



Case Report

1	Case Number	0409/10
2	Advertiser	Kraft Foods Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	22/09/2010
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Advertising Message AFGC - Advertising Message
2.8 - Food and Beverage Code untruthful/dishonest
Food and Beverage Code (Children) misleading/deceptive
Product Placement AFGC - Product Placement

DESCRIPTION OF THE ADVERTISEMENT

Television advertisement with two boys in a school playground, sitting down eating their lunch and the boys are playing a game with their Oreos by pulling it apart and seeing who gets the side with the icing. One of the boys says that if you get the cream side, you have to marry The other boy is displeased and screws his face up. A young girl (one of the girls they have been talking about) runs nearby to collect her basketball, smiles and then runs off with the ball, back to her friends.

THE COMPLAINT

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

We write to request a review of the Advertising Standards Board's decision in relation to our recent complaint about an advertisement for Kraft Oreos (complaint reference number 0363/10). We were informed of this decision by a letter from the Advertising Standards Bureau dated 6 September 2010.

Complaint

In summary the grounds for the original complaint were as follows:

1. Under the AFGC Responsible Children's Marketing Initiative advertisements that are directed primarily to children must represent healthy dietary choices consistent with established scientific or Australian government standards.
2. The Oreos advertisement was directed primarily to children. It featured two primary-school aged boys in school uniform daring each other to a challenge involving pulling apart Oreos and saying which girl they would have to marry. The boys were sitting in a bench in a schoolyard and children could be seen and heard playing in the background.
3. Oreos would appeal primarily to children and are normally marketed to children.
4. The Dietary Guidelines for Children and Adolescents in Australia state that care should be taken in relation to children's diets to limit saturated fat and moderate total fat intake and consume only moderate amounts of sugars and foods containing added sugars.
5. Oreos are not a healthy snack choice for children: they are very high in added sugar (40.4%) saturated fat (10.5%) and total fat (19.8%).

Advertising Standards Board's decision

The Advertising Standards Bureau rejected the complaint on the following three bases:

1. *The advertisement is not directed to children:*

The Board decided that the visuals language and theme of the advertisement created an "overall impact" that was not "specifically directed or designed to be appealing to children".

2. *Oreos are not a children's product*

The Board decided that Oreos are not 'targeted toward and of principal appeal to children' because they are equally enjoyed by adults.

3. *The advertisement was not shown in children's programs*

The Board noted the media schedule and placement for the advertisement the advertiser's statement that "the advertisement is targeted to the main grocery buyer (aged 25 – 54) and concluded that the advertisement was "not broadcast during programs that are likely to have a significant child audience."

On these bases the Board held that the AANA Children's Code Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code and the AFGC Responsible Children's Marketing Initiative did not apply to the advertisement.

Grounds for appeal

We believe that the three bases for the ASB's decision set out above are substantially flawed.

1. *Advertisement not directed to children*

The visuals language and theme of the advertisement were clearly specifically directed or designed to be appealing to children:

- *The visuals of the advertisement are two primary-school aged boys in school uniform sitting in a schoolyard with other children playing in the background the two boys pulling apart and licking an Oreo and 'high fiving' each other and a primary school aged girl coming over to pick up her basketball and smiling at the boys. No adults are visible during the entire advertisement.*
- *The language of the advertisement is two young boys speaking to each other in language typical of primary school-aged boys about a dare involving pulling apart Oreos and saying which girl they will have to marry if they lose the challenge. Only two words "Only Oreos" are spoken by an adult narrator at the end of the advertisement.*
- *The theme of the advertisement is the boys daring each other to the challenge described above. This type of behaviour would be typical of primary school-aged boys.*

2. *Oreos are not a children's product*

The advertisement shows Oreos being taken out of a child's lunchbox and being consumed by children in a child-like manner – by twisting and licking them. The advertisement is clearly promoting Oreos as a snack product of principal appeal for children.

3. *Advertisement not shown in children's programs*

Since making our complaint we have obtained a tracking report for the advertisement which indicates that it was shown on several occasions during various programs and films that are specifically directed to and designed to be appealing to young children:

- Dora the Explorer*
- Shrek the Third*
- Time Tracker*
- Pyramid*
- Go Go Stop*
- Go Diego! Go!*
- Ben 10 Alien Force*
- Dennis and Gnasher*
- Lockie Leonard*
- Stormworld*
- The Sleepover Club*
- Bee Movie*
- Backyard Science*

The advertisement was also shown several times during Home and Away which is typically watched by very high numbers of children.

A copy of the tracking report is attached.

THE ADVERTISER'S RESPONSE

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

1. INTRODUCTION:

Kraft Foods understands that the Australian Standards Bureau ("ASB") has received a complaint in relation to the Kraft Foods Oreo "School Yard" TVC. As such, the ASB is considering whether the Kraft Foods Oreo "School Yard" TVC is in breach of the Kraft Foods Company Action Plan as part of the Australian Food and Grocery Council's Responsible Children's Marketing Initiative Company Action Plan and the Australian Association of National Advertisers Code for Advertising and Marketing to Children, specifically in relation to the Oreo TVC appearing in children's viewing times.

2. ADVERTISING CONTEXT:

The idea and intent behind the Oreo TVC is to deliver a light-hearted portrayal of the way kids make games out of every day objects and scenarios. While the ad features children, it is designed for parents who will appreciate the way the ad dramatises and celebrates an innocent and natural part of childhood.

The media buying schedule for the Oreo "School Yard" TVC is designed so that the TVC appears outside of children's viewing times.

3. TELEVISION COMMERCIAL VIEWING TIMES: COMPLAINT REPOSE

Kraft Foods strives to market and advertise its products in a responsible and sensitive manner. An area of particular concern to the public, to legislators, and to Kraft Foods, is marketing and advertising to children.

Kraft Foods ANZ is committed to maintaining its long-standing policy of not directing its television advertising to audiences primarily composed of preschool children and as evidence

of this commitment is a signatory to the Australian Food and Grocery Council Responsible Marketing to Children Initiative and the Australian Association of National Advertisers Code for Advertising and Marketing to Children.

As part of Kraft Foods' Company Action Plan as part of the Responsible Marketing to Children Initiative, Kraft Foods has a clear position on television advertising in that Kraft Foods does not and will not advertise on programs with a primary audience under the age of six, and only advertise Sensible Solutions products to those under 12 years. Sensible Solutions products are defined as those that provide beneficial nutrients such as protein, calcium, fibre or whole grain at nutritionally meaningful levels and deliver a functional benefit such as heart health or hydration, while staying within specific limits on calories, fat – including saturated and trans fat – sodium and sugar. Where specific program viewership data is unavailable, we use our best judgment to avoid programs which seem likely to be primarily intended for the under 12 audience.

As per all Kraft Foods products such as Oreo that do not comply with its Sensible Solutions criteria which is contained within the AFGC Responsible Marketing to Children Initiative, it is company policy and a condition of the AFGC and AANA Codes that all advertising of Oreo does not occur during children's viewing times. The Oreo "School Yard" TVC paid media buying schedule complies with these Codes, however upon investigation of the complaint, we have identified that some bonus advertising slots for the Oreo "School Yard" TVC have inadvertently occurred during some children's viewing times.

Bonus slots are often provided to advertisers by networks at short notice and by nature, fall outside of a paid media schedule. Understanding this, Kraft Foods has processes in place with its media buying agency designed to ensure that products outside of its Sensible Solutions criteria are not advertised during children's viewing times, regardless of whether the advertising is paid or a bonus slot.

Our investigation has shown that our media buying agency did communicate via email to the television networks that Kraft Foods is not able to target viewers under the age of 12 with this TVC, however due to an unfortunate oversight this information was not contained within the official media briefing document which may have led to television networks inadvertently airing this TVC during children's viewing times.

In addition, Kraft Foods understands that the Oreo "School Yard" TVC had been given a C classification by CAD following a request for this from the creative agency. We are currently investigating how this occurred. When providing bonus advertising slots, television networks generally air those TVCs which have a classification that matches the classification of a program. As the Oreo "School Yard" TVC was classified C, this means that networks would consider this commercial suitable to appear in C classified programs.

While the circumstances giving rise to the TVC appearing during children's viewing times inadvertently, Kraft Foods is deeply concerned by this situation in light of its public commitment to responsible advertising and has undertaken or will undertake with urgency, the following activity to minimise the possibility of a like incident from re-occurring:

- Re-communicate to both media buying agencies working on our brands that any bonus advertising slots offered by networks must occur within the times outlined within the paid media schedule*
- Re-communicate to all networks that any bonus advertising slots offered must occur within the times outlined within the paid media schedule, regardless of classification*
- Re-train both retained media agencies, all retained creative agencies and relevant Kraft Foods employees in the Kraft Foods Marketing Code (in addition to our annual cycle of training).*
- Re-communicate with all retained creative agencies that advertised products outside of the Sensible Solutions criteria cannot be rated C.*

Kraft Foods assures the ASB Board that these incidents were in no way deliberate and that Kraft Foods takes its advertising and marketing responsibilities seriously. Kraft Foods and has commenced the review of processes and communication between itself, its media and creative agencies and television networks as a matter of urgency to prevent similar incidents from occurring.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code") and the AFGC Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

The Board noted that this case is a reconsideration of case 363/10 which was dismissed on 25 August 2010. The Board noted that the case has been resubmitted to the Board on the basis that a further complainant has provided new information about when the advertisement was broadcast.

The Board reviewed the advertisement and noted the advertiser's response. In particular the Board noted that, despite earlier information from the advertiser indicating that the advertisement was not broadcast in programs directed to children, the advertisement has in fact been broadcast during a number of children's programmes. The Board noted the advertiser's comments that such broadcasts were unintentional and related to a number of 'bonus' advertisements.

The Board noted the original complainant's concern that the advertisement is directed at children, and that the product advertised is not a healthy snack choice. The Board also noted the subsequent complainant's concern that: the advertisement is directed to children; the advertisement is for a children's product and the advertisement is shown in children's programming.

The Board first considered whether the advertisement is advertising or marketing communications to children. Under the AANA Code for Advertising and Marketing Communications to Children (the Children's Code) the Board must consider whether the advertisement 'having regard to the theme, visuals and language used are directed primarily to children and are for product.' The Board noted its decision in 363/10 in which it determined that: 'The Board first considered whether the advertisement is directed primarily to children. The Board noted that the advertisement uses child actors and that this can indicate that an advertisement is targeted to children. However the Board considered that the visuals, language and theme of this advertisement create an overall impact of this advertisement that is not specifically directed or designed to be appealing to children. The Board also noted the media schedule and placement for this advertisement and the advertiser's statement that the advertisement is targeted to the main grocery buyer (aged 25 – 54). The Board noted that the advertisement is not broadcast during programs that are likely

to have a significant child audience but acknowledged that some children will see the advertisement.'

The Board discussed its earlier comments and considered again the wording of the Children's Code and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverage Code). The Board noted that, for the purpose of the AANA Children's Code and the Food and Beverage Code the test that the Board must apply is whether or not the advertisement 'having regard to the theme, visuals and language used, are directed primarily to children...'. The Board also noted the practice note for the Food and Beverages Code which requires that 'in its determination of whether any advertising or marketing communication is directed toward children, the Board will apply the same criteria as used in considering complaints under the [Children's Code]. The Board will consider the advertiser's stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted..'

The Board noted that the dictionary definition of 'primarily' is 'in the first place' and that to be within the Children's Code and relevant part of the Food and Beverage Code the Board must find that the advertisement is aimed in the first instance at children. The Board considered the theme of the advertisement (boys playing a schoolyard game at an age when boys don't like girls), the visuals (children playing in a playground) and the language (children talking in everyday terms with little voice over). The Board noted that depictions of children do not, by themselves, necessarily amount to an advertisement being attractive to or directed to children in the first instance. The Board considered that the advertisement was more likely to be taken as being directed to adults who can look back with amusement at school behaviour from young boys and girls. The Board agreed that the advertisement would be attractive to children but that it is not, in the terms of the Children's Code, 'directed primarily at children.'

The Board then considered whether the product is 'a good that is targeted to and of principal appeal to children' as required by the Children's Code. As in case 262/10, the Board agreed that the advertised product 'Oreos' biscuits are a product that is appealing to children. However they considered that this biscuit is not a product that is 'targeted toward and of principal appeal to children' as it is equally enjoyed by adults.

Overall the Board considered that, although the advertisement will be seen by children, it is not directed to children in the first instance and is not for a product that is targeted to and of principal appeal to children. The Board therefore considered that the Children's Code and Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) do not apply to this advertisement.

The Board considered that the advertisement complied with all relevant provisions of the Food and Beverages Code, in particular that it did not encourage excess consumption and clearly depicted the children consuming the product in the context of active lunchtime play.

The Board noted that it had previously considered this advertisement in 2009 (Case Report 437/09). In 2009, the Board considered whether the advertisement was in breach of section

2.3 of the Code. Section 2.3 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant programme time zone".

The Board agreed that the boys in the advertisement were portrayed in a manner which represented the typical sentiments of most pre-pubescent boys towards their female school mates and was neither sexualised nor objectifying towards boys or girls. By contrast, the Board considered that the girl depicted in the advertisement was portrayed to be confident, strong and engaging. The Board considered that the advertisement was not sexually suggestive and did not portray any negative elements which would be considered to be the "sexualisation of children" and was not in breach of section 2.3 of the Code.

The Board determined that the advertisement did not breach the AANA Code of Ethics, Children's Code or Food and Beverages Code.

The Board then considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that under Initiative, the advertiser has committed to :

‘not [advertising] food and beverage products to children under 12 in media unless;

1. Those product represent healthy dietary choices, consistent with established scientific or Australian Government standards; AND
2. The advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
 - Good dietary habits, consistent with established scientific or government criteria
 - Physical activity.’

The Board noted that the advertiser has agreed that the advertised product does not represent a healthy dietary choice under the Initiative and does not meet the criteria that the advertiser has set. The Board noted the information provided by the complainant, confirmed by the advertiser, that the advertisement has been broadcast in children's programming. On the basis that the product was not an appropriate product and that it had been advertised in children's programming the Board determined that the broadcast of this advertisement breached the first core principal of the AFGC RCMI. The Board noted the advertiser's comments that the broadcast during children's programming was by error. The Board expressed significant disappointment that it had been forced to reopen this case as a result of new information. The Board asked that advertisers take particular care to ensure that the information provided to the ASB about programming is accurate and up-to-date in order for the Board to be able to make its decisions taking into account all of the relevant information.

The Board determined that the advertisement breached the first core principal of the AFGC RCMI and upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Kraft Foods has reviewed your Case Report and acknowledges that the Board had concluded that the Advertisement did not breach the following:

- AANA Code for Advertising and Marketing Communications to Children;
- AANA Food and Beverages Advertising and Marketing Communications Code; and
- AANA Code of Ethics.

Kraft Foods further acknowledges that the Board had found that the Advertisement only breached the first core principle of the Australian Food and Grocery Council - The Responsible Children's Marketing Initiative of the Australian Food and Beverages Industry ("AFGC Initiative") on the basis that the Advertisement has been broadcast in children's programming. We accept this finding by the Board.

In response to the above finding and to address the offending matter associated with the Advertisement, Kraft Foods will:

- Modify the Advertisement by cessation of its usage.

Accordingly and based on the action outlined above and our commitment to discontinue the Advertisement, we ask that the Board enters its determination for this case as "Complaint Upheld - Advertising Modified/Discontinued."