



Case Report

1	Case Number	0375/15
2	Advertiser	Mondelez Australia Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	14/10/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.01 Community Standards
RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The advertisement ('Sour Patch Bicycle' – Attachment 3) depicts a teenager riding his bike along a road before making a cartoon-like impact – reminiscent of Wile E Coyote in the classic Road Runner cartoons – with a false tunnel entrance and falling off his bike. An anthropomorphised CGI Sour Patch lolly walks out from behind the false tunnel entrance holding a hammer, at which point the voice over says, "first they're sour". The lolly offers the teen a first aid plaster (Band-Aid) and the voiceover says, "then they're sweet".

THE COMPLAINT

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

This ad is marketing unhealthy food to children because it is using child friendly themes, including animated bears and a child actor. This advertisement was drawn to my attention by Teriece, a parent from NSW who said "The advertisement is related to the promotion of the product itself, by bringing to life the bear shaped lollies and using them as characters in the advert. It utilises, not only the comfort-ability in the idea of a child's favorite bed time teddy bear, but the life like characters of the product, promote fun alongside the purchase. Subliminally I think this is the aim of the advertisement and it promotes unhealthy eating, on-going unhealthy eating and falsified ideas that enjoyment involves sugar, unhealthy eating

habits and the normality in that. "

This advertisement is certainly aimed at children because children are featured interacting with the animated confectionery. It is also an ad for an unhealthy food as confectionery is classified as a discretionary food in the Australian Dietary Guidelines.

Mondelez has signed the RCMI and their action plan states "Mondelez International will only advertise to children under 12 years under our Sensible Solution criteria (as outlined above). 100 percent of all child-directed ads (television, radio, print, internet) will be based on our Sensible Solution criteria."

THE ADVERTISER'S RESPONSE

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

With reference to complaint 0375/15 please find below a response addressing the information requested.

1. *Whether the audience of the programs is predominantly children*

The audience for the sample period (Channel 7, week of the complaint) is predominantly general/adult skewed – media schedule available.

2. *Substantiation of any health, nutrition or ingredient claims or statements made in the advertisement*

Not applicable. No claims made.

3. *Your comprehensive comments in relation to the complaint (taking into account the need to address all aspects of the advertising codes)*

AANA Code of Ethics

Sections 2.1, 2.2, 2.4 and 2.5 are not applicable.

With regards to sections 2.3 and 2.6:

2.3 – Violence

The advertisement depicts a sophisticated prank executed by an anthropomorphised computer generated image of a lolly. It does not depict violence per se (which the World Health Organisation defines as, "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation").

The sophistication of the prank and cartoon-like elements would more accurately place the action in the realm of slapstick comedy (which The Free Dictionary defines as, "A boisterous form of comedy marked by chases, collisions, and crude practical jokes") than violent screenplay.

Further, in terms of whether the slapstick is socially acceptable we highlight that this is the first time we (Mondelez International ANZ) has received a complaint about the advertisement after having been on air for around 18 months.

2.6 – Health and safety

The advertisement observes prevailing community (and legal in some jurisdictions) standards in that the teen riding the bike is wearing a helmet and appropriate riding clothes.

Another indicator of whether or not this advertisement observes or does not observe those standards is the fact that, as previously mentioned, this is the first complaint about the 18-month old advertisement put to Mondelez International ANZ.

There are also no signs that the lead character has sustained any injury as a result of his slapstick impact with the fake tunnel entrance.

Last, in terms of whether it meets the prevailing community standard for health and safety, we note the absence of a community debate or readily accessible public campaign/conversation around the dangers of teenage pranks or hijinks of this nature (albeit ones executed by anthropomorphised CGI lollies).

Responsible Children's Marketing Initiative

Content

The content of the advertisement does not primarily appeal to children. In the advertisement we see a teenager – clearly over the age of 12 yrs old – caught up in a sophisticated prank, which is paired with the equally sophisticated sour/sweet tagline. The creative was clearly designed to appeal to a late high school early university aged demographic, which is further demonstrated by viewing the advertisement in the context of the entire series.

Placement

The sample media spreadsheet reflects that the advertisement has not been aired during children's television programming.

Overall we do not consider this advertisement to have breached the RCMI or AANA Code of Ethics in any way.

From our perspective the complaint is isolated (literally, being the only one we have received) and it is also unclear from the wording of the complaint whether the complainant has viewed the advertisement or is lodging the complaint on somebody else's behalf.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food Code'), the AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code') and the AANA Code of Ethics (the 'Code').

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

The Board noted the complainant's concern that the advertisement breaches the RCMI because it is advertising an unhealthy product to children.

The Board noted that its role is to consider the advertisement's compliance with the AFGC RCMI and the issue of whether or not the product is a 'healthier choice' is only relevant once the Board has determined that the advertisement is directed primarily to children.

The Board considered whether the advertisement met the requirements of the AFGC RCMI. The RCMI applies to advertising or marketing communications to children (under 12 years of age). The Board noted the RCMI Initiative provides that advertising or marketing communication activities are captured under the RCMI if they are:

Content

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

Placement

Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium.''

The Board also noted that the definition of Children in the Initiative means persons under 12 years of age.

The Board first considered the programming in which the advertisement was broadcast. The Board noted the information provided by the advertiser outlining the programs in which the

advertisement had been aired. The Board noted that these programs included Castle, Family Guy, Seven News and Ramsay's Kitchen Nightmares.

The Board also noted the information provided by the advertiser that the programs in which the advertisement was broadcast do not have audiences where children represent 35 percent or more of the audience of the Medium.

Although the advertisement was not considered to be advertising or marketing communications to children on account of placement, the Board must also consider whether the Advertising or Marketing Communications, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.

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 under 12 years.

The Board considered the theme of the advertisement. The Board noted that the concept of sweet versus sour is used to represent the taste of the product and considered that this concept would be of general appeal and not specifically of appeal to children under 12.

With regards to visuals in the current advertisement the Board considered the animated nature of the advertisement. The issue of animated characters is one where the Board has previously stated that animation per se does not mean that an advertisement will be considered to be directed primarily to children. Specifically the Board noted scenes in advertisements for Kellogg LCMs (0179/13 and 0180/13) (which predominantly featured real life images of children at school but also included images of cartoon snails and dinosaurs) and for Kellogg's Coco Pops (0144/13)(which predominantly featured the image of a cartoon bowl of coco pops playing a well-known pool game). By contrast however in a number of other advertisements including animated characters (eg: Kraft 0229/11 and Smiths Chips 0190/13) the Board had considered that the advertisements were not directed primarily to children. The Board reiterated that it is essential for the Board to 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 clearly directed primarily to children.

In the current advertisement the Board considered that although there is an animated representation of the product, which is depicted antagonising a real actor, in the Board's view this type of animation in the context of the overall theme of the advertisement would be of appeal to a broad audience.

With regards to the language used the Board noted the adult male voiceover of the advertisement and considered that the tone of voice and the actual words used ("first they're sour, then they're sweet") are not designed to be of appeal primarily to younger children.

The Board agreed that the advertisement would be attractive to children but considered that it would also be attractive to older teens and adults and considered that overall the advertisement was not directed primarily to children under 12.

The Board noted that, although in this instance it had determined that the advertisement was not of itself directed primarily to children under 12, if an advertiser chooses to make an advertisement which has themes, visuals and language that are attractive to children, it does run the risk of the Board determining that, on balance, the advertisement is in fact directed primarily to children.

The Board determined that as the advertisement is not directed primarily to children under 12, does not appear in media directed primarily to children and does not appear in media attracting an audience share of greater than 35 percent the advertisement does not come within the AFGC RCMI.

The Board then considered whether the advertisement complied with 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 means: means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition.

The Board noted that the definition is largely the same as that in the RCMI. For the same reasons noted above, the Board considered that this advertisement is not directed primarily to children and that the AANA Children’s Code and Part 3 of the AANA Food Code do not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the AANA Food and Beverages Code. The Board noted in particular 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 noted that the advertised product is a Sour Patch lolly. The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

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

Finally the Board noted the AANA Code of Ethics.

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted the advertisement shows a fake wall being placed across a path so that a cyclist rides in to it and falls off his bike.

The Board noted the slapstick tone to the advertisement and considered that the depiction of a person being tricked in to falling off their bike was relevant to the theme of the advertisement, i.e. showing the ‘sour’ side of the sweet. The Board noted that the young male who falls off his bike is wearing a bicycle helmet and considered that he does not appear to be harmed or in any pain and that he is then offered care by the animated lolly in the form of a band-aid. The Board noted that the construction of a fake wall is used in the advertisement and considered it would be unlikely for the average person to copy this scenario.

Overall the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

Finding that the advertisement did not breach the AFGC RMCI, the Food Code, the Children’s Code or the Code of Ethics, the Board dismissed the complaint.