

Case Report

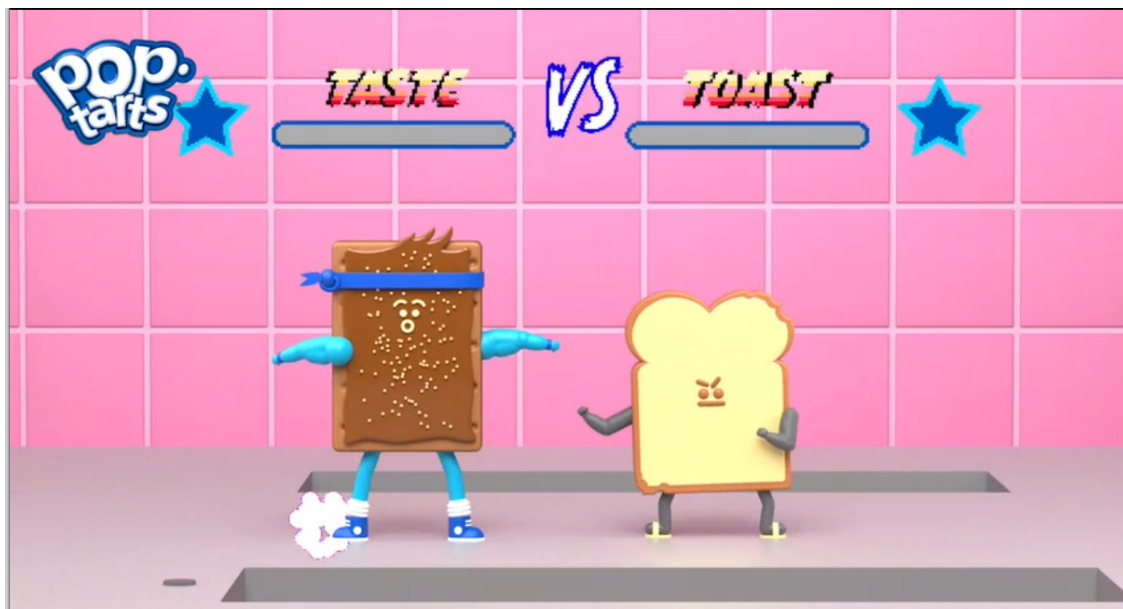
1. Case Number :	0061-23
2. Advertiser :	Kellogg (Aust.) Pty Ltd
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - On Demand
5. Date of Determination	26-Apr-2023
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\3.1 Must not target children
AANA Advertising to Childrens Code\2.6 Social values
AANA Code of Ethics\2.3 Violence

DESCRIPTION OF ADVERTISEMENT

This on demand TV advertisement features an animated, 1980s style, 8-bit video game world, with a fight between a Pop-Tarts toaster pastry and a piece of toast, with the Pop-Tart being the winner.



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The ad is aimed at children, showing violence.

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 Ad Standards and the Advertising Standards Community Panel, and Kellogg's commitment to uphold the relevant Codes.

Background Material

- *Whether the audience of the programs is predominantly children – to access the streaming services, the user must be logged in with credentials including age. This advertisement was programmed with an age restriction limited to 18+. Only logged in users with a profile of 18+ would have been able to view this advertisement. See below for further details.*
- *Substantiation of any health, nutrition or ingredient claims or statements made in the advertisement – no health, nutrition or ingredient claims are made in this advertisement.*

Description of Advertisement and Summary of Complaint

The advertisement portrays an animated, 1980s style, 8-bit video game world, with a fight between a Pop-Tarts toaster pastry and a piece of toast, with the Pop-Tarts toaster pastry being the flavour winner.

The concept behind the advertisement is to appeal to the main grocery buyer with a reminder of the fun and flavoursome Pop-Tarts brand credentials. The Pop-Tarts brand is known as an entertainment brand through its language and advertising style, appealing to an adult 18+ consumer base globally. This advertisement is consistent with that approach, using a retro gaming style that adults growing up in the 1980s would be familiar with.

The complaint is the advertisement contravenes -

- (a) Section 2.3 of the AANA Code of Ethics relating to violence;*
- (b) Section 2.6 of the Advertising to Children's Code relating to social values; and*

(c) Section 3.1 of the AANA Food and Beverages Code relating to occasional food targeting children.

Our response to the substantive complaint is set out below.

AANA Code of Ethics – Section 2.3

Section 2.3 provides "Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised."

In considering whether violence is justified, regard must be had to the nature of the violence depicted and in particular the degree of horror and menace conveyed (AANA Practice Note to section 2.3). In the present case, there is simply no horror or menace. A 1980s video game styled 'fight' between two animated food characters over which is tastier is more comic and nostalgic than violent. It does not involve depictions of real or animated people or animals, there is no element of cruelty and no elements of horror or menace. In these circumstances, the threshold for 'justification' must be extraordinary low, even non-existent. In the context of the product advertisement, the 'fight' as to which is tastier (importantly, not which is healthier) is comic and not realistic, rather than violent in a way that contravenes section 2.3.

In Case Report 0287-21 (Grill'd Burgers), one reason for finding that advertisement in contravention was that the depicted violence had no connection with the product being advertised. That finding can be distinguished from the present advertisement by one of the messages of this advertisement, that Pop-Tarts toaster pastries 'win the fight for flavour' against plain toast – which directly relates to a characteristic of the product being advertised.

In respect of the remainder of the Code of Ethics, the advertisement -

- does not discriminate or vilify anyone;*
- does not employ sexual appeal of any kind, or deal with nudity in any way;*
- uses language that is appropriate in the circumstances;*
- does not depict material contrary to health and safety expectations; and*
- is clearly distinguishable as an advertisement.*

Kellogg therefore does not consider the advertisement to contravene the AANA Code of Ethics.

AANA Children's Advertising Code – Section 2.6

Kellogg respectfully contends that the advertisement is not “Advertising or Marketing Communication to Children”, as it is not primarily directed to children, both in terms of the placement of the advertisement and having regard to the theme, visuals and language used.

Firstly, the advertisement is not targeted to children in terms of placement because it was only able to be shown to logged-in users aged 18+ in the on-demand streaming services noted in section 1 above. The nature of streaming services is that programming is accessible 24 hours a day and it is the responsibility of the logged-in user to ensure appropriate programming based on the audience viewing the program with them. As the complaint indicates, this viewer is aged 55-65 and so it was appropriate for the advertisement to be shown to her. Further, whilst we cannot provide any granularity regarding the shows in which the advertising was presented due to the nature of on-demand streaming, we can confirm that the advertisement was program restricted such that it was not to appear in any children's programs across any of the streaming services.

Secondly, the advertisement is primarily directed to an adult 18+ audience by virtue of the theme, visuals and language used:

- The 1980s video game styling of the advertisement would not be recognised by, or primarily appealing to, younger audiences. The style of the advertisement is directed to an older audience for whom this style of gaming holds nostalgic value, many of whom would recall when 8-bit video games were launched or grew up playing them. To depict an 8-bit video game world, the graphics used are highly stylized in a retro format, which is very different to children’s animation in the current context.*
- The music used is house music, which is not particularly child-like.*
- The advertisement does not feature any children, and the setting is a kitchen.*
- There is no voice-over – only written on-screen supers, with the call to action on the end frame: “Available Instore Now”, “Toast Me!”, the product name/image and “© 2023 Kellogg Company ® Registered trade mark Kellogg (Aust) Pty Ltd authorized user. Enjoy as part of a balanced diet and healthy lifestyle.”*

The advertisement therefore clearly targets adult grocery buyers, by its programming and by its content, and not children.

In respect of Section 2.6(a), which provides that an advertisement directed to children "must not portray images or events in a way that is unduly frightening or distressing to Children", whilst we do not consider this is an advertisement directed to children, we will nevertheless address this specific point. The advertisement, by using retro style video gaming tropes, is more comical than frightening or distressing, with any "violence" being highly stylised and not depicting real people or creatures. The idea of a fight over “taste” between a Pop-Tarts toaster pastry and a piece of toast is itself

highly fanciful and unlikely to be taken to portray actual violence in a fashion that is "unduly frightening or distressing" to children.

For completeness, section 2.6 further prohibits advertisements that "demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability". The advertisement does not demean any such grouping.

As to the remainder of the AANA Children's Advertising Code, Kellogg repeats that the advertisement is not directed to children. The mere fact that it is animated does not mean that it must be so directed, with its clear programming, content and messaging that clearly targets adult grocery buyers. Kellogg does not consider the advertisement to -

- contravene prevailing community standards given its stylised and comic content;*
- make any misleading or deceptive representations, or be ambiguous;*
- be placed inappropriately - quite the opposite, in fact, it is only accessible to a log-in connected to an adult age range;*
- employ any sexual appeal or sexualised imagery;*
- raise any concerns regarding safety;*
- undermine parental authority (again, in fact the opposite is true as an adult log-in is required to view the advertisement);*
- require any qualifying statements that do not already appear the advertisement;*
- involve any competition, personalities, premiums, alcohol, privacy concerns or promote any unhealthy lifestyle (Pop-Tarts toaster pastries are promoted only as an occasional treat).*

Kellogg therefore does not consider the advertisement to contravene the Children's Advertising Code.

AANA Food and Beverages Advertising Code – Section 3.1

This provision states that "Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children."

Kellogg agrees that Pop-Tarts toaster pastries are an Occasional Food, but disagrees that the advertisement targets children.

The essence of this part of the complaint is addressed above in section 4) in relation to the Children's Advertising Code: this advertisement is not targeted to children due to its 18+ programming based on user log-in, and its clear content and messaging that

clearly targets adult grocery buyers. With its 1980's video gaming styling, the advertisement would not be attractive or engaging to children.

The advertisement is used only in on-demand streaming services, namely 7Plus, 9Now, TenPlay, SBS on Demand, Foxtel, Kayo, Tubi, Optus Sport, ESPN and Samsung. To access these streaming services, the user must be logged in with credentials including age. This advertisement is programmed with an age restriction limited presentation to log-ins linked to an adult (18+), meaning only users over that age are shown this advertisement.

As to the remainder of the Food and Beverages Advertising Code, the advertisement -

- does not make any misleading or deceptive representations;*
- does not undermine the importance of healthy or active lifestyles, nor encourage overconsumption through the representation of product/s or portion sizes disproportionate to the setting portrayed. The advertisement promotes Pop-Tarts toaster pastries as a tasty treat rather than a healthy food. At no point does the advertisement state or imply that this food should replace a healthy diet. Additionally, and consistent with previous decisions of the Ad Standards panel, advertising the product in and of itself is not, per se, undermining the importance of a healthy or active lifestyle (for example, case numbers 0345/17, 282/11 and 0550/17);*
- does not make, nor does any product image contain, any health or nutrition claims, nutritional or health related comparisons nor any material characteristics claims. As per the practice note, advertisers are able to present a product in its best possible light, so long as that representation would be in line with what an average consumer would expect from such advertising – this advertisement does not go beyond that.*
- does not portray the product as a substitute for meals;*
- at no stage employs a sense of urgency or encourage the purchase or consumption of an excessive quantity;*
- does not involve any consumption of the product, nor involve any premium, promotion or competition, nor is it sponsorship advertising.*

Kellogg therefore does not consider the advertisement to contravene the Food and Beverages Advertising Code.

Conclusion

For the reasons outlined above, Kellogg respectfully submits that the complaint should be dismissed.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising Code (the Food Code), AANA Code for Advertising and Marketing Communications to Children (the Children's Code), and the AANA Code of Ethics (the Code).

The Panel noted the complainant's concern that the advertisement is violent and targets children.

The Panel viewed the advertisement and noted the advertiser's response.

The Food Code

Is the advertisement for an Occasional Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: "food or beverages products which do not meet the Food Standards Australia Nutrient Profile Scoring Criterion as published from time to time by Food Standards Australia New Zealand".

The Panel noted the advertiser's response acknowledges that this product is an occasional food product.

Section 3.1 Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children.

The Panel noted that the Food Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

- *Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- *Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product,

the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that is incidental to the ad placement, the audience of that incidental Children’s concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that Pop-Tarts is a long-established brand and product that is of appeal to both adults and children alike. However, the Panel noted that the relevant test is whether the product is principally or significantly appealing to children, not whether it has significantly greater appeal to children than other age groups.

The Panel considered that Pop-Tarts would have significant appeal to children as it is a sweet pastry product. However, the Panel considered that although Pop-Tarts are a product which children may enjoy it has equal or greater appeal to other age groups and therefore is not a product with principal appeal to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel noted that to be within Section 3 of the Food Code the Panel must find that the advertisement is aimed in the first instance at children under 15.

Is the theme of the advertisement principally appealing to children?

The Panel considered that the theme of the advertisement was a fight between traditional toast and the product. The Panel considered that the style of the advertisement was similar to that of 80's arcade fighting games, and that there was a nostalgic feel to the advertisement.

The Panel considered that the personified breakfast products would be attractive to children, but the nostalgic nature of the advertisement would also be attractive to older age groups and adults. The Panel therefore considered that although the arcade game theme might be appealing to children, it was not principally appealing to children.

Are the visuals of the advertisement principally appealing to children?

The Panel considered that the advertisement used bright 8-bit animated cartoon images which would be attractive to children.

However, the Panel considered that the visuals of the advertisement were similar to 80's arcade fight games such as 'Street Fighter' and the nostalgic theme and visuals of the advertisement would also be attractive to adults.

The Panel therefore considered that the visuals of the advertisement were not principally appealing to children.

Is the language/wording/music of the advertisement principally appealing to children?

The Panel noted that the advertisement did not feature any speaking, only the "house" music and game-like sound effects. The Panel considered that the music and sound effects were evocative of an 80s arcade fighting game and therefore would attract the attention of both adults and children.

The Panel therefore considered that the music and sound effects used in the advertisement were not principally appealing to children.

Is the content of the advertisement overall principally appealing to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement in determining whether an advertisement is principally appealing to children, including how all of the elements interact and the overall impression that they give.

The Panel considered that the overall impression of the advertisement was a playful fight between a piece of toast and a Pop-Tart in the style of an 80's arcade fighting game such as 'Street Fighter'. The Panel considered that while the overall advertisement would be appealing to children, it would also appeal to adults. The Panel therefore considered that the content of the advertisement overall was not principally appealing to children.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted the advertiser's response that the video was shown on an on-demand platform which requires users to log-in and to be over 18, and therefore the primary audience of the advertisement would be adults.

The Panel considered that many families own smart TVs where the on-demand channels remain logged-in, and these can be accessed by children in a similar manner to free-to-air television. The Panel therefore considered that merely utilising an on-demand platform is not enough to ensure that the audience is restricted to adults.

However, the Panel further noted the advertiser's response that the advertisement was restricted from playing during children's shows.

The Panel considered that in combination the placement of the advertisement on an on-demand platform for 18+ logged-in users with the children's programs restriction meant that it would be unlikely that either the predicted audience or the actual audience of the advertisement would meet the threshold of being 25% children aged under 15.

Section 3.1 conclusion

Taking into account the three points above, the Panel considered that while the product would have significant appeal to children, the content of the advertisement was not directed primarily to children. The Panel also considered that the audience for the advertisement would not include a significant portion of children.

The Panel determined that the advertisement did not target children and did not breach Section 3.1 of the Food Code.

The Children's Code

The Panel considered whether the advertisement complied with the Children's Code. To fall within this Code, "Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product".

Is the advertisement directed primarily to children?

The Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Children's Code defined advertising and marketing communications to children as "*Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.*"

The Panel noted that Product is defined as: *“goods, services and/or facilities which are targeted toward and have principal appeal to Children.”*

Are the theme, visuals, and language of the advertisement directed primarily to children?

For the same reasons as discussed in the Food Code section above, the Panel considered that the content of the advertisement would have general appeal to both adults and children, but was not directed primarily to children.

Is the advertisement for a product of principal appeal to Children?

For the same reasons as discussed in the Food Code above, the Panel considered that while the Pop-Tart product would have significant appeal to children, it is not a product of principal appeal to children.

Children’s Code conclusion

The Panel determined that the provisions of the AANA Code for Advertising and Marketing Communications to Children do not apply to this advertisement.

The AANA Code of Ethics

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised.

The Panel noted the complaints’ concerns that:

- The ad contains violence

The Panel noted that the Practice Note to the Code includes:

“Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code. ...In considering whether the violence or menace depicted in an advertisement is justifiable, the Community Panel may have regard to the audience of the advertisement. Graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children...More leeway is permitted where the depiction is stylised rather than realistic. However, advertisers should exercise caution when using cartoon violence as a cartoon style may be attractive to children.”

The Panel noted that the advertisement featured highly stylised scenes of the personified and animated breakfast products fighting.

The Panel noted the advertiser's response that the fighting scene was justifiable in the context of the product being advertised because the theme of the advertisement was a flavour fight between the Pop-Tarts pastry and toast. The Panel noted that it is the product or service itself, rather than the theme of the advertisement that may justify the portrayal of violence.

The Panel considered however that there was no blood or gore in the advertisement, and the depictions of harm were consistent with cartoon-style violence (stars circling around the head).

The Panel considered that the overall theme and feel of the advertisement was light-hearted and humorous. The Panel considered that the advertisement would be unlikely to cause alarm or distress to anyone who may view the advertisement, including young children.

The Panel determined that the very low level of stylised violence in the advertisement would be justifiable in advertising any product.

Section 2.3 Conclusion

The Panel determined that the violence portrayed in the advertisement was justifiable in the context of the product or service advertised and did not breach Section 2.3 of the Code.

Conclusion

Finding that the advertisement did not breach any other section of the Food Code, the Children's Code or the Code of Ethics the Panel dismissed the complaint.