

EU PLEDGE ACCOUNTABILITY MECHANISM

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Case ID: 92

Decision

To	EU Pledge Secretariat	Date of mtg	7 March 2023
From	EASA Secretariat	Date sent	14 March 2023

Ruling – McDonald’s advergaming on Instagram (story)

Description

McDonald’s advergaming advertised on Instagram (story).

Complaint

The complainant provided the following initial comments:

It is a very simple game which children will find easy and attractive to play.

Children only have to put in a false birthday to use the app so this is not really a safeguarding measure.

Advertiser's response

McDonald’s provided the following initial first statement:

The image in question was posted on the McDonald’s Netherlands Instagram profile as part of a story on 10 January 2023, and appeared for 24 hours. The story included a call-to-action with link to content that is housed on the McDonald’s Netherlands app. In order to access the app and content, users must be over 16. The content will not appear again in its current form.

1. The following information demonstrates that the “Spice It Up” Instagram story that was featured on the McDonald’s Netherlands Instagram account is **not directed to nor appealing primarily to children under 13**, and therefore is outside the scope of the EU Pledge commitments.
 - The Spicy Cheese product is not intended for children.
 - The Spicy Cheese sandwich is a limited-time offer and includes a spicy sauce that is targeted towards adult consumers, and exclusively featured on our adult menu.
 - It is exclusively sold via the McDonald’s Netherlands app.
 - The product is not designed for nor sold as part of the Happy Meal menu.

EU PLEDGE ACCOUNTABILITY MECHANISM



2. Actions were taken to restrict child access.

- User data shows users of the McDonald's Netherlands Instagram account are vast majority (over 90%) over the age of 18, and must agree to the terms and conditions of the app in order to view the content.
- The Instagram story featuring the Spicy Cheese directed Instagram followers to visit a link to a game that is housed on the McDonald's mobile app. In order to use the app, users must be 16 years of age or older. Minors (16 and 17-year olds) require consent of their legal representatives to participate in the promotion. If these conditions are not met, the user is blocked from moving forward in the registration process and cannot view or partake in any rewards or games/contests within the app. This permission also includes permission to receive any Prize won. These conditions are clearly stated in the app's terms and conditions and communicated to the user.

3. The target demographic based on the company's media plan was adults.

- The overall impression of the content is directed to and designed for adults over 16.
- McDonald's designs marketing and advertising campaigns to exclude appeal to children under the age of 16, and alongside media partners, we only partake in advertising that targets 18+ media channels.
- The posted content includes animations that are modelled off "retro style" video games of the 1980s and 1990s. Online gaming has been and continues to be popular amongst the Dutch adult population, and research shows that gaming is the fastest growing favourite leisure activity for adults and the elderly. The style used for the content in question is meant to invoke nostalgia for adult audiences.
- The presence of animation or bright colours does not indicate that the content is primarily directed or appealing to children. The EU Pledge Implementation Guide evaluates on whether animation is clearly designed to appeal primarily to young, which is not the case here.
- As also noted by the EU Pledge Implementation Guide, not all animation is designed for young children.

EU Pledge commitment

EU Pledge members commit either to:

- Only advertise products to children under the age of 13 years that meet the common EU Pledge Nutrition Criteria; or
- Not to advertise their products at all to children under the age of 13 years.

The above policy covers marketing communications for food and beverage products that are primarily directed to children under 13 in covered media.

Marketing communications means paid advertising or commercial sales messages for food and beverage products, including marketing communications that use licensed characters,

EU PLEDGE ACCOUNTABILITY MECHANISM



celebrities, influencers, and movie tie-ins primarily appealing to children under 13. Company-owned, brand equity characters are not covered by the policy.

Primarily directed to children under 13 means advertising in measured media where 35% or more of the audience is under 13 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 (Spicy Cheese) 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 the age of 13 years old.

The complaint referred to the ad as appearing on McDonald's Dutch Instagram profile as a 24-hour-long story. The plaintiff also argued that the depicted advergame was lacking a fail-proof age-gating mechanism, as children can input their age falsely on the site. The Panel judged the Instagram story ad, given the material provided by the plaintiff related solely to the story.

Company-owned social media profiles fall under the non-measured media category, meaning that adequate demographic 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 may be helpful, but should not be considered sufficient for compliance if the marketing communication is clearly designed to appeal primarily to children under 13. Therefore, the Panel analysed the creative execution of the ad as seen by audiences.

The Panel first reviewed whether the art style of the story would be primarily appealing to children under 13, and concluded that this is not the case. The Panel judged that the *retro* aesthetics of the ad contained elements alluding to nostalgia and is appealing to older audiences rather than young children. The colours, being of a basic and limited palette, were not considered to be indicative of targeting children under 13 years old. In fact, the *retro* feel of the font, the type of game, the pixelization of the story alluded more to the 1980s' or 1990s' types of games. In addition, there were no characters (popular among children or otherwise) present in the ad.

The Panel also discussed whether the product and the prize advertised in the ad could be appealing to children under 13. The product (Spicy Cheese) was not regarded as something young children would typically enjoy given it is a spicy foodstuff. Likewise, the prize (Xbox Series S) was not considered to be primarily appealing to young children, as it was noted that video game consoles can appeal to a wide age range, including young children under 13, but

EU PLEDGE ACCOUNTABILITY MECHANISM

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also teens and young adults. The language style with which the product and the prize were promoted were also considered age neutral.

Based on the arguments and rational explained above, the Panel does not find the advertisement to be primarily appealing to children under 13 years old and is thus compliant with the EU Pledge Commitment. Therefore, the Panel did not uphold the complaint.

Panel decision: complaint not upheld