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BUREAU**

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Case Report

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| 1 | Case Number | 0410/13 |
| 2 | Advertiser | Unilever Australasia |
| 3 | Product | Food and Beverages |
| 4 | Type of Advertisement / media | TV |
| 5 | Date of Determination | 11/12/2013 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

“This advertisement for Streets “Trop-o-Saurus Slime” icy pole products has been broadcast since October 2013 on commercial television in Sydney, Perth and Melbourne. Two young children (a young boy and a young girl) are seen running through a jungle, before they find a PaddlePop Trop-o-Saurus “slime” icy pole in what appears to be a dinosaur egg. The young boy takes an enthusiastic bite as the product is described by a male voiceover: “New Paddle Pop Trop-o-Saurus Slime: with a gooey tangy sauce inside and a tasty tropical outside: because every great adventure needs a great treat! Try one today.” The young boy then metamorphoses into the Paddle Pop Lion, who is seen with a cartoon friend to be battling against animated adversaries, shooting green laser-beams and swinging through the jungle, as dinosaurs walk below. The Paddle Pop Lion are seen holding aloft the “Slimes”, before the scene cuts to the two young children, standing in the same position, with their icy poles held aloft.”

THE COMPLAINT

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

The OPC considers the TV ads breach the Responsible Children’s Marketing Initiative (‘RCMI’) and the AANA Food and Beverages Advertising and Marketing Communications Code (‘AANA Code’) because: -

1. It is a marketing communication directed primarily to children;
2. Paddle Pop ice-cream products do not represent a healthy dietary choice consistent with established scientific or Australian government standards; and
3. The ad does not promote healthy dietary habits or physical activity.

The advertisement is a marketing communications directed primarily to children.

When regard is had to the theme, visuals, and language used, the TV advertisement is clearly a marketing communication directed primarily to children. In our view this fact is self-evident and should not require elaboration. However, for completeness, we rely on the following important features of the advertisement:

1. *The product advertised is itself designed specifically for children, which is clear from the name of the product ("slime" is not a word used to appeal to adults). This is consistent with the advertiser's 'Paddle Pop' portfolio, which label produces other children's products;*
2. *The advertisement uses the advertisement uses a cartoon-like animation style, very similar to children's cartoon programs;*
3. *It shows young children, aged under 12, looking on wondrously as they discovery a Paddle Pop Trop-o-Saurus in a dinosaur egg and then heartily enjoying the product as they eat it;*
4. *One of the children is seen 'morphing' into Paddle Pop Lion, who then enjoys jungle adventures, clearly inviting children viewers to imagine themselves participating in fantastic, magical adventures;*
5. *The advertisement uses recognisable and popular character: the Paddle Pop Lion, with whom children identify;*
6. *The ad relies heavily on childish themes of adventure, fantasy and 'good-vs-evil', which are commonly used in kids cartoons. It depicts the Paddle Pop Lion and friends battling against adversaries, shooting green laser-beams and swinging through the jungle, as dinosaurs walk below.*

Further, in assessing the child-directed nature of the advertising, we ask the board to consider the content of the PaddlePop website. Although company-owned websites do not themselves come within the ambit of the RCMI, the content of the Paddle Pop website is relevant to the issue of whether this advertisement is directed to children, because the TV advertisement directs children website in its closing scene. The website itself is a sophisticated platform for the promotion of Paddle Pop products through adventure-themed platform games on the computer.

The website and its games feature the Paddle Pop Lion encountering challenges at the "Ice Temple" "Floating Islands" and "Secret Pyramid". Some games are available for download from the app store, to be played on tablets. When visitors to the site first arrive they are greeted by an animated erupting volcano and surrounding jungle scene labelled with the words "Paddle Pop DinoTerra", as adventure music plays. The Paddle Pop Lion is shown with a speech bubble that says "welcome to Dino Terra! Play games, watch movies and get your own dinosaurs!" "A promotional animated clip for games then plays with dinosaurs flying through the sky and screeching. The Paddle Pop lion swings through the jungle, performing summersaults and karate moves with a flaming stick as he faces a variety of animated foes. One character says "do you want to rule the world with three dinosaur crystals?" then Paddle Pop Lion says "I have to follow the shadow master into the past!" A variety of fantastic mythical characters with cartoon-like faces that seem to live in the jungle are shown.

We submit that, very obviously, the website, and the TV commercial promoting it, are directed exclusively to children. The TV advertisement's reference to the website seeks to further engage the children's audience in playing branded games, reinforcing positive brand associations on the impressionable brains of children under 12.

Further, and in the alternative, we rely on the third limb of the definition of "media" in the

RCMI, that is, that the ad was broadcast in programs rated P, C and G rated programs designed for children. These programs included Totally Wild (C), Bondi Rescue, a show which attracted 188,542 viewers under 15 when sampled in 2012, making it the 22nd highest rating show for children. (see <http://www.tvtonight.com.au/2011/10/what-kids-really-watch.html>). In light of this placement, the ad breaches the RCMI irrespective of whether its themes, visuals and language are found to be directed primarily to children.

Paddle Pops are not a healthy dietary choice, consistent with established scientific or Australian government standards

The National Health and Medical Research Council, through the Australian Dietary Guidelines 2013 (Summary), recommends avoiding foods and drinks high in added sugars. In providing tips to limiting added sugars, the Guidelines summary recommends keeping “to a minimum the amount of sugars, honey, sweetened sauces or syrups added to foods and made at home – or avoid adding sugars at all”, and “avoid sweetened drinks.”

The Streets product information website does not disclose the nutritional information for “Slimes”. We estimate, however, based on comparable Streets products, that “Slimes” are very high in added sugar, with a single serve containing approximately 20g of added sugar, while adding essentially no valuable nutrients to the diet other than water. On the basis of the government standards set out in the Dietary Guidelines, discussed above, and on any basic lay-understanding or common sense analysis, Paddle Pop “Slimes” are not a healthier dietary choice.

We anticipate the advertiser will argue that Paddle Pops are a treat food, which may be consumed occasionally within a healthy diet. Such a response does not answer the argument, however, as the decisive issue under the RCMI is not whether the product may be consumed occasionally as a very small part of a healthy diet, as may be argued by advertisers, but simply whether it is a ‘healthier choice’. This test is reflected in the Board’s acceptance of the admission by an advertiser that Oreo Cookies are not a ‘healthier choice’ (see decision 0409/10).

The advertisement does not promote good dietary habits or physical activity

Even in the case of a product that (unlike Paddle Pop “Slimes”) represents a healthy dietary choice, the RCMI provides the advertiser may only promote the product to children if 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: -

- 1. Good dietary habits, consistent with established scientific or government criteria; and*
- 2. Physical activity.*

It appears the advertiser has sought to discharge this requirement by the inclusion of the words “true heroes balance energy intake and physical activity” and “enjoy paddle pop as a treat within a balanced diet”, which appear in small letters at the bottom of the screen.

We submit the appearance of this brief message does not discharge this requirement under the advertisement:

- 1. The lettering is small and appears on screen only for approximately 4 seconds, less than 1/3 of the ad’s short running time;*
- 2. When the message appears, there are fast moving animated action-hero style characters that hold the attention of viewers and preclude the reading of the message, even for adults;*
- 3. The message is not reinforced by voice-over;*
- 4. Young children of an age to enjoy the cartoons and adventure themes are unlikely to read the message;*
- 5. The message is not worded in a manner likely to be understood by young children in so far as it refers to “balancing energy intake and physical activity”. The “balancing” of intake and expenditure is an adult concept understood by reference to basic adult understanding of*

the scientific process of using energy for cellular processes in the body;

6. The communication is not “in the context of a healthy lifestyle”, rather the small lettering of the confusingly worded message is entirely out of context given the other messaging going on around it.

We ask the board to consider who among them, in watching the ad for the first time (without having their consciousness raised by advance reading of this complaint) is aware of and has opportunity to read and understand the written messages. We submit the advertisement does not encourage good dietary habits and physical activity by virtue of the written messaging.

We also note, for completeness, that The Board has previously noted, in its decision 0454/11, that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, which Streets has failed to do in this advertisement. Relevantly, the Board has also previously found that mere suggestion of “adventure” in advertising does “not amount to an implication or encouragement of physical activity” (decision 0454/11). Consistent with that precedent, it is submitted that although the advertisement showing fictional characters swinging between trees and around dinosaurs may promote “adventure” but does not meet the test of positively promoting participation in actual physical activity to children.

The advertisement breaches the AANA Food and Beverage Code.

Further, and in the alternative, the OPC submits that the app breaches of clause 2.1 of the AANA Food and Beverages Code, which states:

“Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”

The Board’s responsibility to protect children from advertising of unhealthy foods that contravenes community standards stems from children’s susceptibility to advertising, particularly advertising featuring, fantasy, adventure, animals, activities or other themes that appeal to children’s imagination.

If the Board finds, contrary to the above submissions, that the advertisement itself does not breach the RCMI by reason of its weak messaging about balanced diets, we submit the advertisement nevertheless breaches the AANA code because of its promotion of the Paddle Pop website, described above. Under the present terms of the RCMI, company-owned websites such as paddlepop.com.au do not attract the RCMI’s prohibition on advertising unhealthy products to children through interactive games and activities. However, the if broadcast of the TV advertisement is permitted to continue, this allows the advertiser to circumvent the rules, directing vulnerable children viewers of Totally Wild to its captivating website.

Online marketing strategies are cost effective for advertisers, and can engage children and young people in interactive activities and games associated with brands or products for much longer periods than traditional forms of advertising such as TV commercials. Recently, the increasing prevalence of tablets and smart phones has impacted on how advertisers promote food products, including to children. Marketing through interactive games is of particular concern because children may not perceive the promotional or commercial nature of the communication, as they lack the experience and cognitive ability necessary to interpret advertising messages critically (see Kunkel, D., Wilcox, B.L., Cantor, J., Palmer, E., Linn, S. and Dowrick, P. ‘Report of the APA Task Force on Advertising and Children. Washington, DC: American Psychological Association, February 20, 2004). This means promotional

material like the Paddle Pop website is powerfully influential over vulnerable children, unscrupulously capitalising on a huge power imbalance between advertiser and consumer. When considering the scope of 'prevailing community standards', the board will be further assisted by recent research showing 83% of Australian main grocery buyers surveyed in 2012 were in favour of banning advertising of unhealthy food at times when children watch TV (Belinda Morley et al, 'Public opinion on food-related obesity prevention policy initiatives' 2012 23(2) Health Promotion Journal of Australia 86). To subvert the rules by using television advertising in children's programs to channel children viewers towards a smorgasbord of branded games online, is, in our submission, contrary to prevailing community standards. That is, this corporate behaviour is not consistent with generally accepted norms of acceptable conduct. The OPC submits that the vulnerability of children to these innovative activity-based marketing techniques renders the advertiser's efforts to engage children in these activities, by reaching them through popular children's programs, is highly unethical and contrary to prevailing community standards.

Conclusion

We ask that the Board require the advertiser to discontinue the advertising immediately. We understand that there are other advertisements on television using promoting the same products, using the same characters and themes, which may use a slightly different script. We ask that all advertisements in this serious be withdrawn for the reasons set out herein.

THE ADVERTISER'S RESPONSE

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

We agree that the TVC for the Paddle Pop Trop-o-saurus Slime (Product) is a marketing communication directed primarily to children. Unilever is a responsible advertiser and confirms its commitment with the RCMI. Through a rigorous internal review process, Unilever decided that the TVC could be shown as we believe that the TVC is compliant with our obligations under the RCMI.

Notwithstanding, we would like to note that the Complainant has referred to the appearance of the TVC during "Totally Wild" and "Bondi Rescue".

"Totally Wild" is predominantly viewed by children aged between 5 and 12 years of age and, as a consequence, is clearly caught by the ambit of the RCMI.

We disagree, however, that "Bondi Rescue" could be considered as primarily directed to children. By virtue of its theme, visuals and language "Bondi Rescue" is not designed for, nor is it of primary appeal to, children aged between 5 and 12 years. We note in this regard that Bondi Rescue has been classified as Parental Guidance (PG), which are programs not recommended for viewing by persons under 15 without guidance from parents or guardians.

Viewership data we have obtained in relation to "Bondi Rescue" show that children only make up 4.35% of the audience of 'Bondi Rescue'. As such, "Bondi Rescue" does not have a predominantly child audience aged between 5 and 12 years as defined under the RCMI.

We submit that "Bondi Rescue" is clearly different from programs set out in Table I (Programs covered by the RCMI) of the Indicative Television Program List, which is set out

in Appendix II of the RCMI. This list contains predominantly cartoons and all appear to be rated General (G). We further submit that “Bondi Rescue” is more closely aligned with the programs set out in Table II (Programs not covered by the RCMI) of the Indicative Television Program List, which is set out in Appendix II of the RCMI.

As such, we consider that “Bondi Rescue” is not a program covered by the RCMI.

*2.2 Paddle Pop ice-cream products do not represent a healthy dietary choice consistent with established scientific or Australian government standards
At the outset we note that the Complainant’s complaint that “Paddle Pop ice-cream products do not represent a healthy dietary choice consistent with established scientific or Australian government standards” misrepresents the obligations under the RCMI.*

The RCMI does not require products to represent “a healthy dietary choice”. The RCMI, in fact, requires participants to represent “healthier dietary choices”.

The RCMI states that Advertising and Marketing Communications to Children for food and/or beverages must:

“Represent healthier dietary choices, consistent with established scientific or Australian government standards, as detailed in Signatories’ Company Action Plan.”

As such, the Complainant’s complaint that “Paddle Pop ice-cream products do not represent a healthy dietary choice” has no basis under the RCMI.

The Complainant does concede that the “decisive issue under the RCMI is not whether the product may be consumed occasionally as a very small part of a healthy diet... but simply whether it is a ‘healthier choice’.” (See also Case Report 0409/10). We agree that the relevant test is whether the Product represents a healthier choice compared to other comparable products.

We submit that the Product meets this test and represents a healthier choice compared to other comparable products.

Unilever is committed 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 more nutritionally sound than many treats or snack alternatives.

The Product contains less than 110 calories per serve, is reduced fat, a source of calcium with each serve providing 11% RDI, and it contains no artificial colours. It also meets strict canteen guidelines in every state across Australia.

To illustrate our commitment to offering families a healthier dietary choice comparative to other treats and snacks on the market, we note that our iconic Paddle Pop brand has also recently been reformulated so the Chocolate, Caramel and Banana Paddle Pop core range

(Paddle Pop Core Range) contain an average of 34 per cent less saturated fat per serve as well as an average of 27 per cent less kilojoules per serve.

Unilever has strict internal guidelines around marketing to children. Unilever's Company Action Plan under the RCMI specifically refers to a commitment not to market food to children aged under 6 years, and to only market food to children aged between 6 and 11 if the products meet the strict nutrient criteria as set out in both:

- Fresh Tastes @ School NSW Health School Canteen Criteria; and*
- 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), and is updated regularly.*

In support of our submission that the product is a healthier dietary choice compared to other treats and snacks, we note that the product complies with the nutrition criteria set out in the Fresh Tastes @ School NSW Healthy School Canteen Strategy, Unilever's global internal nutrient criteria as published in Nijman et al (2007), and as detailed in Unilever's Company Action Plan.

We note that through our efforts in creating healthier dietary treat choices, the Product, along with the Paddle Pop Core Range are all approved for sale in school canteens in every State and Territory in Australia as Amber products based on strict nutritional standards (Qld Smart Choices, NSW Fresh Tastes, WA Star Choice, SA Right Bite as well as the National Healthy School Canteen Guidelines). The Product also meets the following nationally accredited school canteen criteria for the sale of ice cream, milk-based ice confection products in Australian schools:

- Healthy Kids Association (NSW); and*
- FOCiS (QLD).*

We refer to the complainant's reference to the sugar content of the Product. We note that whilst the percentage sugar content by weight is 21.1% of the Product, this percentage by weight does not accurately reflect the nutritional profile of the Product. We submit that it is more appropriate to have regard to the sugar content of the Product per serve. We note that the nature of Paddle Pop products is that it is sold in a portion controlled single serve size of approximately 67g. Based on the controlled single serve of the Product, it is unlikely that consumers consume more than one single serve of the Product consecutively. For this reason, we believe that the Product ought to be profiled based on the nutrient content per serve, rather than regarding the sugar content of the Product in isolation. This is consistent with all school canteen criteria in Australia and consistent with the requirement that Amber products are to be portion controlled in order to be sold in schools.

In taking this approach, we note that the Product contains 14.1g sugar per serve. Additionally, the product also contains 86mg of calcium (11% of adult RDI per serve). We

note that calcium is considered a positive nutrient for the purposes of the school canteen criteria.

We further note that approximately 25% of the total sugar content of the Product is derived from natural sugars such as lactose which are naturally present as a result of the Product being made from milk. Consequently, the added sugar content of this product is 10.4g per serve.

We submit to the Board that, as one of the few ice cream or ice confection products in Australia that are approved for sale in school canteens, Paddle Pops are in fact lower in sugar per serve than many other higher calorie ice cream choices, as well as many other milk-based treat and snack products and, therefore, is a healthier dietary option.

To illustrate this, we note the following:

- A 200g tub of reduced fat flavoured yoghurt with fruit contains 34g of sugar per serve (according to Food Works Professional Xyris Software);*
- A 250mL serve of reduced fat flavoured milk contains 24.38g of sugar (according to AUSNUT 2010 – milk, reduced fat, other flavoured, commercial); and*
- A 100g single tub of reduced fat custard contains 13g of sugar (according to Food Works Professional Xyris software).*

In support of the above, we refer to the Boards' previous considerations of Paddle Pop television commercials in relation to compliance with the RCMI in Case Reports 75/10 and 76/10 where the Board did not have any concerns in relation to the products' compliance with the relevant standards. In particular, we refer to Case Report 0454/11 where the Board accepted that the similar variation of Paddle Pop under consideration in that decision, as well as the Paddle Pop core range, did in fact meet the requirements for a healthier dietary choice and that Unilever's development of a healthier choice of the Paddle Pops "is positive". We note that in 0454/11, despite the Paddle Pop in question having a sugar content of 21.5%, higher than those in the Product in these circumstances, the Board accepted that the Paddle Pop was indeed a healthier choice based on similar nutritional facts as noted above.

Unilever is dedicated to developing nutritionally balanced products and employs a number of in-house Accredited Practising Dieticians and Nutritionists to oversee the development of new products. Both the Product and the Paddle Pop Core Range ensures that parents and children who want to have an ice cream / ice confection product will have a nutritionally approved option.

2.3 TVC does not promote healthy dietary habits or physical activity

2.3.1 Healthier Dietary Habits

As above, we note that the RCMI obliges participants to promote healthier dietary habits and

we submit that the TVC complies with this obligation through a number of means, including the reinforcement of the Product being a 'treat' in the voice over, the sustained depiction of the children engaging in physical activity and the use of an on-screen message to promote a balanced diet and lifestyle.

The TVC makes it clear that the Product is a 'treat' to be consumed occasionally, rather than something consumed regularly. The Product is approved for sale in school canteens in every State and Territory in Australia as an Amber product. We note that the nature of Amber products is that these products should be 'selected carefully', should not dominate the menu and should be avoided in large serve sizes. Amber products may be sold in schools and should be eaten less often than green foods and as part of a balanced diet.

Furthermore, the excitement and pleasure displayed on the children's faces upon discovering the Product in the TVC reinforces the message that the Product is not something received or consumed regularly but is a fun 'treat' to indulge in from time to time.

The notion that the Product is an occasional treat is reinforced by the voiceover and on-screen messaging in the TVC, which explicitly states that the product is a 'treat' on two separate occasions.

The voice over states:

New Paddle Pop Trop-o-saurus Slime. With a gooey tangy sauce inside, and a tasty tropical outside. Because every great adventure, needs a great treat. Try one today. (Emphasis added)

The on-screen messaging further reaffirms

True heroes balance energy intake and activity. Enjoy Paddle Pop as a treat within a balanced diet. (Emphasis added)

We submit that the concept of a treat is easily understood by children. The word 'treat' is indicative and supportive of the idea that the product would be consumed occasionally, rather than as an entire meal or that it should be consumed in excess. Furthermore, we note that the Board has consistently considered that advertising "snacks" and "treats" does not of itself amount to the undermining of important messages around healthy eating, balance diets or active lifestyles (for example see Case Reports 0190/13, 1258/13, 0229/11 and 0443/10) and that the provision of a special "treat" on an irregular basis to a child would not encourage or promote an inactive lifestyle or unhealthy eating habits (Case Report 0443/10).

2.3.2 Physical Activity

We submit the TVC encourages physical activity through the clear depiction of children playing, running, jumping 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 depicts two children actively playing in a sunny park. They are dressed in clothing a child would clearly associate with active play. Upon noticing the 'dinosaur egg' containing the Product, the two children actively run towards it. When the children take a bite of the Product,

one is transformed into Paddle Pop Lion. As the child imagines he is Paddle Pop Lion, he runs and jumps from the ground to a tree, then to a hanging vine. These are all scenes of obvious physical activity.

The on-screen messaging further encourages physical activity:

- True heroes balance energy intake and activity. Enjoy Paddle Pop as a treat within a balanced diet.*

We differentiate the Complainant's submission that the mere description of 'adventure' does not amount to an implication or encouragement of physical activity (see Case Report 0454/11). The TVC does not merely depict a 'jungle scene' and describe 'adventure'; it clearly depicts children actively participating in physical activity, such as playing in a park, running and jumping. Furthermore, the on-screen message provides an additional visual reference to taking part in physical activity

2.3.3 On-Screen Message

We would also like to specifically address the Complainant's complaints regarding the on-screen message. We would like to note that:

- The lettering of the on-screen message is in large letters which occupy the bottom quarter of the screen. The on-screen message is presented in a clearly legible font, is capitalised, and is clearly visible;*

- The TVC runs for only 15 seconds. Presenting the on-screen message for 5 seconds is a substantial portion of the TVC's running time. The on-screen message also complies with the CAD requirements regarding the minimum running time for on-screen messages to appear in TVCs. We note that the requirements set out by the CAD is to allow 0.2 seconds per word, meaning that the length of time required by CAD for the on-screen message in the TVC is 3.4 seconds. The on-screen message therefore not only complies with the CAD requirements but goes beyond what is required of it;*

- The on-screen message is worded in a way that could be easily understood by the school aged children likely to watch 'Totally Wild' (and by the audience of 'Bondi Rescue');*

- The on-screen message is worded so as to be attractive to and be understood by*

school aged children through the use of words such as “heroes”, “energy” and “treat”;

- *The concept of “balancing” or a “balanced diet” is something that school aged children are able to understand. School aged children understand that ‘treat’ foods, such as chocolate or ice creams, should only be eaten occasionally and that they should eat a wide variety of nutritious foods. This is, in essence, a balanced diet. School aged children also understand that there are different food groups, which means eating different food types to obtain all required nutrients without excess energy consumption. They would further understand that a healthy lifestyle requires not only a balanced diet, but also physical activity. We disagree with the Complainant that understanding the concept of a balanced diet requires a “...basic adult understanding of the scientific process of using energy for cellular processes in the body”; and*

1. *The on-screen message is therefore in the context of a healthy lifestyle.*

We further note that the Complainant’s reference to Case Report 0454/11. We note that in this decision, the Board considered that the RCMI obligation is a positive obligation for the advertisement to “...reference or be in the context of a healthy lifestyle... through messaging that encourages good dietary habits.” We submit that Case Report 0454/11 can be easily distinguished from the TVC. The TVC does not merely omit references to unhealthy eating choices or practices; it positively encourages and promotes healthy dietary habits and physical activity through the use of the on-screen message, the reinforcement of the Product being a ‘treat’ in the voice over and the sustained depiction of the children engaging in physical activity.

2.3.4 AANA Code

We refer to the complainant’s reference to AANA Code, clause 2.1 of which states:

"Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information, including any references to nutritional values or health benefits."

With regards compliance with the AANA Code, we would like to note that in Case Reports 55/10 and 0443/10 the Board affirmed that it “...is not yet community standards that treat foods should not be advertised at all”. As such, the TVC, through the mere depiction of the Product, could not be said to contravene prevailing community standards.

2.3.5 Unilever’s Company Action Plan

Finally, we would like to draw attention to Unilever’s Company Action Plan, in which Unilever explicitly states that: “Our aim is to help parents and their children make healthier and more informed choices”. Under the Company Action Plan, Unilever also actively seeks to promote good dietary habits and physical activity:

“Advertising Messaging .1 Only advertising food and beverage products to children under 12 which meet the Fresh Tastes @ School NSW Healthy School Canteen Criteria AND Unilever’s global internal nutrient criteria;

Advertising Messaging .2 Such advertising to children under 12 will be used to support, or will portray, good dietary habits and / or physical activity”.

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 legal and ethical considerations. Our rigorous internal review decided that the TVC could be shown as the Product meets the Fresh Tastes @ School NSW Healthy School Canteen Criteria AND Unilever’s global internal nutrient criteria, and the TVC itself supports and portrays both good dietary habits and physical activity.

1. 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 Code.

For the reasons stated above, we submit that the TVC:

1.

- Represents healthier dietary choices, consistent with established scientific or Australian government standards, and as detailed in Unilever’s Company Action Plan; and*

1. Encourages good dietary habits, consistent with established scientific or government standards; and physical activity.

We submit that the TVC therefore complies with both the RCMI and AANA Code and the complaint should therefore be dismissed in its entirety.

THE DETERMINATION

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

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

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

The Board noted the complainant's concern that the advertisement

1. is a marketing communication directed primarily to children;
2. the product does not represent a healthy dietary choice consistent with established scientific or Australian government standards; and
3. The advertisement does not promote healthy dietary habits and physical activity.

The Board firstly considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that under the AFGC RCMI the relevant requirement is that the company does not advertise food and beverage products to children under 12 in 'media' unless those products represent healthy dietary choices.

Media is defined as: 'Media means television, radio, print, cinema and third-party internet sites where the audience is predominantly children and/or having regard to the theme, visuals, and language used are directed primarily to children.'

The Board noted the RCMI Initiative provides that advertising or marketing communication activities are captured under the RCMI Initiative if:

1. the audience of the communication activity is predominantly children; or
2. the media in which the communication activity appears is clearly directed primarily to children; or
3. the communication activities are, regardless of the audience, clearly directed primarily to children.

The Board also noted that it should consider whether the themes, visuals, language and concepts are those that are attractive to children under 12.

The Board noted the information provided by the complainant that the advertisement was viewed during programs such as Totally Wild and Bondi Rescue.

The Board noted that the advertiser agreed that Totally Wild is predominantly viewed by children aged between 5 and 12 years and is therefore captured within the ambit of the RCMI.

The Board noted that whilst Bondi Rescue could be of appeal to children, it is directed at a family audience and not directed primarily to children.

The Board noted that the programs in which the advertisement was broadcast do not have audiences which are predominantly children. However, the Board determined that the

advertisement was broadcast in programs which regardless of the audience, are clearly directed primarily to children.

The Board noted that the guidelines require that the Board also consider whether the ‘communication activities are, regardless of the audience, clearly directed primarily to children under 12’.

The Board noted the dictionary definition of ‘primarily’ is ‘in the first place’ and that to be within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children. The Board considered the theme of the advertisement (two children on an adventure searching for dinosaur eggs), the visuals (children finding the ice-blocks and biting into them) and the language used (male presenter who says, “Every great adventure needs a great treat”).

The Board agreed that the advertisement is aimed at the grocery buyer as children are generally not the member in the home who buys the groceries for the family, and that the inclusion of the text at the end of the advertisement outlining that “paddle pops should be enjoyed as a treat within a balanced diet” indicates that the advertisement is aiming at an audience of parents or those responsible for buying groceries or treats for children. However, in this instance, the Board agreed that the primary focus of the advertisement would be to attract children because of the focus on the children searching and finding large eggs that have the ice block inside, all within an animated cartoon setting.

The Board noted that the focus of the advertisement is predominantly on the children finding and eating the treat and then the children change into the paddlepop lion and adventure characters fighting villains.

The Board noted it had previously considered an advertisement for Unilever Paddle pops (0454/11) where it found that the advertisement was directed primarily to children. In that instance the Board noted that “the cartoon style, the “adventure” references, the references to a “hero” or “villain” , and the product advertised - variously flavoured “paddle pops”. In the Board’s view the overall theme and content of the advertisement creates an advertisement which is clearly direct primarily to children.

The Board considered that similar to the matter mentioned above, in the current advertisement the language as well as the theme and visuals are clearly directed primarily to children under 12.

The Board then considered whether the product is a healthier dietary choice.

The Board noted the advertiser’s response that the advertised products, Unilever Paddle Pops, do meet the requirements for a healthier dietary choice. The Board also noted the independent arbiter’s confirmation that the advertised product, Unilever Paddle Pops, does meet the requirements for a healthier dietary choice:

“...Therefore, the nutrition criteria of the advertised products comply with the nutrition criteria set out in the Fresh Tastes @ School NSW Healthy School Canteen Strategy and Unilever’s own global internal nutrient criteria as published in Nijman et al (2007). The advertised products are therefore consistent with the nutrient criteria detailed in Unilever’s Company Action Plan under the Australian Food and Grocery Council’s Responsible Children’s Marketing Initiative, and as such the advertising of the product as indicated in the complaint does not breach Unilever’s commitment under this initiative.”

As the advertised product is a healthier dietary choice, the RCMI permits such products to be advertised to children provided the advertisement meets specific requirements. The Board noted that the RCMI allows healthier dietary choices to be advertised to children provided that:

“..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 the two requirements of this provision: encouraging good dietary habits AND physical activity. The Board considered that the advertisement did not depict any unhealthy eating choices or practices but noted that the RCMI obligation is a positive obligation for the advertisement to “reference or be in the context of a healthy lifestyle...through messaging that encourages good dietary habits.”

The Board concluded that the advertisement did reference good dietary habits by stating that “paddle pops should be enjoyed as a treat within a balanced diet” and that “true heroes balance energy intake and activity.” The Board considered that although this message was in written form at the end of the advertisement, the message was clear and positive in the encouragement of a healthy lifestyle and would encourage good dietary habits.

The Board then considered whether the advertisement referenced or was in the context of encouraging physical activity.

A minority of the Board thought that the mere depiction of children playing was not sufficient to meet the need to “encourage physical activity.”

The Board noted that the advertisement featured children playing outside and searching the garden and 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 majority of the Board considered the fact that the advertisement depicted and described an “adventure” that it did amount to encouragement of physical activity.

The Board determined that the advertisement did meet the “Advertising Messaging” requirements of the RCMI.

The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board noted section 2.1 of the Food Code which provides that: “Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be misleading or deceptive or otherwise contravene Prevailing Community Standards...”

The Board first considered whether the advertisement complied with section 2.1 of the Children’s Code which requires that “Advertising or marketing communications to children must not contravene Prevailing Community Standards.” The Board noted that the advertisement is for a healthier choice product and that development of such products is positive. The Board considered that, while there is some concern among sectors of the community about whether or not such products should be advertised directly to children, in the Board’s view the advertisement presents a healthier product and does so in a responsible manner. The Board considered that advertising such products is not contrary to current prevailing community standards.

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

The Board also considered the requirements of section 2.2 of the Food Code which includes the requirement that “advertising or marketing communications shall not...encourage what would reasonably be considered as excess consumption ...by means otherwise regarded as contrary to community standards.”

The Board noted the references in the advertisement to the consumption of a ‘treat.’ The Board considered that most reasonable members of the community would understand the use of the word treat to mean something that is consumed infrequently and not suggested as something to be consumed daily or suggesting that more than one should be eaten at any given time.

The Board considered that the advertisement did not suggest excess consumption and did not breach section 2.2 of the Food Code.

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