking wondrously as he splits the treat in half is an experience that young children covet, not parents. The ad takes child viewers on an adventurous and fantastic journey as they follow of a paper plane as it soars over trees, rooves and playing children. We consider the whimsical journey of the paper plane, an object identified strongly with children's games and not at all with adult interests, appeals strongly and specifically to children's sense of wonderment and adventure. The presence of an animated pigeon is also suggestive of an intention to appeal to children, not adults. The accompanying jingle is whimsical, optimistic and catchy.

Children are susceptible to advertising, particularly where it uses themes that capture their imaginations such as games, adventure and fantasy. Television provides one of the first, and most intimate, experiences of commercial food promotion and recent research has shown such advertising is linked to significant increases in intake, particularly in overweight and obese children, and enhanced preference for high carbohydrate and high fat foods in children (E Boyland and J Halford, 'Television advertising and branding: effects on eating behaviour and food preferences in children' (2013) 62 Appetite 236.) Our view is that advertising to children who are too young to understand the persuasive intent of the communication is unfair and unethical, particularly if the advertised products may be detrimental to health, as children's ability to understand the commercial and persuasive intent of advertising is not well-formed. Children are susceptible to advertising messages where beguiling advertising is directed at their sense of fun or adventure, or if they believe promotional material is simply information or entertainment.

The OPC also asks that the board take note the advertisement was broadcast during many daytime and weekend programs watched by very large numbers of children. These included the Big Bang Theory, Border Security and The Block Sky High. We anticipate the advertiser will rely on the Schedule to the RCMI that excludes certain programs from its application, arguing the ad was not directed at children because it was shown during family friendly programming. In fact, data shows that the largest numbers of children are not watching TV during low-rating C and P programs, but during G and PG rated evening programs.

Advertising has the best potential to reach maximum children when it is placed in shows such as The Block and Big Bang Theory, which have been shown to be top rating shows among

children viewers (see David Knox 'What kids really watch' October 12, 2011, TV Tonight <http://www.tvtonight.com.au/2011/10/what-kids-really-watch.html>, and Australian Government, Australian Communications and Media Authority Review of the Children's Television Standards 2005; Report of the Review, 2008). We consider the placement of the ad in these shows, which the advertiser knows reaches the largest numbers of child viewers, is telling of the intention to reach children, notwithstanding any technical argument that any one particular show is exempt.

While the Board has decided previously that certain school-yard advertisements for Kellogg LCM products, although very appealing to children, were not directed primarily to children (0494/12 and 0228/12), we submit this advertisement is distinguishable and its themes and visuals mark a shift by this advertiser toward more direct targeting of children. Consistent with the Board's previous reasoning (0179/13 and 0180/13) the fact a voiceover at the end of a commercial purports to address parents does not necessarily detract from the overall impact being primarily directed to children. The LCM Split Stix ad is notable devoid of any elements that might be argued to show the intended audience is parents and grocery buyers. The board has previously noted such elements may include reference to more adult concepts such as artificial colours and flavours (0179/13, 0180/13). In short, we submit the advertisement is primarily directed to children on any common sense analysis of its theme, visuals and language, in breach of the RCMI.

LCMs do not represent a healthy dietary choice

LCM Original Bars are very high in sugar (more than 34% by weight), contain saturated fat from hydrogenated soyabean oil and are high in energy, containing 1826 kJ per 100g. The Board has previously found that LCM Original bars, which are not quite as high in sugar and energy, do not represent a healthy choice (0179/13). The advertiser has also acknowledged previously that LCMs do not meet the Kellogg's Global Nutrient Criteria for a healthier dietary choice (0179/13). It appears, therefore appears it is not in issue that the product does not meet the criteria for a healthier choice product and is not permitted to be advertised to children under 12.

These acknowledgements are consistent with 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 consume only moderate amounts of sugars and foods containing added sugars. The recently released Australian Dietary Guidelines 2013 also recommend that Australians limit intake of foods and drinks containing added sugar and salt. We submit the board should not accept any argument from the advertiser that LCMs are a "treat" food, that may be consumed occasionally within the context of a balanced diet". Lunch is a meal consumed daily and the message contained in the ad, which includes the words "mum's surefire lunchbox hit" is that LCM's are an appropriate food to go in lunchboxes daily.

The advertisement does not promote good dietary habits or physical activity

Even in the case of a product that (unlike LCMs) represents a healthy dietary choice, the RCMI provides that Kellogg's may only advertise the product to children if the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages: -

1. Good dietary habits, consistent with established scientific or government criteria; and
2. Physical activity.

The Board has previously noted that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation (0454/11). It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity. This advertisement fails to depict both good dietary habits and physical activity. The board has noted that the presence of some healthier foods in an ad is not sufficient to discharge the

advertiser's onus of encouraging good dietary habits (0179/13). In this ad, the only hint of any other foods is some mandarin peel which is visible in the background of the shot for approximately 1.5 seconds. The Board has previously noted that where a child is not seen consuming any healthier foods, and a voiceover does not nor does not refer to consumption of the other foods, the depiction of the product in association with those healthier foods is not sufficient to establish a context of overall good dietary habits (0079/13).

The only possible argument we anticipate may be raised by the advertiser in answer to the argument about failure to depict physical activity is that a small ball is shown in the ad, of a type which may be used in an outdoor game. We note the boy is shown carrying the ball for less than a second at the end of the ad and is sedentary for a vast majority of its duration. In our submission it could not reasonably be found the ad promotes physical activity.

If the board finds that either one of the above requirements is not met, that is, that the ad fails to promote either physical activity or healthy dietary habits, then this amounts to an additional instance of breach of the RCMI.

The advertisement breaches the AANA Food and Beverage Code.

Further, and in the alternative, the OPC submits that the advertisements and app are in breach of clause 2.1 of the AANA Food and Beverages Code, which states:

“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”.

We submit the ad contravenes prevailing community standards by promoting unhealthy food to children using themes of adventure, fun and animation. Community standards are generally understood to be norms bounding acceptable conduct. The OPC draws the Board's attention to findings from the American Psychological Association Task Force on Advertising and Children Report (as discussed by Rose et al, 2013, above) which has found that children under the age of eight do not possess sufficient cognitive ability to understand the persuasive intent of advertising. We submit that the themes, visuals and language of this ad, as well as its placement in shows that are some of the highest rating programs among children, reveal an intention to promote sales through this vulnerability, which is highly unethical.

When considering the scope of 'prevailing community standards', the board will be further assisted by recent research showing 83% of Australian main grocery buyers surveyed in 2012 were in favour of banning advertising of unhealthy food at times when children watch TV (Belinda Morley et al, 'Public opinion on food-related obesity prevention policy initiatives' 2012 23(2) Health Promotion Journal of Australia 86).

Conclusion

For the above reasons, the OPC submits the broadcast of these advertisements is unacceptable advertising conduct, which is harmful to children and contravenes prevailing community standards and provisions of the RCMI. We ask the ASB to request that Kellogg's withdraw the advertisement immediately.

THE ADVERTISER'S RESPONSE

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

I refer to your letter dated 23 July 2013 regarding the complaint received by the ASB in relation to the above mentioned advertisement.

Please note that we have not provided any substantiation data regarding health, nutrition or ingredient claims or statements, as such claims or statements are not made in this advertisement.

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

Summary of Complaint

The complaint is made under the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI), the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code). The substantive complaint under the RCMI is that:

- I. the advertisement is a marketing communication directed primarily to children;*
- II. LCMS are not a healthy dietary choice consistent with scientific or Australian Government standards; and*
- III. the advertisement does not promote healthy dietary habits or physical activity.*

Furthermore, the complainant submits that the advertisement breaches section 2.1 of the Food Code "by promoting unhealthy food to children using themes of adventure, fun and animation".

Our responses to each of the substantive complaint is set out below.

Australian Food and Grocery Council's Responsible Children's Marketing Initiative (RCMI)

Kellogg submits that the advertising messaging section of the RCMI does not apply in this instance as the advertisement does not appear in "media".

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."

It is Kellogg's submission that if the advertisement does not appear "in media" that the advertising messaging section of the RCMI do not apply. Further, and in any event the advertisement is not a "marketing communication to children" because it is not directed primarily at children.

Media Buy

Objectively, Kellogg's media buy is targeted at Main Grocery Buyers (MGBs) and we have gone to great lengths to ensure that the advertisement was not placed in "media" within the meaning of the RCMI.

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 shows and family targeted movies are to be avoided;*
- that bonus spots will not be accepted without prior agreement, in writing, as to the bonus spots on offer; and*
- Kellogg media is to be placed around programs where the proportion of children under 12 years of age is below 25%.*

We refer you to the enclosed spread sheet showing information on the media buy for free to air television spots for the advertisement (including audience demographic information). In respect of the specific programs referred to in the complaint ("Big Bang Theory" and "Border Security" and "The Block Sky High"), we wish to highlight that:

- "Big Bang Theory" is explicitly referenced in the RCMI as an example of a program not covered by the RCMI. Further, only 10-21 % of the audience for this program were children 0-12;*
- only 1 % of the audience for Border Security (US) were children 0-12; and*
- only 0-17% of the audience for "The Block Sky High" were children 0-12.*

I note that the TVC has been shown in one program where the audience was slightly above 50% (54%). This was inadvertent as it occurred in a show that is not a children's program (Supernanny USA) during a late slot (9:55 pm).

Kellogg respectfully submits that by targeting its media buy to programs where the proportion of children under 12 years of age is below 25%, it goes further than required of it under the 50% threshold contained in the definition of "Media" under the RCMI. In addition, 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, The Food Code, the AANA Code of Ethics and other codes where applicable.

Theme, visuals, and language

Even if the Board finds that the advertisement was placed in “media”, Kellogg submits that that the advertisement is not a “marketing communication to children” because it is not directed primarily at children.

Kellogg acknowledges that the advertisement features children in a school 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 LCMs Split Stix bars are a tasty treat that may be included in their child's lunchbox. Although the advertisements make use of CGI in the form of the paper aeroplane and the pigeon, the images used are lifelike and CGI is only used to overcome the practical difficulties associated with shooting these scenes using conventional techniques. Indeed the images used are based on images of a real paper plane and a pigeon so it would be incorrect to describe these items as being “animated”. The advertisement does not rely on any fantasy themes, and 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 used whilst straightforward is not such that it could be argued to be child-focused. Paper aeroplanes are old fashioned and appeal to MGB's memories of what school was like rather than being representative of the entertainment options available to school children today. The music used in the advertisement is in the style of adult contemporary rock and is not such as to be of particular appeal to children. The voiceover and super at the end of the advertisement explicitly speaks to MGBs, saying “splits in two so it's fun they can have all over again” and “mum's sure fire lunchbox hit”.

The complaint makes references to previous determinations of the Board where it was found that school-yard advertisements were not be directed at children (complaints 0494/12 and 0228/12) and states that “we submit this advertisement is distinguishable and its themes and visuals mark a shift by the advertiser toward more direct targeting of children”. Kellogg strongly disagrees with this aspect of the complaint, and submits that the overall approach is similar to the advertisements the subject of complaints 0494/12 and 0228/12 than more recent advertisements that were the subject of adverse findings by the Board (0179/13 and 0180/13). In particular Kellogg highlights that the advertisement is not shown from the child's perspective and the lack of fantasy themes as features that distinguish this advertisement from the advertisements the subject of complaints 0179/13 and 0180/13.

Healthy Lifestyle

For the reasons stated above with reference to the targeted media buy and the adult voiceover addressing MGB's, Kellogg strongly contends that this is not an advertisement that falls within the meaning of Advertising or Marketing Communication to Children under the RMCI. However I wanted to address the allegation that the advertisement does not encourage good dietary habits and physical activity.

The LCM's Split Stix is depicted as forming part of a balanced lunchbox, and Kellogg has taken great care to depict the other lunchbox items as having been eaten prior to the advertised food, for example, by showing a mandarin peel next to the lunchbox. In addition, the children in the playground scenes are shown being active and engaging in a variety of

games, including hopscotch and handball, and at the end of the advertisement the boy who is the focus of the advertisement is shown running down the hallway with a tennis ball in his hand. Accordingly it is Kellogg's submission that the advertisement encourages good dietary habits and physical activity.

4) *AANA Food and Beverages Advertising and Marketing Communications Code (Food Code)*

The complainant also alleges that the advertisement contravenes section 2.1 of the Food Code, which states:

“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 complainant argues that the advertisement contravenes section 2.1 of the Food Code “by promoting unhealthy food to children using themes of adventure, fun and animation”.

This aspect of the complaint is founded on the allegation that the advertisement is directed at children. For the reasons stated above the advertisement is directed at MGBs, not children.

Further the Board has previously found that "advertising a snack is not, of itself, something which is contrary to prevailing community standards" (0228/12). The advertisement does not make any nutrition benefit claims (nor any other product claims) in relation to the product (express or implied) meaning. Accordingly this aspect of the complaint must fail.

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 Kellogg's submission that the advertisement encourages good dietary habits and physical activity. LCMs are a portion-controlled product, and only one LCM bar is depicted in the lunchbox meaning that the advertisement does not encourage overconsumption.

Conclusion

For the reasons stated above the complaint should be dismissed in its entirety.

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 the AANA Code for Advertising and Marketing Communications to Children (the Kids 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 breaches the RCMI because it appeared in media directed primarily to children, is an advertisement directed primarily to children and Kelloggs LCM Split Stix bars are not a healthy dietary choice. In addition the advertisement does not encourage healthy dietary habits or a healthy lifestyle.

The Board firstly 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 noted the RCMI Initiative provides that advertising or marketing communication activities are captured under the RCMI Initiative if:

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

The Board also noted that it should consider whether the themes, visuals, language and concepts are those that are attractive to children under 12.

The Board noted the information provided by the complainant that the advertisement was viewed during The Big Bang Theory, Border Security and The Block Sky High. 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 Border Security and The Block Sky High 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 (LCM Split Stix are enjoyed by children), the visuals (children playing on a school playground, a boy throwing a paper aeroplane) and the language used (female voiceover which says, "LCM's Split Stix. Splits in two so it's fun they can have all over again", on screen super which reads,

“Mum’s sure fire lunchbox hit”).

The Board considered that the advertisement was aimed at the grocery buyer and that the mention of ‘...it’s fun they can have’ and ‘Mum’s sure fire lunchbox hit’ and the depiction of the contents of a lunch box which had contained a sandwich, fruit, bottle of water and LCM Split Stix bar indicates that the primary audience is intended to be parents or those responsible for buying groceries and/or preparing lunch boxes for children to take to school. Consistent with a previous determination for a similar advertisement (0228/12) 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 likely to be attractive to children but that it is not clearly directed primarily to children under 12 and therefore the AFGC RCMI did not apply.

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 children are shown playing outside on a school playground and that the main character, a young boy, is shown to have eaten his sandwich and fruit before eating the LCM Split Stix bar and is then shown running outside with a ball in his hand. 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.