

COMPLAINT NUMBER	18/239
COMPLAINANT	S Hughes on behalf of Healthy Auckland Together
ADVERTISER	Ferrero
ADVERTISEMENT	Kinder, Digital Marketing
DATE OF MEETING	30 October 2018
OUTCOME	Not Upheld

SUMMARY

The video advertisement for Kinder Chocolate shows a child trying to participate in an adult world and being too small. The final scenes show two children and an adult sitting at a child-sized table and a Kinder Chocolate is offered to each child by the adult. The advertisement says, in part: “Kinder Chocolate is made especially for kids with kid sized portions and a yummy milky centre and the taste that kids love. Kinder Chocolate made for kids.”

The Complainant said that the second part of Rule 1(i) introduces the concept of the expected average audience. The first part does not, so that concept is not relevant to the first part of the rule which focuses on targeting children. The Complainant said the advertisement had breached both parts of the rule. It said the advertisement targeted children and had been placed where children would be a significant proportion of the audience. The Complainant also considered the advertisement misled children and young people by implying the milky centre was made of milk.

The Advertiser said its interpretation of Rule 1(i) differed from the Complainant’s and maintained the three criteria for targeting were all relevant when determining if an advertisement was targeting children or young people. The Advertiser detailed how it had mitigated the appeal of the product to children by placement in an age-gated digital environment. The Advertiser said the image of the glass of milk in the packaging shot of the advertisement was incidental and the “yummy milky centre” was a description of the creamy taste of the product.

The Complaints Board clarified the correct interpretation of Rule 1(i) of the Children and Young People’s Advertising Code.

The Complaints Board found the Kinder Chocolate product advertisement had a high level of appeal to children in relation to the product and the style of the advertisement but targeting of the advertisement to children was mitigated by its placement in the digital marketing environment. The product and advertisement were not likely to appeal to young people and they were not targeted by it.

The Complaints Board said the use of the term “yummy milky centre” was not making any nutritional claims.

The Complaints Board said the advertisement was unlikely to mislead children or young people and had been prepared with the requisite standard of social responsibility. The

Complaints Board ruled it was not in breach of Principle 1, Principle 2 and Rules 1(i) and 2(f) of the Children and Young People's Advertising Code

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to the Children and Young People's Advertising Code, Principle 1, Principle 2, Rule 1(i), Rule 2(f)

Principle 1: required the Complaints Board to consider whether advertisements targeted at children or young people contained anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

Principle 2 required the Complaints Board to consider whether the advertisement had by implication, omission, ambiguity or exaggerated claim misled or deceived or was likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Rule 1(i) required the Complaints Board to consider whether the advertisement for occasional food or beverage products had targeted children or been placed in any media where children are likely to be a significant proportion of the expected average audience.

Rule 2(f) required the Complaints Board to consider whether the advertisement had misled as to the potential physical, social or mental health benefits from consumption of the product.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said that the second part of Rule 1(i) introduces the concept of the expected average audience. The first part does not, so that concept is not relevant to the first part of the rule which focuses on targeting children. The Complainant said the advertisement had breached both parts of the rule. It said the advertisement targeted children and had been placed where children would be a significant proportion of the audience. The Complainant also considered the advertisement misled children and young people by implying the milky centre was made of milk.

The Advertiser's Response

The Advertiser said its interpretation of Rule1(i) differed from the Complainant's and maintained the three criteria for targeting were all relevant when determining if an advertisement was targeting children. The Advertiser detailed how it had mitigated the appeal of the advertisement to children by placement in an age-gated digital environment. It provided analysis from Google to support the platform and programme chosen.

The Advertiser said the image of the glass of milk in the packaging shot of the advertisement was incidental and the "yummy milky centre" was a description of the creamy taste of the product.

The Media's Response

The Media, Google NZ said:

As a result of this review, we can advise the ASA of the following matters:

- Google's Ads Policy team has reviewed this campaign and advises that the campaign is not set up to target children or young people.
- Individuals under the age of 13 are not authorised to open a YouTube account.
- Google has clear ads policies that restrict advertisers from targeting personalised ads to children under 13 (see <https://support.google.com/adspolicy/answer/143465?hl=en>).
- Google's Advertising Program Terms require advertisers to comply with law and not mislead users (see also <https://support.google.com/adspolicy/answer/6020955>).

Preliminary Matter

A complaint was received on July 23, 2018 from Healthy Auckland Together about the Kinder Chocolate video advertisement which the Complainant said had screened during Shortland Street on TV2 on May 15, 2018 and on YouTube during Stan Walker Aotearoa on May 24, 2018.

The Complaint was accepted by the Acting Chair of the Complaints Board and a response was requested. The Advertiser advised on 30 July that the advertisement had not screened during Shortland Street. The Chair asked the Complainant to check the time / date / channel details. The Complainant withdrew the complaint while it did so.

The Complainant re-submitted the complaint on 11 September stating the advertisement had played during My Kitchen Rules at 8.01pm.

The Chair considered the matters raised in the re-submitted complaint and ruled the complaint be accepted to be considered by the Complaints Board with the following matters to be addressed under the Children and Young People's Advertising Code:

- The correct application of Rule 1(i) on targeting and expected average audience.
- Did the advertisement breach Rule 1(i) by screening on YouTube during Stan Walker Aotearoa?
- Does the advertisement's use of the word 'milky' and the imagery of the glass of milk and 'milky' centre breach Principle 2 or Rule 2(f)?

The Chair did not accept the complaint about the screening of the advertisement during My Kitchen Rules at 8.01pm. The Chair confirmed the Board considered the screening of the advertisement at the same time and in the same programme in Decision 18/152 which was not upheld.

The Complaints Board Discussion

The Complaints Board confirmed it would be looking at the following aspects of the complaint as part of its deliberation:

- The correct application of Rule 1(i) on targeting and expected average audience.
- Did the advertisement breach Rule 1(i) by screening on YouTube during Stan Walker Aotearoa?
- Does the advertisement's use of the word 'milky' and the imagery of the glass of milk and 'milky' centre breach Principle 2 or Rule 2(f)?

The correct application of Rule 1(i)

Rule 1(i) states:

“Advertisements (including sponsorship advertisement) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience.”

The Complaints Board began by discussing the correct application of Rule 1(i) of the Children and Young People’s Advertising Code, in light of the Complainant’s submission and the Advertiser’s response interpreting Rule 1(i) in different ways.

The Complaints Board agreed the two parts of the definition of Rule 1(i) are disjunctive due to the use of the word ‘or’, meaning the rule has two parts.

Part 1 relates to the extent to which the three aspects of targeting (product appeal, advertisement presentation and advertisement placement) determine the extent to which an advertisement is considered to be targeting children. Part 1 relates to advertisements for products that by their very nature have principal or general appeal to children and may also be made for / for children to consume. Advertisement content may also include aspects that appeal to children in order for the advertisement to be relevant to the product. The Complaints Board said that to avoid a breach of Part 1 of Rule 1(i), these advertisements need to be carefully prepared and placed so that children are not a ‘significant proportion of the expected average audience.

The Complaints Board said Part 2 of Rule 1(i) related to any occasional food or beverage product advertisement appearing in any environment where children are a ‘significant proportion of the expected audience’ regardless of the product appeal and advertisement content appeal to children.

To what extent was the YouTube advertisement targeting Children and or Young People?

The Complaints Board noted the criteria for ‘targeting’ in the Children and Young People’s Code as follows;

‘**Targeting**’ is determined by the context of the advertisement and the relationship between the following three criteria;

1. Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.
2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.
3. Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people.”

Children

The Complaints Board considered to what extent the advertisement before it was targeting *children*, which for the purposes of the Code are defined as being below the age of 14.

Product

The Complaints Board considered Kinder Chocolate was principally appealing to children. It said chocolate had high appeal to children and fell into the Occasional category of the Food and Beverage Classification System. The Complaints Board also noted the product was a chocolate product specifically for children.

Presentation

The Complaints Board considered whether the overall presentation of the advertisement was appealing to children.

The Complaints Board said that children would recognise and engage with the clear Kinder branding in the advertisement. It also noted the depiction of children in the advertisement and the behaviours depicted by them would resonate with children. It noted the range of activities attempted by the children mirrored a typical child's experience and included struggling to ride a bike and delight at playing with puppies. The Complaints Board said the advertisement also showed the children's mother providing chocolate, a product with high appeal, as a treat, which would appeal to children.

Placement

The Complaints Board then considered the placement of the advertisement and whether the expected average audience included a significant proportion of children.

The Complaints Board noted that Advertisers need to demonstrate that care is taken when evaluating the expected average audience composition prior to the placement of occasional food or beverage advertisements to ensure children are not a significant proportion of that audience.

The Complaints Board noted the 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;

1. Where accurate data exists, 25% or more of the expected audience will be children.
2. Child viewing time zones.
3. Content with significant appeal to children such as programmes, artists, playlists, video, movies, and magazines.
4. Locations where children gather (e.g. schools, school grounds, pre-school centres, playgrounds, family and child clinics and paediatric services and during any children's sporting and cultural events).

The Complaints Board noted the advertisement before it played during a *Stan Walker* video of his song *Aotearoa*. The song is performed in the Maori language. The Complaints Board said this content was not likely to have a significant appeal to children.

The Complaints Board noted the Advertiser had chosen the medium YouTube, which as part of its terms and conditions required account holders to be 13+ years of age. The Advertiser media buy was to all people 25-54, logged in users only. While the Complaints Board acknowledged the fact that children do watch YouTube via other user's accounts, the Board agreed the Advertiser could not be held responsible for this breach and considered in this case it was unlikely the audience would include a significant proportion of children. The Complaints Board said when an audience composition cannot be proved, the intent of the Advertiser to minimise the risk of targeting an under 14 age group must be considered. The Complaints Board said the Advertiser had taken reasonable steps to target an adult audience.

To what extent was the advertisement targeting children?

In determining the extent to which the advertisement was targeting children, the Complaints Board said the product and the overall presentation of the advertisement had high appeal, however, the Advertiser had taken sufficient steps to ensure the advertisement was not likely to be seen by a significant proportion of children under 14 due to its targeted placement to 25 to 54 year olds in the digital environment. This mitigated the extent to which the advertisement targeted children.

Young People

The Complaints Board considered to what extent the advertisement before it was targeting *young people*, which for the purposes of the Code are defined as being at least 14 but under 18 years.

Product

The Complaints Board considered that while chocolate appealed to young people generally, Kinder Chocolate was not that appealing to young people.

Presentation

The Complaints Board considered whether the overall presentation of the advertisement was appealing to young people. The Complaints Board said the advertisement was unlikely to appeal to young people as it clearly showed children and promoted a chocolate product for children.

Placement

The Complaints Board considered the placement of the advertisement and whether young people were a significant proportion of the average audience. The Complaints Board noted that the *Stan Walker* video was likely to have some appeal to young people, specifically those with an interest in Maori language, but it was unlikely to be viewed as widely as an English language music video. However, the advertisement's product and presentation had little appeal to young people.

To what extent was the advertisement targeting young people?

In determining to what extent the advertisement was targeting young people, the Complaints Board said the product and the overall presentation of the advertisement had little or no appeal. The Complaints Board said the advertisement was not targeting young people.

Does the advertisement's use of the word 'milky' and the imagery of the glass of milk and 'milky' centre breach Principle 2 or Rule 2(f)?

The Complaints Board said the use of the phrase "yummy milky centre" is focussing on the taste of the product and does not make any comment on its nutritional composition. The Complaints Board acknowledged the image of the glass of milk on the packaging does make an association with milk, however this was not considered sufficient for children or young people to consider the product is healthy.

Having established the advertisement is not targeting children or young people, the Complaints Board did not consider they would be misled as to the physiological benefits available from consuming this product based on the references to 'milky' and the image of a glass of milk.

The Complaints Board said the advertisement was not in breach of Principle 2 or Rule 2(f) of the Children's and Young People's Code.

Summary

The Complaints Board said the advertisement was a product advertisement that promoted Kinder Chocolate. The Complaints Board said the product had high appeal to children and was an occasional food. The presentation of the advertisement, including the humour, music and brand recognition with Kinder would also appeal to children. However, the Complaints Board said as the advertisement was placed where children were not a significant proportion of the likely audience and ruled it was not in breach of the Children and Young People's Advertising Code. The Complaints Board ruled the complaint was Not Upheld in relation to children.

The Complaints Board said the advertisement was a product advertisement that promoted Kinder Chocolate. The Complaints Board said there was little to no appeal presented by the

product and the overall presentation of the advertisement to young people, which mitigated its placement in a broadcast environment. The Complaints Board ruled the complaint was Not Upheld in relation to young people.

The Complaints Board ruled the advertisement had not breached Principle 2 or Rule 2(f).

Accordingly, the Complaints Board ruled the Complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The YouTube advertisement for Kinder Chocolate shows a child trying to participate in an adult world and being too small. The final scenes show two children and an adult sitting at a child-sized table and a single Kinder Chocolate is offered by the adult to each child. The advertisement says, in part: "Kinder Chocolate is made especially for kids with kid sized portions and a yummy milky centre and the taste that kids love. Kinder Chocolate made for kids."

COMPLAINT FROM S HUGHES, HEALTHY AUCKLAND TOGETHER

Complaint: Kinder Chocolate television and online video advertisement

This complaint is made by the members of the Healthy Auckland Together coalition listed in Appendix A ('We'). We consider that a Kinder Chocolate advertisement breaches the Children and Young People's Advertising Code ('Code').

For reasons set out in more detail below, we consider that the advertisement breaches each of the following principles and rules of the Code:

1. Rule 1(i) of Principle 1 specifically because the advertisement contains an occasional product and targets children;
2. Rule 1(i) of Principle 1 specifically because the advertisement is placed in media where a large number of children are viewing;
3. Principle 1 generally because the advertisement contains an unhealthy product and misleading information that is likely to result in physical harm to children;
4. Rule 2(f) of Principle 2 because the advertisement can be misleading to children and young people; and
5. Principle 2 generally because the language used is likely to mislead children or young people.

The Advertisement

This complaint relates to both a television and online advertisement. The television commercial was viewed at 8.01pm on a Wednesday during My Kitchen Rules. The online advertisement was viewed on May 24th 2018 at 9.35am while watching Stan Walker-Aotearoa (Maori language week 2014) on You Tube. The advertisement may have been screened at other times. The advertisement can be viewed at <https://www.youtube.com/watch?v=BCOCc7EYUcw>

The advertisement shows two young children, a boy and girl, in various scenarios spending time with their mother. The advertisement is framed around a statement made during the advertisement that *'in this adults' sized world, kids need things that are made just for them'*. The advertisement shows the children doing activities with their mum that many children can relate to such as being too short to sit at a table, riding a bike, running through a park with a dog, cuddling a puppy and having a children's tea party.

The advertisement states that Kinder Chocolate has “a yummy milky centre” and shows an image of the packet which has the picture of a young boy smiling and a glass of milk. The advertisement shows the young girl biting into the Kinder Chocolate bar and smiling to herself while she chews the chocolate. It then shows the young boy chewing the chocolate and his eyes are lit up. Both children are very happy while eating the Kinder Chocolate bar. The last scene of the advertisements is of the two children, one of whom is eating a Kinder Chocolate Bar, an image of the packet of the product and the written statement “Kinder Chocolate made for kids”.



First breach: The advertisement contains an occasional product and targets children in breach of Rule 1(i)

The Rule

Rule 1(i) contains two independent parts clearly separated by the word “or”:

Advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience.

We consider that both parts of Rule 1(i) have been breached. This section addresses the first part of the rule, being that Advertisements for occasional food or beverage products must not target children.

The meaning of ‘target’

Chocolate is clearly an occasional food under the Food and Beverage Classification System used by the ASA. The only remaining issue is therefore to determine whether the advertisement targets children.

The definition section of the Code provides a criteria that ‘targeting’ should be determined by the context of the advertisement and the relationship between three criteria; the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience.

The third criteria for ‘targeting’ regarding the expected average audience, is inconsistent with the first part of Rule 1(i). The second part of Rule 1(i) introduces the concept of the expected average audience. The first part does not. The “expected average audience” should therefore be irrelevant when considering the first part of the rule. Failure to do so

would conflate the two independent parts of Rule 1(i) and would render the first part of the rule pointless as it would involve an assessment of the second part of the rule too.¹

Is the nature and intended purpose of the product or service being promoted principally or generally appealing to children or young people?

Yes - The promoted product Kinder Chocolate is made for children and intended to be consumed by children as stated in the advertisement 'Kinder Chocolate, made for kids'. Chocolate in general has high appeal to children. Kinder Chocolate has high appeal to children because firstly it is made especially for kids and secondly there is an image of a child on the packet displayed during the advertisement.

Is the presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) appealing to children or young people?

Yes - The overall presentation of the advertisement has significant appeal to children. The advertisement is depicted from the point of view of a child. Children are also the main characters in the advertisement. This content makes the advert one that children can relate to. The activities and behaviours depicted in the advertisements are ones that children would recognise and engage with. Examples of these are:

- The young boy having to peer over the table because he is not tall enough to sit on the chair and see over the dining table
- The young boy having a ride on his mother's bike and being unable to reach the pedals
- The young boy riding a bike tandem with his mother
- The young girl walking their dog
- The young girl cuddling a puppy.
- Both children playing 'tea parties' with their mother

In the context, we consider that these factors strongly support a conclusion that the first rule in Rule 1(i) has been breached.

Second breach: the advertisement is placed in media where children are likely to be a significant proportion of the expected audience in breach of Rule 1(i)

The Rule

This section addresses the second rule of Rule 1(i) being that advertisements for occasional food or beverage products must not be placed in any media where children are likely to be a significant proportion of the expected average audience.

Measures in the guidance notes to help determine if children are likely to be a 'significant proportion' of the expected audience are:

1. Where accurate data exists, 25% or more of the expected audience will be children.
2. Child viewing time zones
3. Content with significant appeal to children such as programmes, artists, playlists, video, movies, and magazines.
4. Locations where children gather (e.g. schools, school grounds, pre-school centres, playgrounds, family and child clinics and paediatric services and during any children's sporting and cultural events).

These are guidance notes only.

The television advertisement

We submit that the advertisement was screened when children were likely to be a significant proportion of the audience. This was determined by using the two relevant measures of

¹ If the Authority does not accept that the third factor should be disregarded or given significantly less weight, then the submissions addressed below under the Heading "Second Breach..." should be considered by the Authority as being applicable to this first submission "First Breach..."

children viewing time zones and content with significant appeal to children stated in the code.

- Where accurate data exists, were 25% or more of the expected audience children?

The television advertisement was viewed at 8.01pm during My Kitchen Rules. There is no accurate data on the number of children actually viewing My Kitchen Rules at this time, there are only estimations therefore this measure cannot be used to determine if children are likely to be a 'significant proportion' of the expected audience.

- Was it screened during child viewing time zones?

Yes - based on the Children's Media Use Study (2015), our own experience and data from the UK, a large proportion of children are watching television at 8.01pm. Data has shown the largest number of child viewers is between 6pm - 9pm around family viewing time². The Block, one of the top ten favourite television shows for New Zealand children³ is screened between 7.30pm and 8.30pm.

Television remains the most widely consumed media in New Zealand, reaching nearly nine in ten 6-14 year olds each day. In 2015, New Zealand data showed a significant proportion (28%) of children are still watching television at 8.00pm⁴ making it a child viewing time zone. See Table 1 for the proportion of different aged children watching television watching television at 8.00pm.

Table 1. Proportion of different aged children watching television watching television at 8.00pm.

	6-8 year olds	9-11 year olds	12-14 year olds
8.00pm	14%	27%	44%

- Was it screened during content with significant appeal to children?

Yes - One of the key aspects that makes a favourite television show appealing to children is being shown how to make things⁵. My Kitchen Rules shows people how to cook and bake. Children also like to watch reality television shows of a similar nature such as The Block which was the eighth favourite television show for children when asked unprompted⁶.

- Was it displayed in locations where children gather?

Not relevant to this complaint.

The online advertisement

YouTube is extremely popular among both children and parents. It equals the daily reach of TV2 (32%) as the two most popular sources of any media each day and exceeds the reach of TV2 among 12-14 year old's – especially among boys (52% daily reach). You Tube is the most popular source of new music and online content (after friends and family), and the most popular online activity (equally popular as games). It is also children's and parents' favourite website for children (and for pre-schoolers).⁷

² Ofcom (2017). *Children and parents: media use and attitudes report*. United Kingdom: https://www.ofcom.org.uk/_data/assets/pdf_file/0034/93976/Children-Parents-Media-Use-Attitudes-Report-2016.pdf

³ Colmar Brunton. (2015). *Children's Media Use Study 2015*. New Zealand: <http://www.nzonair.govt.nz/document-library/childrens-media-use-study-2015/>.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

There is no accurate data for the expected audience on this platform. Children commonly access YouTube on a parent or guardian's device. Filters for age are based on when the account holder added their Google Account which is not effective at filtering content when children are watching on an adult's device. Children are exposed to advertisements and content based on the device owners filters.

Third breach: the advertisement targets children and contains content that is likely to result in their physical, mental or moral harm in breach of Principle 1 generally

The Principle

In addition to the specific breaches above we believe Principle 1 has been breached generally. Principle 1 provides:

Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

The Code provides that:

In interpreting the Code, emphasis will be placed on compliance with both the principles and the spirit and intention of the Code. The Rules are examples, by no means exhaustive, of how the Principles are to be interpreted and applied. It is possible for advertising to be in breach of one or more of the Principles in the Code without being in breach of a specific Rule. The Complaints Board will have regard to all relevant matters, including the overall impression conveyed, the context and target market.

Analysis

We have already provided evidence that the advertisement is targeted at children, therefore the principle applies and the following two general questions remain: does the advertisement contain anything that is likely to result in children's or young people's physical, mental or moral harm and has a high standard of social responsibility been observed?

Does the advertisement contain anything that is likely to result in children's or young people's physical, mental or moral harm?

We believe the advertisement is likely to result in physical and mental harm for children because of the links with obesity. Obesity is an established risk factor for type 2 diabetes, cardiovascular disease, certain cancers, musculoskeletal disorders, and poor mental health⁸. There are links showing the impact of advertising to children including influencing the food and drink purchased, children's eating habits – their food preferences, food requests, choices and consumption.¹⁰ Food preferences are developed during childhood and thus eating patterns established during this time have both immediate and long term health

⁸ Han JC, Lawlor DA, Kimm SYS. Childhood Obesity. *The Lancet* 2010;375:1737-48.

⁹ Doak CM, Visscher TLS, Renders CM, et al. The prevention of overweight and obesity in children and adolescents: A review of interventions and programmes. *Obesity Reviews* 2006;7(1):111-36.

¹⁰ Cairns G, Angus K, Hastings G (2009). The extent, nature and effects of food promotion to children: a review of the evidence to December 2008. Geneva: World Health Organization.

implications.¹¹ Furthermore, research has shown controls on food and beverage marketing to children rate as one of the most cost effective strategies for reducing childhood obesity.¹²

The Kinder Chocolate advertisement promotes an unhealthy food. Unhealthy foods are defined as energy dense and nutrition poor foods¹³ and contribute to obesity and increased risk of many serious health conditions. The Kinder Chocolate bar is 53.3% sugars and 22.6% saturated fat. Only one Kinder Chocolate bar provides a 6 year old girl (EER6.1MJ and a PAL of 1.6) with 35% of the daily recommended intake for free sugars based on the WHO recommendation¹⁴.

The advertisement of an unhealthy product is likely to cause physical and mental harm irrespective of the small portion size or the manufacturer's intention that it is a treat to be consumed occasionally. Depicting a food as a treat by the mother holding the chocolate hidden in her palm and then gifting it to the children may even exacerbate the harm caused by making the product more enticing to children and encouraging children to value or desire it more.

Has a high standard of social responsibility been observed?

We do not believe a high level of social responsibility has been observed. Public attitudes to marketing to children have changed with many people, especially parents, not wanting advertisers to target their children with advertisements for unhealthy products.¹⁵ Despite the best efforts of parents, the current unhealthy nature of food and beverage marketing is one of the biggest factors undermining parent's attempts to raise healthy children. The Code states that prevailing community standards will be integral to the consideration of the complaints board.

Fourth breach: the advertisements is likely to mislead in breach of Rule 2(f)

The Rule

Advertisements must not mislead as to the potential physical, social or mental health benefits from consumption of the product.

The guidance notes state that where occasional food and beverage products are advertised to young people they should not be portrayed in any way that suggests they are beneficial to health. The Principle covers both children and young people.

Application

The Food and Nutrition Guidelines for Children and Young People (Aged 2 –18 Years) state that children should eat a variety of foods every day from the four food groups one of which

¹¹ Gorton D (2011). Advertising Food to Children: Background Paper. Auckland: The National Heart Foundation of New Zealand. [Cited 11/10/2012]. Available from [http://www.heartfoundation.org.nz/uploads/Advertising%20to%20children_Background%20paper_Feb%202011\(4\).pdf](http://www.heartfoundation.org.nz/uploads/Advertising%20to%20children_Background%20paper_Feb%202011(4).pdf)

¹² Victorian Government Department of Human Services (2006). ACE-Obesity Assessing Cost-effectiveness of obesity interventions in children and adolescents – Summary of Results. [Cited 18 February 2013]. Available from: http://www.health.vic.gov.au/healthpromotion/downloads/ace_obesity.pdf

¹³ Seventieth World Health Assembly. Report of the Commission on Ending Childhood Obesity: implementation plan. Geneva: World Health Organization, 2017.

¹⁴World Health Organization. (2015).Guideline: Sugars intake for adults and children. Geneva. http://apps.who.int/iris/bitstream/handle/10665/149782/9789241549028_eng.pdf?sequence=1

¹⁵ Phoenix Research (2007). Survey of public opinions about advertising food to children: understanding attitudes in New Zealand. Auckland: Peak Group.

is milk and milk products¹⁶. The guidelines state that children need milk to help build strong bones and teeth. Children and their parents are educated that it is recommended children have 2-3 servings of milk or milk products per day.

The advertisements states “Kinder Chocolate is made especially for kids, with kids sized portions, a yummy **milky** centre and the taste that kids love”. The advertisement finishes with an image of the packet of the product. The packet has an image of a glass of milk and an open chocolate bar showing the ‘milky’ centre. The use of the word ‘milky’ along with the imagery used is likely to mislead children and parents to thinking that the centre of the chocolate is milk. The benefits of milk and milk products are well known therefore it is likely that parents and children will think there are health benefits of the chocolate having a milky centre.

Even if the use of the word is intended by the advertiser to have a different meaning, we consider that any alternative meaning does not take away from the above meaning. In any event and, at best, the word “milky” creates an unacceptable “ambiguity” in breach of Principle 2.



Fifth breach is Principle 2 in general

The Principle

In addition to the specific breach above we believe Principle 2 has been breached generally.

Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Analysis

The word “milky” in conjunction with the imagery used in the advertisement used creates an unacceptable “ambiguity” that is likely to mislead children or young people about the content of the product.

Summary

The primary consideration for the Complaints Board is if the best interests of children have been considered and protected. We believe a child’s best interests were not the primary consideration when composing the advertisement or deciding where and when the advertisement would be screened. In addition to not complying with the overall spirit of the Code the advertisement clearly breaches principles and rules of the Code (these five breaches are listed on Page 1).

¹⁶ Ministry of Health. 2012. Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2–18 years): A background paper. Partial revision February 2015. Wellington: Ministry of Health.

Appendix A: Healthy Auckland Together signatories

Healthy Auckland Together is a coalition of organisations within the Auckland region that aims to: improve nutrition, increase physical activity and halt rising rates of obesity among Aucklanders. A priority focus within these aims is equitable outcomes for Māori, Pacific and lower-socioeconomic communities. With a broad range of coalition partners - including health, central government (including Ministry of Health and New Zealand Transport Agency), local government (including Auckland Council and Auckland Transport), sport, iwi, and non-government organisations - Healthy Auckland Together's aim is to encourage change in the regional environment so it contributes to Aucklanders' health and does not impede it.

Healthy Auckland Together made a submission to the review of the Children's Code for Advertising Food and the Code for Advertising to Children. Marketing to children is a key component of the environmental work undertaken by Healthy Auckland Together.

This complaint is made by the following members of the Healthy Auckland Together coalition:

- Alliance Health Plus
- Asian Network
- Auckland Council
- Auckland Dental Association
- Auckland District Health Board
- Auckland Regional Public Health Service
- University of Auckland - School of Population Health
- Disability interest groups
- Counties Manukau Health
- Primary Health Organisations
- Hapai te Hauora Tapui
- Healthy Families Manukau, Manurewa-Papakura
- Healthy Families Waitakere
- Heart Foundation
- Ministry of Health
- Pacific Heartbeat
- Te Runanga o Ngati Whatua
- Toi Tangata
- Waitemata District Health Board

CODES OF PRACTICE

CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

Principle 1: Advertisements targeted at children or young people must not contain anything that is likely to result in their physical, mental or moral harm and must observe a high standard of social responsibility.

Principle 2: Advertisements must not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive children or young people, abuse their trust or exploit their lack of knowledge.

Rule 1(i): Advertisements (including sponsorship advertisements) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience.

Rule 2(f): Advertisements must not mislead as to the potential physical, social or mental health benefits from consumption of the product.

RESPONSE FROM ADVERTISER, FERRERO

We refer to your letter dated 25 September 2018 regarding the complaint received by the ASA from Healthy Auckland Together (Complaint 18/239, referred to herein as the Complaint) in relation to Ferrero's Kinder Chocolate television advertisement (the Advertisement).

We attach the Advertising Complaint Response Form containing the requested details of the advertisement, including advertisement description, media placement and contact details.

We note the Advertisement was previously considered by the Complaints Board in Complaint 18/152 (Previous Complaint) which was not upheld with the Complaints Board finding that the Advertisement was not in breach of the Children and Young People's Advertising Code (the Code) or the Code for Advertising Food. The Complaints Board ruled that the media placement of the Advertisement in an environment targeting an adult audience mitigated the extent to which the Advertisement appealed to children.

This finding is consistent with the rigorous internal and external advertising review processes that Ferrero maintains, including ensuring that advertising and marketing communications concerning Ferrero products are directed primarily to the adults who make household purchasing decisions in terms of content as well as media purchasing and placement.

We note that the Chair of the ASA requires that the following additional matters be addressed in this Complaint:

- the correct application of Rule 1(i) of the Code on targeting and expected average audience;
- whether the Advertisement breached Rule 1(i) of the Code by screening on YouTube during a Stan Walker Aotearoa music video clip; and
- whether the word "milky", and the imagery of a glass of milk and milky centre breaches Principle 2 or Rule 2(f) of the Code.

These matters were not considered by the Complaints Board in the Previous Complaint.

The Chair has not accepted the Complaint as it relates to the screening of the Advertisement during My Kitchen Rules at 8:01pm as this was considered in the Previous Complaint and not upheld and so this aspect of the Complaint has been disregarded.

Ferrero takes this opportunity to reiterate its support for the ASA and its commitment to uphold the relevant Codes of Practice and responds to the matters requested by the Chair as follows:

1) Correct application of Rule 1(i) on targeting and expected average audience

The complainant submits that Rule 1(i) contains two independent parts separated by the word "or" and which are independently capable of being breached, that is:

"Advertisements (including sponsorship advertisement) for occasional food or beverage products must not target children or be placed in any media where children are likely to be a significant proportion of the expected average audience" [emphasis added]

On this argument, the complainant asserts a breach of Rule 1(i) can occur if an advertisement for an occasional food or beverage product targets children, and also, separately, if an advertisement is placed in any media environment where children are likely to be a significant proportion of the expected average audience. The complainant further states that ‘expected average audience’ should be irrelevant to considering whether an advertisement targets children.

We do not agree with the complainant’s interpretation of the Code.

We submit that the complainant’s argument should not be accepted for the following reasons:

1. Rule 1(i) requires that advertisements for occasional food or beverage products “must not target children”. The definition of ‘Targeting’ in the Code is directly relevant to this assessment as to whether this component has been breached. It is inherent in the Code’s definition of ‘Targeting’ that an advertiser cannot target children if they do not place the advertisement in a broadcast environment that is expected to include a significant proportion of children. The definition of ‘Targeting’ makes this clear by stating:

“Targeting” is determined by the context of the advertisement and the relationship between the following three criteria: [emphasis added]

- 1. Nature and intended purpose of the product or service being promoted is principally or generally appealing to children or young people.*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is appealing to children or young people.*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of children or young people”*

The words “and the relationship between the following three criteria” clearly requires that all three criteria are essential and relevant to determine if an advertiser has engaged in ‘targeting’ children. This definition therefore expressly requires that the issue of ‘targeting’ must be determined by evaluating the context of the advertisement as well as a consideration of the relationship between all of these three criteria, and the third criteria is expressly listed here and cannot be ignored in this assessment, to do so would be contrary to the express wording of the Code. This also accords with a common-sense view. Targeting children is not solely based on mere appeal but involves a more conscious intention to place an advertisement before children in media where they will see it. This is reflected in the definition above and in Complaint Board findings (including in the Previous Complaint) that appeal alone is not enough to breach Rule 1(i), and further, that appeal to children can be mitigated where the expected average audience does not include a significant proportion of children or young people.

The interpretation the complainant proposes, i.e. that targeting should be determined on the basis of points 1 and 2 of the ‘Targeting’ definition alone and ignoring point 3, is illogical and inconsistent with the Code. There is no valid basis for this argument. It can also lead to absurd results where advertisements for occasional food and beverage products clearly appealing to and targeted to adults in terms of media placement could breach the Code if the product or advertising content has any appeal (however minor) to children or young people, and irrespective of children or young people actually have the potential to see such advertisements. An advertiser cannot ‘target’ children without placing advertisements in media where the expected average audience includes a significant proportion of children or young people. Rule 1(i) should (and has been) interpreted this way and ‘expected average audience’ is fundamentally relevant to any consideration of whether an advertisement targets children, and in any consideration of whether Rule 1(i) has been breached. To find

otherwise is both illogical and is inconsistent with the Code, the latter of which the complainant has already pointed out.

2. Rule 1(i) also requires that advertisements for occasional food or beverage products must not “be placed in any media where children are likely to be a significant proportion of the expected average audience”. The whole premise of Rule 1(i), by virtue of the way it is expressly drafted, requires an assessment of the expected average audience in an evaluation of whether this Rule has been breached.

3. The guidance note to Rule 1(i) specifically states that “Advertisers need to demonstrate that care is taken when evaluating the expected audience composition prior to the placement of occasional food or beverage advertisements **to ensure they are not targeted at children**” [emphasis added]. Inherent in this guidance note is tacit recognition that whether an advertisement is ‘targeted at’ children is dependent on the expected audience composition when placing the advertisement in media (and this is also consistent with the definition of ‘Targeting’ and our views at point 1 above). It can therefore be deduced from this guidance note that an advertiser is **not** targeting children where they place advertisements in environments where children are **not** a significant proportion of the expected average audience. This also accords with a common sense view and with the ‘Targeting’ definition.

4. In addition, the preamble to the Code states: “*The likely audience (including the media that advertisements are broadcast, printed or displayed in)* is a **key factor** in determining code compliance” [emphasis added]. Again, this goes to the point that audience and media placement is an essential consideration for assessment of compliance with the Code, including with Rule 1(i). It is our view that Rule 1(i) needs to be evaluated by reference to expected average audience and that this is the dominant point going to the notion of ‘targeting’. The weight given to expected average audience in the preamble, as well as the guidance notes and in the Complaints Boards own interpretation in the Previous Complaint and other complaints supports this idea. Any argument that Rule 1(i) can be breached by simply ignoring part of the definition of ‘targeting’, is both inconsistent with the Code and nonsensical.

Overall, targeting requires more than appeal and both the definition of ‘Targeting’ and Rule 1(i) need to be read in full and with the emphasis on whether the advertisement has been placed in any media where children are likely to be a significant proportion of the expected average audience (as per the guidance note to Rule 1(i) and the preamble to the Code). We confirm that the Advertisement has not been placed in any media where children are likely to be a significant proportion of the expected average audience.

We note that Ferrero undertook specific action to ensure that the Advertisement was not targeting children. The Advertisement was directed at parents as Ferrero has always believed in the crucial role that parents play in educating their children and supporting a balanced diet and healthy, active lifestyle. Ferrero purchases independent research carried out by Ipsos, utilising Global Advertising Tracking which is an always-on research that has been conducted to track the equity and image of Ferrero brands as well as its television commercials performance over time. Findings from this research in September 2018 indicate that in the majority of cases, parents make purchasing decisions without the child asking for it. The research concluded that brand choices are usually not influenced by the child and therefore brand communications should appeal to the mother. Therefore it is in Ferrero’s interests to direct its marketing communications to parents.

Directing the Advertisement to parents has been an overall strategy employed by Ferrero throughout the inception, planning, development and placement of this Advertisement.

Ferrero briefed the creative and media agencies responsible for the Advertisement that the target audience was mums with kids. The advertising agency was briefed to create an advertisement appealing to mums of children 3 to 10 years old who treat their children with chocolate. For its media agencies, the Ferrero ANZ Media Brief for this New Zealand campaign expressly provided: "Target Audience: Creative target: Mums with Kids aged 3-10; Media Target: Household shoppers 25-54."

The advertising concept was tested quantitatively with mums of kids 3 to 10 years old. Its appeal with this audience meant that it was then produced and aired. Ferrero then has a post-advertising tracker with mums of children to ensure the Advertisement had the impact intended.

The storyline of the advertisement was designed to primarily appeal to parents with the central theme relating to the size of Kinder Chocolate, because Kinder Chocolate has smaller portions when compared to other pre-portioned or unportioned chocolate products. The fact that portion control was the dominant message reflects that parents were the target of this Advertisement as parents have sensitivity regarding portion controls for treats like chocolate. Children do not have this sensitivity, and so this storyline was not designed to be principally appealing to children.

The targeting of parents is also demonstrated in the language used and tone adopted in the Advertisement which is to speak directly to parents, rather than children. The key message: "In this adult sized world, kids needs things that are made just for them", speaks directly to the adult and refers to kids as third parties. During the Advertisement the mum is shown prominently, lifting her son onto a chair, supporting her son on a bike, riding her bike with her son, handing a puppy to her daughter, sitting with both at a table and then getting an extra cushion showing that the table is too small for her. All of these scenes are intended to allow adult viewers to relate to these common scenarios of looking after children. The mum in the Advertisement plays a central role in providing the Kinder Chocolate as a discretionary treat and reveals this as a surprise, indicating this was a treat rather than a food that is to be consumed regularly (and therefore without any element of surprise). The Kinder Chocolate was also consumed in the presence of and as supervised by the mum. Special care was taken to show the children in the Advertisement engaging in active play, including riding bicycles, and running alongside a dog in a park with the aim to encourage a balanced and active lifestyle. It remains Ferrero's position that the Advertisement was primarily intended and created to appeal to the parent. This is also reflected in the media brief and placement of the Advertisement in media that complied with the GXC CAB rating. In fact, Ferrero briefed its media agency to ensure that programmes that could have an expected audience of 20% or more children were removed from the TV media buying selection and for YouTube, that the target audience were people aged 25 to 54 (and thus went further than it was required to under the Code).

Ferrero submits that it is not in breach of Rule 1(i) or Principle 1 of the Code for the reasons stated above. We note that this would be consistent with the findings of the Complaints Board in the Previous Complaint.

2) Did the advertisement breach Rule 1(i) by screening on YouTube during Stan Walker Aotearoa?

The complaint relates to the screening of the Advertisement on 24 May 2018 at 9.35am during a YouTube video clip of Stan Walker's song, 'Aotearoa' titled "Aoteaoa Stan Walker feat. Ria Hall, Troy Kingi and Maisey Rika".

YouTube's Terms of Service require that users must be aged 13+. While children under the age of 13 may violate YouTube's Terms of Service, this is outside the control of Ferrero and

there is currently no fail-safe measure to avoid this. Ferrero through its media agency (PHD), has ensured that placement of the Advertisement on YouTube reaches its intended audience of adults and purchased YouTube placements to target 25-54 year old viewers. In this respect, Ferrero's media agency executes media buying through a set of parameters to ensure that it is adhering to the Code. The media buy was to All People 25-54, logged in users only. PHD has a black list to exclude children's content. It also excludes categories of content that may inadvertently lead to child exposure, with the following categories being avoided for YouTube:

- o Embedded YouTube videos
- o Live streaming videos
- o Games

In the ASA Complaints Board decision for Complaint 17/286, the Complaints Board found that it was outside the control of the advertiser in that case relating to Facebook advertisements to protect against potential exposure to children under the age of 13 years, who violate Facebook Terms of Service, which like YouTube, require users to be aged 13+. We submit that this decision should be followed in this case. Similar to Complaint 17/286, Ferrero has utilised restrictions available on the YouTube platform to minimise exposure to children.

In addition, this particular music video clip of Stan Walker (which is from 2014 and sung in the Maori language) arguably has no specific appeal to children. Stan Walker is 28 years of age and his music, including the 'Aotearoa' song in the video clip, cannot be said to have any significant appeal to children. In Ferrero's view it is unlikely that children would search for this particular song in order to see this music video clip specifically.

In any event, the assessment of whether there has been a breach of Rule 1(i), is whether the Advertisement *targeted children*, or whether the Advertisement was *placed in any media where children are likely to be a significant proportion of the expected average audience*. In respect of whether the Advertisement targeted children, this is determined by the context of the advertisement and the relationship between the criteria set out in the definition of 'Targeting' which, as detailed in section 1 of this submission, includes not only the nature and intended purpose of the product, and the presentation of the advertisement content, but also importantly, *whether the expected average audience includes a significant proportion of children*. As set out in section 1 of our submission, on a proper interpretation of the Code, in any assessment of Rule 1(i) it is required to consider whether children are likely to be a significant proportion of the expected average audience. It is not enough that the product may be appealing to children or that a child may find the content appealing or potentially be exposed to the content. What is required is a consideration of whether the Advertisement has targeted children or that children are a significant proportion of the expected average audience.

In our view, children would not comprise a significant proportion of the expected average audience for this music video clip, and therefore, this Advertisement has not targeted children. To the contrary, this Advertisement was placed in YouTube, which is not intended for children under 13 in accordance with YouTube terms of service. The terms of service state: "The terms of service state: "In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you."

So if children were to view this Advertisement it would be in violation of the YouTube terms of service. Further, the media agency in this case only allowed for YouTube advertisements to appear for logged in YouTube users and the media buy was for people aged 25-54. So

the Advertisement was specifically targeted to appear to adults. This was consistent with Ferrero's media brief and the parameters set by the media agency. If a person under 25 may have possibly seen this Advertisement, this would have been contrary to the parameters put in place by the media agency. The target audience was adults. The expected average audience was adults, given the YouTube terms of service and the further restrictions put in place by the media agency. As child viewers are not permitted to use the YouTube service, it could not be said that children could make up a significant proportion of the expected average audience.

To support this, Ferrero have also obtained confirmation from Google that the YouTube video analytics show that 99.1% of the audience for this video was over 18 years, and from the YouTube channel analytics that 92.3% of the audience of this channel were aged over 18 years. Google has confirmed that the advertising campaign was targeting 25-54 year olds and excluded all other audience demographics. Google has also reiterated that it has clear ad policies that restrict advertisers from targeting personalised ads to children under 13, or collecting personal information from children under 13.

Therefore, children were not targeted by Ferrero for this Advertisement and it was not placed in a media where children are likely to be a significant proportion of the expected average audience. To the contrary, it was expressly targeted to adults and placed in a medium where viewing by children under 13 was not permitted.

As set out in section 1 above, Ferrero has employed a consistent strategy throughout the planning, development, execution and placement of this Advertisement, of targeting the Advertisement to adults. Further, as set out more fully in section 1 above, the presentation of the Advertisement content and its overall context, supports its targeting to parents and not to children. The Code presumes a balanced consideration between the three criteria for determining whether an advertisement is targeted to children. We do not accept that the content is of particular appeal to children, however even if there was any potential residual concern of the content being appealing to children, this is strongly outweighed by the fact that almost the totality of the audience for the Advertisement on YouTube (as evidenced by data) is over 18.

3) Does the advertisements use of the word "milky" and the imagery of a glass of milk and milky centre breach Principle 2 or Rule 2(f)

The Advertisement refers to a Kinder Chocolate having "a yummy milky centre" and this is shown alongside an image of the chocolate centre which zooms in to a creamy swirl. There is no actual milk shown when using the descriptor "milky" and the context of the reference is purely as a description of taste because the Ferrero Kinder Chocolate is creamy in taste.

The image of a glass of milk referred to appears incidentally as part of the packaging shot of the Kinder Chocolate 200g product for approximately 2 seconds at the end of the Advertisement.

Insofar as this packaging appears in the Advertisement, it is not a focal point, does not give any misleading impression and appears so incidentally and as part of the packaging shot (in small scale), rather than as a central or focal point of the Advertisement. The packaging shot is also not shown in conjunction with the "milky centre" claims but is only shown at the end of the Advertisement and only in the context of displaying the product packaging, rather than to make any claim, express or implied. We submit that the ordinary consumer will notice the packaging shot only very incidentally and will not consider that it amounts to any claim regarding milk content, and the reference to "milky" is purely in reference to taste and that is the context of how it is described i.e. the words "yummy milky centre", relates solely to taste.

There is also no misleading representation at all in the Advertisement that the product is equivalent to milk, a substitute for milk or contributes to milk consumption as a food group in accordance with dietary recommendations. It is our view that parents will not be misled that the centre of the product is made from milk or is equivalent to milk. The Kinder Chocolate product does in fact contain milk ingredients, so this is not misleading as to the true content of the product. In any event, there are no health claims regarding milk at all in the Advertisement and therefore consumers will not be misled that the product has any health benefits, simply that the product has a “milky” or creamy taste.

In the Previous Complaint, the Complaints Board found that there was nothing in the Advertisement that could be considered a health or nutrition claim noting that the Advertisement focused on the portion size of the chocolate and its milky taste, rather than any comment on its nutritional composition or the potential physiological effect of consumption. The Complaints Board interpreted the word “milky” in relation to taste only. We submit that the Complaints Board’s finding that the Advertisement was unlikely to mislead consumers as to the nutritional or health qualities of the product remains correct and should be applied to this Complaint and the complaint dismissed.

Ferrero also expressly denies that the Advertisement contains content that is likely to result in the physical, mental or moral harm of children or young people and, as found by the Complaints Board in the Previous Complaint, Ferrero has prepared the Advertisement with a high level of social responsibility. Ferrero therefore denies that it has breached Principle 2 or Rule 2(f) of the Code.

Conclusion

On the basis of the arguments above, Ferrero respectfully submits that the Complaint should be dismissed entirely. We thank you for the opportunity to respond to this Complaint and confirm Ferrero’s commitment and continued support for the ASA and the Advertising Codes of Practice.

RESPONSE FROM MEDIA, GOOGLE NEW ZEALAND LIMITED

Thank you for your letter to Google New Zealand Limited in relation to an online advertisement for Kinder Chocolate appearing as part of Google’s Ads advertising program on YouTube. For the record, we note that the link to a YouTube video provided in the complaint is not running as an advertisement on Google’s Ads advertising program but as user generated content on Kinder Chocolate Australia’s YouTube channel.

Ads which appear as part of Google’s Ads program are created by advertisers or advertising agencies using the Google Ads program. We have been liaising with the Ads Policy team in relation to the matters raised in your letter in an effort to obtain relevant information which may help the ASA resolve this matter. We advise that this advertisement does not violate Google’s current Ads Policies. However, if the ASA Complaints Board determines that the advertisement has breached the Children and Young People Advertising Code, we would appreciate reviewing the Board’s decision so that we can take any necessary further action.

As a result of this review, we can advise the ASA of the following matters:

- Google’s Ads Policy team has reviewed this campaign and advises that the campaign is not set up to target children or young people.
- Individuals under the age of 13 are not authorised to open a YouTube account.
- Google has clear ads policies that restrict advertisers from targeting personalised ads to children under 13 (see <https://support.google.com/adspolicy/answer/143465?hl=en>).

- Google's Advertising Program Terms require advertisers to comply with law and not mislead users (see also <https://support.google.com/adspolicy/answer/6020955>).

In its role as a platform provider, Google is not in a position to assess factual disputes arising from the content of advertiser's ads.

We note that you have written directly to the advertiser for comment on this complaint and we believe that in this case they are best placed to answer your enquiry and to take any necessary action with respect to their advertisement.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.