

Case ID: 86

Decision

To	EU Pledge Secretariat	Date of mtg	28 May 2021
From	EASA Secretariat	Date sent	08 June 2021

Ruling – Ferrero

Description

Ferrero Applaydu YouTube ad in Italy

Complaint

This marketing examples concerns a [Youtube ad](#) for Kinder Italia’s Applaydu app and Kinder Sopresa chocolate egg product for children.

The ad opens with a picture of the Kinder Sopresa chocolate product and one of the collectible toy surprises (toy shark) you can find within this chocolate product. The voiceover speaks in an excited tone telling the viewer that ‘With Applaydu, you can bring your ‘surprises’ to life and unleash your imagination. Create personalized stories with your children. There is a world of games to discover on Applaydu.’ During this narration the toy shark becomes animated into a digitalized cartoon and swims through a very bright and colourful cartoon sea the visuals of which are very similar to cartoons which would be watched by younger children under the age of 12.

The promotion of an app with games which is directed towards children under the age of 12 years old (it is aimed at children 4+ years old), the emphasis on the collectible toys (available only with the purchase of the Kinder products) which can ‘come to life’ with the use of the Kinder kids’ app, the promotion of games, imagination, stories and personalization which will be particularly attractive to younger children under the age of 12 years old as well as the visuals and animation used in this advert demonstrate that this marketing example should be considered to be targeting 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.

Appplaydu is an immersive experience designed by a team of experts as a fun edutainment app for families with children aged 4 to 9 years old to use together. The app has been created following the highest standards and includes a series of safeguards specifically developed to protect its youngest users: **parental permission is required** when first setting up the app and parents have access to a 'dashboard' that allows them to always control their child development and progress, the app **does not include any references to Kinder or its branding** (nor mentions words that could create a direct connection with products e.g. no 'toys', no 'surprises', etc.), it is totally **free from advertising** and **from in app purchases**. The app is also free to download and **does not require any purchase of our products to be enjoyed** (see last screenshots on app playability below).

As for all the marketing communications concerning our food products, the Instagram story mentioned in the complaint has been designed and placed to target adults. We have taken all the available measures to ensure compliance with our commitment:

- The title of the video in question and its description are clearly direct to parents: 'Kinder Sorpresa APPLAYDU - crea storie personalizzate con i tuoi bambini!', 'Rendi speciale i momenti insieme ai tuoi bimbi'.
- The wording embedded into the video as well as the voiceover are also clearly directed to adults: "dai vita alle sue sorprese" "scatena la sua immaginazione" "crea storie personalizzate con i tuoi bimbi".
- The link available in the post redirects users to the section of the Kinder website dedicated to Appplaydu. A section that clearly addresses the adults both in terms of language and visuals.

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-measures 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 YouTube video in Italy.

The Panel considered that the overall composition of the ad would primarily appeal to children. The first scene depicting the product and the toy is not inherently appealing to a young audience, as it only informs viewers of what to expect when purchasing the product. Moreover, the toy and the product are outside the scope of the EU Pledge commitment. However, the second part of the video sees the toy becoming animated and swimming through a virtual 3D ocean that contains bright vivid colours. The setting is similar to something children would be keen to build themselves out of cardboard and to cartoon short stories on TV that they would enjoy watching. The second part of the ad is displaying gameplay of the *Applaydu* online app game. The game is fundamentally purposed to be and played by children as the visual rendition of the environment is colourful and childish with elements that are primarily appealing to a very young audience.

The Panel took into account the fact that *Applaydu* is not branded, contains parental control, and can be played for free without having to purchase the product. The advertiser also confirmed that the game was created to be appealing to and played by children between the ages of 4 and 9 years old. However, the complaint here centres on the advertisement as appearing on YouTube. The Panel thus did not assess the game, but its representation in the YouTube advert. As such, the Panel found that displaying gameplay in an advert is used as a hook to attract the attention of a young audience.

The Panel also assessed that the language accompanying the video is largely targeting parents, with phrases such as *"con i tuoi bambini"*, referring to playing the online app game "with your children", or *"dai vita alle sue sorprese"*, translating as "give life to their surprises". However, the tone of the voice-over is particularly excited in a manner that would incite children to participate in the online game, and less targeted at parents. Similarly, an ad meant for parents does not need to include a gameplay presentation that displays bright vivid colours accompanied by childish background music. If the game is intended to be played by children, it is recommended to mitigate its appeal to children when showing it in an advert of a non-compliant product.

Whilst similar adverts for the same products may also include animated toys and gameplay of *Applaydu*, this particular advert contains more gameplay than depiction of the product or toy. Moreover, since the advert appears on YouTube, it is more likely to be seen by children than on a corporate website featuring only nutritional information.



Based on the arguments and rationale outlined above, the Panel judged that the Ferrero Kinder Sorpresa video on YouTube 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