



Case Report

1	Case Number	0553/17
2	Advertiser	Kellogg (Aust) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
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
Food and Beverage Code (Children) 3.5 pester power

DESCRIPTION OF THE ADVERTISEMENT

The material that is the subject of the complaint is a website and an app that promote the Kellogg's Halloween Promotion ("the Promotion"). The purpose of the Promotion is to provide mums and other adult grocery buyers with fun Halloween ideas to do with the family. A central feature of the Promotion is to provide mum with Kellogg's Halloween recipe ideas to make with the family. Further, to invite mum to go out 'trick or treating' with the family and to use the Kellogg's Halloween food in trick or treating activity.

THE COMPLAINT

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

It's obvious that this promotion is aimed at children due to the themes, visual and language used. The cereals and products themselves are popular with children and are not regarded as healthier options with most being under 3.5 stars.

The use of cartoon spokes-characters dressed up in Halloween type outfits would predominately appeal to children. The use of an interactive app to get individuals to play the simple promotional game would primarily be of interest to children. The use of child-popular and simple words 'trick or treat' with a special surprise revealed appeals to children and despite saying 'mums make your choice' I doubt mums would be playing this! I didn't see

this promotion on any of the Kellogg's cereals that are popular with adults. This promotion is another way to tap into pester power and kids sense of play and imagination to push their sugary products.

THE ADVERTISER'S RESPONSE

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

Prior to addressing the substantive issues, Kellogg would like to confirm its long-standing support for the ASB and its commitment to uphold the relevant Codes together with its own internal guidelines.

1) Background Material Requested

The material which is the subject of the complaint is:

(i) a website located at https://www.kelloggs.com.au/en_AU/recipes/halloween.html ("Website"); and

(ii) Kellogg Halloween Shazam app content.

The Website can be viewed by clicking the link above. The Kellogg Halloween Shazam app content can be viewed by downloading the Shazam app from the App Store and using the Shazam app in conjunction with any of the Kellogg's Halloween packs that formed part of the Kellogg's Halloween Promotion. The range of participating products are shown at the Website above.

As the Website and Kellogg Halloween Shazam app content are not TV or radio advertisements there are no scripts and no CAD ratings and the Website and app content do not appear in any television or radio programs.

Please note that we have not provided any substantiation data regarding health, nutrition or ingredient claims or statements, as no such claims or statements are made in the material the subject of the complaint.

2) Description of Advertisement and Summary of Complaint

The material that is the subject of the complaint is a website and an app that promote the Kellogg's Halloween Promotion ("the Promotion"). The purpose of the Promotion is to provide mums and other adult grocery buyers with fun Halloween ideas to do with the family. A central feature of the Promotion is to provide mum with Kellogg's Halloween recipe ideas to make with the family. Further, to invite mum to go out 'trick or treating' with the family and to use the Kellogg's Halloween food in trick or treating activity.

The complaints are made under the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI), the AANA Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code) and AANA Code for Advertising & Marketing Communications to Children (Children's Code). The substance of the complaints is that:

i) the Website is an advertising and marketing communication within the meaning of the RCMI;

ii) the Kellogg Halloween Shazam app content is an advertising and marketing communication and an interactive game within the meaning of the RCMI;

iii) the Website and Kellogg Halloween Shazam app content are directed primarily to children under 12 years of age, based on the language, themes and visuals used;

iv) based on research on the use of other types of social media (that are undisclosed) there are likely to be many children under 12 years who use Shazam;

v) products advertised do not meet the Nutrient Criteria for healthier dietary choices,

and that the Website and Kellogg Halloween Shazam app content therefore breach Core Principles 1.1 and 1.3 of the RCMI, as well as section 2.14 of the Children's Code and section 3.5 of the Food & Beverages Code.

We note that the Complaint report, in the section headed "Issues Raised to Date", also refers to sections 2.1(b) and 2.2 of the Food & Beverages Code, although we note that the complaints do not make submissions on these sections.

Our response to the complaints is set out below.

3) Advertising to Children (RCMI)

Kellogg submits that Core Principles 1.1 and 1.3 of the RCMI do not apply in this instance as both the Website and Kellogg Halloween Shazam app content are directed to mums and other adult grocery buyers and are not directed primarily to children.

The intent behind the Kellogg's Halloween Promotion is to provide mums and other adult grocery buyers with fun Halloween ideas to do with the family. It relies on the insight that mums are looking for fun things to do with the family around Halloween. The central feature of the promotion is to provide mum with Kellogg's Halloween recipe ideas to make with the family and which she can use when going out 'trick or treating' with the family. The Promotion seeks to do this in an interesting and creative way.

Kellogg draws the Board's attention to the following factors that Kellogg submits demonstrate that the Website and Kellogg Halloween Shazam app content are not directed primarily to children.

The Website

- The Website is factual in nature. The language used is plain English language and is not child-focused. The concepts and language speak to parents, and appeals to the insight that parents are constantly looking for affordable (preferably free) fun experiences for their families.*

- At the top of the Website there is a screen shot from the Kellogg Halloween Shazam app content that contains the words "Mums make your choice".*

- The first line of the text directs the main grocery buyer to stores to "Discover a free Trick or Treat experience in store this Halloween by picking up one of these packs in store". This call to action is clearly talking to mums / adult grocery buyers and inviting them to pick up a pack of the Kellogg's Halloween packs on their next grocery shopping trip.*

- The very next line is again talking to main grocery buyers informing them of the partnership with Shazam that is directed to "making Halloween more fun for you and your family".*

- The webpage then goes on to show thumbnail images of the Kellogg's Halloween packs so that the main grocery buyer can recognise the packs on their next store visit.*

- The central feature on the webpage is a recipe involving Rice Bubbles*

- The webpage goes on to further promote the Kellogg's Halloween recipe ideas and invite parents to learn how to make Halloween food using Kellogg's products. "After your free Trick or Treat experience, learn how to make awesome Halloween food using Kellogg's cereal and LCMs, ideal Trick or Treat food!"*

- At the bottom of the webpage there are links to various other Kellogg's Halloween recipes and beneath that, the webpage contains the usual links to various pages including "Contact us", "Terms of Use", "Privacy", "Sitemap" and Kellogg's company information.*

- It is relevant to note also the url of the webpage*

https://www.kelloggs.com.au/en_AU/recipes/halloween.html. This is talking about Halloween recipes and evidences the intent of the Promotion, which is to provide parents with fun recipes to make for Halloween.

- The webpage complained of is part of the Kellogg's Australia website located at www.kelloggs.com.au. The Kellogg's Australia website is a website of broad appeal and is*

directed to adults. It is clearly not a website directed to children. The website contains the usual sort of information that a consumer would look to find on a food manufacturer's website. It contains information including:

- Information about Kellogg's products, including nutritional, ingredient and other information;*
- Recipes;*
- Information on health and wellbeing;*
- Information about Kellogg's Promotions;*
- Information about Kellogg's history and story;*
- News and articles;*
- Kellogg's website terms of use, privacy statements and sitemap information.*

- *The webpage complained of is part of the Promotions section of the Kellogg's Australia website. This page makes consumers aware of current Kellogg's promotions. Other promotions that regularly feature on the Kellogg's Promotion webpage include gift with purchase promotions such as the Kellogg's Fitness Tracker promotion, the Kellogg's Free Books promotion and Kellogg's Free Spoons promotions. The Kellogg's Promotion page is not a page that is directed to children and features a broad range of promotions that are directed to adult grocery buyers.*

- *Kellogg respectfully contends that the Website complained of, being a part of a broader website containing predominantly content for parents, is unlikely to be accessed by children under 12 years of age in the first instance.*

- *Whilst elements of the Website may have some appeal to teens and children, this is an insufficient basis for a finding that the Website is primarily directed at children, as consideration must be had to how the images are used, surrounding language and thematic context. We note in particular the following:*

- o As held in case number 0258/13, the fact that an advertisement may be attractive to children does not necessarily mean that an advertisement is primarily directed at children.*

- o The Board's prior decision in case 0097/14, where it was held that while some elements of the website would appeal to kids (images and play suggestions), content (such as the text and nutrition information) would also be used by parents, and therefore the website was not primarily directed to children.*

Kellogg Halloween Shazam App Content

- *Kellogg's choice of Shazam as a medium to promote the Kellogg's Halloween Promotion is further evidence of the fact that the Promotion is directed to adult grocery buyers.*

- *Shazam is an app that you must download to your smartphone/device in order to access the Kellogg Halloween Shazam content.*

- *Kellogg's use of such an adult dominated medium is consistent with the purpose of the Promotion, as described above, which is to provide adult grocery buyers with fun Halloween ideas to do with the family, with the central feature being to provide mum with Kellogg's Halloween recipe ideas to make with the family and which she can use when trick or treating with the family.*

- *The first interaction that the Kellogg Halloween Shazam app content provides to users is the screen which states "Mums make your choice". This screen contains two options that can be selected - "trick" or "treat". Irrespective of which option mum chooses, the app will always conclude on a screen which promotes Kellogg's Halloween recipe ideas to mum and includes the direct call to action to mum to make these recipes with the kids "Discover Creepy Kellogg's Recipes to make with the kids".*

For the reasons stated above, it is Kellogg's respectful submission that the RCMI does not apply to either the webpage or the Kellogg Halloween Shazam app content complained of, as

neither are directed primarily to children but rather are directed to adult grocery buyers. Accordingly, the complaints in respect of the RCMI should be dismissed.

However, we would like to make further submissions in relation to matters relevant to the application of the RCMI. These matters are set out below.

1) *In order for the RCMI to apply to “Advertising or Marketing Communications”, it is necessary that the communication in question falls within the definition of “Advertising or Marketing Communications” set out in section 3 of the RCMI.*

Kellogg accepts that the Website referred to in the complaints falls within the definition of “Advertising or Marketing Communications”. For clarity, we submit that the Website does not breach the RCMI as it is not directed primarily to children as stated above.

However, it is Kellogg’s submission that on a plain construction of section 3 of the RCMI, the Kellogg Halloween Shazam app content does not fall within the definition of “Advertising or Marketing Communications” for the reasons set out below.

- The Kellogg Halloween Shazam app content can only be accessed as part of the Kellogg Halloween packaging. That is, the content will only play while the phone is being pointed at the packaging. When the phone is moved away from the packaging the content stops playing. An image appears in the bottom left corner of the screen which shows the front and back of the Kellogg’s pack together with text that says “Point phone back at packaging”. Once the phone is pointed back at the packaging, the Shazam content will continue playing.*

- Further, the Kellogg Halloween Shazam content visually appears as part of the packaging. That is, the image that users see is an image of the actual Kellogg pack with the Halloween Shazam content shown on the packaging.*

2) *In order for principle 1.3 of the RCMI to apply, the Kellogg Halloween Shazam app content needs to be construed as falling within the definition of “interactive game”. Kellogg submits that the Kellogg Halloween Shazam app content should not be considered an interactive game as the user has no control over the outcome and beyond the first ‘choice’, there is no further opportunity to interact (which is at odds to a game where users must constantly engage and respond). The user can only select between the options of “trick” or “treat” and irrespective of which option they select the Kellogg Halloween Shazam app content culminates on an end screen where the user is invited to “Discover Kreepy Kellogg’s Recipes to make with the kids”. In fact, the purpose of the Kellogg Halloween Shazam app content is to promote the Kellogg’s Halloween Promotion and in particular the Kellogg’s Halloween Recipe ideas and to do this in a fun and creative way that will catch mum’s attention.*

3) *The complaint made by the OPC states that “The advertisement is for Kellogg’s LCMs Splitstix Yoghurty and was released on Shazam on around 16 October 2017...”. It is Kellogg’s respectful submission that it is inaccurate to state that the advertisement is for LCMs Splitstix Yoghurty.*

We have set out above the reasons why both the Website and the Kellogg Halloween Shazam app content are directed to mums / adult grocery buyers and not directed primarily to children. This is the principle reason why Kellogg’s submits the content complained of does not breach the RCMI and why the complaints should be dismissed.

However, it is relevant also to note that, in Kellogg’s respectful submission, the content complained of is not “an advertisement for Kellogg’s LCMs Splitstix Yoghurty”. The Website promotes the Kellogg’s Halloween Promotion in general. The promotion is available through the packaging of a range of specially marked Kellogg’s packs and is not limited to Kellogg’s LCMs Splitstix Yoghurty. Other products included in the promotion include Rice Bubbles cereal, Crunchy Nut cereal, Coco Pops cereal and Froot Loops cereal. All of these products meet the nutrient criteria required by the RCMI. Further, the Website showcases Rice Bubbles cereal as the featured product. As stated above, Rice Bubbles cereal meets the

nutrient criteria required by the RCMI.

Further, the packaging featured on the Kellogg's Halloween Shazam app is dependent upon which particular package the consumer directs their phone towards.

Accordingly, the Website should be determined to be promoting the Kellogg Halloween Promotion in general, with a central product feature of Rice Bubbles (an RCMI nutrient criteria compliant product), and should not be construed as an advertisement for LCMs Splitstix Yoghurty.

4) AANA Code of Advertising and Marketing Communications to Children (the Children's Code)

Kellogg submits that the content complained of does not breach the Children's Code. For the reasons stated above it is Kellogg's submission that the content is not primarily directed to children.

Further, the only matter raised in the complaints in respect of the Children's Code is clause 2.14. In this regard the OPC complaint proceeds on the basis that the content complained of promotes the consumption of Kellogg's LCMs Splitstix Yoghurty and thereby promotes unhealthy eating habits. The mere promotion of a food product does not of itself equate to the promotion of unhealthy eating habits. The content complained of does not at any time encourage excess or inappropriate consumption. In fact, the premise of the Kellogg Halloween promotion is that the recipes promoted are "treat" food. The Kellogg's recipes are promoted as a treat and are inviting parents to engage in the fun family activity of making these recipes for Halloween and going outdoors with the family for some fun trick or treat activity. For example, the content refers to "ideal trick or treat food", "Discover Kreepy Kellogg's Recipes to make with the kids", "Treat yourself to Rice Bubble Bats".

5) AANA Food & Beverages Advertising & Marketing Communications Code (the Food & Beverages Code)

Kellogg submits that the content complained of does not breach the Food & Beverages Code. We will deal in turn with each of the Code matters that have been referred to in the complaints:

Clause 2.1(b) – Contravenes Community Standards & Clause 2.2 healthy lifestyle / excess consumption

Kellogg submits that the mere promotion of a particular food product does not of itself equate to contravening community standards. The content complained of makes truthful and accurate statements, and it complies with all applicable laws. Further, the food is at no times presented in a manner that is encouraging or promoting excess or inappropriate consumption or an inactive lifestyle, nor is there a representation of products or portion sizes disproportionate to the settings portrayed. To the contrary, the premise of the Kellogg Halloween promotion is to promote the Kellogg's Halloween recipes as trick or "treat" food and to invite parents to engage in the fun activity of making the recipes and going outdoors with the family for trick or treat activity. Please refer to section 4 above.

Clause 3.5 – advertising to children / pester power

For the reasons stated above, Kellogg submits that the content complained of is directed to adult grocery buyers and is not directed primarily to children. Accordingly, clause 3.5 does not apply. Further, the content does not at any time include any appeal to children to urge parents and/or other adults to buy a particular product for them.

Conclusion

For the reasons stated above the complaints should be dismissed in their 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 (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, not a healthy dietary choice.

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

The Board noted that the medium the subject of complaint is the Kellogg website www.kelloggs.com.au 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 landing page of the website features Halloween themes images, and an image that reads “Mums make your choice.” There is information about Halloween 2017 and images of various product packages. There is a template of a rice bubble bat that can be used and includes a reference to the SHAZAM App for the recipe.

The Board noted the theme of the advertisement. The Board noted that the theme of the website is related to Halloween and that there are recipes specific to ideas for this particular event. The Board agreed that the images and concept would be a theme that appeals to children but noted that the clear instruction is to involve “mum” to assist with making the recipes and choosing the preferred option. The Board noted that while children would be interested the promotion was clearly intended to include and appeal to adults with novel food creations for Halloween.

The Board noted the language of the advertisement. The Board noted there is a combination of large animated text as well as smaller font with more detail about the recipes. The Board noted that the products and the writing on the packaging is familiar to viewers but is not specifically childlike or appealing to children.

The Board noted the visuals of the advertisement. The Board noted that the top of the screen includes pictures that would appeal to children with the snap, crackle and pop characters in the image and noted that the main picture is of a bat made from rice bubbles and includes a face. The Board noted that the images are still pictures and that it is clear they are related to the recipes and other information on the page.

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 (0144/13)(which predominantly featured the image of a cartoon bowl of Coco Pops playing a well-known pool game). 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 noted a prior decision in case 0097/14, where it was held that while some elements of the website would appeal to kids (images and play suggestions), other content (such as the text and nutrition information) would also be used by parents, and therefore the website was not primarily directed to children.

The Board reiterated that it is essential for the Board to 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 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 images were childlike and appealing to children but considered that the overall impression and deliberate call to action to include an adult (mums) meant that the primary focus is parents.

The Board considered that the overall theme, visuals and language used were of appeal to children of all ages and to adults and considered that the advertisement was not directed in the first instance to children under 12.

The Board then considered part 2a in relation to television and noted that, regardless of whether the advertisement is directed primarily to children or not in terms of its content, it will within the RCMI if it is broadcast in C or P rated programs or other rated programs that are directly primarily to children through their themes, visuals and language;

The Board noted the complainant's complaint that the advertisement has been shown on the Kellogg's Internet site. The Board noted that as this advertisement was not aired on television, this part of the Code did not apply.

The Board then considered part 2b relating to where children represent 35 percent or more of the audience of the Medium. The Board considered that the Kellogg's Australia website would not have more than 35% of its audience being children under 12. The Board considered the context of a website for a cereal and related products and noted that the advertisement was not interactive and that there was no additional driver for young people to view this advertisement and therefore it would not have a greater than 35% child audience.

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 this particular website promotion.

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. '

The Board noted the complainant's concerns regarding pester power and considered specifically section 2.7(b) of the Code that states that Advertising or Marketing Communications to Children must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them.

For the same reasons noted above the Board considered that this advertisement, considering its overall impact and the theme, visuals and language used is not directed primarily to children. The Board therefore considered that the AANA Children's Code including this provision did not apply.

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

The Board 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 product Rice bubbles does meet the criteria for being a 'healthier choice' product under the RCMI. The Board noted that this assessment is not of particular relevance to whether or not its promotion is permitted under the Food Code. However the Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active 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 website is offering more than one option for ideas for Halloween treats and considered that the likely interpretation of the

advertisement is that the product advertised is to make a choice about which recipe was to be used and that it was not intended to make and consume each one of the recipes. The Board noted that there is no suggestion of frequency of consumption but noted that the recipes are in the context of a special Halloween promotion not everyday.

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.