

Case ID: 101

Decision

To	EU Pledge Secretariat	Date of mtg	25 February 2025
From	EASA Secretariat	Date sent	

First instance – Campaign on McDonald’s Italy Website

Description

Campaign on McDonald’s, Italy, Website

Complaint

The complainant filed a complaint on “a marketing example from McDonald’s Italy” attaching screenshots of the advertising piece without additional comments.

Advertiser’s response

McDonald’s provided the following information as an answer:

1. The campaign on McDonald’s website in Italy was **not primarily appeal to children under 13**. It featured the Grinch character but focused on adult menu items like the Big Mac® sandwich. The campaign was part of the Winter Days campaign, aimed exclusively at adults and promoting adult menus, with large meal offerings intended for adults.
2. The image of the Grinch was used in the context of a holiday season menu for adults, as the character is part of holiday films for all ages, not specifically children. The character references a movie from 2000, leveraging nostalgia to appeal to adults.
3. Actions were taken to restrict child access.
 - Promotions were available only through McDonald’s App in Italy, which is accessible from age 16.
 - The app’s terms and conditions restrict access to users over 16.
 - This restriction ensures that the campaign was not accessible to children under 13.
 - The campaign is no longer available.
 - The campaign did not use excessive animation, bright colours, or sounds that would appeal primarily to children.
 - The overall impression of the campaign was designed to appeal to adults and young adults. The campaign was reviewed to ensure it did not primarily appeal to children under 13, aligning with the EU Pledge commitment.

EU Pledge commitment

EU Pledge members commit either to:

- Only advertise products to children under the age of 13 years that meet the common EU Pledge Nutrition Criteria; or
- Not to advertise their products at all to children under the age of 13 years.

The above policy covers marketing communications for food and beverage products that are primarily directed to children under 13 in covered media.

Marketing communications means paid advertising or commercial sales messages for food and beverage products, including marketing communications that use licensed characters, celebrities, influencers, and movie tie-ins primarily appealing to children under 13. Company-owned, brand equity characters are not covered by the policy.

Primarily directed to children under 13 means advertising in measured media where 35% or more of the audience is under 13 years of age. Where adequate data are unavailable, companies will consider other factors as appropriate, which may include the overall impression of the advertising, actions taken to restrict child access and the target demographic based on the company's media plan.

Covered media means the following vehicles: TV, radio, print, cinema, online (including company-owned websites and company-owned social media profiles), DVD/CD-ROM, direct marketing, product placement, interactive games, outdoor marketing, mobile and SMS marketing. Packaging, in-store and point of sale as well as forms of marketing communications which are not under the direct control of the brand owner, such as user-generated content, are not covered by this policy.

Decision

The advertised product (Big Mac) does not comply with the EU Pledge nutrition criteria. Therefore, marketing communications promoting the food product must not be directed at or primarily appeal to children under the age of 13.

The complaint referred to a marketing communication displayed on McDonald's website in Italy, featuring a drawing of "the Grinch", in a similar style to that presented in the 1957 book "How the Grinch Stole Christmas!". The character has also appeared in various movies, specials, and television series over the decades, with the most well-known appearance being a movie adaptation from the 2000s.

The Panel evaluated the content displayed on McDonald's Italy website, based on the material provided by the complainant, which related solely to the website.

Company-owned websites fall under the non-measured media category, meaning that adequate demographic metrics are unavailable. According to the EU Pledge Commitment, an age-gating mechanism may be helpful but should not be considered sufficient for compliance if the marketing communication is clearly designed to appeal primarily to children under 13.

Therefore, the Panel analysed the creative execution of the advertisement as perceived by audiences.

The Panel assessed the primary appeal of the licensed character, “the Grinch”, to children under 13. Although the character is associated with a popular movie, the Panel unanimously agrees that it does not primarily appeal to children under 13, as the character, as shown on the website, is not considered as such. There is no animation, music, or sound effects that might encourage children to interact with the advertisement.

The Panel also acknowledges that everything associated with Christmas may appeal to children under 13, hence being borderline with the commitment. However, this does not mean that all content produced during this period primarily appeals to children under 13. In the contested advertisement, the character and the way it is represented do not primarily appeal to children under 13.

Based on the arguments and rationale explained above, the panel does not find the advertisement to be primarily appealing to children under 13 years old and thus compliant with the EU Pledge Commitment. Therefore, the Panel did not uphold the complaint.

Panel decision: complaint not upheld

Case ID: 101I

Appeal

To	EU Pledge Secretariat	Date of mtg	18 March 2025
From	EASA Secretariat	Date sent	

Appeal ruling – Campaign on McDonald’s Italy Website

Complainant’s appeal

“I confirm that we would like to appeal for the following reasons:

- The Grinch is clearly a children’s movie character and in any case the cartoon shown in the adverts is an animated character, much more closely resembling the animated movie which came out in 2018 and of course the Grinch character which children would see today in the books.*
- It is incorrect for McDonald’s Italy to state that the campaign was aimed exclusively at adults and promoting adult menus. Please see below for screenshots of this promotion linked with Happy Meals and free fluffy Grinch-themed Christmas bauble. This is clearly something the company would have clearly been aware of so it is disappointing to see that they would be purposely deceitful in their response to our complaint.*
- We can hardly agree that ‘the campaign is no longer available’ is a valid reason to end a complaint. The purpose of the complaint system should be instructive to guide future marketing plans.*
- We have already made the point in previous complaints that age-gating cannot be considered to be sufficient protection, given the ease with which children can easily circumvent them with simply an incorrect age date inputted.*
- We also clearly disagree with McDonald’s assertion that they haven’t used bright colours, or ‘excessive animation’ given that the whole promotion is based upon an animated character using bright colours.”*

Grounds for appeal

An appeal can be assessed to be admissible considering:

- additional evidence is available, with a good reason given why it was not provided earlier (such as programmatic which makes it hard to capture a copy of the ad or research which was not completed at the time of complaint showing the product is in fact compliant)
- evidence of a substantial flaw of procedure, and/or
- evidence of a substantial flaw of adjudication.

The appeal must be made on reasonable grounds and not used as a mean to systematically challenge the decisions achieved by the original Panel.

Decision

The Appeal Panel first judged the admissibility of the appeal as lodged by the complainant. As per the EU Pledge commitment, either party can file an appeal of the decision of the First Instance Panel on one of three specific grounds. The Appeal Panel may consider an appeal admissible if the appellant provides additional evidence relating to the case with an acceptable reason as to why it was not provided earlier or if the appellant provides evidence of a substantial flaw of procedure, or finally if the appellant provides evidence of a substantial flaw of adjudication.

In the case concerning the present appeal, the complainant requests a second judgement of the case based on new evidence and substantiation. The complainant did not invoke any of the other appeal criteria. The new evidence consists of screenshots both from the communication medium sent in the original complaint, the McDonald's Italy website, and from a different digital medium, Instagram stories from McDonald's Italy. New evidence can determine the admissibility of an appeal, but it must be provided with a good reason as to why it was not submitted in the first instance. In this case:

- The advertisement is from a Christmas campaign in December 2024, which is no longer present on the McDonald's Italy website.
- Among the new evidence provided are two Instagram stories corresponding to the aforementioned Christmas campaign of December 2024 (non-permanent content that is deleted after 24 hours).

It is therefore assumed that the evidence collected and provided by the complainant for the appeal was gathered during the aforementioned Christmas campaign, and thus, collected prior to the lodging of the complaint that initiated the case. Without being able to substantiate that there are good reasons for presenting this evidence retrospectively in an appeal.

Therefore, the panel considers that there are no reasons why this evidence could not have been submitted for judgement in the first instance.

Additionally, the panel notes that this new evidence includes, as referenced above, advertisements in a different medium from that initially contended, potentially constituting material for a different case.

For these reasons, the panel considers that the appeal is not admissible.

Decision regarding the appeal: Not admissible.