



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0289/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Kellogg (Aust) Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>28/08/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a “Brand Power New Product Watch” segment, and opens with the presenter introducing Kellogg’s Coco-Pops Chocolatey Liquid Breakfast and Nutri-Grain Breakfast Fuel liquid breakfast products to the audience in a supermarket scene. The advertisement then shifts to a kitchen scene depicting a mother getting her two sons ready for school in the morning. The mother is shown handing her younger son a Coco-Pops Chocolatey Liquid Breakfast drink who drinks the product. There is a plate of toast and an apple in front of him as he takes the drink. An older boy enters the room, takes the Nutri-Grain Breakfast Fuel liquid breakfast and a piece of fruit as he walks out the door, drinking the product as he goes. Throughout the kitchen scene the presenter continues to talk about the product attributes and states that “8 out of 10 mums would recommend it to their friends”. The advertisement then shifts back to the presenter in the supermarket saying “So ease the rush and give new Nutri-Grain or Coco-Pops liquid breakfast a try”.

### THE COMPLAINT

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

*Given the research into the role that both sugary cereal and high sugar, high calorie drinks play in the obesity of children in western societies currently, I object to these high calorie,*

*high sugar cereals in a liquid form being advertised as being a healthy breakfast option for children. The assertion that 8 out of 10 mums would recommend these products to their friends is profoundly misleading. Additionally the ad was shown before 7pm and featured children in the ad.*

## **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 2 August 2013 regarding a complaint received by the ASB in relation to a TV advertisement for Kellogg's Coco-Pops Chocolatey Liquid Breakfast and Nutri-Grain Breakfast Fuel liquid breakfast products.*

### *Substantive Response to the Complaint*

*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.*

*The substance of the complaint is that the complainant objects to "these high calorie, high sugar cereals in liquid form being advertised as a healthy breakfast option for children. The assertion that 8 out of 10 mums would recommend these products to their friends is profoundly misleading. Additionally the ad was shown before 7pm and featured children in the ad".*

### **RCMI**

*Kellogg submits that the advertising messaging section of the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI) does not apply in this instance as the advertisement is not a "marketing communication to children" under 12 "in media". The RCMI only applies to "marketing communications to children" under 12 appearing "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 does not apply. Further, and in any event the*

*advertisement is not a “marketing communication to children” because it is not directed primarily at children.*

*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 (Children’s) 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 the advertisement (including audience demographic information). Kellogg notes that a small percentage of these programs had child audiences over 50%. Kellogg typically buys its spots 13 weeks out, and the audience demographic predictions are based on historical data, meaning that some spots may profile higher against children once they go to air. Further, programming changes can occur in that time – while we ask our media partners to assist us by highlighting any change to their program formats so that we can avoid running spots during children’s programs the Board will appreciate that such changes do create challenges in terms of controlling our media buy. Further the demographics can be skewed where the total audience of a program is small.*

*Overall, and across Regional, Pay and Metropolitan slots just 4-8% of the total audience was people aged 0-12 years.*

*At any rate on no view of the “theme, visuals and language used” could the advertisement be considered to be directed to children. The advertisement is a “Brand Power New Product Watch” advertisement which is presented in the style of a news clip, and aims to provide consumers with factual information regarding their grocery purchases. Brand Power’s website includes the following description of the Brand Power concept:*

*“Brand Power aims to provide you with rational information about grocery products to help you make a more informed purchase when you’re at the supermarket.”*

*The only person who speaks in the advertisement is the presenter who is an adult woman, and the advertisement is clearly shown from an adult’s perspective. A significant part of the advertisement is situated in a supermarket setting which is unlikely to appeal to children. A major focus of the advertisement is convenience, and viewers are invited to “ease the rush”*

*which speaks to time-poor MGBs who face a rush in the morning to get their children off to school. References to “the kids” and “8 out of 10 mums would recommend it to their friends” reinforces that the advertisement is directed at MGBs and not children.*

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

*The complaint also raises issues under clause 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code).*

*“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.”*

*Nutrition claims*

*The advertisement includes the following nutrition claims, which are clearly directed to MGBs:*

*“high in fibre”;*

*“with the protein and energy of cereal and milk”;* and

*“taste, nutrition and convenience”.*

*The first two claims are very specific and relate to the objective nutritional profile of the products. Kellogg’s Coco-Pops Chocolatey Liquid Breakfast and Nutri-Grain Breakfast Fuel have a fibre content of 4.5g/serve and 4.2g/serve respectively. A serve of the product is 250mL – ie, one carton. The Code of Practice for Nutrient Claims in Food Labels and Advertisements specifies that a “high fibre” claim may be made where a product contains 3g fibre per serve.*

*Kellogg compared the protein and energy content of Coco-Pops Chocolatey Liquid Breakfast and Nutri-Grain Breakfast Fuel against the average nutrient values of a serve of the top 20 selling ready to eat cereal products in the market (excluding muesli and hot cereals) combined with ½ a cup of skim milk. The cereal data was sourced from AZTEC National data (dated 30/09/2012) and the milk nutritional data was sourced from 2012 for Dairy Farmers skim milk.*

*Kellogg’s Coco-Pops Chocolatey Liquid Breakfast has an energy content of 740KJ per serve and a protein content of 9.8g per serve. Nutri-Grain Breakfast Fuel contains an energy content of 700kJ per serve and a protein content of 9.5g per serve. An average serve of cereal with ½ cup skim milk contains an energy content of 756kJ per serve and a protein content of 8.2g per serve.*

*The “taste, nutrition and convenience” claim appears directly after the other nutrition claims and is given context and meaning by those other claims. It is Kellogg’s submission that consumers would understand the “nutrition” claim to be referring to those product attributes*

*highlighted in the advertisement. In addition to those attributes highlighted, the products are a good source of 8 vitamins and minerals.*

*Kellogg notes previous decisions of the board (for example 318/09) where it has found that the community does not expect advertisers to highlight all elements of a food, rather it expects that representations that are made about a product be accurate. Accordingly failing to highlight a particular aspect of the product (such as the sugar content) does not amount to a breach of the Food Code.*

*In addition, please note that both products meet the “Green” criteria under various school canteen programs in Australia, including the NSW Fresh Tastes, VIC Healthy Canteen, QLD Smart Choices, WA Star Choices and SA Healthy Bites programs.*

*“8 out of 10 Mums Would Recommend it to Their Friends”*

*This claim is based on market research undertaken by Kellogg in conjunction with the Brand Power Home Tester Club. The source of this claim is identified in the advertisement, with a prominent super appearing on screen at the same time as the claim which states “Brand Power Home Tester Club survey of 410 people, March 2013”.*

*Enclosed with this response are the relevant parts of the survey questions and survey data. The Board will appreciate that market research data is commercially sensitive information, and this information is being provided to the Board in confidence to assist the Board in its determination of this complaint. Kellogg requests that, except to the extent it is necessary to refer to this information in its case report, that this information be kept confidential and not be published on the ASB’s website. In order to preserve confidentiality in this data Kellogg has redacted the information so that only the data relating to the “8 out of 10 mums” claim is visible.*

### *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 AFGC Responsible Children’s Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI), the AANA Code for Advertising and Marketing Communications to Children (Kids Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

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

The Board noted the complainant's concern that the advertisement advertises a high calorie, high sugar drink to children.

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 did not identify which program the advertisement appeared in. The Board noted that the advertiser had provided a copy of the media buy which showed that whilst the advertisement had been placed in accordance with the RCMI guidelines, on two occasions the child audience was 50% or above. The Board noted that both these programs, Big Brother and Conan, are programs which are not directed primarily to children and that Big Brother is mentioned in the RCMI guidelines as being not covered by the RCMI. The Board noted that the advertisement also appeared in a cartoon program on one occasion, Chill Out Scooby Doo. The Board noted that this program was a last minute change by the TV station and considered that, whilst Scooby Doo is primarily directed to children, in the Board's view the advertiser had taken all reasonable steps to ensure that the placement of the advertisement was in accordance with the RCMI. 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 (Brand Power advertisement promoting a new breakfast drink for children), the visuals (a female presenter

talking to camera, a mum giving her children the drink) and the language used (female presenter who says, “There’s a convenient new breakfast option that’s set to make the morning rush a little easier”, text on screen which reads, “high in fibre” and “protein & energy of cereal and milk”).

The Board noted that Brand Power advertisements are usually aimed at the main grocery buyer and considered that in this instance although the product is described as being a breakfast option for children, the overall theme, visuals and language used are clearly directed to adults and not to children. The Board considered that this advertisement is not clearly primarily directed 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 Products shall be truthful and honest, shall not be misleading or deceptive or otherwise contravene Prevailing Community Standards...”

The Board noted the complainant’s concerns that it is against prevailing community standards to promote a high calorie, sugary drink to children as a breakfast option. The Board noted that the product is advertised as a breakfast option to consume in lieu of cereal and milk. The Board noted the advertiser’s response indicated that the nutritional content of the drink was similar to that of a bowl of cereal and milk and considered that advertising a breakfast drink is not, of itself, something which is contrary to prevailing community standards.

The Board noted the complainant’s concerns that the advertisement is misleading in its assertion that 8 out of 10 mums would recommend the product. The Board noted that in their response the advertiser had provided a copy of the survey data which their claim was based on. The Board noted that this survey is referenced in the advertisement in the form of an onscreen disclaimer which reads, “Brand Power Home Tester Club survey of 410 people, March 2013” and considered that the claim is not misleading as it clearly indicates the market research on which the statement is based.

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

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

