



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0439/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Mars Confectionery</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>24/11/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### 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

Opens with a group of young men playing American football. An elderly woman and man, transformed from two young male players when they are hungry, are tackled and then offered a Snickers to feel better. In the case of the 'Betty White' image, the person was transformed back to a young man after consuming the product. End image 'You are not you when you are hungry. SNICKERS really satisfies'.

### 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 Snickers chocolate bars (manufactured by Mars Snackfood Australia) 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 Junior Masterchef and The Simpsons) and because Snickers chocolate bars 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 ad has been broadcast a number of times during The Simpsons on Network Ten in Melbourne and Sydney 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.*

*The ad has also been broadcast a number of times during Junior Masterchef on Network Ten in Perth 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).*

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

*Nutritional content of Snickers bars*

*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.*

*Snickers bars are extremely high in added sugar and also very high in saturated fat and total fat. Snickers are approximately 48.5% sugar 9.3% saturated fat and 24.4% total fat. They are also very high in energy providing 2040kJ per 100g.*

*Therefore clearly Snickers 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 energy fat and sugar such as Snickers 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 Mars Snackfood Australia to cease broadcasting the Snickers advertisement (or other advertisements for unhealthy products) during programs such as The Simpsons that 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:

*Firstly let me give you overview of Mars Chocolate's commitments.*

*Responsible Marketing Initiative*

*In October 2008, the Australian Food and Grocery Council (AFGC) launched the Responsible Children's Marketing Initiative. Mars was instrumental in the development of*

*this initiative which provides a framework for the food and beverage industry to promote health dietary choices and lifestyles to Australian children.*

*Regulation of the initiative*

- *Companies develop action plans for how they will comply with the initiative, which covers advertising on free to air television, pay television, the internet, the use of licensed characters and publications.*
- *Scheme is overseen by an independent arbitrator.*
- *It is underpinned by a transparent compliance program and a public complaints mechanism.*

*Mars commitment*

- *WE have a global and local policy of no advertising of products primarily to children under 12 years of age. This includes television advertising, digital media, text and the internet.*
- *No use of celebrity or licensed animated characters, targeted primarily to children under 12 years of age to promote products.*
- *No vending machines offering core products in primary schools.*
- *No sponsoring of sports events in primary schools.*
- *Will continue to engage in activities aimed at children regarding nutrition, health or physical activity.*

*The storyline of the Snicker Ad in question sees a group of young adult males playing a game of (American) football, the tackle being an inherent and key part of the game. Having long positioned the brand as hunger satisfying, this ad dramatizes the idea that you are not yourself when you're hungry, using Betty White as a fantastical metaphor for how a young guy might play football like an old woman when he is hungry. Later in the commercial, we see another of our obviously hungry young guys transform into an old man, Abe Vigoda, who is likewise tackled to the ground as part of the football game.*

*The ad is clearly in good humoured fun, with the tackling of the older people in reality a tackling of young guys who only appear as older people for the sake of metaphor – which becomes clear when the lead character eats a Snickers and transforms back into his younger, male self.*

*In terms of your queries on our Snickers TVC*

*1) These are some industry guidelines which showcase how we need to behave. It states that we can't advertise in programming where 50% of the audience is under 12 years of age.*

*2) This is a breakdown of the viewing profile of both the Simpson's (21% under 12) and Junior Masterchef (16% under 12).*

*The Simpson's - the programmes enduring success over the past 20 years has seen it transcend traditional animated viewing trends, and is now delivering a mass audience. Only 21% of viewing of the Simpson's is by people aged under 12. This was further reflected in the Simpson's movie being released in Australia to a PG rating in 2007.*

*Junior Masterchef - whilst featuring children up to the age of 12 as the contestants, we anticipated (correctly) that Junior Masterchef viewing trends would follow a similar pattern to Masterchef, delivering a much older and broader audience. Only 16% of viewing of Junior Masterchef is of people under the age of 12.*

*Hence we do not believe that the TVC in question breaches the Responsible Marketing Initiative.*

**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 Snickers Bars 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 Snickers Bars is 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” and “The Simpsons”. The Board noted that Junior Masterchef was 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 during ‘The Simpsons’ which, although it has a child viewing audience of around 28% under 12s, is not a programme with an audience of predominantly children and is not primarily directed to children under 12.

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 (men playing a game of football), the visuals (men and older women and men playing football) and the language (which is mildly sexually suggestive adult 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 considered that the Snickers bar is a chocolate bar 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.

The Board considered that the advertising of a chocolate bar in family viewing times is not contrary to prevailing community standards and that the advertisement did not breach section 2.1 of the Food and Beverages 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 chocolate bar is not inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board considered that the advertisement depicts a person consuming the chocolate bar as an energy boost on a single occasion. The Board considered that the advertisement 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.

