

**Case ID: 37**

**Decision**

---

<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

---

**Ruling – Nestlé**

**Description**

KitKat Relaxing Instagram Spain

**Complaint**

An Instagram [video](#) was posted by KitKat Spain on the 18th of March. It depicts a KitKat chocolate Easter Bunny, wearing sunglasses, relaxing and floating on a lilo in a swimming pool.

The visuals are of a brightly-coloured 3D cartoon landscape reminiscent of children’s programmes. The next frame shows the KitKat chocolate bunny product with the headline ‘Bunny merece un break’ (In English: Bunny deserves a break).

The simplistic humour (the chocolate bunny relaxing in a swimming pool with Easter chicks also visible in floating rings), the bright and appealing colours and audiovisual aspects resembling young children’s cartoons, the use of the Easter bunny (a character of clear attraction and relevance for younger children), as well as the promotion of chocolate products which would be especially appealing for children (Easter chocolate products), and even the childish name of the campaign ‘Kit Kat Bunny’, clearly demonstrates that this marketing is targeted toward younger children under 12.

### Advertiser's response

The KITKAT Easter campaign and the KK Seasonal assets have been developed globally to target Family Enthusiast (Pre-family and young families that have kids 0-4 y.o.)

The idea of the campaign is that “Everyone deserves a break” this is why we have some assets where the bunny is training for Easter and then he gets his well-deserved break with light-hearted scenarios.

We never had the intention to target children below the age of 12. Our desired target group for Kit Kat is adults. An analysis of the actual Instagram-followers of our Kit Kat Instagram account shows that, out of 13.7 k followers, almost all of them are  $\geq 18$  years old (95.1%). Less than 1,000 users are between the ages of 13 and 17, which is the most risky age group (but targeting this group is allowed by the EU pledge and Nestlé Policy). It shall also be noted, that Instagram's usage guideline only allows 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 Kit Kat posts on Instagram will be seen by children  $< 12$  years of age.

We have reviewed this particular complaint, we believe it is compliant for the below reasons:

- The language used is not childish, clearly not targeting a younger consumer
- The bunny is indeed the product and therefore we are compliant to use it in our communication. The emphasis on the bunny is linking the product to the season and is showing the gatekeeper that the product is the perfect fit for the season and that their kids will enjoy it.
- The style is cartoon-y in design however it is not of primary appeal to children, and can be relevant to older consumers, playing on nostalgia for adults ( gym clothes, ray-ban style sunglasses...)
- The simplistic humour is part of the brand personality
- The act of having a break, relaxing in a pool with a drink is not a ‘child-driven’ activity and the look & feel is more realistic than kiddish (floatie, water treatment...)
- The one ‘correction’ we could make is to remove the floating characters as they can appear as being more childish.

Therefore we can defend this particular execution and for now we ask the Spanish team not to pull the ad but to keep it as it is.

### 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 advertisement at hand.

Judging the creative execution of the post, the Panel deemed that the brightly coloured landscape around the pool, and its graphic design where the bunny is placed to be appealing primarily to children below 12 years of age. The presence of floating toys around the bunny enhances this appeal to children. However, even the removal of these toys, as the company stated in their reply, would not be judged as sufficient to mitigate the creative being appealing primarily to children under 12. The Panel also noted that the presence of an age-screening mechanism on Instagram is not sufficient on its own for compliance. The Panel noted that the presence of the chocolate bunny itself in the ad poses no problem with regard to the EU Pledge commitment, as this is simply advertising the product.

Based on the overall creative execution, the company's potential actions to improve the adverts' compliance, and the above rationale, the Panel judged that the Instagram post still has a very childish appearance and was deemed to be appealing primarily to children under 12. Consequently, the post is not compliant with the EU Pledge commitment and the complaint is upheld.

**Panel decision: complaint upheld**