



Case Report

1	Case Number	0399/14
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Pay
5	Date of Determination	08/10/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

“The advertisement depicts a group of three young children running towards a castle. Subsequently, each child begins to eat a Dragon Pop Icy Pole. One of the children then turns into the Paddle Pop lion and he and another animated character (each holding an icy pole) win a battle against a villainous character. Both of these characters are from the Magilika film. The ad is then subtitled with the statement “True Heroes Balance Energy Intake and Activity. Enjoy Paddle Pop as a Treat within a Balanced Diet”. This is shown for a total of ** [sic] seconds. The second part of the ad relates to competitions run by Nickelodeon and the advertiser, for tickets to [sic] and Magilika competitions, giving ticketing, entry and prize details. Slimefest is a children’s entertainment event being held in Melbourne and Sydney in September 2014, featuring music, rides, merchandise and food. The prize includes ticket and flights for “you, a friend and a guardian”.”

THE COMPLAINT

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

The TV ad breaches the Responsible Children's Marketing Initiative (January 2014, RCMI) because:

- 1. It is an ad for food products directed primarily to children (S1.1);*
- 2. Paddle Pop Dragon Pop Icy Pole products do not represent a “healthier dietary choice consistent with established scientific or Australian government standards (S1.1(a)); and*

3. Other food products promoted in the ad (being Hoyts Candy Bar products as prizes through the advertised Nickelodeon competition referred to by the ad) do not represent “healthier dietary choices consistent with established scientific or Australian government standards (S1.1(a)).

1. The Ad is directed primarily to children

We expect this element is not in issue as the advertiser has conceded that this style of advertisement, featuring Paddle Pop lion and friends are advertising communications directed to children (see decisions 0089/14 and 0410/13) When regard is had to the theme, visuals, and language used, the ad is clearly directed primarily at children.

2. Dragon Poppers do not “represent healthier dietary choices:

Unilever refers to the NSW Healthy School Canteen Strategy (2006) as the basis of their definition of what constitutes a healthier dietary choice. The NSW Canteen Strategy specifies children and adolescents should consume “only moderate amounts of sugars and foods containing added sugars (p.2). Furthermore, the Strategy stipulates that icy poles which contain more than 300kj a serve should be considered an occasional food which is not to be sold more than twice a school term (p.11-13).

Online nutrition information on the advertiser’s websites suggests that a Paddle Pop Dragon Pop Icy Pole contains 8.8g of sugar (equivalent to almost 20% sugar by weight) and an average of 298kj per 50g serving size. This dose of energy, almost entirely contributed by sugar, is only 2kJ lower than the 300kj serve (for a occasional only) food under the NSW Canteen Strategy. To rely on the definition to deem a product so close to the end of the spectrum is not accurate or appropriate.

The reason foods are permitted in schools only occasionally is that energy dense products, which contribute no valuable nutrients, can contribute to poor diets, overweight and obesity. These preventable risk factors for chronic disease present a huge problem for Australia’s current generation of children, with around 25% of children overweight or obese. National Health and Medical Research Council, through the Australian Dietary Guidelines 2013 (Summary), recommends avoiding foods and drinks high in added sugars. The Australian Government (National Health and Medical research Council) Dietary Guidelines for Children and Adolescents in Australia recommends the consumption of only moderate amounts of sugars and foods containing added sugars, as excessive consumption is a risk factor for obesity.

In our view, the product advertised in this instance may be distinguished from other cases where this advertiser has successfully argued that high sugar products are “healthier dietary choices. In decision 0410/13, Unilever noted that approximately 25% of the sugar content of a product (Trop-o-saurus Slime) was derived from naturally sugars such as lactose that are naturally present as a result of the product being made from milk. This is not the case here. In that case it was also argued that the product contains 86mg of calcium, a “positive nutrient under the NSW Canteen Guidelines, which is absent here.

That is, while Unilever has argued that “through our Paddle Pop range we offer families a treat option that is portion controlled and more nutritionally sound than many other comparable treats (decision 0089/14), Dragon Poppers have minimal nutritional value and are not consistent with the NSW Canteen Guidelines, to which Unilever subscribe as their guide for advertising.

Finally, Dragon Pop Icy Poles are promoted as containing “popping candy, which, as a confectionary product, falls into the category under the NSW Canteen Guidelines and is “limited for sale in school canteens being a food “of minimal nutritional value. It’s promotion is not consistent with Unilever’s own definition of “healthier dietary choices (p.13).

We ask the Board to apply a common sense analysis to find that Dragon Poppers are not a healthier dietary choice appropriate for advertising to children. We submit this is the only reasonable conclusion that can be reached that is consistent with the spirit of the RCMI's commitment to reduce children's exposure to products that are not healthy options, as well as the best available dietary evidence, which underpins the Australian Dietary Guidelines.

3. The advertisement also promotes unhealthy products through a promotional competition: As noted above, the second part of the advertisement promotes the Paddle Pop SLIMEFEST Competition. The advertisement encourages viewers to a website for details of how to enter to win the prizes. The prizes for this competition include a Family Pass for four people to the premiere of Paddle Pop Magilika valued at \$40 and four Candy Bar Combos (bottled drink, popcorn and Paddle Pop) at the premiere, valued at \$49.20. The terms and conditions of the competition detailing the prize can be found here.

THE ADVERTISER'S RESPONSE

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

Unilever does not consider the TVC to be contrary to the AFGC's Responsible Children's Marketing Initiative (RCMI) or the relevant AANA Codes.

Our reasons follow.

1. The Complaint

We note that the Complaint was received by the ASB on 18 September 2014. The complainant expressed the following concerns in relation to the TVC.

"The TV ad breaches the Responsible Children's Marketing Initiative (January 2014, RCMI) because:

- 1. It is an ad for food products directed primarily to children (S1.1);*
- 2. Paddle Pop Dragon Pop Icy Pole products do not represent a "healthier dietary choice consistent with established scientific or Australian government standards (S1.1(a)); and*
- 3. Other food products promoted in the ad (being Hoyts Candy Bar products as prizes through the advertised Nickelodeon competition referred to by the ad) do not represent "healthier dietary choices consistent with established scientific or Australian government standards (S1.1(a))."*

2. The TVC:

We largely agree with the complainant's description of the TVC.

Unfortunately, we do not have a CAD reference number or rating for the TVC as the TVC was aired on Nickelodeon which is not a "free-to-air" network. Therefore, CAD numbers were not required.

3. Responsible Children's Marketing Initiative (RCMI)

3.1 Marketing communication directed primarily to children (S1.1)

Unilever is a responsible advertiser and confirms its commitment to the RCMI. We agree that the TVC is a marketing communication for food products directed primarily to children. The TVC contains themes and visuals which do appeal to children and Annexure 'C' suggests that the TVC was aired during children's programs, and therefore was predominantly viewed by children. As such, with regard to the content and placement, we confirm that the TVC was targeted primary to children and falls within the ambit of the RCMI.

3.2 Paddle Pop Dragon Popper icy pole products do not represent a healthier dietary choice consistent with established scientific or Australian government standards (S1.1(a))

As outlined in our Company Action Plan under the RCMI, Unilever is committed to ensuring that it does not market food to children unless the products comply with the strict nutrient criteria set out in:

(a) Fresh Tastes @ School NSW Health School Canteen Criteria; and

(b) Unilever's global internal nutrient criteria as published in the peer-reviewed European Journal of Clinical Nutrition (Nijman CAJ et al 2006 EJCN. 1-11), which is updated regularly. Latest version found at the link below:

(http://www.unilever.com/images/Unilever_Highest_Nutritional_Standards_2013_tcm13-387677.pdf).

In 2014 Paddle Pop introduced a new product, Dragon Popper (subject of the complaint), to the Paddle Pop range. This product was only introduced because it complies with both sets of nutrition criteria outlined above.

The serving size of a Paddle Pop Dragon Popper (Relevant Product) is 50g which contains:

(a) 298kJ;

(b) 8.8g of total sugars;

(c) 0.9g of saturated fatty acids;

(d) 0mg of sodium; and

(e) orange, apple and grape flavours.

3.2.1 Unilever's Internal Nutrition Guidelines

As a responsible advertiser, Unilever is dedicated to helping people make healthier food choices. We continually work to improve the taste and nutritional quality of all our products. Through our Paddle Pop range we offer families a treat option that is portion controlled and more nutritionally sound than many other treats.

Pursuant to the Unilever Sustainable Living Plan, it was our target to have all of our Paddle Pop products, contain 110 or fewer calories per portion by 2014, a target that we have now achieved. In addition, aligned with Unilever's internal nutrient guidelines for children's ice cream products, the entire Paddle Pop range, including the Relevant Product, complies with the following criteria:

- (a) 110 calories or fewer per portion;*
- (b) less than 3g saturated fat per portion; and*
- (c) less than 20g added sugar per 100g.*

3.2.2 Fresh Tastes @ School NSW Health School Canteen Criteria (NSW School Canteen Criteria)

We do not accept the complainant's allegation that the Relevant Product is not consistent with the NSW canteen guidelines which Unilever subscribes to.

The NSW School Canteen Criteria prescribes the following nutrient criteria for 'water ice' products to be considered occasional treats ('Amber' rating) and to be sold in NSW schools:

- (a) less than 300kJ per serve; and*
- (b) less than 100mg sodium per serve.*

The nutritional profile of the Relevant Product (as outlined above) is consistent with the NSW School Canteen Criteria as an 'Amber' product. Pursuant to this criterion, products classified 'Amber', like the Relevant Product, should be selected carefully, should not dominate the menu and should be avoided in large serve sizes. Amber products may also be sold in NSW schools and should be eaten less often than green foods and as part of a balanced diet. We believe that the message conveyed in the TVC through the use of our 'nutrition sticks' which state "True heroes balance energy intake with activity. Enjoy Paddle Pop as a treat within a balanced diet", is consistent with such principles. The TVC does not encourage regular consumption nor does it make nutritional claims about the Relevant Product. Rather, the TVC reminds viewers that the Relevant Product is a treat and is to be consumed occasionally.

The complainant appears to assert that whilst the Relevant Product contains 2 kilojoules less than the prescribed amount of total kilojoules by the NSW School Canteen Criteria (and therefore compliant), it is not appropriate to rely on the criteria when a product is so close to the spectrum. We submit that this assertion is unsubstantiated. On one hand the complainant has alleged that the Relevant Product breaches the RCMi because it is inconsistent with the NSW School Canteen Criteria, but on the other hand, claims that reliance on the criteria

outlined by the same guidelines is inappropriate. The NSW School Canteen Criteria is an established and recognised nutritional framework which Unilever has relied on continually to improve the nutritional quality of all its products. Unilever's reliance on the NSW School Canteen Criteria has also been accepted and recognised by both the Australian Food and Grocery Council (AFGC) and the ASB in the past. The parameters set by the criteria should not be disregarded simply because a product sits close to the end of the spectrum. The criteria would become invalid if parameters set by it were not able to be used to guide product development and then put into practice. The important factor that needs to be considered is that the Relevant Product meets the NSW School Canteen Criteria and therefore is compliant.

We also note the complainant's contention in relation to the popping candy which is a component of the Relevant Product. We believe it is unreasonable to isolate the presence of popping candy, as the Relevant Product is likely to be consumed as a whole and not in parts. Taken in its entirety, a serve of the Relevant Product contains only 0.9g of popping candy which is equivalent to 1.8% (by weight) of the Relevant Product. Although not negligible, popping candy is only a small component of the Relevant Product and we request the Board to consider the nutritional value of the Relevant Product in its entirety and not in components, as has always been the practice in the past and is reflective of how the product is consumed.

As the nutritional profile of the Relevant Product complies with both Unilever's internal nutritional guidelines as well as the NSW School Canteen Criteria, we submit that the Relevant Product does represent a healthier dietary choice, consistent with established scientific and Australian government standards.

3.3 The advertisement also promotes unhealthy products through a promotional competition

We acknowledge that the TVC promotes a competition which enables participants to win tickets to the Slimefest event and a number of other prizes. However, we deny that the TVC actively promotes unhealthy products.

The focus of the advertisement is the Relevant Product and the opportunity to win tickets to Slimefest. The TVC does not actively promote the Candy Bar Combos as the complainant has alleged. It only promotes the Family Passes to the Paddle Pop Magilika movie.

We acknowledge that when you access the Slimefest competition website, details of minor components of the prize such as Candy Bar Combos are provided. However, we submit that these snack items are foods commonly consumed by people when they visit the cinema. Furthermore, the winner and their guests are not required to redeem all food items included in the Candy Bar Combo and can choose what they redeem and consume (including whether to substitute the drink for healthier options like water).

In addition, the terms and conditions of the Slimefest competition clearly stipulate that if a prize winner is under the age of 18 at the time of awarding the prize, they must be accompanied by a parent or guardian when collecting the prize. The terms also outline that the Magilika movie is classified as Parental Guidance and that it is not recommended for viewing by persons under the age of 15 years without guidance from parents or guardians. Based on this and general community standards, it is reasonable to assume that children (as defined in the RCMI) who won the Family Pass would be accompanied by a parent or

guardian to the Magilika movie premiere. As a result, the parent and/or guardian would be able to guide or advise the child on the consumption of products offered as part of the Candy Bar Combo.

In light of the above, we do not believe the TVC promotes unhealthy products through promotion of a competition. If anything, having Candy Bar Combos as part of a prize (not shown on the TVC) reinforces that products such as popcorn, bottled drink and the Relevant Product are occasional treats as they are part of a prize that can be won and only redeemed once.

3.4 Advertising and marketing communications to children for food and/or beverages must reference, or be in the context of a healthy lifestyle, designed to appeal to children through messaging that encourages good dietary habits and physical activity (S1.1(b))

We note that the complainant has not raised any concerns in relation to clause S1.1(b) of Schedule 1 to the RCMI. However, we understand that in addition to the specific issues raised by the complainant, the Board will also review the TVC in its entirety against all the relevant applicable codes outlined in your notification. As such, we submit that the TVC also complies with clause S1.1(b) of Schedule 1 to the RCMI.

3.4.1 Good dietary habits

In addition to the NSW School Canteen Criteria, we recognise that the Australian Dietary Guidelines 2013 classify ice creams as an occasional food. As a result, we constantly refer to Paddle Pop products, including the Relevant Product, as treats to be enjoyed occasionally. Accordingly, the TVC displays the message “True heroes balance energy intake with activity. Enjoy Paddle Pop as a treat within a balanced diet”. This message reminds children and their parents that the Relevant Product is to be consumed as a treat and to balance consumption with energy intake and good diet. We highlight that the Board has previously concluded that this message is “clear and positive in the encouragement of healthy lifestyle and would encourage good dietary habits” (Case Report 0410/13, p.15).

The nutrition information for all existing and new Paddle Pop products is also available on the Paddle Pop website to help parents make informed choices.

3.4.2 Physical activity

We submit that the TVC encourages physical activity through the clear depiction of children playing, running and engaging in physical adventures outside, as well as through the on-screen message which reinforces the fact that treat foods should be balanced with physical activity.

The TVC shows three children running outdoors towards a castle where they enter an imaginative hole and take a bite of the Relevant Product. One of the children transforms into the Paddle Pop lion when he takes a bite and is shown jumping and running outdoors on hilltops along with Leena, another Paddle Pop character, to battle against Shadow Master, a villainous character and Paddle Pop lion’s greatest enemy. These are all scenes of obvious physical activity. We also refer to the Board’s decision in Case Report 0410/13 (p.16), in which the Board noted that “physical activity did not have to be portrayed as a structured or formal sporting activity, but that participating in outdoor play and imaginative play was a

positive message encouraging children to take part in physical activity”.

The TVC also promotes ‘Slimefest’, an annual music event for children hosted by Nickelodeon and sponsored by Unilever. This event is held during school holidays and encourages children to get outdoors and engage in the numerous activities organised for them at the event such as music shows where kids dance, and multiple activation spaces where children participate in physical adventures (e.g. spaces with fog machines where children have to find their way through a jungle and fun rides). The music show is also depicted in the TVC by showing hundreds of children at Slimefest jumping, dancing and having a great time with other children.

In light of the above, we believe that the TVC does encourage physical activity consistent with the core principles of the RCMI.

Due to the reasons outlined in section 3 above, we do not believe the TVC breaches the core principles of the RCMI.

4. AANA Code of Ethics

We understand that the Board will also review the TVC against Section 2 of the AANA Code of Ethics.

Unilever respectfully submits that the TVC complies with Section 2 of the AANA Code of Ethics due to the reason outlined below.

Section 2.1

The TVC does not discriminate against or vilify a person or a section of the community.

Section 2.2

The TVC does not employ sexual appeal as it is a TVC predominantly viewed by children.

Section 2.3

While the TVC shows animated characters in battle, the battle is depicted as an imaginative adventure where the Relevant Product and its flavours are used to fight off ‘evil’. There is also no use of violent objects in the TVC.

Section 2.4

There is no sexual or sex-related content in the TVC that needs to be treated sensitively with the relevant audience (children).

Section 2.5

The language used in the TVC is not inappropriate or obscene.

Section 2.6

The TVC does not depict material contrary to prevailing community standards on health and safety. The TVC promotes the Relevant Product as a 'treat' food. Based on the Board's previous findings in Case Reports 0410/13, 55/10 and 0443/10, advertising treat foods is not against prevailing community standards.

5. *AANA Code for Advertising and Marketing Communications to Children*

We submit that the TVC complies with the AANA Code for Advertising and Marketing Communications to Children due to the reason outlined below.

Section 2.1

For reasons already outlined above, we do not believe the TVC contravenes prevailing community standards.

Section 2.2

The TVC is not misleading or ambiguous. The TVC clearly communicates the Relevant Product as a new product and the nature of the Slimefest competition. The TVC does not mention prices for anything.

Section 2.3

As outlined in Annexure C, the TVC has been placed in timeslots such that the programs in close proximity to the TVCs are all programs predominantly viewed by children and therefore not unsuitable for children.

Section 2.4

The TVC does not employ sexualisation in any form.

Section 2.5

The TVC does not portray images or events which depict unsafe use of the Relevant Product, nor does it advertise products which are unsafe or dangerous.

Section 2.6

The TVC does not demean any person or group and does not portray images or events which are frightening or distressing. Instead, the TVC depicts images of fun and adventure and appeals to all children.

Section 2.7

The TVC does not undermine the authority, responsibility or judgment of parents or carers. The nutritional message "True heroes balance energy intake with activity. Enjoy Paddle Pop as a treat within a balanced diet", displayed in the TVC reminds and educates parents and carers on the context in which the Relevant Product is to be consumed. The terms and conditions of the competition promoted in the TVC also provide parents with the responsibility and authority to monitor and control their child's participation in the Slimefest

event and also in redemption of prizes.

Section 2.8

The only disclaimers used in the TVC are in relation to the Slimefest competition terms and conditions. The key terms are clearly explained through the voice over and children are asked to visit the website to understand the terms and how to enter the competition.

Section 2.9

The TVC does advertise a competition. However, through the use of written text and voice over, the TVC does summarise the key terms of the competition. The text at the bottom towards the end of the TVC also outlines the closing dates for entries. Through the voice over, the TVC makes it clear that there is a chance of winning and what some of the likely prizes are. The TVC also includes a call to action which is to visit the website provided, for more details regarding the promotion and how to enter.

Section 2.10

While the TVC uses the popular Paddle Pop animated characters, it is not used in a manner which obscures the distinction between commercial promotions and programs. The Paddle Pop characters are established and recognised characters amongst Paddle Pop fans. In the TVC, these characters are used to relate to the Relevant Product and not a particular program or editorial content. The TVC does show Paddle Pop characters in the context of the Magilika movie but this depiction is clearly distinguished and represented through the voice over and headline text which states “Paddle Pop Magilika”.

Section 2.11

The TVC does not include, refer to or involve an offer of a premium other than the prizes for the Slimefest competition. However, the TVC makes the nature of the prizes quite clear and also clearly outlines the key terms and conditions of the competition.

Section 2.12

The TVC does not in any way relate to alcohol products and does not draw any association with companies that supply alcohol products.

Section 2.13

The TVC does not indicate that personal information in relation to a child will be collected.

Section 2.14

For reasons already outlined above in relation to the RCMI, we submit that the TVC does not encourage nor promote an inactive lifestyle or unhealthy eating habits.

6. AANA Food and Beverages Marketing and Communications Code

We submit that the TVC complies with the AANA Food and Beverages Marketing and

Communications Code due to the reasons outlined below.

Section 2.1

For reasons outlined above, we reiterate that the TVC does not mislead, deceive or otherwise contravene prevailing community standards. The TVC is communicated through themes, visuals and voiceovers which children can easily relate to and understand. All the information regarding the Relevant Product as well as the Slimefest competition are accurately presented. The TVC does not make any nutritional claims and uses messaging to remind children that the Relevant Product is to be consumed only occasionally has a treat.

Section 2.2

For reasons outlined above, it is clear that the TVC does not undermine but rather promotes the importance of healthy or active lifestyle as well as balanced diets. This is achieved through the message “True heroes balance energy intake with activity. Enjoy Paddle Pop as a treat within a balanced diet, as well as through depiction of physical activity in the form of playing outdoors, at the Slimefest event and through imaginative adventures.

Section 2.3 & Section 2.4

The TVC does not include any health or nutrition based claims regarding the Relevant Product nor does it include nutritional or health related comparisons.

Section 2.5 & Section 2.6

The TVC does not make any reference to consumer taste or preference tests nor does it use scientific terms. The TVC only makes reference to the flavours and texture (“crackling popping candy”) of the Relevant Product which are accurate in the manner that it is represented in. The Relevant Product does contain orange, apple and grape flavours and the top part of the Relevant Product does create a crackling popping sensation when consumed.

Section 2.7

The TVC does not appear within segments of media devoted to general and sports news and/or current affairs. Therefore, we do not believe this section is applicable to the TVC.

Section 2.8

The TVC does not portray the Relevant Product as a suitable substitute for meals. Rather, the TVC promotes the Relevant Product as a treat to be consumed along with a balanced diet and physical activity.

Section 2.9

For reasons outlined in the sections above, we respectfully submit that the TVC does comply with the AANA Code of Ethics and the AANA Code for Advertising & Marketing Communications to Children.

Section 3.1

As outlined above, the TVC employs themes and visuals such as animated characters, adventures, outdoor activities, the Relevant Product and the Slimefest event, which all relate to and can easily be understood by children. The TVC does not make any nutritional or health related claims or create a deceptive sense of urgency to purchase the Relevant Product.

Section 3.2

We do not believe the TVC improperly exploits children's imaginations which may encourage excessive consumption of the Relevant Product. The TVC merely promotes the Relevant Product as a new available product in the Paddle Pop range. There are no calls to action in the TVC which ask children viewers to go out and buy the Relevant Product immediately. Entry into the Slimefest competition also does not require purchase or consumption of the Relevant Product. Through our key messaging, the TVC reinforces that the Relevant Product is a treat and that its consumption needs to be balanced with physical activity and a good diet.

Section 3.3

The TVC does not state or imply that possession or consumption of the Relevant Product affords children physical, social or psychological advantage over other children.

Section 3.4

The TVC does not aim to undermine the role of parents or carers in guiding diet and lifestyle choices. In our view, the TVC assists parents in maintaining this role by reminding children and parents that the Relevant Product is only to be consumed as a treat. Furthermore, the terms and conditions of the Slimefest competition clearly require the involvement of parents not only in managing participation in the competition but also redemption and use of prizes.

Section 3.5

There are no calls to action in the TVC which require children to immediately purchase and consume the Relevant Product. The TVC merely informs its children viewers of the new product that is now available. Entry into the Slimefest competition is also not subject to purchase or consumption of the Relevant Product. As such, we do not believe the TVC includes any appeals to children to urge their parents or guardians to buy the Relevant Product.

Section 3.6

The TVC only makes reference to flavours (orange, apple and grape flavours) and the nature of the Relevant Product (“crackling popping candy”) which are in fact features of the product.

7. Conclusion

Unilever is pleased to have had the opportunity to respond to this Complaint and confirms its support for the Board and its commitment to both the RCMI and AANA Codes.

For the reasons stated above, we respectfully submit that the TVC complies with both the RCMI and relevant AANA Codes. As such, we believe that the Complaint should be dismissed in its entirety. In any event, we would like to inform the Board that the TVC (in its current form) is no longer being aired as the Slimefest event concluded on Sunday, 21 September. As such, the last time the TVC was on air was on Friday, 19 September 2014. However, another version of the TVC will continue on air.

We would like to reassure the Board that Unilever is actively committed to and conscious of its obligations under the RCMI and AANA Codes, and we aim to ensure best practice in this regard. Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever’s Legal, Nutrition and Corporate Relations Departments to critique all advertisements to ensure compliance with our strict internal guidelines as well as legal and ethical considerations. We will continue to improve these review processes to ensure that we continue to adhere to our obligations and commitments under the RCMI and AANA Codes.

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 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 because there are some Paddle Pop products that do not represent a healthy dietary choice within the meaning of the RCMI.

The Board noted the complainant’s concern that the advertisement refers to items available as prizes from the Hoyts Candy Bar. The Board noted that as these products do not appear in the advertisement, it is beyond the scope of the Initiative and the Board’s charter to consider these products as part of the current matter.

The Board noted that it had previously dismissed complaints regarding television and internet advertisements for Unilever (0454/11 and 0410/13 and 0089/14) however those products differ to that in the current advertisement.

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

The Board firstly considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted 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.

Medium is defined as: 'Television, radio, print, cinema, internet sites'.

The Board noted the RCMI Initiative 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 directly 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.

The Board considered the theme, content and visuals of the advertisement. 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 (celebrating the arrival of the new paddle pop with a chance to win tickets to Slime Fest), the visuals (children turning into animated characters and large groups seen at slime Fest) and the language used (voice over describing the product and the chance to win tickets). The Board considered that the advertisement includes animation, adventure, colours and images of children, all of which appeal to child audiences and determined that the advertisement is clearly directed primarily to children under 12 and that the first part of s1.3 is satisfied.

In any case, the Board noted that the advertisement is featured on Pay TV on the Nickelodeon channel and would be considered to be in a medium directed primarily to children.

The Board noted that as the advertisement is directed primarily to children and includes the signatory's brand, it must comply with core principle s1.1 of the AFGC RCMI.

S1.1 requires that 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;

And

- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:
 - i. good dietary habits, consistent with established scientific or government standards;

and

ii. physical activity

The Board first considered whether the product is a healthy dietary choice.

The Board noted the advertiser's response that the advertised product (the Dragon Pop PaddlePop) does meet the requirements of the company action plan for a healthier dietary choice.

Based on the information provided by the advertiser, the Board also noted that the independent arbiter is required to provide confirmation about the nutritional integrity of the product with regard to whether the product meets the requirements for a healthier dietary choice:

The Board noted the independent arbiter's comments:

“in terms of the nutrition criteria of the advertised product, the product featured in the advertisement ie: Dragon Pop Icy Pole complies with the nutrition criteria set out in the Fresh Tastes @ School NSW Healthy School Canteen Strategy and Unilever's own global internal nutrient criteria. The advertised product is therefore consistent with the nutrient criteria detailed in Unilever's Company Action Plan under the Australian Food and Grocery Council's RCMI.”

On the basis of the confirmation by the Independent Arbiter that the products meet the criteria for a healthier choice product, the Board considered that the product is a healthier dietary choice and is permitted to be advertised to children under 12.

The Board then considered whether or not the advertising and/or marketing communication activities, reference, or are in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:

Good dietary habits, consistent with established scientific or government standards; and

Physical activity

The Board noted that that requirement is a positive obligation on the advertiser to ensure that the advertisement encourages both good dietary habits and physical activity.

The Board noted that it had previously dismissed complaints for PaddlePops promoted via the company website (0089/14) and acknowledged that there can be considerable difficulty for advertisers on a website platform to reflect this type of messaging and considered that in this matter there was sufficient information around good dietary habits.

The Board noted that the current advertisement for Dragon Pop, incorporates on-screen messages of “Enjoy Paddle Pops as a treat within a balanced diet” and “true heroes balance energy intake with activity.” The Board noted that the messaging is written in simplified language that could be understood by children. However, in contrast to the website promotion mentioned above, the Board considered that as a television advertisement, the advertiser has a greater capacity to get messaging across that encourages good dietary habits.

The Board noted that in this instance, the inclusion of small on screen text at the forefront of animated action scenes is not sufficiently getting the message to children. The Board

considered that the printed message does not have a big impact for children when the rest of the advertisement is based on voiceover and visuals.

The Board determined that in the medium of television, the messaging relating to good dietary habits was not strong and did not meet the above criteria and therefore was not sufficient to meet the threshold test of messaging that would encourage good dietary habits.

The Board then considered the issue of physical activity.

A minority of the Board considered that the content of the advertisement that included only an implication of adventure and activity was not sufficient to meet the threshold test of messaging that would encourage physical activity.

This was consistent with a previously considered case (0454/11) where the Board considered that “the fact that the advertisement depicted a jungle scene and described an “adventure” did not amount to an implication or encouragement of physical activity. The Board noted that the advertisement does not feature any characters participating in physical activity and that there are no verbal or visual references to taking part in physical activity.”

In the current case however, the Board considered that the advertisement itself did not have to include intense physical activity for the viewers but that the message that the advertisement was delivering was a positive message. The majority of Board considered that consistent with a previous case for Paddle Pop (ref: 0410/13), the physical activity depicted did not have to be portrayed as a structured or formal sporting activity, but that participating in imaginative, adventure play was a positive message that encouraged children to take part in this style of play . Consistent with this decision, the Board considered that the fact that the advertisement depicted outdoor adventure and activity and a large group of children and adolescents attending the Slime Fest event and noted that these groups are participating in activities that involve music and dancing.

The Board determined that these depictions in total did amount to encouragement of physical activity in line with the requirements of the RCMI.

Based on the above, the Board determined that the advertisement did breach the good dietary habits component of the RCMI but did not breach the requirements related to physical activity.

The Board determined that the advertisement breached s1.1 of the RCMI.

The Board then considered the requirements of the Children's Code and Part 3 of the AANA Food and Beverages Code. The Board noted that for the provisions of the Children’s Code and Part 3 of the AANA Food and Beverages Code to apply the product must also be a children’s product. “Product” is defined in the Children’s Code as meaning;

“goods, services and facilities which are targeted toward and have principal appeal to Children”.

The Board noted that it had previously dismissed complaints regarding a television advertisement for Unilever, (ref: 0410/13) and noted that in that advertisement, the ice confection was considered under the provisions of the Children’s Code as it was considered to be for product.

Consistent with the above, the Board determined that although Paddle Pops are not only consumed by children, it is a snack that is targeted toward and has principal appeal to

Children and accordingly meets the definition of Product.

The Board agreed that in this instance the advertisement was directed to children, that the product is of principal appeal to children and therefore that the provisions of the Children's Code and of Part 3 of the AANA Food and Beverages Code are applicable in this case.

The Board considered whether the advertisement complied with Section 2.14(a) of the AANA Code for Advertising and Marketing Communications to Children. Section 2.14(a) states that:

‘Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.’

The Board determined that promoting the consumption of Paddle Pop as a snack as part of a balanced diet is not of itself encouraging or promoting unhealthy eating habits and that the advertisement does not promote an inactive lifestyle.

The Board considered that the advertisement did not breach section 2.14(a) of the Children's Code or any other provision of the Children's Code or Part 3 of the Food and Beverage Code.

The Board lastly noted section 2.2 of the Food Code which provides that: ‘advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...’

Consistent with previous decisions, the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising a Paddle Pop is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.

The Board also 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 noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board noted that it had dismissed complaints regarding the website for Lion – Yogo (ref: 0075/14) and noted that in that case the website showed messages regarding eating Yo-go as part of a healthy balanced diet rather than the promotion of the product as an everyday meal option. The Board agreed that this website was indicative and supportive of the idea that Yo-go would best be consumed as a snack rather than as the entire meal or that it should be consumed in excess.

Consistent with the decision above, the Board considered that the advertising or promotion of flavoured Paddle Pops is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board noted that the advertisement included the promotion of a competition. The competition requires the purchase and consumption of PaddlePops in order to enter. The Board considered that in the context of a competition, the need to buy one or more PaddlePops for the chance to win a prize does not encourage excess consumption. The Board also considered that there was nothing in the advertisement which suggested or promoted excess consumption.

The Board determined that the advertisement did not undermine the promotion of a healthy balanced diet and did not encourage excess consumption and therefore did not breach Section 2.2 of the Food Code.

The Board determined that the advertisement did not breach Section 2.2 or any other provision of the AANA Food Code.

Finding that the advertisement did breach the advertising messaging requirements of the AFGC RCMI, the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertisement that is the subject of complaint 0399/14 was last aired on 19 September 2014 and will not be aired again in its current form.