



FOOD MARKETING TO CHILDREN NEEDS RULES WITH TEETH

A snapshot report about how self-regulation fails to prevent unhealthy foods to be marketed to children

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SUMMARY

In the spring of 2021, BEUC and 10 of our member organisations collected examples of unhealthy food and drink marketing and advertising. We selected those which we deemed to be infringing leading EU food and beverage companies' commitment to market their products responsibly towards children. We brought these cases to the Accountability Mechanism of the EU Pledge, the EU-level industry self-regulatory initiative to restrict unhealthy food marketing.

Out of the 81 complaints we submitted, only 14 were successful.¹ Indeed, as our report shows, the marketing restrictions prescribed by the EU Pledge are so weak that they give a lot of leeway to food and drink companies to continue marketing unhealthy products to children. Here are the EU Pledge's main shortcomings:

- **Nutrition criteria are too lax and still permit foods which are high in fats, salt, and sugar to be marketed to children.**
- **Rules only affect children's TV programmes, when in fact children watch most those shows not specifically directed at them (prime-time shows).**
- **Rules are neither suited to address the world of digital marketing nor do they effectively address the significant amount of offline marketing – such as on the packaging – which children continue to be exposed to.**

With ample evidence that self-regulation is failing to adequately protect children from unhealthy food marketing and advertising, it is high time the EU adopted binding rules including:

- An online ban for the marketing of unhealthy food products, including food company websites and social media accounts.
- A 6am-11pm TV watershed to stop the broadcast of unhealthy food advertising when children watch TV the most.
- A ban on the use of marketing techniques appealing to children on food packaging (e.g., cartoon characters and brand mascots).

These rules should apply to children up to the age of 18, and the World Health Organisation nutrient profiling model should be used to determine which foods should not be advertised to children.



¹ At the time this report is being finalised on 15 September, seven complaints have been upheld by the EU Pledge, seven marketing posts have been withdrawn by companies, and one case is still pending.

1

SETTING THE SCENE

Levels of childhood obesity remain worryingly high in Europe. While one in three European children on average suffer from overweight or obesity, in some Mediterranean countries (Cyprus, Italy, Spain and Greece), the prevalence is even higher at over 40%.²

It has been widely acknowledged that there is now ‘unequivocal evidence’ that the marketing to children

of foods which are high in fats, salt, and sugar (hereafter HFSS) has a strong impact on childhood obesity.³ Yet, the increase in powerful and persuasive advertising techniques, as well as repeated and constant exposure to unhealthy food marketing has become ubiquitous for children growing up across Europe.

EU policy context

In recent years there has been an increasing recognition amongst policymakers as well as health experts that unhealthy food marketing has major implications for children’s rights and by extension governments’ obligations to ensure the fulfilment of such rights. The UN Convention on the Rights of the Child – which recognises the right of the child to the highest attainable standard of health – is the most widely ratified human rights treaty in history. Recent EU Council Conclusions on healthy nutrition for children adopted in 2018 highlight the importance of this convention while calling on Member States and the Commission to support policies on nutrition, food and physical activity that prioritise children’s rights⁴. However, it is clear that signatories, including the EU and its Member States, must take further action to effectively assume their obligations to protect children.

The 2018 revision of the EU Audiovisual Media Services Directive (hereafter AVMSD), which regulates commercial communications in the audiovisual world,⁵ was therefore a significant missed opportunity for EU policy makers to prioritise the protection of children’s interests in relation to unhealthy food marketing. Instead of introducing strict new EU-

wide rules to regulate this powerful influence on children’s eating habits, the Directive merely requires EU Member States to encourage the use of self-regulatory or co-regulatory codes, i.e. voluntary rules set by the audiovisual media service providers themselves or in cooperation with other sectors (e.g. food, advertising industry).⁶ This goes against the evidence to date that such voluntary approaches have been too weak.⁷ The EU Strategy on the Rights of the Child⁸ published in March 2021 sadly continues along this path by committing the European Commission to “develop[ing] best practices and a voluntary code of conduct to reduce online marketing to children of products high in sugar, fat and salt”.

While the AVMSD failed to introduce strict harmonised EU rules on unhealthy food marketing, it does stipulate that Member States should ensure that even self-regulatory codes “effectively reduce the exposure of children” to HFSS food marketing. The European Commission announced, in its Europe’s Beating Cancer Plan, that it will prepare an implementation report in 2022 on the AVMSD, including the rules pertaining to commercial communications on unhealthy food and drinks.⁹

² WHO European Childhood Obesity Surveillance Initiative (COSI): report on the fourth round of data collection, 2015–2017. Copenhagen: WHO Regional Office for Europe; 2021. Licence: CC BY-NC-SA 3.0 IGO.

³ Boyland E, Tatlow-Golden M. Exposure, power and impact of food marketing on children: evidence supports strong restrictions. *European Journal of Risk Regulation* 2017;8(2):224-236.

⁴ ‘Healthy nutrition for children: The healthy future of Europe’ - Council conclusions, 22 June 2018.

⁵ Directive (EU) 2018/1808 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

⁶ See European Commission [website](#), last accessed on 4 September 2021.

⁷ Garde, A., Jeffery, B., and Rigby, N. ‘Implementing the WHO recommendations whilst avoiding real, perceived or potential conflicts of interest’, *European Journal of Risk Regulation*, 8(2), 237-250. doi:10.1017/err.2017.22.

⁸ European Commission, ‘*EU Strategy on the Rights of the Child*’, March 2021.

⁹ European Commission, [Europe’s Beating Cancer Plan](#), SWD(2021) 13 final. Published on 3 February 2021.

Our joint action

The voluntary EU-level industry initiative to restrict unhealthy food marketing to children is the “EU Pledge”. Its members include some of the largest food companies including McDonald’s, Coca Cola, Ferrero and Nestlé, covering “over 80% of food and beverage advertising spend in the EU”.¹⁰ The EU Pledge covers its members’ commercial communications on multiple channels, including print, TV, radio, Internet, mobile apps, etc.

In this report, we bring the EU Pledge under scrutiny and demonstrate why it is not fit for purpose and fails to effectively protect children from the harmful marketing and advertising of unhealthy food and drinks. This project was inspired and initiated by Professor Amandine Garde (University of Liverpool) who, together with Dr Mimi Tatlow-Golden (The Open University), Dr Marine Friant-Perrot (University of Nantes), and Dr Emma Boyland (University of Liverpool), provided expert advice and support throughout the running of the project.

Concretely, over the course of around two months in the spring of 2021, BEUC and 10 of our member

organisations: Altroconsumo (Italy), CLCV (France), Consumentenbond (Netherlands), DECO (Portugal), Forbrugerrådet Tænk (Denmark), KEPKA (Greece), OCU (Spain), Test Achats/Test Aankoop (Belgium), vzbv (Germany), Zveza potrošnikov Slovenije (Slovenia) from across Europe gathered over 120 examples of unhealthy food marketing. A seminar was held online at the end of January 2021, with the participation and contribution of the above-mentioned experts, to brief BEUC members on the project, its policy context and the type of evidence sought.

Around 90 of the collected examples were from EU Pledge members, over 80 of which we submitted to the EU Pledge’s own ‘Accountability Mechanism’.¹¹ This mechanism was introduced in May 2018 to allow members of the public and organisations to submit complaints when they believe that EU Pledge members’ marketing communications have breached the Pledge’s rules.¹²

HOW DOES THE COMPLAINT MECHANISM WORK?

Complaints submitted to the Pledge’s Accountability Mechanism are firstly assessed to decide if they are in scope of the Pledge rules. If so, the food company in question is given a chance to respond before the complaint is sent to a Panel of experts drawn from different advertising standards authorities across Europe to adjudicate on it. Once the Panel has made its decision, it is communicated to the complainant and the company, who are then given an opportunity to appeal the decision. It is then considered again by the Panel before a final adjudication is made.

Our report exposes the loopholes of the EU Pledge and its Accountability Mechanism, while providing a snapshot of the various marketing techniques used by food companies to target children and teenagers. It is based on examples gathered through several consumer organisations and does not aim

to be (nor should it in any way be considered as) a comprehensive study of HFSS food marketing in the EU. Based on the observed trends, we show why **the EU Pledge and self-regulation are not fit for purpose** and make several recommendations.

¹⁰ <https://eu-pledge.eu/our-members/>

¹¹ Some examples were for marketing practices which are not covered by the EU Pledge such as packaging or for examples which were considered to be compliant with the nutritional profile set by the Pledge companies.

¹² **Disclaimer:** While our action and complaints were submitted in the first quarter of 2021, in July 2021, the EU Pledge updated its rules. It changed its definition of a child from 12 to 13 years old, lowered the TV audience threshold from 35% children watching to 30% and committed to updating its nutritional criteria by mid-2022. However, even according to these new rules, the outcome of our action would have been the same as these adjustments are still too weak to adequately protect children from the exposure and power of unhealthy food marketing.

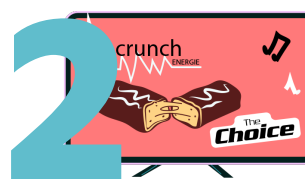
2

BEUC'S RECOMMENDATIONS IN A NUTSHELL

We are calling on the European Commission to end the reliance on self-regulation and finally regulate the marketing and advertising of unhealthy foods to children at EU level including:



An online ban for the marketing of unhealthy food products, including food company websites and social media accounts.



A TV watershed from 6am-11pm to stop the broadcast of unhealthy food advertising when children watch TV the most.



A ban on the use of marketing techniques appealing to children on food packaging (e.g. cartoon characters and brand mascots).



Rules should apply to children up to the age of 18 as opposed to the 13 years old limit typically set by self-regulatory initiatives.



The widely recognised World Health Organisation Nutrient Profiles should be used to determine which foods should not be advertised to children.¹³

In the meantime, European governments should recognise the pervasive and persuasive influence of the marketing of HFSS foods. In the absence of adequate action from industry, they should therefore not hesitate to already introduce national regulatory measures to properly tackle this issue.

¹³ World Health Organisation, *WHO Regional Office for Europe Nutrient Profile Model*, 2015.

3

WHY SELF-REGULATION FAILS TO PROTECT CHILDREN FROM UNHEALTHY FOOD MARKETING AND ADVERTISING

UNPACKING THE FLAWS IN THE EU PLEDGE

Given that self-regulatory models allow food companies to decide what they deem to be acceptable to advertise to children, it is unsurprising that they fall at many hurdles. The World Health Organization (WHO) has described existing policies to tackle the impact of unhealthy food marketing to children as “markedly insufficient”.¹⁴

Our action further highlights the serious failings of permitting food companies to set the rules themselves and the inadequacy of their tools to check on compliance. In brief:

- EU Pledge food companies’ definition of which foods are healthy enough to market to children still permits foods which are high in fats, salt, and sugar.
- EU Pledge rules on TV advertising continue to permit HFSS marketing during prime time shows, i.e., when children watch TV the most.
- The self-regulatory model fails to consider the significant exposure and powerful marketing techniques used online.
- The EU Pledge does not address the significant amount of offline marketing – such as on the packaging – which children continue to be exposed to.
- Their complaints system fails to hold food companies to account.

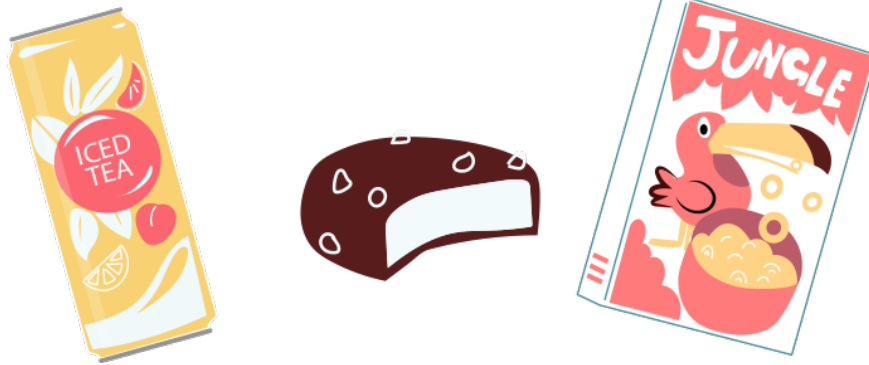
Flaw #1 : The nutritional criteria is too weak

The EU Pledge signatory companies have committed to only advertise their products which meet the EU Pledge Nutritional Criteria.¹⁵ Unsurprisingly, however, the foods and beverages which food companies have deemed to be acceptable to be marketed to children are much higher in nutrients of concern than the recommendations of independent public health experts.

This is especially worrying as not only does the advertised diet bear little resemblance to the recommended diet in general, but **the foods and beverages which are marketed to children are often much worse nutritionally than those directed towards adults.**

¹⁴ WHO Europe, *Evaluating Implementation for the WHO Set of Recommendations on the Marketing of Food and Non-Alcoholic Beverages to Children: Progress, challenges and guidance for next steps in the WHO European Region*, 2018.

¹⁵ EU Pledge, *‘EU Pledge Nutrition Criteria White Paper’*, 2015 (updated in 2018, 2021).



Spanish consumer organisation OCU conducted a survey which found that while almost a third of foods and beverages marketed towards adults received a 'D' or 'E' Nutri-Score front-of-pack nutrition label (the least favourable scores), the number of such products marketed towards children was three times that (89%).¹⁶ UFC-Que Choisir also found a similar pattern in France, with 88% of food marketing to children with 'D' or 'E' Nutri-Scores compared with 43% of such products marketed towards the general public.¹⁷

In 2015 the WHO Regional Office for Europe published a nutrient profile model for restricting food marketing to children¹⁸ which has further highlighted the weaknesses of the EU Pledge's nutritional criteria. While both models set nutrition limits for various product categories, the differences between the two are often stark. For example, for breakfast cereals which are one of the key product categories to contribute to children's consumption of added sugars, the Pledge is much more lenient, allowing almost double the sugar content. A report by the Joint Research Centre (JRC) of the European Commission which compared the nutrient profile model developed by WHO Europe with the industry-devised EU Pledge concluded that "the WHO model can be considered stricter than the EU Pledge system in that it would permit fewer products to be advertised to children".¹⁹

The EU Pledge also continues to allow advertising of certain product categories which the WHO recommends should not be marketed to children at all, including cakes and biscuits.

For the latter product category, even biscuits which are over a third sugar are still permitted by the EU Pledge.²⁰ Indeed, the EU Pledge nutrient limits for biscuits are so lax that they still permit those which are rated 'E' with the Nutri-Score to be marketed to children. At the same time, these products are some of the most commonly advertised products to children. **Belgian consumer group Test Achats/Test Aankoop in a recent survey of foods marketed to children found that the biscuits and chocolate category represented over 60% of food adverts alone.²¹**

Another report by the European Commission's JRC found that while the WHO nutrient profile was much stricter than the EU Pledge in general, for certain product categories the difference between the two models was significant.²² While only two in ten breakfast cereals were judged to be healthy enough with the WHO model, more than 60% passed the EU Pledge's nutritional criteria. Similarly, with the yoghurt category, over three quarters were deemed to have too much sugar or fat to meet the WHO standards while only 29% did not meet the EU Pledge's own nutritional rules.

The food companies of the EU Pledge are still able to claim a high level of compliance with their own model. When the goals set are so low, it is much easier to meet them. Indeed, our own action found that the majority of examples gathered were for products rated Nutri-Score 'D' or 'E'.

¹⁶ OCU, 'Empacho de anuncios: Alimentos no saludables para niños', OCU Salud, June 2021.

¹⁷ UFC – Que Choisir, *Pour une loi de moralisation du marketing alimentaire. Etude du dispositif français d'encadrement des publicités alimentaires destinées aux enfants, à la télévision et sur Internet*, September 2020.

¹⁸ WHO Regional Office for Europe nutrient profile model, World Health Organisation, 2015.

¹⁹ Storcksdieck Genannt Bonsmann S., *Comparison of the nutrient profiling schemes of the EU Pledge and the World Health Organization Regional Office for Europe*. EUR 28063 EN. Luxembourg (Luxembourg): Publications Office of the European Union; 2015. JRC102763.

²⁰ The EU Pledge Nutrition Criteria has set an upper boundary of 35g of total sugar per 100g for the biscuit and cake food category. From 30th June 2022 this upper boundary will be reduced slightly to 30g of total sugar per 100g.

²¹ Test Achats/Test Aankoop, *Publicité envers les enfants : le laxisme règne*, September 2021.

²² Storcksdieck genannt Bonsmann S, Robinson M, Wollgast J, Caldeira S (2019), *The ineligibility of food products from across the EU for marketing to children according to two EU-level nutrient profile models*. PLoS ONE 14(10): e0213512. <https://doi.org/10.1371/journal.pone.0213512>.

WHAT ABOUT NATIONAL INITIATIVES?

Our French member, UFC-Que Choisir found in 2020 that most foods which are marketed to children in France are nutritionally poor, with 88% receiving only a 'D' or 'E' Nutri-Score due to their high levels of fat, salt or sugar. At the same time, France's voluntary code claimed to have a 99.8% compliance rate.²³

Similarly, in Spain, while the latest monitoring figures for the co-regulatory code point to a compliance of over 94%²⁴, our member OCU found that almost 6 out of 10 products marketed to children on Spanish TV were high in nutrients of concern (58% of products received the 'D' or 'E' Nutri-Scores).²⁵

In Norway, a recent pilot mapping exercise of the digital landscape of food and drinks advertised to children found that 8 out of 10 products did not meet the WHO nutrient profile while just 9% failed to pass the Norwegian self-regulatory guidelines.²⁶

LOOPHOLE FOR 'BRAND MARKETING'

Crucially 'brand marketing' is not covered by self-regulatory models such as the Pledge which states that its commitments only concern 'product advertising'. This means that even companies which are synonymous with food high in fats, salt or sugar can continue to market their brand to children as long as they do not feature such products in the advert themselves.



Our Portuguese and Spanish members for example, found the McDonald's 'Happy Meal' being advertised on TV with many child-appealing elements such as 'My Little Pony' licensed media character toys provided in the Menu Deals. However, because the products featured were healthier options (in the case of the Portuguese advert, only apple slices were shown), these complaints were dismissed by the Pledge. While apple slices and milk may be available on the Happy Menu, so too are many less healthy options such as cheeseburgers, fries, sugary drinks and ice creams.

OUR ASKS

- 1) Future EU legislation should rely on recommendations of independent health experts and the WHO nutrient profile model.** It should not in any way rely on food companies to define which foods and drinks are healthy enough to market to vulnerable consumers such as children and teens.
- 2) Brand marketing must be included in restrictions** to avoid food companies simply highlighting healthier options in their marketing whilst continuing to sell high amounts of HFSS foods.

²³ UFC – Que Choisir, *Pour une loi de moralisation du marketing alimentaire. Etude du dispositif français d'encadrement des publicités alimentaires destinées aux enfants, à la télévision et sur Internet*, September 2020.

²⁴ [Percentage of food and drinks advertising by companies adhering to the PAOS Code \(PAB-PAOS\) that targets children aged 4 to 12.](#)

²⁵ OCU, 'Empacho de anuncios: Alimentos no saludables para niños', OCU Salud, June 2021.

²⁶ Steinnes, Kamilla Knutsen; Haugrønning, Vilde, *Mapping the landscape of digital food marketing: Investigating exposure of digital food and drink advertisements to Norwegian children and adolescents*, 2020.

Flaw #2 : Popular TV shows slip through the net

Prime time shows excluded

Of the nearly 20 television adverts by EU Pledge food companies found by our members and submitted as complaints to the Pledge, none were found to be in breach of the EU Pledge rules. This is due to the unattainably high audience bar set by the companies for TV advertising.

The EU Pledge will only consider an advert for a non-compliant product as a breach of the rules if the number of children under 12 years old watching represent 35% or more of the total audience share.²⁷ Given that children aged 0-14 years old account for just a 15% share of the EU population, the 35% children's audience threshold is particularly difficult to attain, especially for programmes which are also of interest to older demographics.

In practice, this means that *EU Pledge rules only affect children's TV programmes when children watch most those shows not specifically directed at them.* A 2015 study commissioned by the European Commission on minors' exposure to alcohol advertising had some useful insights into children's TV viewing patterns. Peak viewing times were either between 5-9pm or 9pm-midnight and not during children's programming times earlier in the day.²⁸

Of all the TV adverts we submitted as complaints, one of the highest percentages of children viewers aged 4-14 years old²⁹ was just 8%, far from the 35% required by the EU Pledge to be considered as marketing to kids. While 8% may sound like a small proportion, in reality over half a million young children watched this popular TV show.



This advert for a Kinder Schokobons chocolate confectionary features many child-appealing elements such as the presence of a young child, cartoon brand character, a family having fun playing a simple game with the chocolate products. It was shown just before the Saturday night popular prime-time talent show, 'The Voice France' which is one of the most watched programmes on French-speaking TV. In France, this episode alone attracted [an audience of 6.31 million](#), a 29.6% share of the entire TV-watching audience at that time.

²⁷ As announced in July 2021 this threshold will be reduced to 30% and the age of a child will be raised one year to 13 years old.

²⁸ Ecorys, *Study on the exposure of minors to alcohol advertising on linear and non-linear audio-visual media services and other online services, including a content analysis: Final Report*, 2015.

²⁹ Audience measurement data provided by food companies gave information for the 4-14 years old demographic.

In some European countries, advertising restrictions have already begun to take these peak viewing times for children into account. The UK recently announced its intention to introduce a 9pm TV watershed for

unhealthy food advertising by the end of 2022 which is a welcome first step.³⁰ Unfortunately, however, regulatory action on TV advertising of HFSS products remains the exception, not the rule.

Late night viewing

Programmes which are shown even later in the evening still have a high absolute number of children viewers. A television advert for Fanta viewed by our Belgian member Test Achats/Test Aankoop, was shown at 10:30pm during the broadcast of a popular reality TV show. It had the highest proportion of children viewers under 14 years old of all the examples we found (13%), representing over 600,000 children.³¹

Moreover, it is important to also note that while the two programmes mentioned above were broadcast on a French TV channel, they were also viewed in

Belgium. This highlights not only that these audience figures are an underestimate of the actual number of children watching but also the importance of regulating such marketing at an EU-level given the significant level of cross-border audiences.

Although the AVMSD does permit Member States to go further and introduce stricter rules, the cross-border nature of many media channels means that even if a government wishes to implement stricter rules, the impact will be lessened if their citizens are able to view media from a country with much weaker rules.

Unreliable measurement data

Even for children's programmes, there appear to be some issues with the reliability of audience measurement data.

Following our complaint for an HFSS food advert shown during a Saturday morning Slovenian children's cooking show, the Pledge responded to say that the ad was not in breach as the programme in question had a 0% children's audience. When we questioned this

surprising figure, they stated that "a small audience means a small sample of households, rendering the demographic analysis of the audience sometimes unreliable". In such cases where reliable data is not guaranteed, and especially given the childish nature of the show in question and the time it was broadcast, it would have been prudent for the food company to avoid advertising unhealthy products to reduce the exposure of children to such marketing.

OUR ASKS

- 1) Much stricter audience thresholds are required to protect children from seeing HFSS adverts when they watch TV the most often** (later in the evening). The requirement for a TV audience to be made up of at least 35% children before Pledge rules apply fails to protect children from enormous exposure to advertising of HFSS products.
- 2) A watershed must be introduced across Europe from 6am to 11pm**, given the different TV-watching habits across Europe and the fact that children are a significant demographic of viewers of late-night TV shows.
- 3) An EU regulation would ensure that the same rules are applied across all countries.** This would have a clear added value as adverts broadcast in one country can be viewed easily in other countries.

³⁰ UK Government, Department of Health and Social Care and Department for Digital, Culture, Media & Sport [Introducing further advertising restrictions on TV and online for products high in fat, salt and sugar: government response](#), Consultation outcome, 2021.

³¹ Coca Cola reported that the audience data showed that 366,480 children aged 4-10 years old and 241,367 children aged 11-14 years old out of a total audience of (4,760, 531), watched Koh Lanta on the 12th of March at 10:30pm on the French TV channel TF1.

Flaw #3 : Too weak to address the ecosystem of digital marketing

The digital landscape has undoubtedly become deeply embedded in children's daily lives. From watching videos, communicating with friends and families, to listening to music and playing games, a growing number of children's activities take place online. *The average amount of time spent online by European children has almost doubled in the past decade and 80% of European children aged 9-16 now use a smartphone to go online every day.*³²

The rapid expansion of digital platforms and time spent by children online has been matched by an upsurge in digital advertising spend in Europe: almost quadrupling in just over a decade.³³

The combination of the significant amount of time spent online by children (increasingly including very young ones) with the sophisticated and invasive digital techniques used by advertisers,

poses new and serious challenges for the protection of children from unhealthy food marketing.³⁴

Foods and beverages represent a major segment of online advertising. Indeed, a 2020 report by the Catalan Audiovisual Authority found that, when examining some popular teen and young people's profiles, *food and beverages were the most common product type advertised (25% of ads) on the Tik Tok social media platform.*³⁵

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, the business sector "should respect children's rights and prevent and remedy abuse of their rights in relation to the digital environment". However, the EU Pledge undoubtedly fails to effectively protect children from the effects of unhealthy food marketing online.

Age restrictions are just an illusion

A common defence of food companies in reaction to our complaints regarding digital marketing examples was that the social media platforms on which they appeared have age-gates. According to them, age-gates prevent children under a certain age (usually 13 years old) from using them.

However, **age-screening mechanisms are well-recognised as unreliable tools to prevent or 'bar' children under 13 years old from using online platforms.** The WHO have highlighted the problem of a substantial proportion of underage children using these platforms. For example, 78% of 10–13-year-olds in the United Kingdom have reported having a social media account (49% Facebook; 41% Instagram).³⁶

In fact, *it is child's play to simply input an older birthdate to be granted access or even just tick a box or click a button to confirm that you are old enough to use the platform.* Instagram itself has even acknowledged that it is an issue as "young people can lie about their date of birth".³⁷

Moreover, parental consent is very difficult to define for online use. Children spend much of their online time on portable smartphones, the screens of which are too small to properly allow parental supervision.

While the EU Pledge Panel itself even acknowledges that age-gating is insufficient to guarantee compliance, it regrettably frequently cited these mechanisms in its decisions to not uphold complaints.



³² Smahel, D., Machackova, H., Mascheroni, G., Dedkova, L., Staksrud, E., Ólafsson, K., Livingstone, S., and Hasebrink, U. (2020). *EU Kids Online 2020: Survey results from 19 countries*. *EU Kids Online*. Doi: 10.21953/lse.47fdeqj01ofo

³³ Statista Research Department, Digital advertising spending in Europe 2006-2020, July 2, 2021.

³⁴ Tatlow-Golden, M. and Garde, A., 'Digital Food Marketing to Children: Exploitation, Surveillance and Rights Violations', *Global Food Security* 27 (2020), 100423.

³⁵ Conseil de l'Audiovisual de Catalunya, *Advertising in video content created by TikTokers*, August 2020.

³⁶ World Health Organisation, *Tackling food marketing to children in a digital world: trans-disciplinary perspectives*, 2016.

³⁷ <https://about.instagram.com/blog/announcements/continuing-to-make-instagram-safer-for-the-youngest-members-of-our-community>.

Sneaky and effective tactics

The ‘stealth’ techniques used by food companies to advertise to children and teenagers online are very engaging and persuasive but less obvious to detect by the younger generation. As opposed to traditional media such as TV where adverts are more passively received by children, online marketing promotes a much more active (and often longer) engagement between children and advertised content.

Many of the more subtle but no less effective methods detected by our action make it more difficult for young people to be able to properly identify content as advertising, as the line between commercial and non-commercial messaging is significantly blurred. For example, research has shown that children as old as 15 do not recognise that advergames are adverts.³⁸ Similarly, the Danish Competition and Consumer Authority recently found that *while more than 90% of Danish consumers of all ages can clearly recognise adverts shown on TV, this drops to just 50% when it is influencer advertising on social media platforms. Less than four in ten children were able to identify such marketing.*³⁹

Our members found many examples of different digital marketing methods for HFSS products which would appeal to children and teens including advergames, company-owned apps, product placement in popular

Advergames

In recent years there has been a proliferation of ‘advergames’ where companies use ‘branded entertainment’ to promote their brand or product

computer games, paid partnerships with influencers, ‘dance challenges’, and branded filters on social media channels. Unfortunately, however, the vast majority of the complaints we made to the EU Pledge regarding digital marketing were dismissed.

In the face of this avalanche of unhealthy food marketing online and frustrated with the continued breaches of existing HFSS ad rules⁴⁰ the UK government recently announced some ground-breaking new laws to crack down on the extensive and powerful online methods. Citing the ‘absence of any independent, comprehensive, industry-recognised, gold-standard and publicly available means of audience measurement’ authorities have decided that from the end of 2022, paid-for online advertising for HFSS foods will no longer be permitted.⁴¹

Portuguese authorities have also stepped up their efforts to tackle this problem and introduced legislation in 2019 which prohibits the marketing of HFSS products to children under 16 years old on websites, social networks and mobile apps.⁴²

Unfortunately, however, these remain isolated cases and the move towards regulating digital marketing is still slow and not keeping pace with the dramatic developments and new techniques occurring online.

within an online gaming experience attractive to children.

Our Dutch member Consumentenbond for example found a case where a brand character for a popular crisp, Pombar, was integrated into a childish advergame where the brand character has to jump and grab coins. Not only was an image of a packet of crisps in the background throughout but the crisps themselves are shaped to look like this brand character.



³⁸ Nairn, A. and Hang, H. (2012), ‘Advergames: It’s not child’s play. A review of research. London: Family and Parenting Institute.

³⁹ Danish Competition and Consumer Authority, ‘Consumers benefit from Visually Salient Standardized Commercial Disclosures on Social Media’, *Competitive Markets and Consumer Welfare*, #48, June 2021.

⁴⁰ ASA monitoring report on HFSS ads appearing around children’s media, 6th June 2019.

⁴¹ <https://www.gov.uk/government/news/new-advertising-rules-to-help-tackle-childhood-obesity>.

⁴² Restrições à publicidade alimentar dirigida a crianças • PNPAS (dgs.pt)



Our member CLCV found [a promotion](#) by Kinder France on Instagram for its Schokobons product. This example encouraged users to play a childish game where the user has to sing badly for 20 seconds to enter a competition to win chocolate.



Our Portuguese member, DECO, found [an example](#) of Mondelez’s Chips Ahoy! cookie promoting a competition to win a games console where the user simply has to click on an on-screen cookie as many times as possible within a minute in order to be in with a chance to enter a prize draw. Moreover, the competition required a code from the packet of cookies to play the game and enter the competition, arguably encouraging the purchasing and consumption of the product.

Apps

Another way food companies and marketing agencies encourage extended levels of brand exposure is by developing their own high-quality branded gaming apps, specifically for young children to use.

McDonald’s for example, has a ‘Happy Meal App’, recommended for children as young as four years old, which it promotes as “jam-packed with games and activities” with the ‘Happy’ 3D brand character featuring throughout. However, because the app features only non-HFSS products such as pineapple slices or milk, it breaches none of the Pledge’s own rules on marketing to kids. Recently, in Australia, the company was forced to suspend the use of this app there as it was found that only advertising those products that meet the nutrition criteria was not sufficient as many Happy Meal products are unhealthy options.⁴³

Similarly, our members in France, Portugal, Italy and Spain found marketing examples promoting the Kinder ‘Applaydu’ game app described by the company themselves as designed for children aged 4-9 years old, “from toddlers to preschool and kindergarten”.

It contains many imaginative child-appealing features



such as virtual arts and crafts as well as “tons of stimulating mini magic-games”. While no HFSS products feature in the app itself, the marketing promoting this app on Youtube, Instagram, Facebook and TV does. Indeed, the prominent feature highlighted in these adverts is the possibility to scan the QR code on a Kinder Surprise chocolate product’s packaging to make the toys contained in the product ‘come to life’ on ‘Applaydu’ – creating a direct link between the product and the app. However, at the time of finalisation of this report, the Panel had rejected four out of six marketing posts related to this children’s app and chocolate product which we had submitted as complaints and one case was still pending (over six months after the complaint was submitted).

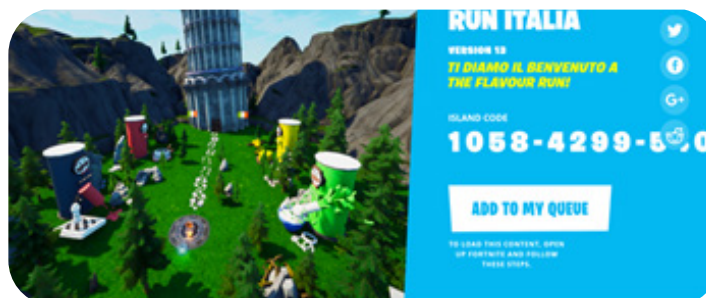
⁴³<https://www.opc.org.au/what-we-do/advertising-marketing/mcdonalds-happy-studio-app.html>

Gaming

Beyond branded advergames, food companies have become increasingly active in promoting their products in collaboration with established online computer games or platforms. BEUC member organisations found many examples of such cases. Competition prizes were commonly gaming-related, e.g., games consoles very attractive

to children and teenagers. The competitions often required the purchase of an HFSS product to enter. Some food companies have even created their own branded game tournaments which include paid partnerships with popular young gaming influencers and product placement in sponsored online games.

Pringles for example, promoted a brand-themed tournament earlier this year across six EU countries on 'Fortnite', a world-famous online game. Cans of Pringles crisps featured prominently in this tournament. Fortnite has over 350 million registered players worldwide, many of whom are children and teenagers. This example however was rejected by the Pledge as they argued that it was primarily targeting teenagers.



Influencers

Recent years have seen the rise of social media influencers who frequently enter into paid partnerships with brands to promote unhealthy food and beverages. They often communicate in a manner relatable and humorous to children and teenagers who are particularly vulnerable to the influence of their peers and role models.

Such influencers are often considered to be very effective brand ambassadors as they are seen as more credible and authentic in the eyes of young audiences than if the marketing message came from the brand itself. Not only are these influencers extremely effective in communicating marketing messages to their followers but they are typically very prolific.

A spot-check by the UK's Advertising Standards Authority in September 2020 on Instagram alone found that over the course of just three weeks, 122 Instagram influencers alone created 24,000 posts (and only 35% of these posts over a three-week period were compliant with ad disclosure requirements).⁴⁴

In Norway, our member organisation Forbrukerrådet found that of the top sixteen Youtubers in the country, eleven had produced content marketing for the food and drink industry, with the large majority being for HFSS products. Furthermore, the channels advertising unhealthy food were without exception all aimed at younger viewers.⁴⁵



⁴⁴ Influencer Ad Disclosure on Social Media A report into Influencers' rate of compliance of ad disclosure on Instagram, Advertising Standards Authority, March 2021.

⁴⁵ <https://fil.forbrukerradet.no/wp-content/uploads/2019/02/young-and-exposed-to-unhealthy-marketing-digital-food-marketing-using-influencers-report-february-2019.pdf>.



Our Danish member, Forbrugerrådet Tænk, found an example of two twin brother young influencers promoting a new sugary beverage product – a ‘mystery’ green-tinted Fanta drink promoted with the hashtag #WhattheFanta?. A YouTube video shows them blindfolding their little brother to taste ten different products, with the joke being that it is in fact the same lemonade product each time. Despite the simplicity of this prank, the childish humour and the young ages of the participants, the Panel rejected the complaint as they decided it was meant for teenagers instead.

Social media influencers also strongly featured in Coca Cola’s Kick Dance Shuffle promotional campaign, examples of which were found by both our Danish and French members on Instagram. It is worth noting that in France, young influencers have some considerable follower counts (for example a 20-year-old professional dancer with over two million followers and a 16-year-old digital creator with over a quarter of a million). Those French influencers uploaded videos of themselves consuming the fizzy drink, performing the new Coca-Cola dance routine and encouraging their viewers to participate in this ‘dance challenge’. In Denmark, an Instagram post featured a Danish media celebrity and children’s author advertising the

challenge and the new humorous filter created for the promotional campaign.⁴⁶

Brands have been quick to jump on the bandwagon and are increasingly engaging in this new marketing technique which simultaneously uses influencers to imbue legitimacy while encouraging young people to create and share free user-generated marketing which will be viewed by their peers. However, as the EU Pledge rules state that a product must be *primarily* targeting children under 12 years old, and the Panel found that these examples were targeted towards teenagers, these complaints were rejected.^{47, 48}

SURVEILLANCE-BASED MARKETING

The online examples gathered by BEUC and our members were found by visiting company websites or profiles on social media platforms and therefore cannot provide insights into the data-driven advertising which children are also exposed to.

Digital advertising is predominantly based on so called ‘surveillance advertising’. Consumers (children and adults) are constantly tracked and profiled online by a myriad of companies, in ways beyond their knowledge or control. All with the objective of serving them targeted advertising based on personal data exploitation. As a [report](#) recently published by the Norwegian consumer group Forbrugerrådet showed, this widespread commercial surveillance has negative consequences on consumers and society, including manipulation, discrimination, misinformation, security risks and privacy violations.⁴⁹

⁴⁶ 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.

⁴⁷ https://eu-pledge.eu/wp-content/uploads/Decision_case_66_Coca-Cola.pdf.

⁴⁸ https://eu-pledge.eu/wp-content/uploads/Decision_case_88_Coca-Cola.pdf.

⁴⁹ Forbrugerrådet. *Time to ban surveillance-based advertising. The case against commercial surveillance online*, June 2021.

Teenagers need protection too

The EU Pledge currently only considers a child to be under 13 years old, which fails to protect teenagers who are still particularly vulnerable to the marketing of HFSS foods.⁵⁰

Indeed, many food companies defended their marketing practices by claiming that it was directed towards teenagers instead of children under the age of 13 years old. Notwithstanding the fact that many older children under 13 will have similar interests to teenagers who are only slightly older than them, this highlights the need to also protect adolescents. Teens are at a sensitive stage of development, vulnerable to marketing messages and are clearly being targeted by food companies and advertisers.

EU rules impose higher consumer protection standards to protect vulnerable consumers who may be particularly at risk due to, among other

things, their age, credulity, or immaturity. The Unfair Commercial Practices Directive (UCPD) identifies children as a clear example of “vulnerable consumers” who may be affected by unfair commercial practices. In its Guidelines on the UCPD, the European Commission also identifies teenagers as another group of vulnerable consumers. According to Article 5 of the UCPD, where a commercial practice is aimed at a particular group of consumers, its impact should be assessed from the perspective of the average members of that group.

Moreover, the sufficiency of this framing of ‘vulnerability’ in online environments is currently questioned by academic experts in view of omnipresent data-driven personalised commercial marketing strategies using individual persuasion profiles, which render most digital users potentially vulnerable regardless of their age.⁵¹

OUR ASKS

Children and teenagers are particularly vulnerable to the sophisticated, subtle and persuasive techniques used by marketers to promote HFSS products and are not sufficiently protected by EU Pledge rules. Food companies, in response to our complaints, have openly admitted that they try to target teenagers with their marketing techniques for products which are nutritionally poor. At the same time, age-screening mechanisms are not stopping even younger children from using popular social media platforms where such child-appealing marketing for HFSS foods is common. As such:

- 1) We support a complete restriction from HFSS food being marketed online at any time**, given the weaknesses of age restrictions in online spheres. Such a ban should include ‘company-owned’ profiles on social media platforms where a significant amount of sophisticated digital marketing takes place and which are very popular with teenagers and children.
- 2) Surveillance-based advertising should be banned for children and teenagers at the very least**, given their particular vulnerability.
- 3) It is essential that the vulnerability of both younger children and teenagers is taken into account when drafting legislation to restrict the marketing of HFSS food online.**
- 4) In order to protect children and adolescents alike, regulators should use the definition of a child as anyone under the age of 18 years old** as recommended by the WHO, the UN Convention on the Rights of the Child and in line with the vast majority of countries’ legal definition of a child.

⁵⁰ During our action, the EU Pledge defined the age of a child as under 12 years old. On 5 July 2021, they updated their rules to define a child as anyone under the age of 13 years old.

⁵¹ Helberger, N., Lynskey, O., Micklitz, H.-W., Rott, P., Sax, M., Strycharz, J. *EU Consumer protection 2.0 Structural asymmetries in digital consumer markets*, BEUC, March 2021.

Flaw #4 : EU Pledge rules are inadequate for the offline world too

Whilst children are bombarded by HFSS food marketing on screen, advertisements for such foods are also common in their offline lives too. Increasingly, offline and online marketing techniques complement

each other with posts on social media platforms advertising premium offers which can be also seen in-store.

Packaging: the silent salesman

The EU Pledge rules do not cover food and beverage packaging. However, packaging has been well-recognised as a powerful marketing tool towards children.

Cartoonish brand characters or licensed media characters from popular children's movies or TV shows are incredibly common on the packaging of HFSS food and can be a strong influence on children asking their parents to purchase a particular product. Indeed, an action by BEUC and its members in 2017

found that such 'hooks' were most common with products such as confectionary, biscuits, sugary breakfast cereals and salty dairy snacks, with only one example found for a vegetable.

Moreover, key selling locations in retail environments invariably promote less healthy products. Stand-alone displays, end-of-aisle locations or checkouts commonly feature such products which frequently target children. EU Pledge rules however, do not cover such retail marketing practices.

The power of 'play'

Toy story

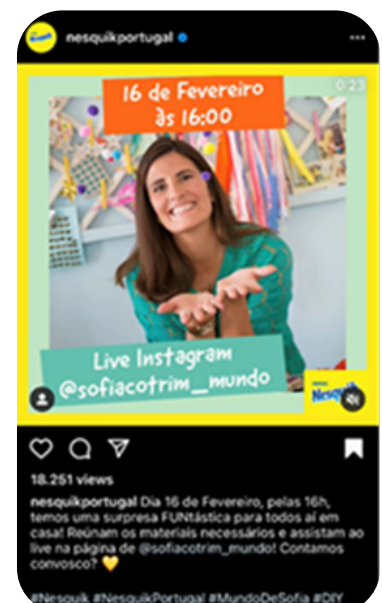
While many competitions offer prizes which would be very appealing to children and teenagers, many food companies or restaurant chains already always offer toys as a 'reward' for the purchase of their product. These toys feature prominently in the marketing posts by food companies, often being the sole focus of the adverts in question. The examples found by our members have shown that these toys are without exception clearly of appeal for children, often based on popular media characters from children's movies or TV shows. However, EU Pledge rules do not cover toys which are 'inherent to the product' even though the 'pester power' appeal of these premium offers can be very powerful.

Even when a toy or game is not inherent to the product, the Panel took a very lenient approach. Our Spanish member OCU for example found YouTube and Instagram posts advertising a new promotion for a fast-food outlet. For the cost of just one extra euro with the purchase of a menu, a children's game such as Twister or the family version of Trivial Pursuit was offered. Even though the latter game has been adapted precisely so that children can play it, the Panel argued that this game is "naturally direct[ed] to adults" and dismissed the complaint.⁵²

Crafty crafts

Another common marketing technique are pages on food companies' websites dedicated to arts and crafts activities for children, with instructions which invariably require the purchase of the HFSS product.

Our Portuguese member DECO found an example of an Instagram craft activity livestream with HFSS products by a well-known 'craft' celebrity which was even advertised for children aged 4-12 years old. Regrettably, it was also dismissed by the Panel as they deemed it to be targeting parents.



⁵² https://eu-pledge.eu/wp-content/uploads/Decision_case_76_McDonalds.pdf.



Das brauchen Sie, um Ihre Riesenrollen-Fackel zu basteln:



2 SMARTIES® Riesenrollen
Klebeband
Klebestift oder Flüssigkleber, zur Not Klebestreifen
Braunes Krepppapier
Schere
PET-Flasche (1,5 Liter)
Filzstift
Transparentpapier: orange, gelb, rot
Naturkordel
LED-Lichterkette
Eine Handvoll SMARTIES®

Our German member vzbv found examples on the Smarties website’s ‘Creative Corner’ for various child-appelling crafts. Even though these activities are clearly for younger children, the Panel argued that the language was targeting parents instead of children. However, it would be extremely unlikely that any adult would be participating in such craft activities without young children present.

Location, location, location

From posters and billboards to ads on public transport, outdoor marketing of HFSS foods is ubiquitous.

Our Slovenian member, Zveza Potrošnikov Slovenije, found an example of a fast-food restaurant chain advertising a meal deal for cola, burgers and fries on a bus stop poster just 30 metres from a children’s playground near a busy shopping centre. Even though the EU

Pledge rules theoretically cover outdoor marketing, the Panel found that the presence of the playground in proximity to the poster ad was not sufficient to consider this as a breach of the EU Pledge rules. The Panel argued the poster’s location means it would be directed at a “broad audience”. However, given that children will always be the minority of the general population proportionally, this sets an unattainably high bar for outdoor marketing to be considered as a breach of the Pledge rules.⁵³

OUR ASKS

Children’s exposure to powerful marketing techniques clearly goes far beyond just those used on television or online. Future regulation on HFSS marketing to children needs to also address, as fully as possible, popular marketing practices used in the offline world too. As a matter of priority:

Future EU regulation should restrict the use of powerful marketing techniques on food packaging.

Cartoon characters, whether brand-owned or licensed from media companies, are extremely common and very appealing to children. They should therefore only be permitted on the packaging of non-HFSS foods.

⁴³<https://www.opc.org.au/what-we-do/advertising-marketing/mcdonalds-happy-studio-app.html>

Flaw #5 : Accountability in name only

The EU Pledge's 'Accountability Mechanism' was introduced in 2018 to allow members of the public and organisations to question the compliance of EU Pledge members' marketing communications with the EU Pledge commitment by submitting complaints.

However, **the complaints process, as we and our members found, is difficult to use for the average consumer and typically takes a lenient approach to the food companies' practices.**

Too slow to keep up with the pace of marketing today

The EU Pledge complaint process is too slow.

For example, we submitted our first complaint on 16 February 2021. Ultimately, it was one of the few occasions where the Panel agreed that there had been a breach of the EU Pledge rules. However, because of the slow process, the final decision to uphold the complaint was not rendered until 25 May, over two months after the actual promotion had already ended.⁵⁴

In spite of the already generous time the Pledge allows for the processing and adjudication of complaints, the majority of the decisions on complaints we submitted were very delayed. Only two of the 53 complaints which we submitted and were considered by the Pledge Panel were finalised within the timeframe they had set for themselves. For example, the decision for a complaint which was submitted on 1 March 2021 was still due at time of finalisation of this report on 15 September 2021.

The UK government highlighted recently that in just one year, British children are exposed to over 15 billion unhealthy food advertising impacts online alone.⁵⁵ It is therefore important to recall that our action was only a relatively small illustrative snapshot of the significant amount of unhealthy food marketing to which children are exposed in just 10 of the 27 EU Member States. Nevertheless, the Pledge was still unable to keep to its own timetable for processing these complaints.

Given that the EU Pledge is meant to cover all 27 Member States, it is undoubtedly underequipped to cope with even a small number of complaints, representing just a fraction of the high number of adverts for HFSS foods.

Negligible Impact

Even on the rare occasions where the Pledge deems that its own rules have been broken, the consequences for the infringing company are minimal.

If the marketing example in question is still available the company may be asked to remove it but the average consumer is very unlikely to notice if a three-month old social media post has been deleted. In other words, the harm has already been done and cannot be mitigated anymore. Nor are they likely to be aware of the EU Pledge's website where panel decisions are published.

Before we began our action, there had only been six complaints published on the EU Pledge website over the course of two years and, according to the EU Pledge's 2020 Annual Report, just one complaint was received over the course of 2020.⁵⁶

In any case, while the EU Pledge reports an almost universal compliance with its rules by its members, varying from between 97.4% and 99.1% during the past five years, the results of our joint action points to a lower level of compliance than what is claimed. On the date of finalisation of the report (15/09/2021), out of 81 complaints submitted, 14 ads were either found to be in breach of the Pledge rules by the Panel or were withdrawn by the companies: a level of 83% compliance.

⁵⁴ https://eu-pledge.eu/wp-content/uploads/Decision_case_23_McDonalds.pdf.

⁵⁵ <https://www.gov.uk/government/consultations/total-restriction-of-online-advertising-for-products-high-in-fat-sugar-and-salt-hfss/evidence-note>.

⁵⁶ EU Pledge Monitoring Report 2020, April 2021.

Lack of transparency

Only complaints which are considered by the Panel are published on the website. In other words, complaints which are dismissed outright – such as those on TV which do not reach the children’s audience threshold

– are not made public.⁵⁷ Arguably, for full transparency all complaints should be published along with the reasons why the EU Pledge consider them to comply (whether they are considered by the Panel or not).

Panel decisions favour companies on very weak grounds

Given the narrow scope of the EU Pledge rules for restricting HFSS marketing to children, as outlined above, unsurprisingly most of the complaints submitted by BEUC and its members were rejected by the EU Pledge Panel.

Even though the Panel often accepted that certain elements in these examples could be considered to be appealing to children, including those under the age of 12 years old, they were often disregarded for trivial reasons.

A very common reason given by the Panel for dismissing a complaint was that the food company had included some language directed at parents or in a more formal tense. The Panel dismissed many cases where HFSS foods were promoted with child-appealing elements – such as licensed media characters from the Marvel franchise ‘Spiderman’. *Even the promotion of a children’s chocolate product with collectible Disney Princess toys which can ‘come to life’ on the brand’s app*



for young children was rejected by the Panel because of language referencing families.

Although the EU Pledge commitments state that “the overall impression of the marketing communication should be taken into account” in these cases, it is clear that the most attractive and attention-grabbing element of the post is the vivid and engaging video and not the textual caption.

Inconsistent panel decisions

For ‘non-measured media’ where audience measurement data is unreliable such as social media platforms, the Pledge Panel is tasked with assessing the overall creative execution of the advert to determine if an advert can be deemed as marketing to children (and therefore a breach of the EU Pledge rules). However, in practice this has created many

inconsistencies with the Panel decisions which often contradict previous adjudications. *It is clear that, even with this relatively small sample of examples, the subjective judgement of whether certain elements are appealing to children or not can have a significant impact on the outcome of a complaint.*

Formal tones only count sometimes

As mentioned above, if an advert contained any language directed at parents (even if it was not the most eye-catching element of the post) the Panel would dismiss the complaint for most cases. We submitted complaints regarding two similar adverts for the same brand, product and app which showed collectible toys becoming animated and travelling

through vividly-coloured 3D landscapes and which both contained parent-focused language. In one case, our complaint was immediately upheld. For the other case, the initial Panel decision before we appealed (final decision still pending at time of finalisation of the report) was negative, i.e. our complaint was not upheld.

⁵⁷ None of the adverts which we or our members witnessed on TV met the children’s audience threshold set by the EU Pledge.

Child-appealing activities can still be deemed to be for adults

The Panel upheld a complaint for a HFSS Instagram promotion by a fast-food company which featured a childish Easter Egg Hunt-themed advergaming in Denmark. Even though there was some parent-targeted language in the post, the Panel argued that “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, other complaints which featured very child-appealing activities, including Easter Egg Hunts were dismissed because of the parent-focused language.

OUR ASKS

While EU Pledge rules continue to be inherently inadequate and the consequences for companies who breach even these weak restrictions are minimal, the Pledge will never be sufficient to protect children from the effects of HFSS marketing. Nevertheless, it can already take immediate action to improve its Accountability Mechanism which our action has demonstrated is not fit for purpose.

- 1) The Pledge Accountability Mechanism must become more transparent.** All complaints, whether they are considered by the Panel or not, should be published online in full with detailed explanations as to why such complaints were dismissed or upheld.
- 2) Decisions on complaints need to be much more timely.** The significant delays experienced for most complaints we submitted meant that, even when they were upheld, the effects were extremely limited.

4 CONCLUSION

Policymakers have given food companies ample time to demonstrate that the rules they set themselves are up-to-scratch and can work to protect children. However, our action has highlighted that EU Pledge rules are so weak that they allow companies to continue to promote HFSS foods to children on various media channels. It has also shown that the accountability mechanisms which have been set up are not fit-for-purpose.

It is time to end the failed experiment of self-regulation for marketing to children and introduce EU-wide regulation which comprehensively covers the various marketing channels and techniques used

to reach children and teenagers, including a complete restriction of HFSS marketing online.

At EU level, there is due to be an implementation report on the EU’s Audiovisual Media Services Directive in 2022 which will be a timely occasion for policymakers to set out their plans in this area.

In the meantime, at national level, given the variety and frequency of food marketing, it is essential that Member States devote enough resources to adequately implement, enforce and dissuasively sanction any food companies who breach such regulation.

ENDS



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