



**ADVERTISING
STANDARDS
BUREAU**

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Case Report

1	Case Number	0438/10
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	10/11/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code (Children) consumption of excess
Advertising Message AFGC - Advertising Message
2.8 - Food and Beverage Code undermines healthy lifestyle

DESCRIPTION OF THE ADVERTISEMENT

The TVC is a version of the current Magnum Gold marketing campaign featuring Benicio Del Toro and Caroline Correa. The premise of the TVC is a bank heist where the bank vault is filled with Streets Magnum Gold. As part of the winning stick promotion, one stick flips over and flies into the lock. The lock opens the safe to reveal a woman inside surrounded by Magnum Golds.

THE COMPLAINT

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

We write to complain about a television advertisement for Streets Magnum icecreams (manufactured by Unilever) which we consider to breach the Responsible Children's Marketing Initiative of the Australia Food and Beverage Industry (RCMI).

*We believe the advertisement breaches the RCMI because it was shown during 'Media' (children's television programs such as The Simpsons and Junior Masterchef) and because Streets Magnum ice creams do not represent healthy dietary choices consistent with established scientific or Australian government standards.
Broadcast during 'Media'*

'Media' is defined in the RCMI as '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 advertisement has been broadcast on Network Ten during a number of the highest rating programs for children younger than 12 in Melbourne Sydney Brisbane Adelaide and Perth. The ad has been broadcast a number of times during Junior Masterchef in September. Junior Masterchef is a children's cooking competition. It is specifically designed for and principally directed to children. It is also extremely popular amongst children. According to television viewing data for metro audiences in 5 capital cities the first episode of Junior Masterchef was the highest rating program for children younger than 12 (between 22 August and 18 September 2010) with 417 000 children under 12 in the metro audience (in the 5 capital cities surveyed).

The ad has also been broadcast many times during The Simpsons in September. The Simpsons is a cartoon program that is directed primarily to children and is extremely popular among children younger than 12. According to recent viewing data (for metro audiences in five capital cities) The Simpsons is among the top ten highest rating TV programs for children younger than 12.

Clearly these programs are 'media' according to the RCMI definition.

The ad has also been broadcast during Modern Family and Talking 'Bout Your Generation both among the highest rating programs for children younger than 12. According to recent viewing data (described above) Modern Family is the second highest rating program for children younger than 12 after Junior Masterchef and Talkin' 'Bout Your Generation is the sixth highest rating program.

Nutritional content of Streets Magnum icecreams

According to the Dietary Guidelines for Children and Adolescents in Australia 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.

Magnum ice creams are very high in sugar saturated fat and total fat. They consist of 26.7% sugar 14.3% saturated fat and 21% total fat and contain 1302 kJ per 100g.

Therefore clearly Magnum ice creams are not a healthy snack choice for children and do not represent healthy dietary choices consistent with the Dietary Guidelines for Children and Adolescents in Australia.

Consumption of foods high in fat and sugar such as Magnum ice creams may contribute to weight gain and obesity in children. The OPC believes it is highly irresponsible for companies to advertise such foods directly to children particularly at a time when a quarter of Australian children are overweight or obese.

Action requested by the ASB

We ask the Advertising Standards Board to request Unilver to cease broadcasting the Magnum advertisement (or other advertisements for unhealthy products) during programs such as Junior Masterchef and The Simpsons which are watched by large numbers of children.

THE ADVERTISER'S RESPONSE

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

We note that the ASB is considering the TVC in relation to an issue that falls under section 2.2 of the ANAA Food & Beverages Advertising & Marketing Communications Code (Food & Beverage Code). For the reasons outlined below, we do not consider that the TVC is in breach of Section 2.2 of the Food & Beverage Code.

Food and Beverages Code Section 2.2: 'Advertising or Marketing Communications for Food and Beverage Products shall not undermine the healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as 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 Streets Magnum product range is intended for adult consumption only. The advertising and marketing of this product is not intended to be directed at children as the complainant alleges. The intention of the advertising and marketing of all Streets Magnum ice cream products is that the products are to be consumed by adults as a special treat.

The TVC is a version of the current Magnum Gold marketing campaign featuring Benicio Del Toro and Caroline Correa. The premise of the TVC is a bank heist where the bank vault is filled with Streets Magnum Gold. The choice of actors and concept clearly denote that the TVC is not marketed to children. The TVC does not feature children nor does it make any appeals to children to consume the product. In light of this Unilever does not consider that the TVC is required to meet the requirements of the AFGC Responsible Children's Marketing Initiative.

By way of background the Streets Magnum 1 in 6 promotion has been conducted from the 19 July 2010 and will close on 28 November 2010. The mechanic of the promotion is that 1 in every 6 Streets Magnum ice cream will contain a message on its stick that will provide the consumer with a free Streets Magnum ice cream.

Consumers are given almost five months to try and win a free Streets Magnum. We submit that due to the length of the promotion period and the prize offered of a free Streets Magnum, the promotion does not encourage over consumption as the complainant alleges. As the prize offered is a free Streets Magnum, whether a consumer has a chance to win a Streets Magnum depends on their decision to purchase a Streets Magnum. The consumer is under no obligation to purchase a Streets Magnum and may choose to purchase only one Streets Magnum during the promotion period and still have a chance to win a free Streets Magnum. It is not Unilever's intention to encourage overconsumption of the Streets Magnum products during this promotion. In our view, it is entirely realistic that a purchaser need only consume one Streets Magnum during the promotion.

Approvals

Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever's Legal and Corporate Relations Departments to critique all advertisements to ensure compliance with legal and ethical considerations.

Conclusion

We submit that we are not in breach of the sections 2.2 of the Food Code as the TVC is advertising a promotion in connection with the Product.

THE DETERMINATION

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

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

The Board noted the complainant's concern that the advertisement breaches the AFGC RCMI because it is directed primarily to children, and because Magnum ice creams do not represent a healthy dietary choice.

The Board 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 not advertise food and beverage products to children under 12 in 'media' unless those products represent healthy dietary choices. The Board noted that the advertised product Magnum ice creams are not a healthier dietary choice. As a result the product cannot be advertised to children under 12 in 'media'.

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 also noted the recent Guideline to the RCMI Initiative which provided that advertising or marketing communication activities are captured under the RCMI Initiative if:

1. the audience of the communication activity is predominantly children (under 12);
2. the media in which the communication activity appears is clearly directed primarily to children (under 12)
3. The communication activities are, regardless of the audience, clearly directed primarily to children under 12.

The Board also noted that under the Guideline 'the key to determining whether the media or communication activities are directed to children is whether the themes, visuals, language and concepts are those that are attractive to children under 12.' The Board also noted, however, that while useful in determining whether the advertisement is directed to children, the requirement is that the advertisement is 'clearly directed primarily' to children.

The Board noted the extensive information provided by the advertiser about the range of programmes in which the advertisement was broadcast. The Board noted that the programmes in which the advertisement appears are programmes that are directed to adults and families and are not programmes which are primarily directed to children or likely to have predominantly child audiences. The Board considered that the programming in which the advertisement appeared was not directed primarily to children – although undoubtedly a significant number of children may view some of the programmes.

In particular, the Board noted that the complaint indicates that the television programme in which the advertisement was broadcast was “Junior Masterchef”. The Board noted that this programme is the most popular programme currently showing among 5 – 12 year olds. Despite its popularity with children, however, the program does not have an audience of ‘predominantly’ children. The Board also noted that the advertisement was broadcast in various ‘family’ movies and noted that in these cases the movies, while attractive to children, do not have predominantly child audiences.

On the basis of the viewing audience the Board determined that the advertisement was not broadcast in a program where the audience is predominantly children or the program is directed primarily to children.

The Board noted that the revised 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 that 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 (secret agents/thieves trying to find a vault full of the product), the visuals (adults eating finding and consuming the product) and the language. The Board noted the advertiser’s response that the intention of the advertisement is to encourage adults to consume the product as a treat. The Board considered that the advertisement was clearly directed to adults and not to children.

On balance, 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 clearly directed primarily to children. The Board considered that the advertisement was primarily directed to adults.

On this basis, the Board determined that the advertisement is not broadcast within ‘media’ as provided by the RCMI and that the advertisement does not breach the RCMI Initiative.

The Board 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 AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code), the advertisement must be ‘having regard to the theme, visuals and language used [...] directed primarily to children and are for product.’

The Board first considered whether the advertisement is directed primarily to children. The Board 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.’

For the same reasons as noted in relation to the RCMI Initiative above, the Board agreed that the advertisement 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. The Board noted that the advertiser considers that the product is directed to adults. The Board agreed that this brand of ice-cream is a premium ice cream that is targeted to adults.

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 then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code, in particular whether it encouraged excess consumption in accordance with section 2.2 of the Food Code.

Under section 2.2 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 considered that the advertising or promotion of a premium ice cream is not inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board noted that the advertisement implies the potential need for consumption of more than one ice cream to win a prize and depicts a vault full of ice creams. The Board considered that the promotion was run over several months and the tone of the advertisement did not suggest excess consumption over the term of the promotion. In addition the Board considered that the depiction of a vault full of the product was a reference to the product's 'golden' appeal and value and did not suggest consumption of excessive amounts of the product. The Board determined that the advertisement did not breach section 2.2 of the Food Code.

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