

COMPLAINT NUMBER	21/190
COMPLAINT ON BEHALF OF	Healthy Auckland Together
ADVERTISER	Kellogg (Aust) Pty Ltd
ADVERTISEMENT	Kellogg's LCMs Television
DATE OF MEETING	22 June 2021
OUTCOME	Upheld Advertisement to be removed

Summary of the Complaints Board Decision

The Complaints Board upheld a complaint about a television advertisement for Kellogg's LCMs, which are a puffed rice snack. The Board said the advertisement undermined the health and well-being of individuals. This is because it was encouraging parents to add an occasional food to their children's lunch boxes, on a regular basis.

Advertisement

The television advertisement for Kellogg's LCMs showed the reaction on a primary school student's face as she opens her lunchbox; she is excited to see the contents. The next scene shows the reaction on the faces of that student and another, as the first student opens her lunch box again. Inside the lunch box was an apple, some grapes, some lettuce sandwiches and a choc chip LCM bar. The bar is made to appear as if by magic. The voiceover said "Light up their faces with the awesomeness of puffed rice. LCMs are the sure-fire lunch box hit." The text said "Mum and Dad's sure-fire lunchbox hit".

Summary of the Complaint

The Complainant was concerned the advertisement promoted the regular consumption of an occasional food, and this is likely to result in harm to children's health.

Issues Raised:

- Social responsibility
- Health and well-being
- Appropriate targeting of Children
- Truthful presentation

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said it is not targeted to children or young people. It is to remind adult grocery buyers, that LCMs are a convenient lunch box treat. Only 3% of the audience for the Advertisement at the placement time complained of were children.

The Advertiser has taken care with the foods it has shown in the lunchbox, and the consumption of LCMs as a treat is not inconsistent with a healthy, balanced diet. The advertisement does not promote overconsumption of any food that appears, and a responsible serving size is shown.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1(h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

Guidelines:

- Advertisers must not undermine the food and nutrition policies of the Government and the Ministry of Health, such as the [Food and Nutrition Guidelines](#) or the [Eating and Activity Guidelines](#).
- Advertisements for food or beverages must not:
 - Condone or encourage excessive consumption or show a quantity of food or beverage that exceeds the portion size that would be appropriate for consumption by the person or people of the age depicted in the advertisement; or
 - Promote inactive or unhealthy lifestyles, or portray people who choose a healthy, active lifestyle in a negative manner.

CHILDREN AND YOUNG PEOPLE'S ADVERTISING CODE

Principle 1: Social Responsibility: 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.

Rule 1(e) Body image: Advertising must not provide an unrealistic sense of body image or promote an unhealthy lifestyle.

Rule 1(i) Targeting children: 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.

Principle 2: Truthful Presentation: 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.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/229, which was Upheld in part/Not Upheld in part and 19/229 Appeal 19/015, which was Not Upheld, under the Children and Young People's Advertising Code.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 19/229 concerned a bus shelter advertisement which showed a photo of a boy in school uniform reaching for a packet of Tiny Teddy biscuits in his lunch box. Also in the lunch box was a salad sandwich and an apple. Below the photo was the text “ADD A LITTLE LUNCHBOX LOVE”.

The Complaints Board said the advertisement undermined the health and well-being of individuals. This is because it encouraged the regular inclusion of a packet of Tiny Teddy biscuits in children’s lunch boxes, as part of a balanced school lunch. The complaint about the bus shelter advertisement was in breach of Principle 1 and Rule 1(h) of the Advertising Standards Code. The complaint about the bus shelter advertisement was also in breach of Principle 1, Principle 2 and Rule 1(e) of the Children and Young People’s Advertising Code.

Decision 19/229 Appeal 19/015 concerned an appeal of the above decision. The Appeal Board agreed to consider the bus shelter advertisement under the Children and Young People’s Code, de novo. The Appeal Board said the Complaints Board decision that the bus shelter advertisement was in breach of Rule 1(h) of the Advertising Standards Code was not affected by the appeal and continued to apply.

The Appeal Board allowed the appeal and ruled the bus shelter advertisement was Not Upheld under the Children and Young People’s Advertising Code. The Appeal Board said this was because the bus shelter advertisement for Tiny Teddy biscuits did not target children or young people and therefore the Children and Young People’s Advertising Code did not apply.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Advertising Standards Code and/or the Children and Young People’s Advertising Code.

In deciding whether the Codes have been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: High rate of childhood obesity in New Zealand
 - Medium: Television
 - Audience: Predominantly adult
 - Product: Occasional food

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was kids will love getting this LCM puffed rice bar in their school lunch box. The majority of the Complaints Board said that the inference was that the advertisement encouraged parents to include an LCM bar in children’s lunchboxes regularly, rather than once in a while as a treat. The Complaints Board agreed LCMs fitted the definition of an occasional food.

Precedents

The Complaints Board agreed the Tiny Teddy precedents, Decision 19/229 and Decision 19/229 Appeal 19/015, were relevant to the complaint.

Reviewing the advertisement under the Advertising Standards Code

Did the advertisement undermine the health and well-being of individuals?

A majority of the Complaints Board said the advertisement undermined the health and well-being of individuals. This is because it was encouraging parents to add an occasional food to their children's lunch boxes, on a regular basis. This is because parents want to give children food they know they will like and eat and lunch boxes are filled each school day. The language and imagery in the advertisement did not suggest the LCM bars were to be given occasionally as a treat. The inclusion of occasional foods, regularly in school lunch boxes is not consistent with the Ministry of Health Food and Nutrition Guidelines for Healthy Children and Young People (Aged 2-18 years), which are referred to in the Guidelines for Rule 1(h). The Ministry of Health website provides a link to the Health Education (HealthEd) website which says the following:

“...Children need healthy food most of the time. It's all right to eat foods that are high in fat, sugar or salt occasionally (less than once a week), but not every day. Too much of these foods can cause health problems such as obesity (being very overweight), diabetes and high blood pressure.

Foods that are high in fat, sugar or salt include muesli bars, sweets/lollies, fruit leathers and roll-ups, potato chips, chocolates, sweet biscuits, meat pies, takeaways and soft drinks.”

A minority disagreed. The minority said the advertisement was not overtly promoting LCMs as a regular, everyday snack and therefore the advertisement did not reach the threshold to undermine the health and well-being of individuals.

Was the advertisement socially responsible?

The majority of the Complaints Board said that it was not socially responsible to encourage parents to add an occasional food to their children's lunch boxes, on a regular basis.,

The minority disagreed. The minority said it was up to parents whether they put an LCM bar in their children's lunch box regularly or occasionally.

In accordance with the majority, taking into account context, medium, audience and product the advertisement was in breach of Principle 1 and Rule 1(h) of the Advertising Standards Code.

Reviewing the advertisement under the Children and Young People's Advertising Code

Who is the target audience?

The first question the Complaints Board had to address was whether the advertisement targeted children or young people. If it did so the Children and Young People's Advertising Code applies.

How is targeting assessed?

'Targeting' is defined in the Children and Young People's Advertising 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.”

The Complaints Board noted that assessing targeting involves considering the relationship between three different criteria: the product itself, the presentation of the advertisement and the expected average audience for the advertisement.

Product

The Complaints Board said LCMs are an occasional food. They are therefore a treat food, not an everyday food, and they have high appeal to children. The product being advertised was a box of LCMs, which contains six bars.

They come in four flavours – coco pops, kaleidos, chocolate chip and yoghurt.

Presentation

The Complaints Board said the presentation of the advertisement had moderate appeal to children. This is because showing excited children and the rice bubbles forming themselves into an LCM bar in a fantastical way would appeal to children. However the language used such as “LCMs are the sure-fire lunch box hit”, were more likely to engage household shoppers.

Audience

The Complaints Board agreed the target audience for the advertisement was adults, especially those who are household shoppers tasked with preparing packed lunches for their children. The voiceover “Light up their faces with the awesomeness of puffed rice. LCMs are the sure-fire lunch box hit” and the text “Mum and Dad’s sure-fire lunchbox hit” speak directly to this group.

The Complaints Board noted that the advertisement had a GXC classification (General Except Children’s Programmes) and played during the TVNZ News, a programme that is aimed at an adult audience and carries a permanent parental guidance recommendation. According to information provided by the Advertiser, children made up 3% of this viewing audience.

Did the advertisement target children?

The Complaints Board agreed the advertisement did not reach the threshold to target children, taking into account product, presentation and audience. This is because while the product does have high appeal to children and the presentation had moderate appeal to children, the target audience was adults.

The Complaints Board said therefore the Children and Young People’s Advertising Code did not apply, as the advertisement was not targeting children.

Outcome

The Complaints Board ruled the complaint was **Upheld**.

Advertisement to be removed.

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 calendar days of receipt of this decision.

APPENDICES

1. **Complaint**
 2. **Response from Advertiser**
 3. **Response from Media**
-

Appendix 1

COMPLAINT FROM HEALTHY AUCKLAND TOGETHER

Complaint: Kellogg's LCM Television Advertisement

This complaint is made by the members of Healthy Auckland Together listed in Appendix A ('We').

A television advert for Kellogg's LCM bars was viewed on 20 January 2021, on TVNZ1 at 6.19pm during 1 News. We ask that the Complaints board considers all other instances of this advertisement in all media. We submit that the Kellogg's LCM television advertisement breaches the Children and Young People's Advertising Code and the Advertising Standards Code.

We submit that the advertising campaign breaches the following principles and rules of the Codes:

1. **Principle 1** of the Children and Young People's Advertising Code: the advertisement does not observe a high standard of social responsibility because it promotes unhealthy eating behaviours to children, thereby causing harm.
2. **Rule 1 (e)** of the Children and Young People's Advertising Code: the advertisement promotes an unhealthy lifestyle to children by promoting sweet snack bars as part of a healthy school lunch.
3. **Rule 1 (i)** of the Children and Young People's Advertising Code: the advertisement targets occasional foods to children. Both the product and presentation appeal to children. The advertisement was on at 6:19pm when a large proportion of children are watching with their families.
4. **Principle 2** of the Children and Young People's Advertising Code: the television advertisement is likely to mislead children that snack bars are part of a healthy school lunch.
5. **Principle 1** of the Advertising Standards Code: The advertisement is not prepared with a due sense of social responsibility as it promotes unhealthy eating behaviours.
6. **Rule 1(h)** of the Advertising Standards Code: The advertisement undermines the health of children by promoting a cereal bar as a school lunch food to children and parents/caregivers.

The Advertisement:

A primary school aged girl wearing a school uniform is shown in a school playground. She opens up her lunchbox. As she opens the lunchbox her eyes widen with excitement. The next scene is in the school classroom, with two girls opening up one lunchbox. They are both excited about the lunch box contents. One has her mouth wide open in surprise, the other puts her hands over her mouth. One of the girls shouts 'yes' and does a fist pump in her excitement.

The lunchbox is then shown, which includes a sandwich, an apple and some grapes. Puffed rice pieces then magically appear and form an LCM bar which stands out above the other contents of the lunchbox. The corresponding words are 'light up their faces with the awesomeness of puffed rice'. The last scene is a visual of four packs of LCMs in the following varieties: Coco Pops, Kaleidos, Choc chip, and Splitstix yoghurt. A woman's voice states 'LCMs are the sure fire lunchbox hit'. 'Mum and Dad's surefire lunchbox hit' is written at the bottom of the screen. Fun, catchy music is played throughout the entirety of the advertisement.

The Kellogg's LCM advertisement can be viewed here:

<https://www.youtube.com/watch?v=UnJ1Jf1e7bg>

Analysis:

Kellogg's LCM bars fall into the Food and Beverage Classification System (FBCS) category of 'sweet snack foods'. The following table assesses two of the advertised LCM bar varieties under the FBCS. All types of LCMs in the television advertisement are classified as occasional.

	Choc Chip	Splitstix Yoghurty
Energy per 100g	1720kj (sometimes)	1900kj (sometimes)
Energy per serve	380kj (sometimes)	440kj (sometimes)
Saturated fat per serve	1.6g (sometimes)	2.5g (occasional)
Sodium per serve	56mg (sometimes)	64mg (sometimes)
Fibre per serve	0.2g (occasional)	0.1g (occasional)
Total sugar	6.9g (sometimes)	8.7g (sometimes)
Overall FBCS classification:	Occasional	Occasional

Kellogg's LCM snack bars have principal appeal to children and are mostly made for children to consume. The look of the product and the colourful product packaging, including cartoon images, entice children to want to eat them. Some of the products advertised are further appealing due to added sprinkles or chocolate chips on top.

There are a number of factors that make the advertisement appealing to children:

- it is based within a school playground and classroom
- it features two young school children
- contains fun music and visual techniques.

Bright colours and catchy music are used throughout and there is a sense of fun with the LCM bar magically appearing in the lunchbox. This type of music is likely to grab children's attention to the television or internet.

The product and appeal of the advertisement is clearly targeting children however Kellogg's are circumventing the advertising code by adding the words 'Mum and Dad' to the advertisement.

According to the BSA 62% of NZ children (6 to 14) watch live or recorded free –to –air TV between 6pm and 8:30pm¹.

The advertisement promotes the regular consumption of an occasional food, which is likely to result in harm to children's health. New Zealand children eat lunch at school five days per week and this advertisement promotes LCM snack bars a 'sure fire lunchbox hit'. This implies the snack food is an everyday food, despite their classification as an occasional food. No mention was made in the advertisement of the LCM snack bar being viewed as a "treat". These are irresponsible messages for both children and parents/caregivers and do not align with the spirit of the code.

In decision 19/229, which dealt with a Tiny Teddy biscuit out of home advertisement promoted as part of a lunch box, the Complaints Board notes:

“ a bus shelter advertisement for Tiny Teddy biscuits gave a misleading impression that a packet of Tiny Teddy biscuits is an everyday food and encouraged the addition of a packet of Tiny Teddy biscuits, as part of a balanced school lunch”²

The corresponding guideline in the Advertising Standards Code which elaborates on Rule 1(h) states that advertisers must not undermine the food and nutrition policies of the Government and the Ministry of Health, such as the Food and Nutrition Guidelines or the Eating and Activity Guidelines. By encouraging the addition of an occasional food, a LCM bar, as part of school lunches does not align with nutrition guidelines.

It is inappropriate for advertisements to encourage parents/caregivers to purchase occasional foods for their children's lunchboxes. There is a clear deficiency in the Children and Young People's code as it does not address advertising of occasional food and beverages to parents/caregivers who purchase food for children.

Summary:

The Kellogg's LCM television advertisement has not been prepared or placed with a due sense of social responsibility to children, parents/caregivers or society. It targets occasional food to children. LCM snack bars are principally designed for children, the advertisement's presentation is appealing to children, and it was scheduled during the 6pm news hour for exposure to large numbers of children when families typically view television together. The LCM advertisement promotes unhealthy snack bars as part of a healthy school lunch, going against Ministry of Health guidelines and the work being undertaken to support healthy eating and lifestyles for school children.

Appendix A:

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

¹ Broadcasting Standards Authority (2020) Children's Media Use. <https://www.bsa.govt.nz/research-and-reports/research/all-research/childrens-media-use-research-2020/>

²Complaint 19/229 Appeal 19/015 Arnotts, Tiny Teddy Out of Home <https://www.asa.co.nz/backend/documents/2019/12/09/19229%20Appeal%2019015.pdf>

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 +
- ARPHS
- Auckland Council
- Auckland Dental Association
- Auckland DHB
- Auckland PHO
- Auckland War Memorial Museum
- Cancer Society Auckland Northland
- Counties Manukau Health
- Comprehensive Care
- Diabetes Foundation Aotearoa
- Disabled Persons Assembly
- East Health Trust
- Hāpai te Hauora
- Healthy Families South Auckland
- Healthy Families Waitākere
- Heart Foundation
- Ministry of Health
- National Hauora Coalition
- Pacific Heartbeat
- ProCare
- Stroke Foundation
- The Asian Network Incorporated (TANI)
- Te Hiringa Hauora - Health Promotion Agency
- Te Rūnanga o Ngāti Whatua
- Toi Tangata
- Total Healthcare
- University of Auckland
- Waitemata DHB

Appendix 2

RESPONSE FROM ADVERTISER, KELLOGG (AUST) PTY LTD

We refer to your letter dated 26 May 2021 to Kellogg (Aust.) Pty Ltd (**Kellogg**) notifying Kellogg of a complaint received in relation to our advertising – in particular, complaint reference number 21/190 (the **Complaint**).

Thank you for providing us with the opportunity to respond to the Complaint. Set out below is Kellogg's response, together with the information requested at Appendix A and supporting documents.

Kellogg is committed to adhering to, and promoting advocacy of, the Advertising Standards Authority's Codes. We agree that advertisers must act with a high level of social responsibility towards consumers.

The Advertisement

By way of background, the advertisement referred to in the Complaint (**Advertisement**) is a television commercial that advertises Kellogg's LCMs. A link to the 15-second advertisement is set out at **Appendix A**.

Kellogg's LCMs are individually wrapped, portion-controlled products which, over many years, have been positioned to adult grocery buyers as a convenient, treat food option. This is the very brand equity that these products have, established over a long period of time.

Kellogg's LCMs are offered in a size, shape, serving and food format that is convenient and fits well inside the lunchbox. They take up only a small amount of space and leave ample room for other foods in the lunchbox.

The Advertisement being complained of has run over many years and its purpose is to remind mums and dads that LCMs are a convenient lunch box treat.

There are many ways in which a functional message like the above can be brought to life. The LCMs Advertisement is seeking to demonstrate this proposition visually.

As a leading food manufacturer, Kellogg takes a tremendous amount of care in the analysis and presentation of its advertising messages. This includes the commitment of substantial resource, process and time to ensure that advertising content is prepared and presented to a very high standard of social responsibility and complies with all applicable regulatory requirements, as well as Kellogg's self-imposed standards.

It is our respectful submission that the Advertisement in question is fully compliant with the Advertising Standards Authority Codes.

The Complaint

The complaint is made under the Children and Young People's Advertising Code and the Advertising Standards Code. We will consider each of the Codes respectively.

The Children and Young People's Advertising Code

To fall within the ambit of the Children and Young People's Advertising Code, the advertisement must target children or young people³.

Kellogg respectfully submits that the Code clearly does not apply to this Advertisement as it is not targeted to children or young people.

The sections of the Code relevant to the Complaint are as follows:

“Children” means all persons below the age of 14 years.

“Young People” means all persons who are at least 14 years but under 18 years.

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

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

Guidelines under Rule 1(i) (Targeting Children):

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 accurate data exists, 25% or more of the expected audience will be children.*
- *Child viewing time zones.*
- *Content with significant appeal to children such as programmes, artists, playlists, video, movies, and magazines.*
- *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 Advertisement is intentionally targeted to adults and is specifically and deliberately not targeted to children or young people.

Kellogg draws the Board’s attention to the following factors that Kellogg submits demonstrate that the Advertisement is not targeted to children or young people.

- The purpose of the Advertisement is to remind adult grocery buyers, and specifically those who are responsible for packing the lunchbox for their children, that LCMs are a convenient lunch box treat. As the Board will see from our submissions, and supporting evidence below, this Advertisement has been carefully placed and targeted to adult grocery buyers. LCMs have been positioned to adult grocery buyers over many years as a convenient, treat food option. This is the very brand equity that these products have, established over a long period of time. The Advertisement is demonstrating visually that LCMs come in a size, shape and food format that is convenient and fits well inside the lunchbox. They take up only a small amount of space

³ Refer to the section within the Code headed “Application of the Code”.

and leave ample room for other foods. Hence, the shot of the LCMs bar in the lunchbox together with a wholemeal sandwich, apple and grapes. The consumer takeout that the Advertisement is driving is that LCMs are a convenient lunch box treat.

- Consistent with the purpose of the Advertisement, Kellogg has specifically and intentionally targeted media placement that is directed towards adults. Please see **attached** the media plan for this Advertisement. The Board will see that the media plan is expressly targeted solely to adult grocery buyers. The designation HHS in the media plan stands for household shoppers. This targeting is consistent with the purpose and intent of the Advertisement.
- Further, in relation to the targeting of the Advertisement, please see **attached** the spot list that covers both the placement that has been complained of, as well as the entire month of January. The Board will see that only 3% of the audience for the Advertisement at the placement time complained of were children.

Further, the Board will note that only 2.47% of the average audience for the entire month of January were children.

This is entirely consistent with both the intent of the Advertisement and the very strict measures that Kellogg has taken to ensure that the Advertisement is targeted towards adult grocery buyers. Kellogg takes this responsibility seriously and has clear processes in place towards ensuring that its advertising reaches the correct intended audience.

Additionally, in relation to targeting and placement, Kellogg's has standing instructions to its media buyer in place. These instructions are:

- No advertisements in programs with audience profile of 25% or higher against children 0-14
 - No advertisements in or adjacent to C or P rated programs, avoid G rated programs
 - No advertisements in a program where, despite its rating, the content or theme of the program is nevertheless directed to children
 - No advertisements in any animated program regardless of classification
 - Do not accept bonus or makegood activity that is not guaranteed to avoid children's programming
- The LCMs Advertisement is classified GXC by CAB. This stands for General excluding children which specifically prohibits the Advertisement airing during children programming.
 - The language in the Advertisement is talking expressly to adult grocery buyers, "Light up **their faces...**" and "**Mum and Dad's** sure-fire lunchbox hit" (emphasis added).
 - The Advertisement uses an adult voice-over and the language of the Advertisement is ordinary English. The language is not child focused. This is intentional, as the Advertisement is speaking to mums and dads.
 - The Advertisement highlights the ingredient of "puffed rice". This is a message that is directed to the adult grocery buyer and would not appeal to children.
 - The settings shown are intended to appeal to parents and carers of school aged children and to demonstrate that LCMs are a convenient lunchbox treat.

- Kellogg acknowledges that the product has child appeal. Kellogg notes that consistent with established Board decisions, this factor is not enough to determine that an advertisement is targeting children and regard must be had to all the factors relevant to the determination of targeting. The Board's decisions in these cases is especially relevant to advertisements such as the present, where the Advertisement is clearly and expressly targeted towards adults and is presenting a product offering to adults.

Having regard to all the factors relevant to the determination of "targeting", and consistent with Board decisions on the issue of targeting, it is Kellogg's respectful position that this Advertisement clearly does not reach the threshold of targeting children that is set by the ASA Codes. Accordingly, the Children and Young People's Advertising Code does not apply.

Further to the above, we note that Kellogg has taken intentional and strategic steps to ensure that the Advertisement reaches an adult audience and mitigates any exposure and appeal of the product. We note that the diligent steps Kellogg has taken in this regard have been overwhelmingly successful (as evidenced by the spot list provided) and such steps have included not only specific placement instructions for this Advertisement, but also standing instructions to Kellogg's media buyer.

Further to this, Kellogg has taken special care in how it has presented the message in this Advertisement. As stated earlier, this Advertisement is seeking to remind adult grocery buyers that LCMs are a convenient lunch box treat. In showing the lunchbox and demonstrating the food format benefits of LCMs as a portion controlled, individually wrapped product that takes up little space in the lunch box, Kellogg's has taken care in the foods it has shown in the lunch box. These foods include a wholemeal sandwich, apple and grapes and the scene also shows a bottle of water. This is consistent with Kellogg's position that whenever a meal occasion is shown in an advertisement the advertisement must demonstrate the product in a manner that is consistent with a healthy, balanced diet.

It is Kellogg's respectful submission that the factors set out above demonstrate clearly that Kellogg treats compliance with the ASA Codes seriously and that Kellogg exercises a high standard of social responsibility and a special duty of care in its advertising.

The Complainant's allegations

For the reasons we have set out above, it is Kellogg's respectful submission that the Children and Young People's Advertising Code clearly does not apply to the present advertisement.

Despite that, we would like to respond to the Complainant's allegations. We outline the Complainant's allegations and our responses as follows.

7. Principle 1 of the Children and Young People's Advertising Code: the advertisement does not observe a high standard of social responsibility because it promotes unhealthy eating behaviours to children, thereby causing harm.

We respectfully disagree. As we have stated already, the Advertisement is not directed to children, it is directed to adult grocery buyers. We submit this is clearly established.

Further, the Advertisement is reminding mums and dads that LCMs are a convenient lunchbox treat. LCMs have been positioned to adult grocery buyers over many years as a convenient, treat food option. This is the very brand equity of the product. It is critically important to determine the consumer takeout for a particular advertisement in the context of the relevant audience and its understanding of the relevant products. In this regard, there are critical differences between a new product that is being advertised for the first

time and a product has established its positioning and brand equity amongst the relevant audience over many years.

The Advertisement has taken significant care in the foods it has shown in the lunchbox and the consumption of LCMs as a treat is not inconsistent with a healthy, balanced diet. The Advertisement does not promote overconsumption of any food that appears and a responsible serving size is shown.

Further, Kellogg takes numerous additional measures in its advertising (as detailed in the section above) towards ensuring that all Kellogg advertising is consistent with the spirit and provisions of the Advertising Codes. This includes (but is not limited to) measures in relation to both the presentation of advertising content and messages, as well as the targeting and placement of advertising.

For all these reasons we submit that the Advertisement adheres to a high standard of social responsibility and is not promoting unhealthy eating behaviors.

8. Rule 1(e) of the Children and Young People's Advertising Code: the advertisement promotes an unhealthy lifestyle to children by promoting sweet snack bars as part of a healthy school lunch.

We respectfully disagree. We refer the Board to our submissions in relation to Principle 1 above.

Further, addressing the guidelines included in this section of the Code, we note that the Advertisement is not denigrating healthy diets or lifestyles.

9. Rule 1 (i) of the Children and Young People's Advertising Code: the advertisement targets occasional foods to children. Both the product and presentation appeal to children. The advertisement was on at 6:19pm when a large proportion of children are watching with the families.

We respectfully disagree. We refer the Board to our submissions above which state why we consider the Advertisement is not targeting children.

10. Principle 2 of the Children and Young People's Advertising Code: the television advertisement is likely to mislead children that snack bars are part of a healthy school lunch.

We respectfully disagree.

The submissions we have set out above establish clearly that this Advertisement is directed to an adult audience. Further, that the various targeting and placement controls that Kellogg has in place in relation to this Advertisement have been successful in avoiding a child audience. As set out above, 3% of the audience for the Advertisement at the placement time complained of were children. Further, 2.47% of the average audience for the entire month of January were children.

As we have stated above, when determining the consumer takeout for a particular advertisement it is essential to consider the relevant audience. In this case, the audience is adult grocery buyers. Furthermore, LCMs have been positioned to adult grocery buyers over many years as a convenient, treat food option. This is the very brand equity of the product.

The Advertisement has taken significant care in the foods it has shown in the lunchbox and the consumption of LCMs as a treat is not inconsistent with a healthy, balanced diet. The Advertisement does not promote overconsumption of any food that appears and a responsible serving size is shown.

For the reasons set out above, it is our respectful submission that the Advertisement is not in breach of Principle 2.

The Advertising Standards Code

The Complainant's allegations

1. Principle 1 of the Advertising Standards Code: The advertisement is not prepared with a due sense of social responsibility as it promotes unhealthy eating behaviours.

We respectfully disagree.

We refer the Board to our submissions above which state why we consider that Kellogg has acted with diligence and a high standard of social responsibility in the preparation and placement of this Advertisement and, further, why the Advertisement is not promoting unhealthy eating behaviours.

2. Rule 1(h) of the Advertising Standards Code: The advertisement undermines the health of children by promoting a cereal bar as a school lunch food to children and parents/caregivers.

We respectfully disagree.

We refer the Board to our submissions above which state why we consider that Kellogg has acted with diligence and a high standard of social responsibility in the preparation and placement of this Advertisement and, further, why the Advertisement is not promoting unhealthy eating behaviours.

Other comments

The complainant refers to the Board's prior decision in complaint 19/229.

There are fundamental and determinative distinctions between the Advertisement that was the subject of the Board's decision in complaint 19/229 and the present Advertisement. These distinctions are as follows:

- The advertisement in complaint 19/229 was an out of home advertisement placed at a bus shelter. We will refer to that advertisement as the "19/229 Bus Shelter Advertisement". Due to the nature of the relevant advertising medium and the placement of the advertisement in that instance, the 19/229 Bus Shelter Advertisement reached a very wide and unrestricted public audience that included a substantial number of children. The evidence on appeal included the following:
 - Children made up approximately 20% of the audience at the bus shelters;
 - Children aged 5-14 make up approximately 19.2% of the total population in Auckland.

The 19/229 Bus Shelter Advertisement was placed on a bus shelter located on a main arterial road, in a location that was near to a number of places where very large

numbers of children would gather. These places included, amongst others, a primary school.

Accordingly, the 19/229 Bus Shelter Advertisement was viewable by a very large number of children, who would have been viewing the advertisement by themselves and in the company of other children.

The LCMs Advertisement complained of is a television advertisement that has been placed with a high degree of diligence and social responsibility and has been targeted to an adult audience. As stated above, this has included not only specific placement and media purchasing to achieve this objective, but also

standing instructions to Kellogg's media buying agency regarding placement measures to avoid child audiences and to target adult grocery buyers.

The child audience in relation to the LCMs Advertisement complained of was 3. Further, the placement time complained of was during the news.

Both the nature of the medium and the manner of placement in relation to the LCMs Advertisement is substantially and determinatively different to the 19/229 Bus Shelter Advertisement. Further, the audience for the respective advertisements is fundamentally and determinatively different.

- The consumer takeout for the respective advertisements is fundamentally and determinatively different. In the 19/229 Bus Shelter Advertisement, the Board found that the consumer take out was that the product being advertised was "a good addition to children's lunch boxes to show children love".

The consumer takeout in the present LCMs Advertisement is to remind mums and dads that LCMs are a convenient lunch box treat. We refer the Board to our submissions above explaining the consumer takeout for the Advertisement.

As we have stated above, when determining the consumer takeout for a particular advertisement it is essential to consider the relevant audience.

Accordingly, not only is the audience and the medium so distinctly and determinatively different between the 19/229 Bus Shelter Advertisement and the LCMs Advertisement, but so too are the consumer takeouts of the respective advertisements.

For the reasons we have set out above, it is our respectful submission that it would not be correct to apply the Board's decision in relation to the 19/229 Bus Shelter Advertisement to the present LCMs Advertisement.

Other matters we note for the Board in relation to the LCMs Advertisement are as follows:

- This Advertisement and minor variations of it, have been on air since at least 2012. A similar version of the Advertisement was considered by the Advertising Standards Board (**ASB**) in Australia in 2012 in relation to essentially the same matters complained of in the present complaint. The ASB decided that the advertisement was directed towards grocery buyers and was not primarily directed towards children. Further, the ASB decided that the advertisement was not inconsistent with or undermining of a balanced diet or healthy lifestyle and there was nothing in the advertisement which suggested or promoted excessive consumption. The ASB also found that there was nothing contrary to community standards in the manner in which the product was promoted in the advertisement.

- We have checked our consumer services records back to January this year and can confirm that we have not had any complaints regarding the LCMs advertisement.

Conclusion

For the reasons set out above, it is our respectful submission that the Complaint must be dismissed.

Kellogg appreciates the opportunity to respond to the Complaint and confirms its support for the Advertising Standards Authority and the Codes to which Kellogg upholds.

Appendix A

Please provide the ASA with a digital media file(s) copy of the advertisement. If the complaint relates to on-screen graphic in a video, provide a broadcast quality version.

The link to the 15 second advertisement can be found here

<https://www.youtube.com/watch?v=UnJ1Jf1e7bg>

Is the advertisement still accessible – where and until when?

As per the media schedule attached, the Advertisement is scheduled to run at various times through to the end of 2021.

List all media where the advertisement is placed e.g. TV, Radio, Outdoor, Newspaper, Cinema, Website, Social Media, App, and Email.

The Advertisement is placed on TV and Online Video (On demand)

For Broadcast advertisements, provide:

• A copy of the 15 second script

A copy of the script is outlined as follows:

Music plays and girl opens lunchbox.

Her friend appears. They are both excited about what's inside.

VO: Light up their faces...

Rice swirls to begin to form an LCMs bar.

VO: With the awesomeness of puffed rice

Bar lands over the lunchbox with a wiggle.

Four LCMs packs sit on a flat surface.

VO: LCMs are the sure-fire lunchbox hit!

Super: Mum and Dad's sure-fire lunchbox hit

Disclaimer: ©2018 Kellogg Company ®Registered trade mark Kellogg (Aust) Pty Ltd authorised user.

• A copy of the media schedule and spot list (please remove all financial information)

We **attach** the media schedule and spot list referenced in this letter.

- **CAB key number and rating**

The CAB key number is KENS0557K1.

The TVC was given a GXC rating, which stands for General Except Children meaning it cannot play during air times targeted at children.

Who is the target audience for the product / brand / service? And what tools and/or data were used to target this audience?

The target audience is adult grocery buyers. This is reflected in the media plan targeting of HHS, standing for Household Shopper.

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Complaint 21/190 Kelloggs KELN0013K115 Classification: GXC

This commercial for Kelloggs was approved on 18/06/2020 with a GXC classification.

The GXC classification automatically excludes this commercial from play during programmes that are targeted towards children.

The complaint has quoted an airtime of 6:19pm during TVNZ1 News, a programme that is aimed at an adult audience and carries a permanent parental guidance recommendation. Network news shows in New Zealand are not intended as children's viewing.

The commercial shows the LCM snack included as part of a packed lunch made up of sandwiches, an apple, and a serving of fresh grapes. The children in the commercial are shown to be excited, as children invariably are with treats.

This advertisement meets the current understanding of the Advertising Standards Code protecting children and young people, and CAB supports the advertiser's submission and their offer of fuller details surrounding the product.