

**Case ID: 85**

**Decision**

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<b>To</b>	EU Pledge Secretariat	<b>Date of mtg</b>	28 May 2021
<b>From</b>	EASA Secretariat	<b>Date sent</b>	08 June 2021

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**Ruling – Ferrero**

**Description**

Ferrero Ladybug Instagram post in Italy

**Complaint**

This marketing example concerns a [video](#) posted on the 4<sup>th</sup> of February on KinderItalia’s Instagram Page which advertises that characters from the children’s popular animated TV show about the superhero ‘Miraculous Ladybug’ which can be collected with the purchase of the Kinder Sorpresa products. The Kinder Sorpresa product is shown in the video.

The visuals, music and messaging are very child-friendly – bright, engaging colours, use of licensed media characters, prompts to collect all the toys in this promotion. The text reads ‘Big adventures with magical characters, all collectible’ in Italian.

Although the accompanying text reads, ‘With the new Miraculous collection by Kinder Surprise your children will turn into superheroes!’ it is clear that the creative execution of this marketing is geared towards children.

Themes of adventure, superheros, magic as well as the premium offer (collectible licensed media cartoon character toys (from a children’s TV show) which come with the chocolate product) are obviously attractive to younger children. Moreover, the bright colours and dynamic visual components will be of particular appeal to children. For these reasons, this example should be considered to be an example of marketing to children under the age of 12 years old.

### **Advertiser's response**

All Ferrero's brands globally do not communicate directly to children. Ferrero has always believed in the crucial role played by parents in educating their children to a balanced and varied diet and an active lifestyle. Therefore, advertising and marketing communications concerning our food products are directed primarily to adults who make the household purchasing decisions and to young people, in compliance with local requirements, in terms of content, as well as of media purchasing.

As for all the marketing communications concerning our food products, the Kinder Surprise post featuring our Miraculous collection has been designed and placed to target adults. We have taken all the available measures to ensure compliance with our commitment:

- The post uses wording clearly directed at adults "I tuoi bambini si trasformeranno in supereroi".
- It was placed in a 'age-gated' environment as Instagram requires users to be over 13yo to register to the platform. Please also note that the demographic data of our Instagram profile shows that more than 97% of our organic followers is above 18 years of age.

### 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 (Kinder Sorpresa) is not compliant with the EU Pledge nutrition criteria. Therefore, marketing communications surrounding the promotions of the food product must not be directed or be appealing primarily to children under 12 years old. Company-owned social media profiles fall under the non-measured media category, meaning that adequate metrics are unavailable. The Panel took note of the fact that Instagram has an age-gating mechanism barring anyone under the age of 13 from setting up an account. However, as per the EU Pledge commitment, an age-gating mechanism is not sufficient on its own to guarantee compliance. Consequently, the Panel is presented with the task to assess the overall creative execution of the advertisement at hand: in this case, the Kinder Sorpresa Instagram video in Italy.

The Panel considered that the overall composition of the ad would primarily appeal to children. Its animation, though short and limited, is nonetheless fundamentally childish as its first scene depicts the licensed character of the Miraculous Ladybug, not the toy or the product. This first part of the video also zooms in on the character, with the toy being only a secondary element to the brightly coloured background mirroring the character's colour palette. Though animations and creative graphic visuals are not an exclusive advertising method used solely to target children, in this case, the animation focuses especially on the licensed character as it is portrayed in the cartoon series *Miraculous: Tales of Ladybug & Cat Noir* with a similar bright colour scheme. In fact, the Panel found the overall colours of the first part of the video to be inherently childish and meant to target a very young audience.

The Panel also further discussed the inclusion of the licensed character Ladybug. The character appears in a 3D animated cartoon series that is predominantly popular with young children under 12 years old and less so with adults. It is a cartoon series that children between the ages of 4 to 8 would happily enjoy watching and one that they could fixate on for a while. Attaching its product to the series via the main character is, in itself, not an issue, if the creative composition of the ad does not replicate the overall childish look and feel of the series. In this case, the first part of the ad aims to attract children's attention by using the licensed character as a hook, and then show that it is linked to a Kinder product. The Kinder toy found inside the product appears only in the backdrop of the video and is not the main focus of the video in the same way as it is in other Kinder Surprise adverts. The main focus of the video is the licensed character Ladybug as it is displayed in the children cartoon series. In this sense, the video would appeal primarily to young children.

The Panel took note that the music accompanying the video on Instagram is also licensed from the cartoon series. In addition to the character appearing first and centre in the ad, the music also provides as an audio cue for children who will recognise the song from the cartoon series. In this sense, the song of the video is primarily aimed at targeting children under 12 years old.

The Panel considered that the accompanying text appearing in the caption and in the video was largely targeting parents, with the use of "*tuoi bimbi*" referring to "your little ones" or "your kids". However, the Panel did not find the text appearing in the video or the caption to be mitigating sufficiently the creative execution of the video. Moreover, the other elements outlined above all contribute considerably in the Panel's assessment that, notwithstanding the accompanying text, the video is primarily appealing to children under 12. If the intention of the video was to target parents, it would not have included the licensed character as its first image with such bright and vivid colours

accompanied by the series' music in the background. The second part of the video does not pose a problem, according to the Panel, as that merely displays the product and its packaging. The first scene of the video is, however, what brought the Panel to the assessment that the Instagram post is primarily appealing to children under 12.

Based on the arguments and rationale outlined above, the Panel judged that the Ferrero Kinder Sorpresa video on Instagram is appealing primarily to children under 12 years old, and is thus in breach of the EU Pledge commitment. Therefore, the Panel upheld the complaint.

**Panel decision: complaint upheld**