



Case Report

1	Case Number	0494/12
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	12/12/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code (Children) 3.3 peer advantage
Food and Beverage Code (Children) 3.5 pester power
RCMI a - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a lunchbox being opened. The advertisement is filmed from an angle of the interior of the lunchbox looking outwards towards the individual opening the lunchbox. We see a girl's face looking in. As she opens the lunchbox, we see her reacting to whatever is in the lunchbox. Her eyes widen and she smiles. The scenario is repeated many times.

We then see what the child has been looking at: on a desk, we see a blue lunchbox container. Inside is a carton of juice, apple, sandwich and a Kellogg's LCMs Golden Joys bar. The voiceover states "Liven up their lunchbox with new Golden Joys from LCMs. Crispy golden flakes of corn on a delicious layer of choc".

We cut back to the lunchbox opening. This time we see the girl surrounded by a number of other children. She is holding a LCMs Golden Joys bar and goes to take a bite, but pauses and looks around her as she realises others are looking at her LCMs Golden Joys bar. The "super" reads "The sure-fire lunchbox hit."

THE COMPLAINT

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

We believe the advertisement breaches the Responsible Children's Marketing Initiative (RCMI) and the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code).

Breach of the RCMI

We believe the advertisement breaches the RCMI because it is directed primarily to children, and because LCM Golden Joys do not represent a healthy dietary choice consistent with established scientific or Australian government standards. In addition, the advertisement does not promote a healthy lifestyle.

This ad is clearly a communication activity directed primarily to children, within the meaning of the RCMI and associated guidelines. It features young, primary school-aged children wearing their school uniform and is set in a schoolyard and a classroom. It shows excited children as they open their lunchbox and find the LCM Golden Joy bar inside. The ad then shows a group of school children gathering around the girl who is eating the Golden Joy, looking jealously at her. It suggests to children that they will be happy and popular with their friends if they have a Golden Joy in their lunchbox.

LCM Golden Joys are a children's snack product. They are of primary appeal to children, are normally marketed to children, and are shown in this advertisement being eaten by children. Clearly, the advertisement is promoting consumption of LCM Golden Joys by children. It suggests that parents can make their children happy, popular, and the envy of their friends if they put LCM bars in their lunchbox.

The advertisement has been shown during programs such as Big Brother, The X Factor and The Big Bang Theory, which are watched by high numbers of children.

Nutritional content of LCM Golden Joys

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.

LCM Golden Joys contain a very high level of sugar (29.2%), with four different sources of sugars, and saturated fat from hydrogenated palm oil and hydrogenated soyabean oil (5.9%). They contain sorbitol, glycerol, flavours, emulsifiers, maltodextrin, and are high in energy with 1700 kJ per 100 g.

Therefore, LCM Golden Joys 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. They should not be promoted for inclusion in children's lunchboxes. Consumption of energy dense, high-sugar snack products such as LCM Golden Joys may contribute to weight gain and obesity in children. The OPC believes it is irresponsible for companies to advertise such foods to children, particularly at a time when children's diets include too many "extra" foods and a quarter of Australian children are overweight or obese. Kellogg's will assert that LCM Golden Joys are a "treat" food within the context of a varied diet, as they are shown in lunch boxes with other foods (eg a sandwich and an apple). However, the voiceover states that Golden Joys will "liven up" their lunchbox, which implies that healthy foods such as fresh fruit are dull and boring. There is nothing in the ad which states that LCM Golden Joys should only be consumed once in a while as a special treat. Instead, the ad suggests that Golden Joys are suitable for inclusion in a lunchbox every day because they are a "sure-fire hit" and will make children happy.

Breach of the Food Code

We believe this advertisement breaches clauses 3.3 and 3.5 of the Food Code.

Clause 3.3 of the Food Code states:

"Advertising or Marketing Communications to Children shall not state or imply that possession or use of a particular Children's Food or Beverage Product will afford physical,

social or psychological advantage over other Children...”

The ad clearly shows that a child who has an LCM Golden Joy in their lunchbox will have a social advantage over other children because they will be more popular and will be envied by others. The girl in the ad who is eating the Golden Joy is clearly the centre of attention – she is envied by the other school children, who gather around her and covet her Golden Joy. Therefore the ad breaches clause 3.3 of the Food Code because it implies that a child who has a Golden Joy will have a social advantage of popularity over other children and will be the envy of her classmates.

Clause 3.5 of the Food Code states:

“Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child’s welfare to buy particular Children’s Food or Beverage Products for them.”

Whilst the OPC is aware that the ASB has interpreted this clause to apply only to direct and explicit statements made to children in ads telling them to ask their parents to buy a particular product, the OPC considers that this interpretation is too literal and extremely narrow. Clause 3.5 of the Food Code provides that the ad shall not include “any appeal” to children – the use of the word “any” should be interpreted to capture any form of appeal, including indirect and suggestive appeals. If Clause 3.5 was intended only to apply to direct and explicit statements, the word “any” would not have been used and a word such as “direct” would have been used instead. Therefore Clause 3.5 – and in particular the phrase “any appeal” – should be interpreted according to its ordinary and natural meaning to include all forms of appeal.

Applying this common-sense interpretation, the OPC considers that the use of the primary school children in the LCM Golden Joy ad is designed to resonate with other children who see the ad, who will then pester their parents to buy LCM Golden Joys for their lunchbox. The ad suggests to children that they will be happy, popular and the envy of their friends if they have Golden Joys, and therefore appeals to children to ask their parents to buy LCM Golden Joys for their lunchbox.

For the above reasons, the OPC asks the ASB to request Kellogg’s to withdraw the LCM Golden Joys advertisement on the basis that it breaches the RCMI and the Food Code.

THE ADVERTISER’S RESPONSE

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

The complaint is made under the AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code) and the Responsible Children's Marketing Initiative of the Australian Food and Beverage Industry (RCMI).

An advertisement, in substantially the same format, was first aired in July 2012. The key difference between the prior version and the current version is that the prior version featured the entire LCMs range whereas this version features and promotes the launch of the new LCMs Golden Joys variant.

Other than the complaint that is the object of this response, we have not had any complaints to our customer services department about this or the prior version of the advertisement in the six months since the original version was first aired.

AANA Food Code

Kellogg strongly contends that the advertisement does not come within clauses 3.3 and 3.5 of the AANA Food Code because the theme, visuals and language of the Advertisement are not directed primarily to children (as defined in the AANA Food Code as being “persons being 14 years old or younger”), rather the theme, visuals and language of the advertisement is directed primarily to the main grocery buyer (“MGB”).

Kellogg acknowledges that the advertisement features children in a playground and classroom setting. Notwithstanding those themes and visuals, Kellogg contends strongly it did not do this to direct this communication to children but rather to reinforce the message to MGBs in the advertisement that LCMs Golden Joys bars are a tasty treat that may be included in their child's lunchbox.

The advertisement is not animated and is intended to resonate with parents of school age children who wish to provide a treat for their child in their child’s lunchbox.

To reinforce this point, the advertisement is not shown from a child's perspective (so the children featured are not the subject of the advertisement but are rather the object of the advertisement.) The voice over is an adult's voice and the language whilst straightforward is not such that it could be argued to be child-focused. This voiceover “Liven up their [our emphasis] lunchboxes” is addressed directly to MGBs. The fact that LCMs Golden Joys bar is depicted in one frame located in a lunchbox is also indicative of the fact that this advertisement is aimed at those responsible for preparing lunchboxes, being more often than not, the MGB.

Objectively, Kellogg has gone to considerable lengths to ensure that this advertisement is aimed at MGBs and not children under 12. In particular, we would refer you to the terms of the media buy.

Further:

- The advertisement has a CAD placement code of "W" which means:*

“May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in cartoon and other programs promoted to children or likely to attract a substantial child audience”.

Kellogg specifically requested this rating. The rationale for this this was two-fold. Firstly, Kellogg, in accordance with the assertion above, intended this communication be directed to MGBs and having a “C” rating would not, in Kellogg’s view, have been likely to achieve this. Secondly, Kellogg recognises that complaints have been made in the past alleging that its advertisements for LCMs have been directed primarily to children. Kellogg takes these complaints seriously and wants to continue to market its products in a manner that is appropriate to its intended audience, being MGBs.

- Kellogg's standing instructions to its media buyer are that animated programs and family-targeted movies be avoided, that Kellogg will not accept bonus spots without prior agreement in writing as to the spot, and that Kellogg does not wish for its media to be placed around programs where less than 75% of the audience is above 14 years of age.*

- *Kellogg has internal processes for the review of all externally facing media and within those processes, we do discuss the relevant codes including RCMI and AANA Food Code.*

- *We refer you to the enclosed spread sheet showing information on the media buy for free to air TV. In respect of the specific programs referred to in the complaint (“Big Brother”, “The X Factor” and “The Big Bang Theory”), we would highlight that none of these programs are designed for children or are of primary appeal to children. We understand that in respect of all of specified programs, the proportion of viewers aged 14 years or younger was 25% or under.*

- *For those specific programs, across the 5 capital cities on main free to air channels, the average proportion of viewers under 14 years of age was as follows:*

“The X Factor” 13%;

“The Big Bang Theory” 13%; and

“Big Brother” – 18%.

In respect of its media buying, Kellogg would respectfully submit that by working to only airing the advertisement during programs where the proportion of children under 14 years of age is 25% or below, it goes further than is required under the 50% threshold in the definition of "Media" in the RCMI.

For the reasons stated above, Kellogg contends that the advertisement is not an "advertising or marketing communication to children".

On the basis that Kellogg maintains that the advertisement is not "advertising or marketing communication to children", clauses 3.3 and 3.5 do not apply. Nevertheless, if the event that a different view was to be taken, Kellogg contends that it has not contravened the sections alleged on the basis of the assertions below.

Clause 3.3 AANA Food Code

Clause 3.3 requires that:

“Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children’s Food or Beverage Product will afford physical, social or psychological advantage over other Children, or that non-possession of the Children’s Food or Beverage Product would have the opposite effect.”

It is alleged that the advertisement implies that the possession or consumption of the LCMs Golden It is alleged that the advertisement implies that the possession or consumption of the LCMs Golden Joys bars provides a social advantage or leads to popularity. The fact that the child appears with another child throughout the advertisement and with a number of other children and, in particular, the final scene where other children are looking on as she is about to eat the product, does not of itself support this.

In order that we produce content that resonates with MGBs, we endeavour to feature depictions of children (if any) that are representative of normal, happy, well-adjusted children, doing what children do - smiling, being shown with similarly aged friends or being in the presence of other children (as they would in a normal school scenario).

The main character in the advertisement is shown most frequently with one other girl and, looking at the advertisement objectively, we would argue that there is no suggestion that the other girl's presence or relationship is conditional (either wholly or partly) on the main character having a LCMs Golden Joys bar. Rather, the friend's demeanour is more one of inquisitiveness as to what the main character might have in their lunchbox. This is entirely in line with Kellogg's desire to illustrate that its product is a treat and, by virtue of this characteristic, is special and exciting.

The final scene where the main character is surrounded by a number of children is, again, not suggestive of the girl being more popular on account of the LCMs Golden Joys bar. It is also suggested in the complaint that these other children are envious of the main character and indeed covet the product. We would argue that the children are not envious of the child with the LCMs Golden Joys bar but are interested in the product and this is in line with the overall impression that we intended to create given that the Golden Joys LCM bar is a new variant (within the existing LCM range) and is unique in the sense that it is the only LCM variant that is made from Kellogg's Cornflakes. This is supported by facial expressions of the children which instead of showing envy are instead an exaggerated depiction of their interest in and the anticipated response of the main character upon tasting the bar. Common sense dictates that, by their very nature, treat products are appealing. That onlookers are interested is not of itself evidence of envy.

Clause 3.5 AANA Food Code

Clause 3.5 requires that:

“Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.”

Even if and to the extent that this was an advertising or marketing communication to children and having regard to the matters set out in the Food & Beverages Advertising & Marketing Communications Code Practice Note, we respectfully suggest that there is nothing in this advertisement that directly (or indirectly) encourages children to urge the purchase of this product.

The fact that our products appeal to children does not of itself mean that this advertisement contravenes this clause. As a company, we are sensitive to this issue and we believe the steps we take, particularly in respect of our media buy, significantly reduce unintended consequences in this respect (if any).

RCMI

It is Kellogg's submission that the RCMI does not apply to the advertisement because the advertisement is not directed at children.

The RCMI applies to "marketing communications to children" under 12 "in media". The relevant definitions in the RCMI are set out below:

Advertising or Marketing Communications to Children is defined by the AANA Code for Advertising and Marketing Communications to Children and means advertising or marketing communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.

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. In regards to television, this includes all P and C programs; all programs where more than 50% of the audience is children under 12 years; plus those G rated programs that meet the criteria above as being designed for children.

For the reasons stated above with reference to, amongst other things, the targeted media buy, the steps taken by Kellogg in respect of requesting a more restrictive CAD classification, the adult voiceover addressed to the MGB, we strongly contend that this is not an Advertising or Marketing Communication to Children within the meaning of the RMCI. Further, and in respect of the particular programs mentioned in the complaint, none of the programs are designed for or of primary appeal to children. Furthermore, "The X Factor" and "Big Bang Theory" are programs that the RMCI explicitly does not apply to (Appendix II).

LCMs bars are portion-controlled products that, over a number of years, have been positioned as a "treat" food. We endeavour always to show a single LCMs bar in the context of a balanced lunch box containing a variety of other foods (bread sandwich, fruit and water bottle) emphasising the role of this product as a treat food within the context of a balanced diet

We do not agree that the phrase "liven up their lunchbox" is suggestive of a message that LCMs be consumed in excess or every day. Nor do we accept the argument that "sure fire lunch box hit" is suggestive of the same either. Both statements provide context to MGBs in respect of the fact that LCMs Golden Joys, being individually wrapped snacks, are well suited to lunchbox treats. New variants such as Golden Joys provide variety and excitement, and this has an important role to play in maintaining these products as genuine treats that children might look forward to.

For the reasons stated above, respectfully, the complaint should be dismissed in its entirety.

Kellogg is pleased to have had the opportunity to respond to this complaint and to confirm its support for the ASB and the codes to which Kellogg is subject.

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 Food and Beverages Advertising and Marketing Communications Code (the Food Code), 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 is directed to children and does not represent a healthy dietary choice or promote a healthy lifestyle.

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. In regards to television, this includes all P and C Programs; all programs where more than 50% of the audience is children under 12 years; plus those G rated programs that meet the criteria above as being designed for children.'

The Board noted the information provided by the complainant that the advertisement was viewed during programs such as Big Brother, the X Factor and The Big Bang Theory. The Board noted that The Big Bang Theory is listed in Appendix II to the AFGC RCMI under 'Programs not covered by the RCMI' and considered that whilst the X factor could be of appeal to children it is directed at a family audience and is not directed primarily to children. The Board considered that Big Brother is not primarily directed to children under 12. The Board also noted that the programs in which the advertisement was broadcast do not have audiences which are predominantly children. On this basis the Board determined that the advertisement was not broadcast in programs where the audience is predominantly children or the program is directed primarily to children.

The Board noted that the RCMI requires that the Board also consider whether the communication activities are 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 (children looking into a lunchbox), the visuals (close ups of children's faces) and the language used (female voiceover suggesting you "liven up their lunchbox"). The Board considered that the advertisement was aimed at the grocery buyer and that the depiction of a lunch box containing a sandwich, apple, bunch of grapes and LCM bar indicates that the primary audience is parents or those responsible for buying groceries and/or preparing lunch boxes for children to take to school. The Board agreed that the advertisement would be attractive to children because of the focus on the children and the school setting but overall considered that it could not be said that the advertisement is 'directed primarily to children under 12'. On balance, the Board considered that this advertisement was not clearly directed primarily to children under 12 and did not breach the provisions of the AFGC RCMI.

The Board then considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children' in the AANA Children's Code is largely the same as that in the RCMI. For the same reasons noted above, the Board considered that this advertisement is not primarily directed to children; therefore the provisions of the Children's Code and of Part 3 of the AANA Food and Beverages Code are not applicable in this case.

The Board then considered whether the advertisement complied with all other 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 product shall not...otherwise contravene Prevailing Community Standards...’

The Board considered that advertising a snack is not, of itself, something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.

The Board noted section 2.2 which states: “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 snacks is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board also considered that there was nothing in the advertisement which suggested or promoted excess consumption.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

The Board determined that the advertisement did not breach the AANA Food Code.

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