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**Case ID: 26**

**Decision**

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<b>To</b>	EU Pledge Secretariat	<b>Date of mtg</b>	9 April 2021
<b>From</b>	EASA Secretariat	<b>Date sent</b>	16 April 2021

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**Ruling – Kellogg’s**

**Description**

Kellogg’s Pringles Benelux campaign

**Complaint**

The complaint concerns a promotion by Pringles (Benelux) where the company sponsored an interactive gaming competition between two well-known ‘Gamers’, ‘Team Dani’ vs ‘Team Rarko’. Both these gamers promoted the competition on social media (Instagram) wearing Pringles-themed hoodies with images of Pringles cans and gaming consoles in the post. Dani also held a can of Pringles in their photo. Together the two players have over 350K followers on Instagram. Each post invites viewers to register their interest in qualifying as one of four eventual members of their gaming team via the link in their bio and to help Dani/Rarko beat the other’s team. Viewers are informed that all the players on the winning team will receive a new Xbox Series X. The posts have two hashtags #danivsrarko and #pringlesgaming. The Pringles logo is also visible in each post.

The link in each of their bios takes the viewer to the competition webpage where users are told ‘Win an Xbox Series X or other prizes thanks to Pringles! Join us and who knows, you might be scouted by team Bundled [an esports management company]. In this challenge the followers of Dani & Rarko compete against each other! A qualifying tournament must decide which four players will join Team Dani or Team Rarko. The top four players from each team compete and the winning team takes home an Xbox Series X each. Join now!’

This page also informs the user that should they not qualify there are other ways of winning prizes such as buying a can of Pringles, taking a picture of your gaming room with the can of Pringles and then sharing the photo on Instagram with the hashtag #PringlesBattleStation. Prizes include an Xbox Series X, 19 Xbox Wireless Headphones and 15 Pringles Hoodies.

On the 2nd of February Rarko also posted about the competition on their Youtube account which has 174K followers. In this video, which is a recording of the ‘final’ competition Dani and Rarko’s teams compete against each other in a computer football game.

At least two (Chris and Jerome) of the competitors in the Youtube video are children below the age of 12. One of these young players celebrates winning his game by eating Pringles. The age-appearance of the 8 finalists in the competition shows that it is a promotion which is appealing to young people, in particular children.

In the middle of the gaming content, the gamers announce a giveaway competition for users who can correctly identify (by writing in the comments of the Youtube video) the four flavours of Pringles by the four colours they show on screen. The prize is an outsized large can of Pringles. The two gamers hosting the competition often refer to the deliciousness of the Pringles ('lekker') and they consume the crisps too, arguably encouraging immoderate consumption of an unhealthy food item (especially when related to the extra large pack of pringles).

The brand is ubiquitous throughout the video, the cans of Pringles are very visible at different points throughout the competition (in the hosts' studio but also on the players' screens).

The use of successful social media influencers involved in the world of esports/gaming, a pastime popular with children, the presence of Pringles products (Sour Cream and Onion and Original flavours) as well as the multiple competitions and prize giveaways, the participation in the final competition of children players, demonstrates a clear appeal to children. As of April 2020, Xbox Live has 90 million monthly users, of which many are children.

### **Advertiser's response**

According to EU Pledge guidelines for influencer marketing, to determine if an influencer's primary target audience is under the age of 12, the same standard should be as used as for all marketing channels and communications.

Kellogg Benelux has mandated Bundled, an Esports agency, to organize a marketing activation for the brand Pringles. The activation consisted of an Esports competition running from 31/12/2020 to 19/01/2021 in which the 4 winners received the prize of an Xbox Series X.

Special care was given to recognisability and disclosure of the whole campaign. Each social media post had an embedded Pringles X Bundled logo identifying the commercial relationship as did the YouTube video with an embedded overlay in the top left corner. In addition, the influencers mention in the video the collaboration with Pringles verbally.

The competition was promoted by Dutch social media influencers, Rarko and Dani, on their Instagram pages and on the Instagram page of the agency, Bundled and Pringles Netherlands. The Influencer Instagram posts have since been deleted. The final competition game was posted to the YouTube channel of social media influencer Rarko.

The Pringles brand has an age target demographic of adults 18+, which is aligned with the audience targets of the social media influencers and Bundled. Over 90% of the influencers' Instagram followers are over the age of 18,

The followers of Rarko's YouTube channel, where the final competition was posted, are also 100% over the age of 18, the core target group of the brand.

Terms and conditions of the promotion clearly indicate that participants need to be at least 18 years old. Participants younger than this age required parental consent. The final participants were all over 12 years old, for those under the age of 18, parental consent was received. In response to this complaint, however, Kellogg's is now reflecting on going beyond the EU Pledge to require participants below 18 to not only require parental consent but to also be above an age higher than 12 years.

The creative execution of the campaign was clearly aimed at a target audience of adults. Both the influencers are adults with primarily adult social media followers. People that can be seen cheering in the background are adults. The dark colours and the type of music that were used do not typically appeal to younger kids. Adult language was used and prizes to win were primarily appealing to an older audience.

The giant Pringles can, which served as gift wrap for the prize of four 200g size resealable Pringles cans, was not portrayed in a way that encourages or condones excess consumption or portion sizes. The influencers do not interact with the prize in a way that encourages excessive consumption and they do not overconsume the product themselves when interacting with the food in the video.

### EU Pledge commitment

- *EU Pledge members commit either to:*
  - *Only advertise products to children under the age of 12 years that meet the common EU Pledge Nutrition Criteria; or*
  - *Not to advertise their products at all to children under the age of 12 years.*
- *The above policy covers marketing communications for food and beverage products that are primarily directed to children under 12 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 12. Company-owned, brand equity characters are not covered by the policy.*
- *Primarily directed to children under 12 means advertising in measured media where 35% or more of the audience is under 12 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 is not compliant with the EU Pledge nutrition criteria, therefore marketing communications surrounding the promotion of the food product must not be directed or be appealing primarily to children under 12 years of age. Creatives published by company-recognised influencers on their own feed paid-for by the brands are considered as a non-measured media, much like adverts appearing on social media platforms. Therefore, the Panel assessed the overall creative execution of the adverts appearing on the influencer's profile, specifically the Instagram posts, the YouTube video, and the linked website.

The gaming activity displayed in the photos and videos involved online football games. The Panel considered the fact that online gaming involving football games is not primarily appealing to children under 12 years of age, but its appeal spreads to teenage and adult audiences. The Panel found that the influencers themselves were either adults or older teenagers, whereas the participants seemed indeed to be younger than the influencers, but not under 12 years old.

Moreover, taking into account the overall design of the ad, namely the colours, music, depictions, and illustrations, Panel members found no elements to indicate that the ad would be primarily appealing to children younger than 12.

Based on the overall creative execution and the above rationale, the Panel judged that the post and video are compliant with the EU Pledge commitment.

**Panel decision: complaint not upheld**

**Case ID: 26**

**Appeal**

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<b>To</b>	EU Pledge Secretariat	<b>Date of meeting</b>	27 May 2021
<b>From</b>	EASA Secretariat	<b>Date sent</b>	28 July 2021

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### Appeal rulings – Kellogg’s

#### Complainant’s appeal

The Pledge member has not made clear how they ensured that the participants in the competition (who were under 18 and therefore required parental consent) were over 12 years old. If this was based on simple self-declaration of age (even with parental approval), this method of age verification is as insufficient as the age verification methods used by social media channels (self-declared birth date). Age-screening mechanisms are well-recognised as unreliable tools to prevent children under 13 years old from using a social media platform as it is sufficient to simply input an older birthdate to be granted access. The WHO have [highlighted](#) the problem of a substantial proportion of underage children using these platforms. Moreover, Instagram itself has [acknowledged](#) that it is an issue as ‘young people can lie about their date of birth’. It would therefore be useful to examine this aspect again and seek clarification from the Pledge member given that, as was previously mentioned in our original complaint, at least two of the participants appear to be very young and under the age of 12 years old and others also appear to be very young too.

Unfortunately the Pledge member, while recognising that parental consent had to be sought for certain participants, does not say for how many of the participants this was required. It would therefore also be useful to be seek clarification from the Pledge member on how many of the participants required parental consent because, even if parental consent was a condition, the presence in this competition of majority young teenagers especially including those for whom the age is clearly close to 12 years old (or potentially) under, would clearly increase the appeal for this demographic (under 12 years old).

The influencers being young adults or older teenagers does not mean that those who view or appreciate the video/competition will necessarily be of the same age demographic or older, as evidenced by the strong level of children participants who are clearly much younger than the influencers themselves (and referenced in the panel decision). Indeed, these influencers can be seen as peers or even role models whose opinions or endorsements carry more weight with children because of the respect or admiration younger children including those under 12 years old have for them, meaning that their collaboration with Pringles could have an even more powerful effect.

We would disagree that the creative execution of the campaign was not targeting children under 12 years old especially, as mentioned above, many of the participants, if not most, were under the age of 18 while at least two appear to be under the age of 12 years old. Moreover, the creative execution clearly includes some very child-appealing elements which are not fully addressed in the panel decision which mentions ‘colours, music, depictions and illustrations’ as specific elements which have been

taken into consideration in the overall design of the ad. We believe that the below child-appealing aspects should also be taken into consideration:

- The various competition elements: qualifying for an online football tournament to play on a gaming influencers' team (also likely to be very appealing to young children who look up to these influencers) with a chance to win an Xbox console, the chance to win headphones or hoodies by posting on Instagram about the competition, the possibility of winning the out-sized giant Pringles can if you can guess the correct flavours of Pringles can colours
- The strong elements of childish humour in the marketing:
  - At around the 4 minute mark of the promotional video posted on Youtube there is an 'advert break' to promote the fact that purchasing a can of Pringles provides the consumer with a 7-day access to Xbox 'Game Pass'. Not only would the humour emphasized in this advert be amusing to children, including those under 12 years old (a zombie's jaw falls off because he is so amazed at the offer, which is then stuck back on by his friend) but the offer of 7 days free access to a service already popular with children, would be particularly attractive to lower-income demographics of which children under 12 years old would naturally be a part.
  - We would also consider the over-sized Pringles can as a childishly humorous element which would be primarily appealing to children under the age of 12 years old. The promoted frame on Rarko's Youtube account emphasizes these over-sized Pringles cans and humour as Dani and Rarko 'battle' against each other using them in a jokey and silly manner which would be attractive to young children.

### **Advertiser's appeal**

We would like to reiterate that the Pringles brand has an age target demographic of adults 18+, which is aligned with the audience targets of the social media channels used in this marketing campaign. Over 90% of the influencer's Instagram followers of the channels were over the age of 18.

In addition, the creative execution of the campaign was clearly aimed at a target audience over 12 years old. People that can be seen cheering in the background are older teens / young adults. The dark colours that were used do not typically appeal to kids. Adult language was used and prizes to win were primarily appealing to an older audience. The giant Pringles can, which served as gift wrap for the prize of 4 separate normal size resealable Pringles cans, was not portrayed in a way that encourages or condones excess consumption or portion sizes.

Finally, the age of the influencers or participants is not covered in the scope of the EU Pledge and we believe this part should not be up for evaluation.

**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 a 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 plaintiff. 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.

Based on the arguments provided by the plaintiff the Appeal Panel judged that the appeal is admissible considering that the outlined arguments may contain sufficient elements pointing towards a possible substantial flaw of adjudication. Consequently, the Appeal Panel reassessed case 26 for the Kellogg's Pringles Benelux campaign.

The Appeal Panel considered the original decision's argument relating to the age-gating mechanism as correct and necessary, since the First Instance Panel is required to take into account all aspects of the advertisements. This includes all measures taken by the marketers to ensure that adverts published in non-measured media are not by default accessible or visible to children under 12, such as age-screening systems. However, this measure does not normally stand on its own for the advert's compliance, and must be considered in combination with all other factors.

The Appeal Panel first reviewed the creative execution of the adverts. The Appeal Panel found that there were no elements which would make the ad visually primarily appealing to children. Children may find the content appealing to a certain extent. However the audience that would relate to these influencers expands to include teenagers and young adults. The activity of online football gaming is one that children under 12 years old could find interesting and appealing, but this is not primarily appealing to them in comparison with older age categories, especially to teenagers. Football and online football gaming are not designed to appeal primarily to children nor are they predominantly the domain of children. The activities are popular with a very broad audience. Moreover, the participants did not seem to be under 12 years old, even though Panel Members could not validate their age. Taking into account the overall impression of the ad, this would not be a decisive factor in upholding the case.

Similarly to the First Instance Panel, the Appeal Panel has considered all aspects of the ad, ranging from its placement to the creative execution, from the tone of the language used to the participants' age. There is not any one component in the assessment made by both Panels that is a major decisive factor in concluding that the ad is appealing primarily to under-12-year-olds. All elements are assessed individually and then evaluated holistically to judge whether the advert would likely be more appealing to children under 12 than to any other age-group.

Based on the arguments and rationale outlined above, the Appeal Panel does not overturn the original decision. The complaint remains not upheld and the Kellogg's Pringles Benelux campaign is compliant with the EU Pledge commitment.

**Decisions regarding the appeal: admissible.**

**Decision regarding the complaint: not upheld.**