



Case Report

1	Case Number	0550/17
2	Advertiser	Mondelez International
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet-Social-Inst
5	Date of Determination	19/12/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

An Instagram advertisement accompanied by the text copy: ‘Music to our ears (musical notes emoji) Cadbury Dairy Milk Freddo is now available in blocks (chocolate block and frog emoji) Who would you share a block with?’

THE COMPLAINT

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

Reasons for complaint

1. *The advertisement breaches the RCMI*

The Obesity Policy Coalition (OPC) submits that this advertisement breaches the Responsible Children’s Marketing Initiative (RCMI). As a signatory to the RCMI, Mondelez has committed not to advertise its products to children under 12 years in media unless those products represent healthier dietary choices, consistent with established scientific or Australian government standards.

In our submission the advertisement breaches clause s1.1 of the RCMI because: -

- It is a communication directed primarily to children;*
- Cadbury Dairy Milk Freddo chocolate block does not represent a healthier dietary choice consistent with established scientific or Australian government standards; and*

3. *It does not promote healthy dietary habits or physical activity.*

*The advertisement is a marketing communication directed primarily to Children
The RCMI applies to material that is published or broadcast on television, radio, print,
cinema and internet sites. This advertisement has been published on the internet site
Instagram (<https://www.instagram.com>)*

*This advertisement is, on any common sense view of its themes, visuals and language, a
marketing communication directed primarily to children, within the meaning of the RCMI.
The Board is requested to carefully consider the following features, which the OPC argues
conclusively establish the advertisement is directed primarily to children:-*

1. *Although use of animation is not, of itself, determinative on the issue of whether an
advertisement is directed to children, the advertisement uses a simple and playful animation
style that would have primary appeal to children.*

2. *The bright, colourful visual effects would have strong appeal to children less than 12
years of age, in particular their sense of fun.*

3. *The advertisement is aimed to capture a child's imagination and to communicate
directly to children under 12 as the focus of the advertisement is the children's character
Freddo having fun, playing his guitar, followed by the statement "music to our ears".*

4. *The advertisement clearly encourages child viewers to associate Freddo having fun
with consuming the chocolate as the advertisement asks, "Who would you like to share a
block with?" This very simple message has been designed to appeal to children.*

*The placement of the advertisement also supports a conclusion that it is directed primarily to
children. The advertisement was available on Instagram, a social media site which is popular
with young Australians, including children under 12 years of age. We acknowledge that
Instagram's policy is to restrict usage to those over 13 years of age, however we know from
research on the use of other types of social media that there are likely to be many children
under that age who use Instagram. While it is difficult to obtain current data on Instagram
usage in Australia, it is reasonable to assume it would resemble data from Britain, where 43%
of 8-11 year olds are on Instagram.*

*We submit that the audience for this advertisement is particularly likely to have a significant
number of viewers under 12 because of the way Instagram operates. Users of Instagram
receive a post in their feed either because they have chosen to follow an organisation that
posts on Instagram or because the post is sent to them as a paid advertisement.*

*If a user follows Cadbury Dairy Milk, the user would see the post of the advertisement in
their Instagram feed. Children under the age of 12 are more likely to follow Cadbury Dairy
Milk because children under 12 are eager consumers of chocolate. Consequently it is quite
likely that significant numbers of children would have seen the Cadbury Dairy Milk Freddo
advertisement in their Instagram feed.*

*Children who are not following Cadbury Dairy Milk may also have seen the advertisement if
they have been targeted by paid advertising on Instagram. It is the practice of those who
advertise on Instagram to target particular demographics. For instance an advertiser could
request that their post be directed to those who, through their user profile, have shown an
interest in confectionary or soft drinks. Given we know that children under 12 are eager
consumers of confectionary, it is possible that there are a significant number of children
under 12 who have viewed this advertisement on Instagram as they may have been targeted
due to their history of following other confectionary manufacturers on Instagram.*

*We argue that the placement of the advertisement on Instagram and its themes and visuals
have the combined effect of directing the advertisement primarily to children, in*

contravention of the RCMI.

Cadbury Dairy Milk Freddo does not represent a healthier dietary choice

Cadbury Dairy Milk Freddo is a chocolate confectionary product and can in no way be considered a healthier dietary choice. The Australian Guide to Healthy Eating shows chocolate as one of the foods that should be consumed only sometimes and in small amounts. This is supported by the Australian Dietary Guidelines, which recommend that foods containing saturated fat, added sugar and added salt should be limited. The World Health Organization (WHO) also supports the limited intake of sugar, recently releasing updated guidelines regarding the health impacts of sugar consumption and recommending daily sugar intake be reduced to 10% of daily dietary intake and ideally, for the best health outcomes, to 5%.

Cadbury Dairy Milk Freddo is approximately 57% sugar and close to 30% fat. It is not a healthy food choice for children, and does not represent a healthier dietary choice consistent with prevailing government standards. Consumption of energy dense, high-sugar products such as Cadbury Dairy Milk Freddo can contribute to weight gain and obesity in children. It is not appropriate to promote a product so high in sugar and fat to children for consumption, particularly at a time when 27.4% of Australian children ages 5-17 are overweight or obese. Mondelez's RCMI Company Action Plan says it will only advertise products to children between 6 and 12 years of age in accordance with its Sensible Solution nutritional criteria. The criteria break down food products into categories, assigning each category nutritional criteria it must meet before qualifying as a "Sensible Solution". The criteria Mondelez applies to chocolate, however, is not clear. There is no category for confectionary or chocolate, and other categories, such as dessert or salty snacks, do not appear appropriate. We argue that regardless of how Mondelez categorises chocolate within its own nutritional guidelines, it cannot demonstrate that chocolate is a healthier dietary choice consistent with established scientific or Australian government standards.

We note that in addition to the action plan made under the RCMI, Mondelez's global approach to marketing to children is that, as of 1 January 2016, it will not advertise its products in any media primarily directed to children aged under 12, irrespective of the product's nutritional profile. Mondelez says this covers any advertising where 35% or more of the total viewing audience is under the age of 12 and applies to advertising in TV, print, radio, internet (its own and third party websites) and more.

The advertisement does not promote good dietary habits or physical activity

Even in the case of a product that represents a healthy dietary choice, the RCMI provides that Mondelez may only advertise the product to children if the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

- 1. Good dietary habits, consistent with established scientific or government criteria; and*
- 2. Physical activity.*

The Board has previously noted, in its decision 0454/11, that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, The advertisement does not positively encourage good dietary habits as the only food or drink shown to be consumed is Cadbury Dairy Milk Freddo. No representation of physical activity is incorporated into the advertisement.

For these reasons, we do not think that the advertisement meets the RCMI requirement to encourage good dietary habits and physical activity

Request for action

For the above reasons, the OPC asks the ASB to request that Mondelez withdraw the Cadbury Dairy Milk Freddo chocolate block advertisement immediately on the basis that it

breaches the RCMI.

2. The advertisement breaches AANA Code for Advertising and Marketing to Children. The OPC submits that this advertisement breaches clause 2.14 of the Code for Advertising & Marketing Communications to Children (Children's Code) because:

- 1. It is an advertising or marketing communication to children, and*
- 2. It encourages and promotes unhealthy eating habits*

The advertisement is an advertising or marketing communication to children

The Children's Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on the Instagram internet site, accordingly the Children's Code clearly applies.

Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Children's Code.

The advertisement promotes unhealthy eating habits

The advertisement promotes the consumption of Cadbury Dairy Milk Freddo and encourages children to associate the product with fun. As outlined above, Cadbury Dairy Milk Freddo is an unhealthy product with very high levels of sugar and fat. The promotion of this product encourages children to consume it and thereby promotes unhealthy eating habits.

Request for action

For the above reasons, the OPC asks the ASB to request that Mondelez withdraw the Cadbury Dairy Milk Freddo chocolate bar advertisement immediately on the basis that it breaches the AANA Code for Advertising and Marketing to Children.

THE ADVERTISER'S RESPONSE

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

Thank you for providing us with the opportunity to respond to the complaint regarding the Cadbury Dairy Milk Freddo block creative that was seen on Instagram.

As one of Australia's largest food manufacturers and advertisers, Mondelez International (MDLZ) has a significant role that we take very seriously in marketing and advertising our products responsibly and appropriately.

The complainant has raised numerous issues that fall within the Australian Association of National Advertisers (AANA) Advertiser Code of Ethics, AANA Food and Beverages Advertising and Marketing Communications Code, AANA Code for Advertising and Marketing Communications to Children and the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI).

MDLZ has an internal policy commitment not to advertise its products to audiences where 35% or more are children under the age of 12 years. On a local level, this is reflected in Australia by MDLZ being a signatory to the RCMI and committing to its company action plan.

On review of the complaints received and close examination of the creative and placement of the Cadbury Dairy Milk Freddo communication, we believe that the creative and its placement is consistent with the principles outlined in the AANA's codes, the AFGC's RCMI

and our company's stricter internal policies.

Our responses to the complainant's claims follow:

- *The campaign targets parents through nostalgia and media buy: The intent of this campaign is to drive awareness and purchase intent for the Cadbury Dairy Milk Freddo blocks range, by targeting parents who have grown up with the Freddo brand, influencing them to choose our Cadbury Dairy Milk Freddo block over a competitor's product, and to share it with their family. In line with this strategy, we targeted our social media campaign at adults, and took measures to ensure that the placement of the advertisement does not reach children.*
- *Given Freddo's broad, multi-generational appeal from its presence in Australia for over 80 years, it is incorrect to conclude that simply by using the Freddo character, the advertisement is directed at children, or adapted to appeal to children.*
- *Social media approach targets adults: In line with our responsible marketing commitment, and our social media strategy to leverage the nostalgia that parents feel towards Freddo, we ensure our advertisements target the main grocery buyer and are not directed at children. Besides specifically targeting the main grocery buyer with our choice of platforms, we also take measures to ensure that the placement of advertisements on social media platforms limits children's exposure to the advertisement.*
- *In the case of Instagram, user terms expressly state that users must be over 13 years of age (<https://help.instagram.com/478745558852511>). Instagram has various means to assist people to report underage users and Instagram investigates and seeks to verify all such reports. People can report underage users via a reporting form on the Instagram Help Center (<https://help.instagram.com/>). Reports are investigated by Instagram and accounts are deleted where the age of the person is verified to be under 13 years.*
- *We are not aware of, nor has the complainant identified, any evidence to suggest that:*
 - o a substantial proportion of users of Instagram in Australia are children under 12;*
 - o Instagram routinely ignores reports of users under 13 years; or*
 - o Instagram does not rigorously enforce its minimum age policy.**It is therefore reasonable to conclude that children under 12 would not be 35% or more of the user population of Instagram in Australia generally.*
- *In this case and on our Freddo posts to date, we have applied specific age targeting parameters (males and females 25-54 years) which prevent our paid advertisements from being served to anyone outside of this demographic. This means the advertisement would not have been pushed out or served to any users under the age of 25 years.*
- *The complainant also references the potential for brands to be serving ads to children inadvertently via the use of interest-based targeting (i.e. if they have liked our page previously, they could organically be served the ad in their feed). Note that there is no Cadbury Instagram page, so it would not be possible for the ad to be served organically in their feed unless it was shared with them directly.*

Freddo Blocks on Instagram 22/10/2017

- *Quoted Instagram usage data is not valid: Instagram does not release any official audience/demographic statistics – here nor globally – and depending on where you look online, the inferred statistics vary so dramatically that it throws the validity of the UK research the complainants quoted into question. In any event, we do not agree with the complainant’s assertion that it is reasonable to assume that UK usage patterns reflect Australian usage patterns. To the contrary, in the absence of any evidence to demonstrate a link between UK and Australian usage patterns, there is no reason to believe that how Instagram may be used in the UK has any bearing on how Instagram is used in Australia.*
- *As outlined above, we take every measure possible to ensure that our media buy targets our intended audience – in this case, parents of pre-teens - and the remaining responsibility sits with the parents.*
- *The language, theme and visual of the advertisement is not directed primarily to children under 12 years:*
 - o *Language appeals to a mature audience and actively encourages responsible consumption. There is no music/voice over, only limited text which accompanies the post. The text “music to our ears” – makes a play on words that children would not easily understand, the text then goes on to announce that Cadbury Dairy Milk Freddo is now available in blocks and then asks “Who would you share a block with?”, actively encouraging sharing and responsible consumption.*
 - o *Theme and visuals appeal to audiences of all ages, but, as outlined above we ensure that the placement of the advertisement is directed towards influencing parents’ choices. The opening scene shows an activity that does not appeal primarily children under 12 years (i.e. playing an electric guitar).*
 - o *Freddo, the animated character who appears in this ad and the face of our Cadbury Freddo brand, is synonymous with, and in many ways represents everything the brand stands for. He is an animated character who was created in Melbourne in 1930 and is now 87 years old. He’s long been a part of Australian chocolate manufacturing history and is recognised as such by all audiences.*
- *Further, the Board has previously acknowledged that ‘animation’ does not mean an advertisement will be considered to be primarily directed to children. We note that there have been a number of other advertisements including animated characters (Kraft 0229/11, Smiths Chips 0190/13 and Peters 0146/15) which were considered by the Board as not directed primarily to children.*
- *We do not classify chocolate as a sensible solution product therefore many of the complainant’s statements do not apply.*
- *The product is a treat and intended to be shared by parents/caregivers with their children as an occasional food only. DLZ has always believed in the crucial role played by parents in educating their children about a balanced diet and a healthy, active lifestyle*
- *The CDM Freddo Block is a product specifically developed for family sharing to be purchased by the main grocery buyer in the household.*

- *The advertisement refers to ‘sharing’ and there are no language/visuals in the advertisement which encourage inappropriate or excess consumption of the product (in fact, there are no images of the product being consumed at all).*
- *In addition, we encourage portion control through our participation in the ‘Be Treatwise’ campaign to help consumers understand how much of their recommended daily intake our products contain. This includes things like fat, sugar, energy and carbohydrates. Everyone’s diets and energy requirements are different so this on-pack information helps guide individuals.*
- *Suggested serving sizes also appear on the back of our products to help people make the right decision for them.*
- *Finally, in response to the complainant’s claim that the advertisement does not promote healthy dietary habits or physical activity, we must point out that advertised product is a chocolate block and The Board has previously considered that, consistent with previous decisions (Hungry Jacks 0282/11, Mars 0208/11) promotion of a product which may have a particular nutritional composition is not per se undermining the promotion of healthy balanced diets.*

Please note that a CAD reference number and CAD rating was not required for Instagram placement.

THE DETERMINATION

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the “Children’s 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 (the “AFGC RCMI”).

The Board noted the complainant's concern that the advertisement breaches the RCMI because it is an advertisement directed primarily to children, Freddo Frogs (chocolate) are not a healthy dietary choice and the advertisement does not reference a healthy lifestyle encouraging good dietary habits and physical activity.

The Board viewed the advertisement and noted the advertiser’s response.

The Board noted that the medium the subject of complaint is Instagram, and that this falls within the scope of the AFGC RCMI.

The Board noted the RCMI Initiative provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication is, having regard to the theme, visuals and language used, are directed primarily to children (and are for food and/or beverage products) or

2. The placement of the advertisement or marketing communication is in a medium that is directed primarily to children, ie:

A. in relation to television, all C and P rated programs and other rated programs that are directed primarily to children through their themes, visuals and language; and/or

B. where children represent 35 percent or more of the audience of the Medium.

With regards to point 1, the Board considered the theme, content and visuals of the advertisement. 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 under 12.

The Board noted that the advertisement features an image of the Freddo Frog character playing a guitar. The image then appears as one of the squares on a block of chocolate. The on screen image changes to two different blocks of the chocolate in their wrapping and the text "leap into 2 new blocks" appears on the bottom of the screen.

The Board noted the theme of the advertisement. The Board noted that the theme of chocolate block promotion is a theme that appeals to children and the promotion of two new flavoured blocks would be of appeal to children. The Board noted that the idea of a block of chocolate is generally considered to be something that is shared and that the promotion in this way would be of equal appeal to adults.

The Board noted the language of the advertisement. The Board noted there was no audio in the advertisement and that there is very little text and the text is simple and written in large letters. The Board noted that the tagline "leap into 2 new blocks" makes a connection with the frog character and the excitement of the new flavours but considered that this is not language that was directed primarily to children.

The Board noted the visuals of the advertisement. The Board noted that the colours are bright and are the colours that are recognised as Cadbury colours associated with the brand. The Board noted the inclusion of the Frog playing a guitar and considered that there was direct relevance to the character and the product being a "Freddo Frog."

The issue of animation is one where the Board has previously stated that animation per se does not mean that an advertisement will be considered to be directed primarily to children. Specifically the Board noted scenes in advertisements for Kellogg's LCMs (0179/13 and 0180/13) (which predominantly featured real life images of children at school but also included images of cartoon snails and dinosaurs) and for Kellogg's Coco Pops (0176/17)(which featured Coco Pops in a shopping trolley manoeuvring around a supermarket). By contrast however in a number of other advertisements including animated characters (eg: Kraft 0229/11 and Smiths Chips 0190/13) the Board had considered that the advertisements were not directed primarily to children on the basis that the animation was in the context of a theme, music or text that be attractive to an older audience of either teenagers

or adults or both.

The Board reiterated that it is essential that they consider all elements of the advertisement and to make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is clearly directed primarily to children.

The Board considered in this case that the advertisement was attractive to a broad audience and was not clearly directed in the first instance to children under 12. The Board noted that the animated frog was the recognisable character used for this product for several years and that the promotion of a 'block' of chocolate was the primary focus which is a shared product and not of primary appeal to children. The Board considered that the overall theme, visuals and language used were of appeal to children of all ages and to adults as well and considered therefore that the advertisement was not directed in the first instance or mainly to children under 12.

The Board then considered part 2a in relation to Instagram and noted that, the advertisement has been shown on the company Instagram page and that the terms of use for Instagram clearly state that:

1. You must be at least 13 years old to use the Service.

The Board considered that as Instagram specifies users are to be at least 13 years old, the service as a whole is not directed primarily to children.

Based on the above the Board considered that part 2(a) of the RCMI did not apply.

The Board then considered part 2(b) relating to where children represent 35 percent or more of the audience of the Medium. Based on the above, the Board considered that the Cadbury Instagram page would not have more than 35% of its audience being children under 12 and considered that part 2(b) of the RCMI did not apply.

Finding that the advertisement did not meet point 2 of the Initiative the Board considered that the Core Principles of the RCMI did not apply to the advertisement when published on the Cadbury Instagram page.

The Board then considered whether the advertisement complied with the Children's Code. The definition of "advertising and marketing communications to children" in the AANA Children's Code is: 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 same reasons noted above the Board considered that this advertisement, considering its overall impact and the theme, visuals and language used are not directed primarily to children. The Board therefore considered that the AANA Children's Code did not apply.

The Board then considered whether the advertisement complied with relevant provisions of the Food Code.

The Board considered section 2.1 of the Code which requires that ‘ Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards..’ The Board considered that advertising the product Freddo Frog (chocolate) is not of itself contrary to prevailing community standards and that the advertisement did not breach section 2.1.

The Board then considered 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 noted that the advertised product is Freddo Frog block or chocolate - a chocolate item. The Board considered that, consistent with previous decisions (Ferrero 0345/17, Hungry Jacks 282/11, and Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy balanced lifestyle.

The Board noted the AANA Food and Beverages Advertising and Marketing Communications Code – Practice Note which provides that: ‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’ The Board noted that the chocolate is shown as a bare block and then in the new packaging. The Board considered that the likely interpretation of the advertisement is that the product advertised is intended to be shared at home by the family and that there is no suggestion of frequency of consumption and there is no one person seen consuming the product.

The Board considered that the advertisement did not encourage excess 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 AFGC RMCI, the Children’s Code or the Food Code the Board dismissed the complaint.

