

Case ID: 88

Decision

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

First instance ruling – Coca-Cola

Description

Coca-Cola Instagram Kickshuffle in Denmark

Complaint

This example concerns an Instagram [post](#) by Coca Cola Denmark on the 23rd of March to promote the launch of their new Instagram filter ‘CokeShuffleChallenge’. Popular Danish celebrity @Thomasskov (34 years old) features in this post, drinking a can of Coca Cola. He is known from Danish reality and comedy programs, and among others would also have young/teenage followers. He is also the author of book for children ‘Snip Snak Snork’ which he is also currently promoting.

The Instagram filter splits the screen in half with the top half of the screen showing the user’s top half of their body, with the lower half of the screen showing some legs dancing to the catchy music which also plays with the filter.

The post encourages you to try the filter. The post states: “Kan du gøre det flottere, sjovere eller vildere end @Thomasskov [Can you make it nicer, more fun or wilder than @Thomasskov]”.

The use of simple and silly humour (the filter with legs which dance ‘for’ the user), the encouragement to use the filter which includes Coca Cola branding, the establishment of the association between drinking Coca Cola and dancing and ‘fun’, the feature of a dancing challenge ‘CokeShuffleChallenge’, a marketing format which has been incredibly popular with young children in the past couple of years, especially on platforms popular with young children under 12 e.g. TikTok and the promotion of this marketing campaign with a Danish celebrity popular with young people and a children’s book author, demonstrates marketing towards younger children, including those under 12.

Advertiser's response

Coca-Cola places great importance on its compliance toward the EU Pledge as well as its own Global Responsible Marketing Policy and, of course, the national regulations for marketing products to children, in this case, the Danish Marketing Practices Law (Markedsføringsloven). Coca-Cola wishes to emphasize that it exercises due care to ensure that all its marketing activities are always in compliance with the relevant laws, company guidelines and industry pledges.

The Coke Shuffle Challenge campaign went live in Denmark in March 2021. The campaign included local social media influencers as part of the marketing activities. The campaign shows social media influencers challenging their communities with "Kick Shuffle" dance moves, mimicking the moves shown in our new Coca-Cola TV copy.

The campaign is aimed at teens (age 16 and above), young adults and adults. The influencers were chosen specifically for their appeal to these segments. The viewer statistics of the influencer in question have been vetted and the influencers were chosen with the intent to reach an older audience (see attached industry and agency ethical guidelines). As a result, the largest viewership segment of each influencer falls well within these targeted ages categories, with some followers on either side of that segment. Coca-Cola previews the related videos and posts of the influencers to ensure compliance with our marketing guidelines.

The complaint concerns a specific video produced by TV personality Thomas Skov. We respectfully draw your attention to the following:

- Segmentation statistics showing that the main group of his followers consist of 18+ segments (see attachment). Thomas Skov has been chosen to broaden appeal of the campaign to adult segments.
- The ads with Thomas Skov ran only on Instagram, which allow users 13 and older. The ads did not run on other social media platforms. The ads did not target people below 16 years old. The reach distribution segmented according to age were as follows:
 - 13-15: 0%
 - 16-17: 9%
 - 18-24: 38%
 - 25-34: 41%
 - 35-39: 13%.
- While Thomas Skov may have written a children's book and may be promoting it on his website, this specific campaign and its content is not linked in any way with Mr. Skov's separate activities as an author. Rather, Mr. Skov has been chosen for his influence with adult social media users. The nature of the reach of this post in question as well as subsequent posts featuring Mr. Skov as part of this campaign are further proof that his audience is that of mature adults.
- We have reviewed the post carefully and do not assess the style, the tone, the nature of the video or the subject matter to be aimed primarily at children under the age of 13, which is the industry's voluntary and agreed upon age threshold in the Danish market. Rather, the content has been developed to attract the intended target group of teens over the age of 16, young adults and adults.

In conclusion, we assess the campaign as compliant with the EU Pledge

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 (Coca-Cola) 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 Coca-Cola Kickshuffle campaign on Instagram in Denmark.

The Panel considered that the overall composition of the video would not appeal primarily to children. Though the video may be perceived as funny by some young children, it is more likely to appeal to teenagers between the ages of 16 to 18. It does not contain any inherently childish content nor does it relate to any situation that children could connect with. Moreover, the use of humour in adverts is not a marketing tool used exclusively to target children.

The Panel also took into account the fact that the Danish influencer appearing in the ad is a popular TV presenter in Denmark and has also published books for children. However, this element is irrelevant to the case, as children are more fixated on the stories and the protagonists depicted in the books rather than who wrote them. The music that accompanies the short video is also not one that would attract the attention of children but would more likely relate to an older audience who is used to hear this type of music in clubs.

The Panel noted that the video fits within a recent trend of short videos on social media platforms that are increasingly popular with teenagers and young adults. The videos usually depict mundane daily behaviours, personal thoughts, or can be animated filters that play on visual humour. Though this trend could also touch children who have a smartphone, it is more likely to appeal to a demographic that is following it consistently on social media, which would include teenagers and young adults, but less so children under 12 years old.

Based on the arguments and rationale outlined above, the Panel judged that the Coca-Cola Kickshuffle Instagram video is not appealing primarily to children under 12 years old, and is thus compliant with the EU Pledge commitment. Therefore, the Panel did not uphold the complaint.

Panel decision: complaint not upheld

Case ID: 88

Appeal

To	EU Pledge Secretariat	Date of mtg	12 July 2021
From	EASA Secretariat	Date sent	02 August 2021

Appeal ruling – CocaCola

Complainant'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 '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.' 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.

Appeal to Children

Although the Panel does acknowledge that ‘the video may be perceived as funny by some young children’ it finds that ‘it is more likely to appeal to teenagers between the ages of 16 to 18.’ The Panel does not explain why this video would be appealing to this particularly narrow age range (16-18) beyond the fact that the Pledge member has claimed that this is its target audience. Indeed, these dance challenges, which have seen become significantly more popular in recent years (and on platforms particularly popular with children such as TikTok and Instagram) are particularly enjoyed by younger teenagers and older pre-teens.

We believe that the Panel has underestimated the appeal of such dance challenges for adolescents and children under the age of 12 years old, especially those older children in this age bracket. While the dance may not appeal to very young children such as 3-4 year olds, children under 12 years old are not a homogenous group and what will appeal to children aged 8-12 for example will not be the same as these much younger children.

The filter itself would be amusing to young children too: allowing young users to see their top half as normal but their bottom half replaced by a professional dancer performing the Coca Cola Kick Shuffle. Moreover, the celebrity who promotes this in their Instagram post, Thomas Skov, would be recognised by children, being a popular TV personality in Denmark.

Children’s Smartphone Ownership

The Panel notes that ‘the video fits within a recent trend of short videos on social media platforms ...[which] usually depict mundane daily behaviours, personal thoughts, or can be animated filters that play on visual humour’. We would agree that this video indeed fits into this trend but we disagree that they would only be popular with teenagers and young adults.

The Panel does acknowledge that this trend ‘could also touch children who have a smartphone’ but believes that ‘it is more likely to appeal to a demographic that is following it consistently on social media, which would include teenagers and young adults, but less so children under 12 years old.’ This fails to address that younger children are also prolific users of smartphones – the latest EU Kids Online report (covering 19 European countries) which was published this year found that ‘for most children across Europe, smartphones are now the preferred means of going online’. Indeed, smartphones are the most popular device for children aged 9-16 to use daily across Europe (as shown in the table below) with a significant number of under 12s owning their own phone. In the UK for example, over half of ten year olds own their own smartphone. The Ofcom study where this was mentioned also found that the rate of ownership doubled between the ages of 9 and 10 demonstrating how important this pre-teen age group is in terms of digital exposure.

Table 2: Daily use of different devices, by country.

	A smartphone or mobile phone	A desktop computer, laptop or notebook	A tablet	A games console	TV	A toy connected to the internet	A wearable device	Other
CH	70	26	20	21	n.a.	n.a.	n.a.	17
CZ	82	43	18	n.a.	n.a.	n.a.	n.a.	20
DE	85	46	16	n.a.	n.a.	n.a.	n.a.	8
EE	87	41	16	13	50	9	8	9
ES	76	29	28	30	75	6	15	15
*FI	-	-	-	-	-	-	-	-
FR	65	41	31	26	47	18	13	6
HR	82	52	17	10	20	4	3	4
IT	80	39	20	14	17		3	2
LT	89	66	20	n.a.	n.a.	n.a.	n.a.	26
MT	77	58	43	34	48	11	14	15
NO	86	44	33	26	46	2	10	9
PL	83	40	14	14	59	2	8	8
PT	84	37	27	n.a.	n.a.	n.a.	n.a.	28
RO	86	41	19	n.a.	n.a.	n.a.	n.a.	n.a.
RS	86	40	15	11	61	0	8	13
*RU	-	-	-	-	-	-	-	-
SK	70	43	24	5	21	1	6	n.a.
*VL	-	-	-	-	-	-	-	-
Ave	80	43	22	19	44	6	9	13

* FI/RU/VL: Full age range not available. n.a.: Optional questions, not included in the questionnaire.

QB5 How often do you go online or use the internet using the following devices? Percentage of children who answered *almost all the time, several times each day, or daily or almost daily.*

Base: All children 9-16 who use the internet.

Moreover, a report by the Joint Research Centre in 2015 found that even children aged 0-8 used smartphones by using their parents' devices. Although very young children tend not to own their own devices it does not prevent them from using smartphone devices.

Moreover, and as highlighted above, children under 12 years old, in spite of the age screening mechanisms, are common users of social media platforms. Indeed, as the WHO have highlighted, 'In some countries, underage children report substantial social media use according to the terms and conditions of media platforms, which typically set participation at 13 years; e.g. 78% of 10–13-year-olds in the United Kingdom reported having a social media account (49% Facebook; 41% Instagram) . In Denmark, adolescents reported being “always on” their smartphones, as social media such as Facebook are essential for social activity (organizing their non-digital lives; communicating with one another), and they consider them an integral part of their identity.'

Advertiser's response to the appeal:

The Coke Shuffle Challenge campaign went live in Denmark in March 2021. The campaign included local social media influencers as part of the marketing activities. The campaign shows social media influencers challenging their communities with "Kick Shuffle" dance moves, mimicking the moves shown in our new Coca-Cola TV copy. The campaign is aimed at teens (age 16 and above), young adults and adults. The influencers were chosen specifically for their appeal to these segments.

Children's Rights: Our initial response letter shows that our influencer campaign was not targeting children but rather, a much older audience. The complaint concerns a specific video produced by TV personality Thomas Skov who was chosen specifically for his reach within the adult audience. We have previously shown that:

- Segmentation statistics showing that the main group of his followers consist of 18+ segments (see attachment). As stated, Thomas Skov has been chosen to broaden appeal of the campaign to adult segments.
- We do not consider the content of the advertisement in question to be appealing to children.
- The ads with Thomas Skov ran only on Instagram, and did not target people below 16 years old. Moreover, the reach distribution segmented according to age were as follows, conforming to the intended audience:
 - 13-15: 0%
 - 16-17: 9%
 - 18-24: 38%
 - 25-34: 41%
 - 35-39: 13%

Adding to our previous comments and presentation of facts, we note and emphasize that the **younger audience reach of Mr. Skov's posts (13-15 years of age) is 0%.**

- While Mr. Skov appears on TV, he is widely known for TV programs that **do not appeal to younger audiences.**
- When assessing primary appeal to children, we evaluate many different elements and their impact when used collectively. This includes: the people involved (what they wear, how they act, their follower profiles if they are an influencer) and also, the content (music, messages, visuals, whether activities shown are primarily appealing to children). **Our assessment remains that the posts are appealing to an adult audience.**

We have shared information about every possible effort we have taken to avoid reaching children with the content produced for the campaign, and that these actions were effectively carried out.

We would like to reiterate that Coca-Cola places great importance on its compliance toward the EU Pledge as well as its own Global Responsible Marketing Policy and, of course, the national regulations for marketing products to children, in this case, the Danish Marketing Practices Law (Markedsføringsloven). Coca-Cola wishes to emphasize that it exercises due care to ensure that all its marketing activities are always in compliance with the relevant laws, company guidelines and industry pledges.

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 88 for the CocaCola Kickshuffle Instagram video in Denmark.

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.

Regarding the creative execution, the Appeal Panel did not deem the inclusion of the celebrity in the short video to be problematic within this context. Whilst the individual is indeed popular in Denmark, the Appeal Panel agrees with the First Instance decision in that children are unlikely to be more interested in the writer than in the story he wrote. Beyond his popularity in the country, his behaviour in the short video does not indicate to the Appeal Panel that he would be particularly appealing to young children. Whilst the video may indeed be seen as funny and comical, it would not appeal any more to children than to teenagers or other age-groups. The surrounding background in the video is that of an adult room and not of a child's.

Furthermore, the ad challenge is not particularly targeting children, but mainly teenagers. The music playing in the background would appeal more to an adolescent age-group than to children, as would the challenge in itself, of recording oneself dancing to the beat of the song in sync with the bottom half stock footage. In fact, as the plaintiff themselves have indicated in the original complaint, the ad could be appealing to teenagers as well as to some children. However, the Appeal Panel did not find sufficient facts to indicate that the ad would be appealing primarily to children under 12 years old.

Based on the arguments and rationale outlined above, the Appeal Panel does not overturn the original decision of the First Instance Panel. The complaint remains not upheld and the advert is compliant with the EU Pledge commitment.



Decision regarding the appeal: admissible.

Decision regarding the complaint: not upheld.