

Case ID: 67

Decision

To	EU Pledge Secretariat	Date of meeting	11 May 2021
From	EASA Secretariat	Date sent	31 May 2021

First instance ruling – Mars

Description

M&Ms Instagram stories in France

Complaint

Mars M+Ms Choco Eggs

On the 19th of March the MMSFRANCE account posted two Instagram stories (which only last for 24 hours) to promote their new 'Choco Eggs' Instagram filter.

The first picture shows an animated cartoon hand (of the Branded Cartoon M+Ms character) making 'bunny ears' with their hand with the caption of the post saying 'Surprise: Le nouveau filtre special Choco Eggs est disponible! SWIPE UP pour l'essayer'

The second post shows a young person using the filter which adds a 'bunny' filter to the viewer's face with rabbit's teeth and whiskers. An M+Ms character stands behind her, playing a joke by creating 'bunny ears' with their fingers behind the viewers' head. M+Ms chocolate Easter eggs are also shown in the foreground. The text on the post reads: 'Teste le et partage nous ta vidéo en identifiant @mmsfrance dans ta story'.

The presence of the branded cartoon character, both in the Instagram stories, as well as in the branded Instagram filter, the simple humour of the filter (the M+Ms character playing a joke on the user by holding his fingers up behind the user, the exaggerated cartoon bunny face appearance of the character) which would be appealing to younger children, the theme of the post pertaining to Easter eggs – something which is strongly associated with and likely to be appealing to children, as well as the informal tone of the post using the informal 'tu', demonstrates that this post is directed towards children, including those under the age of 12 years old.

M+Ms France Competition

This post on the 24th of March on the MMs France Instagram Stories is a competition to win an M+Ms Chocolate Egg by responding correctly to the following question 'Which M+Ms is present on the packet of our 'Choco Eggs'? There are then four options (Red, Blue, Yellow, Miss Green).

The presence of the chocolate products in the post, the presence of brand cartoon characters with animated amusing expressions who are partaking in an activity which is of interest and done by very young children and certainly those under 12 years old (Easter Egg Hunt), the simple and easy question posed, the premium offer of a free chocolate Egg as a prize, the tone of the post using the informal tone ('réponds) as well as the bright and attractive colours and graphics demonstrates that this example should be considered to be marketing to children, including under the age of 12 years old.

Advertiser's response

At Mars, we pride ourselves on our commitment to responsible marketing. Our Mars Marketing Code (MMC) is one of the most restrictive in the food industry and we review it regularly. We are one of a few companies to commit not to undertake any marketing activities to children under 12 years (under 13 for digital platforms) across media placement and marketing content – regardless of the product's nutritional profile – and to uphold a 25% child audience threshold. We do not use any licensed characters or celebrities primarily appealing to children under 12 in any of our marketing content. In addition to the EU Pledge audit, we hold ourselves accountable through an external third-party audit of our compliance with our Marketing Code. We report the results to the Mars Board for oversight and publish them in an annual governance report. Our 2020 report can be accessed [here](#).

It is our ambition to be a leader in this space and we are continually evaluating our marketing practices and looking for ways that we can do better. For years, we have worked in partnership with the industry through the EU Pledge and other pledge programmes in an effort to lead the industry in a more responsible direction and encourage our peers to improve their food and beverage marketing practices. In France, for instance, we have worked closely with ANIA, the French food trade association to develop an industry-wide commitment not to advertise any food and beverage products to children under 12 across channels and regardless of nutritional profile.

We have reviewed the concerns raised by the complainant in Case 67 and the corresponding stories published on the @mmsfrance Instagram account. We appreciate the opportunity to respond and are doing so in line with our Mars Marketing Code (our EU Pledge commitment) as well as the EU Pledge Implementation Guidance Note – particularly section 2 'Addressing Creative Execution'.

As per our commitments and the guidance note, in online media, we consider the placement of the marketing content, the overall impression of the advertising, actions taken to restrict child access and the target demographic based on our media plan. Based on an assessment of both the placement and content, we believe that none of the two Instagram stories in question are in breach of neither the EU Pledge nor our own Mars Marketing Code. Our assessment follows:

1. Placement of marketing content, target demographic based on our media plan and actions taken to restrict child access

The marketing content in posts a. and b. has been published on Instagram, which is a platform that requires users to be aged 13 or higher at a minimum. We rely on Instagram's age-screening and parental consent mechanism, which we know requires a full date of birth as well as a process to verify accounts that are suspected to be too young. We are proactively working with Facebook and Instagram through the Global Alliance for Responsible Media (GARM) to improve the safety and brand suitability of the platform.

We recognise that some children under the age of 13 may not be truthful about their age to access the platform (the exact number particularly in Europe is unknown, but, as an example, data published by the Pew Research Center in July 2020 reported that 5% of U.S. parents say their child of age 11 or younger used Instagram¹). Therefore, we take additional actions to minimise children under 13 being exposed to our marketing content. These include a continuous review of the age demographics of the followers and viewers of our accounts, and targeting any sponsored/paid-for content at higher ages.

In the case of the @mmsfrance Instagram account, the age demographic breakdown shows that only 8.4% of our audience is aged 13-17, while the remaining 91.6% are aged 18 or higher. This means that even if the 13-17 age range included children under age 13, their share of the total audience would be below the EU Pledge's 35% audience threshold as well as our stricter 25% audience threshold. The target audience for the Easter filter in story a. was set to 15 years as the minimum age.

We are happy to share proof of age breakdown with the EU Pledge Secretariat under NDA, but unfortunately cannot do so publicly as it contains confidential information.

2. Overall impression of the advertising

In addition to the placement, and in recognition of a small number of Instagram users being under age 13, we use both Mars proprietary frameworks (grounded in academic evidence and consumption data) and the EU Pledge Implementation Guidance Note to ensure our marketing content doesn't primarily appeal to those under age 12.

In line with the EU Pledge and our MMC, the two Instagram stories in question do not feature any licensed characters or movie tie-ins, games, toys, animation or sound effects that primarily appeal to young children.

Looking at the creative execution, the posts do not use language, text, navigation or any other aspects of design clearly intended to appeal to young children. Engaging with users is a key feature of social media and the grammatical form 'tu' to address people is very common regardless of age group, and is the way all of our brands communicate with our consumers. All Mars Wrigley brands stay clear of any language that directly addresses children, such as 'hey kids'. The colour schemes in both posts are of universal appeal and do not feature any cartoon-style execution.

Seasons and seasonal rituals (e.g. Easter, Christmas or Halloween) are enjoyed by people across age groups. The marketing content in both stories addresses teenagers and adults, expressly avoiding featuring children or elements of primary child appeal. The prize offer of product in form of a chocolate egg in story b. is of universal age appeal, as opposed to a toy or similar prize which would have primary child appeal.

Use of brand characters

Both our EU Pledge and MMC commitments allow the use of brand characters, in line with academic literature differentiating between brand characters and licensed characters. Our M&M'S characters are intended to appeal to people aged 13 and above. They have been up-aged and need to adhere to strict character guidelines, ensuring that the context, theme and tone of their execution is adult. For example, they do not act in cartoon settings but stay in the real world or their neutral yellow world, interact with photorealistic props only, represent adults with adult voices, humour and mannerisms, and avoid any childish or slapstick behavior. The 3D-rendering of the characters is a technique that decreases child appeal, as opposed to 2D-renderings which are more closely linked with cartoon-style execution and popular children's shows.

The M&M'S characters can interact with seasons and universal seasonal rituals (e.g. Easter, Halloween or Christmas), but in a manner of universal age appeal and in line with all guidelines. In story a., the M&M'S character is wearing an Easter bunny-style nose clip which is photorealistic and intended as an accessory. Going forward, we are working to make it even clearer that accessories and props are better identifiable as such, so that we avoid confusion. The M&M'S characters are not in full Easter bunny

dress-up as children's cartoons and programming would feature them and all props they use, e.g. the baskets and product in story b. are photorealistic.

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.*

Initial 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 M&Ms Instagram stories.

Judging the creative execution of the first stories, the Panel noted that the presence of the branded cartoon character was not as such against the EU pledge commitments, but found that the concept of the stories with a special chocolate egg filter, the inclusion of a joke by holding two fingers up and the bunny face are elements potentially appealing to a young audience, but not necessarily primarily to children under 12. Marketers should be careful in the way such activities are portrayed in adverts by including mitigating factors. The overall execution of the story may be appealing to some children, but its 3D animations and the behaviour of the brand characters are not elements that would appeal primarily to children. In fact, the M&Ms brand character often engage in a type of humour that is mostly oriented to adults, as young children would not be able to understand or relate to such humour or behaviour. Moreover, the story features a brand character and a female person clearly older than 12, with the former seeming unexcited. In addition, colourful animations are not an advertising method used exclusively for targeting children. Whilst they can attract children's attention, the way the creatives are produced and the behaviour of the characters matter more than the fact that they are animated. In this case, the brand character does not engage in a behaviour that is deemed explicitly or primarily appealing to children. However, advertisers must be careful in how they link their adverts to popular yearly celebrations. For instance, Carnival, Halloween, and Easter are all appealing to a wide audience, but the particular aspects of these that the adverts are linked to and the way they are portrayed matter more than merely including elements of the Easter tradition. Here, the stories depict 3D animations of the brand character, which *per se* is outside the scope of the EU Pledge, but who nonetheless engage in a behaviour that is mirroring more adults than children and refer to Easter and an Easter egg hunt, but are not showing the activity in a childish manner that children would find appealing.

Judging the second set of stories, the Panel considered that the presence of Easter eggs in a basket refers to an Easter egg hunt, an activity mainly enjoyed by young children. The post contains the brand characters, which – as such - is not against the EU pledge commitment and a quite long text for an Instagram story before the simple quiz question, given that Instagram stories have a usual duration of a few seconds. Whilst the story is inherently colourful, the colour palette reflects more the brand's colour scheme and is deemed by the Panel to be nuanced in a way that is predominantly not appealing to children under 12. However, creatives that include animations, graphic designs, and reference to popular celebrations must be presumed to be primarily appealing to children under 12. In this case, whilst the story might attract the attention of young children, the Panel believes it is more likely to appeal more to adults than children.

The Panel also took note that the stories used the informal French pronoun “*tu*” instead of the formal version of “*vous*”, which would have been used if the stories were targeting adults. Marketers must be careful when using informal pronouns, especially in the French language, as the choice of the pronoun can reduce or widen the distance between the consumer and the advert. In this case, the Panel was not convinced that the stories were primarily appealing to children under 12. Instagram stories are

short by their nature and whilst their content may appeal to some children, the brand characters and the product itself are far more popular with adults. Incorporating periodical festive elements does increase the appeal to a young audience, but the way the creative produced matters just as much and in this case, there are insufficient elements to indicate that children would find this content appealing predominantly to them.

The fact that the posts were found on Instagram, a platform which has an age-screening mechanism barring anyone under 13 years of age from registering on the platform, was also taken into consideration by the Panel. However, it is not sufficient on its own to guarantee compliance.

Based on the above rationale, the Panel judged that the stories concerned are not appealing primarily to children under the age of 12, and therefore the complaint is not upheld.

Panel decision: complaint not upheld

Case ID: 67

Appeal

To	EU Pledge Secretariat	Date of meeting	02 July 2021
From	EASA Secretariat	Date sent	30 July 201

Appeal ruling – Mars M&Ms Instagram stories in France

Plaintiff's appeal

Children's Rights

It is now widely accepted that child nutrition, and the regulation of food marketing more specifically, has become a major public health and children's rights issue. The latest EU Children's Rights Strategy that was published in March is very explicit in this regard. It refers to the revised version of the Audiovisual Media Services Directive (2018) which stresses the importance of ensuring that self- and co-regulatory codes of conduct '*effectively reduce the exposure of children*' to audiovisual communications for the marketing of unhealthy food.

Business actors, including the food and advertising industries, have a responsibility to ensure that human rights, and children's rights more specifically, are duly respected when conducting their marketing activities. The marketing of unhealthy food negatively affects the right of children to the enjoyment of the highest attainable standard of health, their right to adequate nutritious food, their right to privacy and their right to be free from exploitation.

As highlighted in the UN Committee on the Rights of the Child's recent General Comment No. 25 on children's rights in relation to the digital environment (also published in March 2021), because the business sector affects children's rights directly and indirectly in the provision of its services and products relating to the digital environment they '*should respect children's rights and prevent and remedy abuse of their rights in relation to the digital environment.*' Moreover, *States parties should make the best interests of the child a primary consideration when regulating advertising and marketing addressed to and accessible to children.*

It is clear that, by failing to protect children from actual *exposure* to unhealthy food marketing, business actors do not meet their human rights responsibilities and in particular are failing to respect a variety of children's rights and uphold their best interests as a primary consideration.

Age Screening

Age-screening mechanisms are well-recognised as unreliable tools to prevent children under 13 years old from online platforms 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. Instagram itself has acknowledged that it is an issue as 'young people can lie about their date of birth'. While the Panel acknowledges that age-gating is indeed insufficient to guarantee compliance, it also states that '*Experts took note of the fact that the video appears on Instagram, which*

bars anyone under the age of 13 from registering on the platform. It is important to clarify that Instagram does not 'bar' anyone under the age of 13 years old. It has an age-gate which is theoretically meant to prevent those younger than this age from using the platform but which, as acknowledged by Instagram itself, does not work.

Appeal

We would like to appeal this Panel Decision.

Instagram Filter Post

Child-Appealing Elements

Animations

The Panel asserts that *'the overall execution of the story may be appealing to some children, but its 3D animations and the behaviour of the brand characters are not elements that would appeal primarily to children'* without explaining how 3D animations would not be appealing primarily to children. We would strongly disagree with the assumption that because 3D animations are used it means that the post is not targeting children (rather the opposite). Indeed, the vast majority of children's animations use 3D graphics. The top 20 highest grossing animated films (all children's films) lists only one 2D animated movie (The Lion King, 1994) with the rest being 3D animated. Indeed, the world's largest creator of children's animated movies, Disney, announced already in 2013 that there were no 2D features left in development (nor have there been any since) demonstrating the clear preference for 3D for children's content. Moreover, it is obvious that animated movies or TV shows in general remain much more prevalent for the children's demographic than teen/adult-directed entertainment.

M+Ms Humour

We believe that the Panel's assertion that *'the M&Ms brand character often engage in a type of humour that is mostly oriented to adults, as young children would not be able to understand or relate to such humour or behaviour'* to be disputable and in any case irrelevant to judging whether this example is a breach of the EU Pledge rules and directed at children. Indeed, Panel's further assertion that the *'behaviour of the brand characters are not elements that would appeal primarily to children'* does not seem to take into account that it is the brand character who is performing the childish joke – making bunny ears behind the girl. The Panel do at least accept that this joke could be appealing to children (and we would argue that it would certainly be appealing to children).

We would further disagree with the Panel's conclusion that the young woman in the ad is not excited. The filter is still available on the Instagram account of @mmsfrance where it is clear that she is very animated/excited, pulling silly faces which would be clearly appealing to young children.

The Panel also states that she is clearly over 12 years old. This is irrelevant to judging whether a marketing post is appealing to children under 12 who are not just attracted to marketing or entertainment which features their same age demographic (as can be seen by entertainment figures

such as bands or singers who are wildly popular with younger audiences whilst being much older themselves).

Easter Bunny Theme

The Panel have ignored the emphasis of the marketing on the filter which is not just a 'bunny face' filter (which would in any case be appealing to younger children) but an Easter Bunny filter (given the Easter theme of the posts)

As the Pledge have previously stated in another decision with Easter themes, *'The Easter Bunny is a fictional character primarily popular with children, who look forward to meeting him. In fact, the Easter Bunny is generally used in marketing communications to attract children's attention and appeal to their imagination and excitement for an Easter egg hunt.'* Moreover, the Panel have not addressed the implication of the Easter Egg hunt in this post – chocolate Easter eggs are shown partially obscured in a pink grass graphic, further emphasising the child-directed Easter elements in the post as an Easter egg hunt, as acknowledged by the Panel previously, is an activity primarily popular with children under the age of 12 years old.

We agree with the Panel's assertion in this decision that *'Carnival, Halloween, and Easter are all appealing to a wide audience, but the particular aspects of these that the adverts are linked to and the way they are portrayed matter more than merely including elements of the Easter tradition'* as these traditions can be enjoyed of course by more than one age demographic.

However, the particular aspects of the Easter tradition which this post links to (Easter Bunny and Easter egg hunts) and the humorous and childish way they are portrayed are clearly primarily appealing to children under 12 years old for whom these particular aspects are only truly relevant to their age group.

Animations

The post is obviously much more than the 3D animations of the brand character (which we would in any case consider appealing to children). We disagree that the brand character is *'mirroring more adults than children'* and the assertion that the Easter activities are not shown *'in a childish manner that children would find appealing'*. The cartoon bunny appearance of the 3D AR filter would naturally appeal more to children as would the childish humour of the joke being played which also emphasises childish aspects of the Easter holiday (bunny ears behind the user's back).

Given the clear child-appealing elements mentioned above, it is not clear to us why the Panel has not taken into account the use of the more informal use of the tu verb tense for this example, which corroborates that this marketing targets young children. It is all the more surprising given the importance the Panel have placed on the use of 'vous' in other examples to dismiss previous complaints.

Instagram Quiz Post

Colour

The Panel acknowledges that the story is 'inherently colourful' but states that the palette chosen '*reflects more the brand's colour scheme*' which doesn't take into account that a brand's choice of colour scheme may be chosen to be inherently attractive to children in the first place. Moreover, M+Ms and the Choco Eggs come in a very wide range of different colours. To exclude colours from consideration in a Panel decision simply because a brand's 'colour scheme' also uses them would render the scope unduly narrow. Furthermore, the Panel has not explained how the colour palette is 'nuanced in way that is predominantly not appealing to children under 12'.

Easter

The Panel states that, '*Incorporating periodical festive elements does increase the appeal to a young audience, but the way the creative produced matters just as much and in this case, there are insufficient elements to indicate that children would find this content appealing predominantly to them.*' While, as we mentioned above, we agree that periodic festivities such as Easter can also appeal to other demographics, it is the particular aspects linked to these seasonal festivities which are emphasised in a marketing example which must be taken into account. In this case, it is the Easter Egg hunt.

As has been acknowledged previously by the Panel, '*an Easter egg hunt is an activity primarily popular with children under 12 years old. The fact that the post relates to an activity that young children under 12 are every year excited to engage in is another element that the Panel deemed problematic in terms of appealing to a very young audience.*' Furthermore, in this previous Easter-related case mentioned above the Panel found that, '*the ad alludes not merely to Easter as a religious or traditional celebration, but to an Easter egg hunt, which is exclusively a children-oriented activity.*'

We do not believe therefore that the Panel have adequately taken into account the inclusion of such an activity (Easter egg hunt) in assessing the appeal to children, especially in light of previous decisions.

Moreover, this previous Instagram post had a longer accompanying textual caption which the Panel had deemed to be targeting parents. However, as the Panel stated at the time, '*notwithstanding the length and the content of the text, the activity it is referring to is something that parents engage in with their children, and not the other way around. In other words, an egg hunt is an outdoor activity that is primarily done by children under 12 years old.*' However, and conversely, with this M+Ms post the Panel argue that the text in the first Instagram story has 'quite a long text' as a reason why it should be considered to be targeting adults and not children. In any case, we disagree that the text is long. It consists of only two sentences (each only 9 words-long), written in the informal 'tu' form'.

Although the Panel does at least recognise with this post that the tu form has been used, because it does not consider the above elements as child-appealing, this has been dismissed, in spite of the importance the Panel has placed on vous/tu forms in previous decisions.

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.

The Appeal Panel noted the complainant's general comments in their preamble to their appeal. They also noted however that the First Instance and Appeal Panels were required to assess compliance of advertising solely against the EU Pledge commitments.

Based on the arguments provided by the plaintiff in the second part of the text, 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 67 for the M&Ms Instagram stories.

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 discussed the creative execution of the bunny theme story. According to the Appeal Panel, the concept of the stories with a special chocolate egg filter, the inclusion of a joke by holding two fingers up, and the bunny face are elements which would appeal to children below 12 years, but not primarily. The Appeal Panel took account of the fact that the story is linked to Easter, as the brand character depicted is a bunny and the presence of Easter eggs in a basket refers to an Easter egg hunt, an activity that is mainly enjoyed by young children. The Appeal Panel agrees with the First Instance Panel in their recommendation that care should be taken in the way such activities are portrayed in adverts by including mitigating factors. In this case, even though the starting point is related to an Easter egg hunt, the reference is to the Easter celebration in general, which is appealing to a broader audience. Even though the activity suggested in the post is rather childish, due to the wider appearance of Easter, the Appeal Panel did not judge that it is primarily appealing to children below the age of 12, but rather appealing to an audience which would mainly include children and teenagers and maybe even some adults, but not primarily children.

The Appeal Panel then discussed the creative execution of the quiz story. The presence of the brand character by itself is not against the EU Pledge commitment. The Appeal Panel agreed with the First Instance Panel that the text of the Instagram story before the quiz is rather long, something which would not be ideal for younger children to read. The presence of the Easter theme and a quiz related to the product in an Easter context could have an appeal to children below 12 years old but this appeal would spread to a bigger audience. Thus, the Appeal Panel did not find that the post was overall primarily appealing to children below 12 years old.

The Appeal Panel also took note that the stories used the informal French pronoun “tu” instead of the formal version of “vous”, which would have been used if the stories were targeting adults. The Appeal Panel agreed with the First Instance Panel that marketers must be careful when using informal pronouns, especially in the French language, as the choice of the pronoun can reduce or widen the distance between the consumer and the advert. Whilst linguistic particularities have an important sway in the assessment of the ad, depending on the cultural context, in this case, the Appeal Panel found that the ad contained insufficient elements to warrant a breach of the EU Pledge commitment. The ad contains certain elements that are likely to appeal to children under 12, but there are also mitigating factors that would not appeal to them.

Similarly to the First Instance Panel, the Appeal Panel has considered all aspects of the post and the part of the game in question. There is not any one component in the assessment made by both Panels that is a major decisive factor in concluding that the ads are appealing primarily to children under 12. 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. In this case, the ad is not overall appealing primarily to them.

Based on the arguments and rationale outlined above, the Appeal Panel does not overturn the original decision. The complaint remains not upheld and both stories are compliant with the EU Pledge commitment.

Decision regarding the appeal: admissible.

Decision regarding the complaint: not upheld.