



## CASE REPORT

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|-------------------------------|---|
| 1. Complaint reference number | 76/10   |
| 2. Advertiser                 | Unilever  |
| 3. Product                    | Food & Beverages  |
| 4. Type of advertisement      | Internet  |
| 5. Nature of complaint        | Advertising to Children Code - Food & beverages – section 2.4<br>Advertising to Children Code - Parental authority – section 2.4<br>Advertising to Children Code – Premiums – section 2.4<br>Food and Beverage Code (Children) – premium<br>Food and Beverage Code – other<br>QSR – Advertising and Marketing Message |
| 6. Date of determination      | Wednesday, 10 March 2010  |
| 7. DETERMINATION              | Dismissed   |

## DESCRIPTION OF THE ADVERTISEMENT

This internet site from Unilever for its Paddle Pop product is a competition named “Lick-A-Prize Soak-A-Rama”. On this site people can design a ‘rashie’ (UV and sun protection shirt). At each stage of the design people need to match a paddle pop stick with one shown on the website to be able to move on to the next step or to win a rashie.

## THE COMPLAINT

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

*We write to complain about a Streets Paddle Pop website that we consider to breach the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) and the AANA Code for Advertising and Marketing Communications to Children.*

*We believe the website breaches clauses 3.5 and 3.6 of the Food Code, and clauses 2.7(b), 2.12(b) and 2.12(d) of the Children’s Code.*

### *1 Premium offer*

#### *1.1 Clause 3.6 of the Food Code*

*We believe the website breaches clause 3.6 of the Food Code, which states:*

*“Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children’s Food or Beverage Product/s being offered.”*

*It is clear that the website is directed primarily to children under 14 years of age, and therefore constitutes an “Advertising or Marketing Communication to Children”. It features imagery and activities that would appeal to children in this age group, such as colourful cartoon graphics of a monkey character, a water slide and bubbles, and a design-your-own rash vest function. It also promotes prizes that would appeal primarily to children younger than 14, including design-your-own rash vests, Super Soaker water pistols and holidays to White Water World.*

*We believe the advertisement features a Premium, which is not an integral element of the Paddle Pops product.*

*The Food Code defines “Premium” as “anything offered free or at a reduced price and which is conditional upon the purchase of a regular Children’s Food or Beverage Product”.*

*The advertised prizes and entry into the weekly prize draw should be considered to be Premiums according to this definition, as they are offered free and are conditional upon the purchase of multiple Paddle Pops. In order to enter the prize draw or participate in any of the activities on the website, children must enter a prize code from a Paddle Pop stick. Clearly the prizes are not integral elements of Paddle Pops.*

*The prize offers are clearly the dominant features of this website and occupy more than half the website. The entire website is devoted to promotion of the prizes offered. The Paddle Pops product is not mentioned or featured at all, other than in the context of collecting matching Paddle Pops sticks in order to win the prizes.*

### *1.2 Clause 2.12(b) of the Children’s Code*

*We believe the advertisement also breaches clause 2.12(b) of the Children’s Code, which states:*

*“Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium...should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product...”*

*As discussed above, the entire website is devoted to promotion of the prizes on offer, and the Paddle Pop product is not featured at all. Therefore, the advertisement would create a false and misleading impression in the minds of children that the products being advertised are the prizes, and not Paddle Pops.*

### *1.3 Clause 2.12(d) of the Children’s Code*

*Clause 2.12(d) of the Children’s Code states:*

*“Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium...must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.”*

*We believe the advertisement breaches clause 2.12(2) as it is necessary to purchase multiple Paddle Pops to be eligible to win the prizes promoted in the advertisement. For example, a child must have two matching Paddle Pop sticks to win a Super Soaker, three to win a Wii console, and four to win a White Water World holiday. Clearly, to have a good chance of winning the prizes, children will need to purchase and consume a large number of Paddle Pops. The more Paddle Pops a child consumes, the greater his or her chances of winning. The advertisement directly encourages children to “get licking” in order to win the prizes. We believe this constitutes use of Premiums (the prize offers) in a way that promotes excessive consumption of the Paddle Pop product.*

## *2 Pester power*

*We also believe the website should be considered to breach clause 3.5 of the Food Code and clause 2.7(b) of the Children’s Code on the basis that it is designed to create, and has the effect of creating, pester power, and contains an implicit appeal to children to urge parents to buy Paddle Pops for them.*

*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.”*

*Similarly, clause 2.7(b) of the Children’s Code states:*

*“Advertising or Marketing Communications to Children...must not contain an appeal to Children to urge their parents or carers to buy a Product for them...”*

*As discussed above, the whole focus of the website is promotion of the prize offers, and the Paddle Pop product is not featured. In order to win the prizes promoted on the website, it would be necessary to buy and consume a large number of Paddle Pops. Therefore, we believe the website is*

*intended to, and does, have the effect of encouraging children to urge their parents to buy multiple Paddle Pops for them. In addition, the advertisement encourages children to “match your Paddle Pop sticks” and “get licking”. We believe this constitutes an implicit appeal to children to urge parents to buy Paddle Pops for them, so that children can get licking and win the advertised prizes.*

### *3 Action requested by the ASB*

*For the reasons discussed above, we ask the ASB to request Unilever (the owner of the Streets brand) to withdraw the website on the basis that it breaches the AANA Food Code and Children’s Code.*

## **THE ADVERTISER’S RESPONSE**

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

*We note that the ASB is considering the TVC in relation to an issue that falls under section 2.7 of the ANAA Code for Advertising and Marketing Communications to Children (Children’s Code) and sections 3.5 and 3.7 of the AANA Food and Beverage Advertising and Marketing Communication Code (Food Code).*

*We further note that the ASB is considering the website in relation to the issues that fall under the same sections of the Children’s Code and Food Code as listed above. Accordingly we will address both complaints simultaneously.*

*For the reasons outlined below, we do not consider that the TVC or the website is in breach of Section 2.7 of the Children’s Code and sections 3.5 and 3.6 of the Food Code.*

**Overview Streets Paddle Pop milk and Streets Paddle Pop Moo, the Streets Paddle Pop products (the Products) available throughout the Streets Paddle Pop Lick-A-Prize promotion have been developed to meet the strict nutritional guidelines of the Fresh Tastes @ School NSW Healthy School Canteen Criteria and Unilever global internal nutrient criteria as published in a peer reviewed scientific journal (Nijman CAJ et al 2006 EJCN 1-11) and regularly updated. The Products meet the amber school canteen nutrient criteria across all states in Australia and New Zealand. The Products are made from 70% milk, have no artificial colours or flavours and are a source of calcium, Streets Paddle Pop milk providing 10% of recommended daily intake and Streets Paddle Pop Moo providing 40% of the recommended daily intake.**

**Children’s Code Section 2.7 Parental Authority Advertising or Marketing Communications to Children:(b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;**

*We submit that there is no express appeal to parent and carers of children urging them to buy the Products for them in the TVC or on the website.*

**Section 2.12 Premiums Advertising and Marketing Communications to Children which include or refer to or involve an offer of a Premium:(b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;(d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.**

*Premium is defined by the Children’s Code to mean anything offered free or at a reduced price and which is conditional upon purchase of a regular product. We submit that the TVC and website are advertising the Paddle Pop Lick-A-Prize promotion. This promotion is a game of chance and as such does not include or refer to or involve an offer of a Premium as defined by the Children’s Code. The TVC and website do not advertise the offer of a free gift with purchase of the Products. As there is an element of chance involved in the winning of all prizes, that is, not all Paddle Pops sold during the promotion provide prizes, there is not a free offer or gift provided with each purchase of a Streets Paddle Pop. We submit that not all purchasers of the Paddle Pop will win a prize and as such the prizes cannot be defined as Premiums.*

*By way of background the Streets Paddle Pop Lick-A-Prize promotion was conducted over almost a six month period from 11 August 2009 until 31 January 2010 providing consumers with quite a long period of time to redeem prizes as they are won. The promotion offers a variety of prizes, that*

are contained on the sticks of the Streets Paddle Pop variants and Streets Paddle Pop Moo variants. Consumers are given almost six months to try and win the prizes on offer. We submit that due to the length of the promotion period, the promotion does not encourage over consumption as the complainant alleges. The prizes offered require at the most consumption of four Paddle Pop milk variants to win the major prize of a White Water World Family Holiday as entrants are required to collect four icons contained on four separate sticks. It is not Unilever's intention to encourage over consumption of the Products during this promotion. In our view, it is entirely realistic that a purchaser need only consume one of the Products per week to participate in the promotion.

**Food code Section 3.5** 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.

We submit that there is no express appeal in either the TVC or on the website to children to urge parents and/or other adults to buy the Paddle Pop products. Please refer to attached TVC and script.

**Section 3.6** Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Products being offered.

We submit that the Paddle Pop Lick-A-Prize promotion does not feature Premiums as defined by the Children's Code. As previously stated, the promotion offers the chance to win a number of different prizes, however not all Products sticks provide a prize to the purchaser and as such this is not strictly speaking a free offer as not all entrants are provided with a gift or prize when they purchase a Paddle Pop.

**Compliance with Lottery Offices Legislation** We further submit that the second chance draw for the Streets Paddle Pop Lick-A-Prize will not be conducted until 1 May 2010 as provided by the terms and condition of the promotion. The promotion has been approved by the relevant lottery offices in NSW, Victoria, ACT and South Australia and it is a requirement by these offices that any entrant who has entered the second chance draw is able to access the terms and conditions until such time as the second chance draw has been conducted. We would therefore request that it is essential that the website be able to operate until the second chance draw has been conducted so as to be in compliance with the various state and territory legal requirements.

### **Approvals**

Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever's Legal and Corporate Relations Departments to critique all advertisements to ensure compliance with legal and ethical considerations.

Please note that Unilever is a signatory to the Responsible Children's Marketing Initiative (Initiative) developed by the Australian Food and Grocery Council in collaboration with the Australian Association of National Advertisers (AANA). Unilever takes its responsibilities as a signatory very seriously and complies with all requirements of the Initiative. Unilever has developed a Responsible Children's Marketing Initiative Company Action Plan and complies with the reporting requirements of the Plan.

### **Conclusion**

We submit that we are not in breach of the sections 2.7 and 2.12 of the Children's Code or section 3.5 and 3.6 of the Food Code as the TVC and website are advertising a promotion in connection with the Product, which meets the amber school canteen nutrient criteria for school canteens in Australia and New Zealand.

### **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"), the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food and Beverages Code"), and the Code for Advertising and Marketing Communications to Children (the Children's Code).

The Board noted that Streets is a signatory to the Australian Food and Grocery Council Responsible Children's Marketing Initiative (AFGC Initiative). The Board noted advice from the advertiser that the television element of the lick-a-prize campaign aired from 22 November under 12 December and that it aired in programmes that are directed to children and where the audience is predominantly children. The Board noted that the television advertisement directed children to the website the subject of complaint. The Board noted that the AFGC Initiative applies to 'television, radio, print, cinema and third-party Internet sites.'. The Board noted that this advertising material is on an advertiser own website not a third party Internet site. The Board therefore determined that, the AFGC Initiative does not apply to this advertising material.

The Board then considered whether the advertising material complied with relevant AANA Codes. The Board firstly needed to determine whether the advertisement is "Advertising or marketing Communications to Children", which is defined in the Children's Code and Food and Beverages Code as meaning:

*"Advertising or marketing communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product"*.

"Children" are defined in the Codes as being 14 years old or under. The Board considered the look and theme of the advertisement. The Board considered that the theme, visuals and language are all images that are attractive to children, as are the prizes offered for winners of the competition.

The Board then considered whether the advertised product is 'goods...which are targeted toward and have principal appeal to children.' The Board considered that the Paddle Pop is directed to children and would have principal appeal to children, even if some adults may also be interested in the product. The Board considered that the advertised product is a product targeted toward and having principal appeal to children and therefore within the definition of 'product'.

The Board noted that the relevant criteria for the advertisement being considered under the Food and Beverages Code is slightly differently worded, and considered that, despite slight wording differences, the definition is the same.

As the advertising or marketing material is directed to children and is for products of principal appeal to children, the Board determined that the material is within the scope of the Children's Code and Part 3 of the Food and Beverages Code.

The Board noted the complainant's concern that the advertisement was in breach of sections 2.1, 3.5 and 3.6 of the Food and Beverages Code and sections 2.1, 2.2(a), 2.7 and 2.12 of the Children's Code.

The Board considered whether the advertisement was in breach of section 3.5 of the Food & Beverages Code and section 2.7(b) of the Children's Code.

*"Advertising and/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."*

The Board noted the complainant's concern that the advertisement breaches section 3.5 as the promotion of the competition prizes will encourage a child to ask a parent to purchase multiple products. The Board noted that the advertisement does not directly include any appeal to a child to ask their parent/carer to buy a paddle pop. The Board noted the Practice Note:

*'In considering whether an advertising and/or marketing communications contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:*

*- although children may be expected to exercise some preference over the foods and beverages they consume, advertisements and/or marketing communications must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.*

*- advertising and/or marketing communications must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products [As an example, in a supermarket setting, a child should not be portrayed asking for a particular product or putting it*

*into a shopping trolley without asking, while voice or text messages must not include such urging as 'Ask mummy to buy you one'.]*

The Board considered that the intention of the Code, as articulated in the Practice Note, is to prevent advertisements containing blatant encouragements for children to ask for a product to be purchased. In the Board's view, to interpret any advertisement which is attractive to a child as amounting to 'pester power', without any direct or obvious appeal to children, would have the effect of banning all advertising to children. The Board recognised that this outcome would be considered desirable by some members of the community, but noted that in its view this is not the clear effect of the Code, nor is it yet a community standard. The Board considered that the advertisement did not include any appeal to children for children to urge parents or other adults to purchase Paddle Pops that would be in breach of section 3.5 of the Food and Beverages Code.

The Board determined that the advertisement was not in breach of section 3.5 of the Food and Beverages Code nor of section 2.7 of the Children's Code.

The Board then considered whether the advertisement was in breach of section 3.6 of the Food and Beverages Code. Section 3.6 of the Food and Beverages Code states:

*"Advertising or Marketing communications to children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Products being offered."*

The Board considered whether the advertisement depicted a premium. Under the Children's Code premium is defined as 'anything offered free or at a reduced price and which is conditional upon the purchase of a regular product.' The Board noted that the Food and Beverages Code provides a slightly different definition 'anything offered free or at a reduced price and which is conditional upon the purchase of a regular Children's Food or Beverage Product.' The Board considered that despite the slight wording difference the definition has the same effect.

The Board noted the complainant's contention that the competition prizes should be considered a premium. The Board noted the definition of 'premium' in both Codes. The Board noted that the Children's Code contains a specific provision relating to competitions (section 2.10). In the Board's view a competition prize, where there is no guarantee that purchase of the product will provide you with a prize, is quite different to a premium. The Board determined that prizes offered as part of a competition are not within the definition of a 'premium' and that the provisions of the Codes relating to premiums do not apply. The Board determined that the advertisement did not breach section 3.6 of the Food and Beverages Code nor section 2.12 of the Children's Code.

The Board also considered clause 2.2(c)(i) of the Children's Code which requires that the advertisement must fairly represent, in a manner clearly understood by children, 'the advertised product'. The Board considered that the advertised product is the Paddle Pop. The Board considered that the advertisement clearly indicated that the product needed to be purchased is Paddle Pops. The Board considered that the advertisement did not breach section 2.2(c)(i) of the Children's Code.

The Board then considered section 2.10 of the Children's Code which requires that:

*'An advertising or marketing communication to children which includes a competition must:*

- (a) contain a summary of the basic rules for the competition*
- (b) clearly indicate the closing date for entries*
- (c) make any statements about the change of winning clear, fair and accurate.*

The Board noted the advertiser's response that the information provided on the website about the competition complies with section 2.10. The Board considered that the website did indicate the relevant requirements. The Board considered that this complied with section 2.10 of the Children's Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.