

**Case ID: 32**

**Decision**

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<b>To</b>	EU Pledge Secretariat	<b>Date of mtg</b>	23 April 2021
<b>From</b>	EASA Secretariat	<b>Date sent</b>	3 May 2021

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**Ruling – Nestlé**

**Description**

Nestle Smarties Instagram Posts in Germany

**Complaint**

Nestle Smarties Instagram Post 5th March

An Instagram story and video was posted by Smarties account (@smarties\_offiziell) on the 5th of March which depicts four Smarties chocolate sweets decorated as Easter bunnies, jumping around excitedly in an outside cartoon landscape. One of them paints a large Easter egg in a simple daisy pattern.

The caption reads:

*‘Was hoppelt schnell, ist bunt und klein? Das muss das SMARTIES©-Häschen sein! 🐰🤪 Unsere quirlige Rasselbande ist endlich da und wartet nur darauf, in eurem Osternest versteckt zu werden. 🤪 Haben sich unsere Osterhasen auch schon in euer Herz gehoppelt? 🍷🍷🍷 #smarties #vielevielebuntesmarties #buntewelt #ostern #smartiesosterhase #klapperhase’*

In English: What hops fast, is colorful and small? That must be the SMARTIES © bunny! 🐰🤪 Our lively gang of rascals is finally here and is just waiting to be hidden in your Easter basket. 🤪 Have our Easter bunnies jumped into your heart? 🍷🍷🍷 #smarties #vielevielebuntesmarties #buntewelt #ostern #smartiesosterhase #klapperhase

The childish appearance of the Smarties ‘bunny’ characters, the simple amusing activity they partake in (jumping around the Easter egg or painting it), the child-friendly cartoon landscape visuals with vivid bright colours, the emphasis on Easter bunnies and chocolate, the presence of the chocolate product itself as well as the tone of the caption accompanying the short video, demonstrate the clear targeting of a very young children’s audience, certainly younger than 12.

Nestle Smarties Instagram Post 17<sup>th</sup> March

An Instagram video was posted by Smarties account on the 17th of March which depicts five Smarties chocolate sweets decorated as Easter bunnies, jumping around excitedly in an outside cartoon landscape. One of them jumps and somersaults off a large Easter egg painted in a simple

daisy pattern. The ears of this bunny then tilts to the left and a stream of chocolate Smarties sweets are shot into the air.

The caption reads *Lass es rasseln mit der SMARTIES® Oster-Rasselbande 🐰❤️ Osterfans aufgepasst! Unsere Schoko-Osterhasen aus zartschmelzender Milkschokolade sind mit vielen vielen bunten SMARTIES®-Schokolinsen gefüllt und warten nur darauf, in eurem Osternest versteckt zu werden. 🕒 Die bunten Farben und das wilde Gerassel sorgen garantiert für strahlende Augen und spitze Ohren bei Groß und Klein. Bereit für gute Laune im Osternest? 🌈🍌 #smarties #vielevielebuntesmarties #smartiesdeutschland #smartiesoffiziell #osterhase #buntewelt #ostern #smartiesosterhase*

In English: Let it rattle with the SMARTIES © Easter rascals 🐰❤️ Easter fans watch out! Our chocolate Easter bunnies made from melt-in-the-mouth milk chocolate are filled with lots of colorful SMARTIES © chocolate lentils and are just waiting to be hidden in your Easter basket. 🕒 The bright colors and the wild rattle guarantee bright eyes and pointed ears for young and old. Are you ready for a good mood in the Easter basket? 🌈🍌 #smarties #vielevielebuntesmarties #smartiesdeutschland #smartiesoffiziell #osterhase #buntewelt #ostern #smartiesosterhase

The childish appearance of the Smarties 'bunny' characters, the simple amusing activity they partake in (jumping around, somersaulting off an Easter egg, the Smarties sweets streaming from the head of a bunny) the child-friendly cartoon landscape visuals with vivid bright colours, the emphasis on Easter bunnies and chocolate, the presence of the chocolate product itself as well as the tone of the caption accompanying the short video, demonstrate the clear targeting of a very young children's audience, certainly younger than under 12.

### Advertiser's response

We consulted our internal stakeholders involved in this activity and wanted to provide the below clarifications to the allegation of non-compliance raised in the complaint.

We never had the intention to target children below the age of 12. Our desired target group for Smarties are parents and other gatekeepers, so clearly adults. An analysis of the actual Instagram-followers of our Smarties Instagram account shows, that almost all of them are  $\geq 18$  years old. Only 3.5% of users are between the ages of 13 and 17. It shall also be noted, that Instagram's usage guideline only allow users 13 years of age and older. It all proves, that our intention is to communicate to adults only and that it is very unlikely that our smarties posts on Instagram will be seen by children  $< 12$  years of age.

Compared with the rules of the EU Pledge regarding the use of animation and sound effects, we came to the conclusion that the following aspects are not in line with the rules:

- Child-friendly cartoon landscape visuals with vivid bright colours which are primarily appealing to a child (with absence of an adult reference/context)
- Simple, amusing activity

With regards to the caption accompanying the short video: Here is a references missing, that shows we are talking to the gatekeeper (eg. 'share with your kids').

What is ok from our point of view:

- Appearance of the Smarties 'bunny' characters: As the bunny products are what we sell in store, it is ok for us showing the product in the videos. It shows the gatekeeper that the product is the perfect fit for the season and that their kids will enjoy it.
- Presence of the chocolate product (Smarties) itself: It's important for this product that we show there are Smarties inside the hollow figure (very unique on the markets).

We appreciate you shared this complaint with us which helped us to improve our practices and we already decided/implemented the following:

- We deleted the Smarties material in question.
- Going forward, we will review an appropriate style for the future Icon social posts and align closely based on this specific complaint.

### 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. Company-owned social media profiles fall under the non-measured media category, meaning that adequate audience metrics are unavailable, and therefore the Panel is presented with the task to assess the overall creative execution of the advertisements at hand – in this case the two Instagram posts in question.

Judging the creative execution of the 2 posts, the Panel found that the child-friendly cartoon landscape visuals with vivid bright colours and the simple story was appealing primarily to children under 12 years old. The panel stated that the presence of the product itself was not against the EU Pledge commitment, and as such it was not considered problematic. The Panel also noted that the text accompanying the posts was targeting parents rather than children, but the images shown in the posts were fundamentally childish and appealing at a very young demographic. Children who are still unable to read will be attracted by the cartoon visuals, regardless of the description alongside the posts. Moreover, the fact that there was an age-screening mechanism barring anyone under 13 years of age from registering on the platform is not sufficient on its own for compliance.

The Panel welcomed the action taken by the company to remove the posts in question, recognising the fact that the posts were not in line with their commitments. Indeed, the posts were appealing to children under 12, but the fact that the company acknowledged it and deleted the posts was deemed by the panel as sufficient to consider this complaint as solved.

**Panel decision: case solved by self-regulation**