



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0328-20
2. Advertiser :	The Smith's Snackfood Company Pty Ltd
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet
5. Date of Determination	11-Nov-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\4.1 Must comply with RCMI
AFGC - Responsible Childrens Marketing Initiative\RCMI 1.1 Advertising Message
AANA Food and Beverages Code\3.5 Pester Power
AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption

DESCRIPTION OF ADVERTISEMENT

This website advertisement features the 'Kit for Clubs' competition page. The page features the Smiths and Pepsi logos, an image of a shield with crossed bats and balls on it, as well as brand logos for:

- Doritos
- Red Rock Deli
- Twisties
- Sunbites
- Nobby's
- Schweppes
- Solo
- Frantelle
- Gatorade

The heading for the page states 'Win \$1000 for your local sports club. 40 prizes to be won.

<http://www.kitforclubs.com.au/>



THE COMPLAINT

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

This bright, attention grabbing website with wording “win \$1000 for your local sports club” is clearly aimed at children to get them to pester their parents to add these junk foods to their shopping trolley. Children’s sports clubs are usually struggling to keep fees for parents low and \$1000 of sporting equipment would be keenly sort. This promotion seeks to encourage shoppers to buy excessive amounts of junk food to have more chance to win the competition. It is irresponsible of the company because it serves to increase sales of junk food by urging children and families to put these discretionary choices in their weekly shop. These foods are primarily junk food (discretionary choices) according to the Australian Dietary Guidelines and this promotion serves only the profits of the company at the expense of our children’s health. It is even more worrying that the target is sports clubs, which should be promoting healthy lifestyles.

A simple field in a form asking for date of birth does not act as an effective age gate nor does it prevent children pestering their parents or even filling out the form for their parents.

THE ADVERTISER’S RESPONSE

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

Ad Standards has referred us to section 4.1 of the FBMCC and to section 1.1(a) of the RCMI.

Section 4.1 of the FBMCC states: “Except as set out in section 4.2, Advertising or Marketing Communication for Food or Beverage Products must comply with Schedule 1 of the RCMI, where applicable.”

Section 1.1(a) of the RCMI states: “Advertising and Marketing Communications to Children for food and/or beverages must:

(a) represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in Signatories’ Company Action Plan”.

We are committed to adhering to each of the Codes, including the FBMCC and the RCMI and agree that advertisers must act with a high level of social responsibility towards all consumers, and in particular towards children.

We understand that in determining whether an advertisement is targeted to children, Ad Standards will consider:



- whether the content (ie theme, visuals and language used) is directed primarily to children;
- whether the advertisement is placed in a medium that is directed primarily to children; and
- for measured media, whether children represent 35% or more of the audience of the Medium.

As explained more fully below, we submit that the Advertisement (not to mention the Promotion and other advertising for the Promotion more broadly) was not directed towards children.

The Promotion was targeted to the adult grocery shopper

Many local community sporting clubs were negatively impacted as a result of the Covid-19 pandemic in 2020 – these clubs typically rely on volunteers and financial support from local businesses and parents. We therefore identified this as an opportunity to help these clubs obtain resources needed to continue to operate (ie sporting equipment). We therefore launched the “Kit for Clubs” Promotion, which provided 50 prizes of \$1000 for community clubs to use to purchase needed equipment.

The Promotion was targeted to the adult grocery shopper (ie adult members of community sports clubs and parents of children who are members of community sports clubs), providing them an opportunity to enter when purchase of a participating product was made in Participating Stores. The Promotion was age restricted to entrants aged 18+ and all winning entrants were aged 18+ as at the date of entry to the Promotion.

The Advertisement was targeted to the adult grocery shopper
Content

The messaging, themes, images and wording of the Advertisement were designed specifically for an adult audience. The Advertisement consisted of:

- *factual text including a description of the available prizes, details on how to enter, the fields for the entry form, and a summary of the terms & conditions of entry;*
- *logos of the participating brands for the Promotion; and*
- *a Promotion logo comprising the Promotion name and simple imagery of sporting equipment to illustrate the intended use for the prizes.*

The Advertisement did not include any:

- *themes directed primarily to children (the theming was generic, with some sporting equipment);*
- *visuals directed primarily to children (the Advertisement contained almost no images – a small section depicted sporting equipment and the only other images were the logos of the participating brands); or*
- *language directed primarily to children (as mentioned above, the language was factual and explained the promotion mechanics and terms of entry. There was no text addressed to children and certainly no appeals to children to pester their parents to enter the Promotion as the Complaint asserts).*



We would also like to highlight that the Advertisement did not encourage or promote excessive consumption of participating products as the Complaint asserts. In fact:

- there were no references to, or depictions of, the participating products (just the brand logos);*
- all pack sizes were eligible for the Promotion, including single serve packs;*
- the Promotion was only running for a short time (29 days);*
- there was no language in the Advertisement creating a sense of urgency to purchase the products or language which encouraged shoppers to enter the Promotion more than once.*

Medium

The Advertisement was hosted on a dedicated website for the Promotion, which the shopper was directed to visit via the other advertisements for the Promotion (detailed further below). It was not housed on a site targeted to or frequented by children. We did not send the Advertisement to sporting clubs or parents by email.

All other advertising for the Promotion was targeted to the adult grocery shopper
Content

The other advertising materials for the Promotion also targeted an adult audience, by avoiding any messaging, themes, images or wording specifically targeted to, or appealing to children. These materials were built around the same elements as the Advertisement (namely, details on the Promotion mechanics, participating product logos, the Promotion logo and terms & conditions of entry), with variations in the level of detail included depending on available space in the relevant medium.

Medium

Each other medium used to advertise the Promotion was selected with a view to ensuring the minimum amount of exposure to children possible, and the advertising materials were designed to target the adult grocery shopper in the moment of the shopping occasion. These advertisements were placed by Participating Stores at point of sale, on their websites, in their catalogues, in emails to their subscribed customers and on their social media pages (Facebook and Instagram).

The Promotion was not advertised through out of home, TV or radio mediums.

Other provisions of the Codes

The Complaint does not make any allegations with respect to other provisions of the Codes and we submit that the Advertisement also does not breach any other provisions of the Codes.

Conclusion

For the reasons set out above, we strongly submit that the Advertisement complies in all respects with the provisions of the Codes and in particular sections 4.1 of the FBMCC and 1.1(a) of the RCMI.

We respectfully ask Ad Standards to set aside the Complaint.



THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the AFGC RCMI) or the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainant's concern that the advertisement:

- is targeted towards children through the bright, attention grabbing website and it's theme of winning \$1000 for the local sports club
- is designed to get children to pester their parents to buy junk food
- encourages shoppers to buy excessive amounts of junk food

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

Is the advertisement for a Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: "any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code".

The Panel noted that the advertisement featured logos for food brands, and did not include pictures of particular food or beverage products.

The Panel noted that it had considered a similar question in case 0006-19, in which:

"The Panel considered that the Magic Kinder app could reasonably be considered an advertising or marketing communication for the brand Kinder through the use of the Kinder logo on the home screen of the app, and the depiction of toys that can be found in Kinder Surprises. However, the Panel noted there was no reference to Kinder Surprises or any other food or beverage product in the advertisement. The Panel noted that the toys and the daily surprise may be associated with the Kinder surprise products, however this is an association which would only be made by people already familiar with the products, and is not a direct reference to a food product."

Unlike case 0006-19, the current advertisement required purchase of particular products to participate. The Panel noted that the wording at the bottom of each page stated, "Participating products include Smith's, Doritos, Nobby's, Red Rock Deli (excludes RRD dips), Sunbites, Twisties, Pepsi, Pepsi Max, Schweppes, Frantelle, Solo, Gatorade." The Panel considered that the advertisement did identify particular food or beverage products, and was an advertisement for food and beverages.



Is this advertisement directed primarily to Children?

The Panel noted that the Food Code defines Advertising or Marketing Communications to Children as 'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product.'

The Panel noted that Children's Food or Beverage Product is defined as 'any food or beverage product (other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code) which is targeted toward and has principal appeal to Children.'

The Panel noted that Children is defined as 'persons 14 years old or younger'.

Is the theme of the advertisement directed primarily to children?

The Panel noted the complainant's concern that the theme of the advertisement is to win money for a local sports club and this would be appealing to children.

The Panel noted the advertiser's response that the theme of the advertisement was generic and targeted at the adult grocery buyer.

The Panel considered that both children and adults would be attracted to a competition for winning sporting goods. The Panel considered that any local sports club could be nominated by someone entering the competition, and that this could be an adult or a child's club.

The Panel considered that the theme of the advertisement would be attractive to both adults and children, and was not directed primarily to children under 14.

Is the language of the advertisement directed primarily to children?

The Panel noted the advertiser's response that language was factual and explained the promotion mechanics and terms of entry and was not addressed to children.

The Panel noted that the main heading of the advertisement was 'win \$1000 for your local sports club. 50 prizes to be won!'.

The Panel considered that while this was simple language it would be equally attractive to children, teenagers and adults and was not directed primarily to children under 14.

The Panel noted that the remaining language in the advertisement was form fields and terms and conditions and that this was not directed primarily to children under 14.



The Panel considered that overall the language used in the advertisement was targeted to adults and was not directed primarily to children under 14.

Are the visuals of the advertisement directed primarily to children?

The Panel noted the complainant's concern that the advertisement was bright and attention grabbing and would be attractive to children.

The Panel noted the advertiser's response that the Advertisement contained almost no images – a small section depicted sporting equipment and the only other images were the logos of the participating brands.

The Panel noted that the advertisement featured a sporting field background with a bright green field and blue sky. The Panel considered that while this may be attractive to children, it would be equally appealing to adults. The Panel considered that the brand images used on the website would be recognised by both adults and children and would be of equal appeal to both. The Panel considered that a large part of the screen was taken up by a form and that this would not be attractive to children.

The Panel considered that overall the visuals in the advertisement were equally attractive to both adults and children and were not directed primarily to children under 14.

Is the content of the advertisement overall directed primarily to children?

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 directed primarily to children.

The Panel considered that the overall advertisement had some elements which would be attractive to children, such as the theme of winning money for their sports club and the bright colours used, however overall the advertisement was equally attractive to teenagers and adults.

The Panel considered that the advertisement, through themes, visuals and language, was attractive to both adults and children but not directed in the first instance to children under 14.

Is the advertisement for a product of principal appeal to Children?

The Panel noted that the advertisement is for a range of products from particular brands. The Panel considered that these products would be equally attractive to adults and children and were not of principal appeal to children under 14.



Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are not directed primarily to Children and are not for a Children's Food or Beverage Product, the Panel determined that the advertisement was not directed primarily to children.

AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

Section 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.

The Panel noted the complainant's concern that the advertisement encouraged people to buy excessive amounts of junk food.

The Panel noted the advertiser's response that there was no language in the Advertisement creating a sense of urgency to purchase the products or language which encouraged shoppers to enter the Promotion more than once.

The Panel noted that the advertisement limited entry to the competition by an individual up to once a day, with up to five products per entry and that the competition ran for 29 days. The Panel noted that this would mean that one person could purchase a maximum 145 products over the time of the competition for entry into the competition. The Panel considered that 145 products over 29 days may be considered excessive.

However, the Panel noted that the information detailing how many times someone could enter the competition was in the terms and conditions and was not the focus of the advertisement. The Panel considered there was no language or messaging which encouraged people to purchase that many products or to enter the competition multiple times.

The Panel considered that there was nothing in the advertisement which suggested all purchased products needed to be consumed within the 29 competition days, or that purchased products should be consumed by one person.

Overall, the Panel considered that the advertisement did 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 and did not breach Section 2.2 of the Food Code.



Section 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.

As discussed above, the Panel considered that the advertisement was not an advertising or marketing communication to Children, and therefore Section 3 of the Food Code does not apply.

Section 4.1 - Advertising or Marketing Communication for Food or Beverage Products, other than fresh fruit or vegetables, must comply with Schedule 1 of the RCMI, where applicable.

The Panel noted that this was an advertisement for food and beverages and therefore must comply with Schedule 1 of the AFGC RCMI.

The Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (the AFGC RCMI)

The Panel first considered the provisions of the AFGC RCMI.

The Panel considered the definition of advertising or marketing communications to children within the RCMI. The definition states that 'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.' Under this initiative children means "persons under the age of 12 years of age."

The Panel noted the RCMI 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.

Point 1: Is the content of the advertisement directed primarily to children?

As discussed above, the Panel considered that the advertisement did not consider that the themes, visuals and language of the advertisement were directed primarily to children under 14, and the Panel considered that this decision did not change when considering children under 12.

Point 2: Is the advertisement in a medium that is directed primarily to children?

The Panel noted that the advertisement was a website created for entry into the competition. The Panel noted that to enter the competition the participant needed to already have purchased the product and be over 18.

The Panel noted the complainant’s concern that an age gate alone would not stop a child from entering the competition on behalf of their parents.

The Panel considered that the advertiser had taken reasonable steps to ensure that the competition could only be entered by people over 18. The Panel considered that the choice to purchase the products initially would likely be that of the grocery buyer.

Overall, the Panel considered that the website was unlikely to have an audience of over 35% children under 12, and, as discussed above, the themes, visuals and language of the website were not targeted directly to children under 12.

AFGC RCMI Conclusion

Finding that the advertisement did not meet points 1 or 2 of the Initiative the Panel considered that the Core Principles of the RCMI did not apply to this advertisement.

Food Code Conclusion

The Panel determined that the advertisement did not breach Section 2.2 of the Food Code.

As the advertisement was not a directed primarily to Children, the Panel found that Section 3 of the Food Code does not apply.

As the RCMI does not apply to this advertisement, the Panel determined that the advertisement did not breach Section 4.1 of the Food Code.



Conclusion

Finding that the advertisement did not breach the AFGC RCMI or the Food Code the Panel dismissed the complaint.