



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0417-19
2. Advertiser :	Gelatissimo
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet
5. Date of Determination	11-Dec-2019
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption
AANA Food and Beverages Code\4.2 Must comply with QSRI
AANA Advertising to Childrens Code\2.1 Community Standards

DESCRIPTION OF ADVERTISEMENT

This website advertisement features three children dressed in Halloween costumes and the text "Free scoop for kids. Kids in costume get a free kids scoop on Thursday 31st October".

THE COMPLAINT

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

The Australian Bureau of Statistics have found that discretionary foods and drinks make up 40% of a child's intake. Currently one in four children are overweight or obese and we don't need advertisements like this one promoting free discretionary food for children.

The the visuals (kids dressed up in fun costumes) and the words 'free scoop for kids' would directly appeal to children. This ad encourages children to visit a store and receive free gelato which promotes unhealthy eating habits. It would also encourage kids to pester their parents. Children are already bombarded with unhealthy food and drink, we don't need stores like Gelatissimo promoting free food directly to children.



THE ADVERTISER'S RESPONSE

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

It was a Halloween community based activity which just a handful of stores participated in. It was a one off and any references to it are no longer viewable. The activity was simply about supporting local community and was not a widespread one.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children's Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

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

The Panel noted that the product advertised is a promotion for Gelatissimo food products and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Panel considered section 2.2 of the Food Code which provides:

"Advertising or marketing communications...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 Panel noted the complainant's concern that a promotion which gives free discretionary food to children undermines the importance of healthy balanced diets.

The Panel noted that the advertisement promotes a free scoop of gelato for children dressed in costume on October 31 (Halloween). The Panel noted that the advertisement promotes a one-off event and states the date that the promotion is available.

The Panel considered that, consistent with previous decisions (Ferrero 0345/17, Hungry Jacks 282/11, and Mondelez 0550/17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy balanced diet and considered that the promotion of Gelatissimo products did not of itself undermine the importance of a health balanced diet.



The Panel considered that the advertisement did not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets and did not breach section 2.2 of the Food Code.

The Panel noted that the advertisement has no messaging around frequency of purchase or consumption, and that a promotion advertising one free scoop of gelato on one day cannot be reasonably interpreted to be encouraging excessive purchasing. The Panel determined that the advertisement is not encouraging excess consumption of the products depicted in the advertisement.

The Panel considered that the advertisement did not encourage excess consumption and did not breach section 2.2 of the Food Code relating to excess consumption.

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

The Panel then considered whether the advertisement is directed primarily to children. The Panel considered Section 4.2 of the Food Code which provides:

“Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable”.

The Panel noted that the QSRI refers to the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and noted that the QSRI is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

The Panel considered the definition of advertising or marketing communications to children within the QSRI. The definition states that ‘Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.’ Under this initiative children means “persons under the age of 14 years of age.”

The Panel noted that the QSRI captures Advertising and Marketing Communications to Children where:

1. ...the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products;
2. Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or
3. Where Children represent 35 per cent or more of the audience of the Medium.



The Panel considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes “television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.” The Panel considered that Facebook is covered by this definition.

The Panel noted that the advertisement was a Instagram post. The Panel considered that using Instagram requires users to be aged 13 or over. The Panel considered that it is unlikely that most members of the community would consider Instagram to be a medium that is directed primarily to children under the age of 14, or a medium that would have an audience of more than 35% children under the age of 14.

The Panel determined that the advertisement did not meet points 2 or 3 of the QSRI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 per cent or more of the audience of the Medium.

The Panel noted that with regards to point 1 the Panel must consider whether the communication activity is directed primarily to Children – regardless of its placement.

The Panel noted that the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Panel must find that the advertisement is clearly aimed in the first instance at Children under 14 and that it must have regard to the ‘theme, visuals and language’ used in determining this issue.

The Panel noted the complainant’s concern that the depiction of children dressed in costumes and the words “free scoop for kids” would directly appeal to children.

The Panel noted that the theme of the advertisement is quite dark with a black background and the only colour that particularly stands out is orange, referencing Halloween. The Panel noted that the advertisement does depict children in costume, but considered that this depiction is not targeted primarily to children as Halloween is an event that appeals to adults as well as children, and that the depiction of the children is relevant to the promotion which is offering a free scoop to children but is not particularly appealing to children. The Panel considered that the language used was not child-like or targeted specifically to children, but rather was factual. The Panel considered that the theme of a free scoop of gelato would be attractive to children but would be equally attractive to parents of children (i.e. adults) who are usually the people paying for the product being purchased.

In this instance the Panel considered that the theme, visuals and language of the advertisement were advertising a gelato product, and the message was equally attractive to adults and children and was not directed primarily to Children under 14.

Based on the requirements outlined in the QSRI the Panel considered that as the advertisement was not directed primarily to Children, did not appear in a medium directed primarily to Children and did not appear in a medium which attracts an



audience share of more than 35% of Children, the QRSI does not apply in this instance and therefore the advertisement did not breach Section 4 of the Food Code.

The Panel then considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (The Children's Code).

To fall within this Code, or Part 3 of the Food Code, "Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product".

For the reasons outlined above, the Panel considered that the advertisement is not directed primarily to Children.

The Panel determined that as this Instagram advertisement is not directed primarily to Children, the Children's Code and Part 3 of the Food Code do not apply.

Finding that the advertisement did not breach the AANA Code of Ethics, the AANA Food Code or the AANA Children's Code, the Panel dismissed the complaint.