



Case Report

1	Case Number	0442/10
2	Advertiser	Mars Confectionery
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	19/01/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Premium Offers AFGC - Premium Offers
2.8 - Food and Beverage Code undermines healthy lifestyle

DESCRIPTION OF THE ADVERTISEMENT

A rugby ball with the Mars logo on it hits a table top and smashes most of the teacups sitting on it. We then see various similar scenes where different shaped balls hit and break things. The screen splits in to four and we see different sports stars in each section, each holding a ball relevant to their sport. All the balls have the Mars logo on them. A male voice over then states that you can check the wrapper of your Mars Play to see if you have won, and if so you can go online to choose your ball and "play....outside".

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 Mars 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 program The Simpsons) and because Mars Bars do not represent healthy dietary choices consistent with established scientific or Australian government standards. The ad also featured a premium that was more than merely incidental to the advertising of the product.

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 was broadcast a number of times during The Simpsons on Network Ten in Melbourne Sydney Adelaide Brisbane and Perth in August and September 2010.

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.

Therefore clearly The Simpsons is 'media' according to the RCMI definition.

Nutritional content of Mars 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.

Mars Bars are extremely high in added sugar and also very high in saturated fat and total fat. Mars Bars are 56.8% sugar 10.3% saturated fat and 17.4% total fat. They are also very high in energy providing approximately 1910kJ per 100g.

Therefore clearly Mars Bars 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 Mars Bars 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.

Promotion of premium offer

The RCMI states that participants will 'commit to not advertising premium offers unless the reference to the premium is merely incidental to the product being advertised in accordance with the AANA codes and the Children's Television Standards 2009 (CTS Section 33)'.

The purpose of the advertisement is clearly to promote the give away of 30 000 sports balls. Almost the entire ad is devoted to promoting and describing the give away. The ad shows a Mars-branded sports ball smashing into household items sports stars holding sports balls and the narrator describing the give away promotion. The only feature of the advertisement that does not involve promotion of the sports ball give away is the shot of Mars Bars and the Mars logo at the end of the ad.

Therefore clearly the ad promotes a premium offer in a way that is more than incidental to promotion of Mars Bars in contravention of the RCMI.

Action requested by the ASB

We ask the Advertising Standards Board to request Mars Snackfood Australia to cease broadcasting the Mars Bar 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:

Responsible Children's Marketing Initiative (RCMI)

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 Mars Play TVC in question highlights Mars promoting a give-away of 30,000 sports balls, features a Mars-branded ball smashing into and breaking various household items. Sports stars such as Chris Judd, Scott Prince, Kevin Muscat and Laura Geitz, are involved in the TVC.

The Mars Play promotion was developed to encourage consumers to pursue a healthy lifestyle by acquiring with an AFL, Soccer or NRL ball and getting active with family and friends with the fun of using the ball.

As Australians continue to struggle with their weight and diet choices, Mars is aware that chocolate lovers are looking for solutions to tackle the issue of 'Big Food', head on. As one of the largest food manufacturers in Australia, Mars has taken a leadership position by launching a range of initiatives which will allow consumers to make their own informed food choices. Even though chocolate lovers were happy with their Mars Bars just the way they were, we reduced the size by more than eleven per cent moving it from 60grams to 53grams. This was one of the many initiatives that we implemented to address the issue of 'Big Food' All twelve of our 'Little Bit of' Fun Size Bars are now less than 100 calories, making them perfect to have as a treat.

In this health conscious environment, these small steps will have a large impact over time. By reducing the portion size we have eliminated 14.7 billion calories out of the Australian food supply per year.

At Mars Chocolate we are constantly looking at ways to make products better for our consumers. We know chocolate isn't an apple. It is a treat food and should be a small bit of pleasure in your day.

Other initiatives Mars have been working on have included the launch of Mars Red, a great tasting chocolate bar with half the fat of a Mars Bar (per single bar serve), clearer nutrition labelling, percentage daily intake labelling and the introduction of the 'Be Treatwise' logo, the reduction of saturated fat and the elimination of artificial colours and flavours from our chocolate bars.

In Australia in 2011 we will be reducing saturated fat in our standard MARS Bar by 22% and MILKWAY by 19% Our goal is to remove 130 – 160 tonnes per year of saturated fat from the Australian food supply. We will achieve this by moving from a hard fat to high oleic sunflower oil.

In terms of your queries on our Mars Play 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)
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.*

The AFCG RCMI Additional Action Plan Commitment by Mars stipulates that Mars will not advertise during programs where more than 25% of the audience is under 12 years – previously via email we responded to you, highlighting our methodology to avoid appearing in these programmes (incorrectly citing 30%). Please see attached the actual current data we use to plan (the prior spreadsheet was intended to showcase our methodology only, the data was old). We have not placed activity in the zones where the proportion of people under 12 is over 25%.

Reference the spot list, please can you provide the following information:

-The 'family/kids' movies that the advertisement was broadcast in (names of the movies are not in the media schedule); and

- The proportion of the audience aged between 5 – 12 that at the time of media buy were expected to watch the various 'Kids/Family' movies that the advertisement was placed in on Saturday and Sunday nights

Unfortunately we can't update the spreadsheet that we sent through (once our invoices have run, we cannot alter these spreadsheets).

I have listed out below the movies that we appeared in. We booked these as a timeslot (as the networks do not confirm movie titles until quite late), and therefore we expected the audience on people under 12 to be roughly as per the spreadsheet provided (roughly 17% for Saturday evening on Network 7 for example). Whilst the family movie titles jump around quite a lot, the audience delivery (in terms of percentage split) is driven more by time zone than title.

We used these spreadsheets to gauge total audience under the age of 12. If we were to look at people aged between 5 and 12 (as asked above), this number would be even lower again.

Sydney

Perfect Strangers

Aces High

In the Line of Fire

The Dark Knight

The Simpsons Movie

Be Cool

Melbourne

Perfect Strangers

The Heartbreak Kid

Dr Dolittle 3

Secondhand Lions

Brisbane

Perfect Strangers

The Heartbreak Kid

The First Travelling Saleslady

The Spy Who Loved Me
The World Is Not Enough
Adelaide
Perfect Strangers
The Spy Who Loved Me
Miss Pettigrew Lives For A Day
The World Is Not Enough
Perth
Perfect Strangers
The Heartbreak Kid
Knocked Up
Wanted
Big Momma's House 2
The Naked Gun 2 ½
The World Is Not Enough
VIC
Cars
Star Trek Nemesis
TAS

While You Were Sleeping

Please note – some time zones that were originally booked as movies appeared as general content due to a late programming change.

Some of these movies appear as though they are kids' titles but are so broad their viewing habits transcend age, as demonstrated in our analysis.

Hence we do not believe that the TVC in question breaches the Responsible Children's Marketing Initiative (RCMI). Mars Chocolate is committed to and adheres to the principals of the RCMI and will remain transparent in reviewing our company action plan annually.

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 does not represent a healthy dietary choice, and because it features a premium which is more than incidental to the advertising of the product.

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 does 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 Mars

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 'The Simpsons'. The Board noted that although The Simpsons 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 (winning a Mars

sports ball using the code from the wrapper of a Mars Bar you buy), the visuals (different types of sports ball causing damage due to be thrown inside) and the language (male voice over describing the competition to win Mars sports ball by checking online after buying a Mars Bar). The Board noted the advertiser's response that the intention of the advertisement is to encourage healthy activity through playing with the sports ball, and that the advertisement had been scheduled to appear in media where the intended audience of children over 12 years would be greater than 25%. 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, although could be attractive to older children as well.

On this basis, the Board determined that the advertisement is not broadcast within 'media' as provided by the RCMI and so the issue of Premium is not one which the Board can consider under the RCMI. The Board determined 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 Mars 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 noted that the advertisement was for a competition to win a sports ball and considered that this promoted a healthy active lifestyle. The Board considered that the advertisement, merely by describing a competition which requires multiple purchases to increase chance of winning, is not of itself promoting excessive consumption. 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.