

**KELLOGG COMPANY**

**Pop-Tarts®**

Challenger: Children's Advertising Review Unit

- **The “net impression” of the entire advertisement, including express and implied claims and material omissions, must not be misleading to the children to whom it is directed.**
- **An advertiser is obligated to support all reasonable interpretations of its claims, not just the messages it intended to convey.**

**Basis of Inquiry:**

Advertising on packages of *Kellogg's® Pop-Tarts®* (“Pop-Tarts®”) with fruit in their name, marketed by the Kellogg Company (Kellogg” or the “Advertiser), came to CARU’s attention through its routine monitoring practices. CARU reviewed both the packaging and the “Kids” section of the Pop-Tarts® website ([www.poptarts.com](http://www.poptarts.com)) for advertising claims.

**The Packaging:**

The front of the package of *Kellogg's® Pop-Tarts® Frosted Strawberry* contains pictures of four strawberries, one on top, and three near the bottom of the toaster pastry. The pastry is featured with its strawberry filling prominently displayed. The strawberry on top, which sits on the pastry itself, is contiguous with the words Pop-Tarts® and features the words, “Made with Real Fruit” inside the strawberry.<sup>1</sup>

The back panel of the box consists of a large card, which is outlined in a black dotted line and covers approximately seven-eighths of the panel. This card features a cartoon representation of a Pop-Tart® that has been mostly eaten to reveal a cartoon character standing behind and holding up the pastry. A box of *Frosted Strawberry Pop-Tarts®* features a cartoon boy with a blueberry mustache and large grin holding the pastry. Below this image is the caption,

IT'S WHAT'S INSIDE THAT COUNTS

Blueberry  
**POP**  
tarts®  
**crazy good**

On the top eighth of the panel, the following instructions are given:

Cut & Collect 15 in all  
With safety scissors, and an adult's help,

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<sup>1</sup> Packaging for additional Pop-Tarts® flavors, including Unfrosted Strawberry, Strawberry Low fat, Frosted Blueberry, Unfrosted Blueberry, Frosted Cherry, Frosted Raspberry and Frosted Wild! Berry, presents the same depiction of fruit and the “Made with Real Fruit” claim.

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Cut along dotted line.

On a side panel, next to the Nutrition Facts, is a series of six rectangles of various colors down the right third of the panel. Each rectangle features a signature cartoon Pop-Tarts® pastry person with arms, legs and eyes, and each rectangle contains the name of a different flavor of Pop-Tarts®: Chocolate Chip Cookie Dough, Strawberry Milkshake, Chocolate Fudge, Cookies & Crème, Chocolate Chip and Hot Fudge Sundae. These cartoon pastry people are featured on the “KIDS” section of the Pop Tarts website, [www.poptarts.com](http://www.poptarts.com), appearing first on the sign up page, along with a cartoon toaster and a mechanical horse, and on every subsequent page of the “KIDS” section. Above the rectangles is the heading “Have you tried these great flavors”? Below them is the question: “Which flavor will you try next”?

The other side panel features pictures of two large strawberries and instructions for toasting and microwaving Pop-Tarts®. Next to the toasting instructions is a cartoon image of a toaster, similar to the cartoon toaster on the “sign-up” page of the Kids section of the website, and two Pop-Tarts® that are adorned with sun rays.

The top and bottom of the box each display a picture of a strawberry.

### **The Products:**

Kellogg’s® Pop-Tarts® toaster pastries are pastries that can be heated by toasting or microwaving. According to the “Nutrition Facts” for various fruit flavored Pop-Tarts®, the amount of the fruit listed in the name of the product is 2% or less, and the total amount of fruit is 6% or less. For example, the Strawberry Pop-Tarts® contain 2% or less of dried strawberries and 2% or less each of dried apples and dried pears, totaling 6% or less of fruit. Similarly, the Frosted Cherry product contains 2% or less of dried cherries and 2% or less of dried apples, totaling 4% or less of fruit and the Frosted Wild Berry product contains 2% or less of each: dried strawberries, dried apples and dried pears.

### **CARU's Concerns:**

CARU was concerned that the product packaging, which features berries and states “Made with Real Fruit” for several of Kellogg’s Pop-Tarts®<sup>2</sup> products that have fruit in their names, impliedly represents to children that the products contain substantial amounts of fruit.

### **Advertiser’s Position:**

In response to CARU’s concerns, Kellogg argued that the case should be administratively closed, without a written decision for two reasons:

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<sup>2</sup> The Advertiser offers several Pop-Tarts® flavors, including Unfrosted Strawberry, Strawberry Low fat, Frosted Blueberry, Unfrosted Blueberry, Frosted Cherry, Frosted Raspberry, Frosted Wild! Berry. Packaging for these products presents the same depiction of fruit and the “Made with Real Fruit” claim. All such products are covered by this decision.

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### 1) Product Packaging is not “Advertising Primarily Directed to Children”

First, the Advertiser asserted that CARU lacked jurisdiction over product packaging because CARU’s jurisdiction, as defined under CARU’s *Self-Regulatory Program for Children’s Advertising* (the *Guidelines*), applies solely to advertising “primarily directed to children”<sup>3</sup> and maintained that “[u]nder no circumstances can product packaging be deemed to be advertising directed *primarily* to children under 12.”

Second, Kellogg asserted that it is an active participant in the Council of Better Business Bureau’s Children’s Food and Beverage Advertising Initiative (CFBAI), a pledge program that excludes product packaging from its commitments because the CFBAI members believe that packaging is not typically directed primarily to children under 12, but instead is intended for the primary grocery shopper.

### 2) Kellogg Does Not Advertise Pop-Tarts® to Children

Kellogg maintained that it does not advertise Pop-Tarts® to children. Kellogg explained that as a participant in the CFBAI it has pledged to limit its advertising directed to children to promotion of products meeting certain nutritional criteria. The Advertiser asserted that because Pop-Tarts® does not meet its pledged nutritional criteria, it does not advertise the product to children.<sup>4</sup>

## Relevant Guidelines

CARU’s Self-Regulatory Program for Children’s Advertising (the *Guidelines*) state, in part, under II. A. Scope,

The principles and guidelines... apply to:

National advertising primarily directed to children under 12 years of age in any medium...<sup>5</sup>

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<sup>3</sup> Kellogg stated that of the factors listed in the *Guidelines* to determine whether an ad is primarily directed to children, none are relevant in this instance.

<sup>4</sup> C. Peeler, E. Kolish, M. Enright, “The Children’s Food and Beverage Advertising Initiative: A Report on Compliance and Implementation During 2008” (Oct. 2009), available at <http://www.bbb.org/us/children-food-beverage-advertisinginitiative/info>

<sup>5</sup> The entire Scope section follows:

The principles and guidelines... apply to:

1. National advertising primarily directed to children under 12 years of age in any medium. Such advertising will be determined by an analysis of factors, no single one of which will necessarily be controlling, including:
  - (a) whether the content of the media in which the advertisement appears is intended for children under 12 (considering the content’s subject matter, format, projected audience demographics, and extent to which other advertising in that content is intended to children under 12);
  - (b) whether the advertisement appears during, or just before or after, a television program aired during what is generally understood to be children’s programming, considering the time of day during which the advertisement appears and the media outlet;
  - (c) whether the advertisement appears during, or just before or after, a television program which is counted towards the broadcaster’s or cablecaster’s children’s Television Act obligations;
  - (d) whether based on available information (including the subject matter and format of the advertisement) the advertiser intended to direct the advertisement primarily to children under 12.

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CARU's *Guidelines* state, under II. B. Definitions,

National advertising shall include any paid commercial message, in any medium (**including labeling**), if (a) it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service. (Emphasis added.)

The *Guidelines*, under II. C, Core Principles, state in relevant part:

1. Advertisers have special responsibilities when advertising to children... They should take into account the limited knowledge, experience, sophistication and maturity of the audience to which the message is directed. They should recognize that younger children have a limited capacity to evaluate the credibility of information, may not understand the persuasive intent of advertising, and may not even understand that they are being subject to advertising.

Part II. D, 2 General Guidelines, states, under (a) "Deception":

To assure that advertising to children is not deceptive:

1. The "net impression" of the entire advertisement, considering among other things, the express and implied claims, any material omissions, and the overall format, must not be misleading to the children to whom it is directed.
2. Whether an advertisement leaves a misleading impression should be by assessed how reasonable children in the intended audience would interpret the message, taking into account their level of experience, sophistication, and maturity; limits on their cognitive abilities; and their ability to evaluate the advertising claims.

Part II. D, 2 General Guidelines, Part 1(b) "Product Presentations and Claims" states, in part,

1. Copy, sound and visual presentations should not mislead children about product or performance characteristics. Such characteristics may include, but are not limited to... nutritional benefits..."

### **Decision:**

This case presented the following issues for CARU's analysis:

- I. Does the product packaging for Kellogg's *Pop-Tarts®* fall within CARU's scope?
- II. If so, could a child viewing the advertising reasonably take away the message that the products contain substantial amounts of fruit?

## **I. CARU's Jurisdiction**

### A. CARU has Jurisdiction Over Product Packaging

CARU clearly has jurisdiction over product packaging. The *NAD/CARU/NARB Procedures (Procedures)*, which were adopted in 1990 and govern the advertising industry's process of voluntary self-regulation, explicitly define "national advertising" to include "labeling" as a covered medium.<sup>6</sup> This definition of national advertising was incorporated into the current *Guidelines* in late 2006 (hereafter referred to as the "revised" *Guidelines*).

### B. The Packaging in Question is Primarily Directed to Children

Given our determination that product labeling falls specifically within CARU's jurisdiction, we now turn to the issue of whether the labeling in question is primarily directed to children.

Under the Scope section of the *Guidelines*, whether or not advertising is "primarily directed to children"<sup>7</sup> is to be determined by a number of factors, no one of which is controlling. While CARU finds that many of the factors listed under Scope refer to television advertising, and therefore may not be relevant to product labeling, one factor – whether the subject matter and content of the advertisement (including labeling) indicates that the advertiser intended the advertisement (including labeling) to be directed primarily to children, clearly is applicable. CARU believes there is ample evidence to conclude that the instant packaging falls within CARU's jurisdiction under this standard.

The package is not only attractive to children, but appears to be directed to them. The box is filled with depictions of the signature cartoon Pop-Tarts® character. This is notable in the panel with the nutrition information, which contains six of those signature cartoon Pop-Tarts® characters. Significantly, one entire package panel constitutes a premium to "Cut & Collect 15 in all." Consumers are instructed to "With safety scissors, and an adult's help, cut along dotted line." Each card features Kellogg's Crazy Good Pop-Tarts® characters and contains the advertising copy, "It's what's inside that counts," referring to the pastry's filling. CARU determined that these cards, along with its advertising copy, are directed to children under 12.

After reviewing the advertising and all other evidence in the record, CARU determined that the packaging falls within its jurisdiction.<sup>8</sup>

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<sup>6</sup> See, *Procedures*, Definitions, I.I A.

<sup>7</sup> Id at 7. *Guidelines*, Part II (A)1.

<sup>8</sup> The Advertiser argued that it did not advertise Pop-Tarts® to children. CARU does not agree. Not only does Kellogg advertise Pop-Tarts® to children on packaging, but it features a "Kids" section on its Pop-Tarts® website that also advertises the product to children. This section is filled with pictures of its signature cartoon Pop-Tarts® pastry person. This appearance starts on the sign-up page and continues throughout the games and activities offered on the "Kids" section of the site. For example, the home page of the Kids section, under the heading "Pop-Tarts® Adventures in Breakfast" displays the pastry person as part of the heading. A little girl is shown chasing a Pop-Tarts® pastry person back and forth across the screen, while a pastry person with an unhappy face, caught in a toaster, waves his arms frantically while being carried on a pallet by four children looking very happy. In fact, the Advertiser has placed the following reminder on every page:

## **II. Implied Claims**

Having determined that the packaging for Pop-Tarts® falls with CARU's jurisdiction, CARU must now determine the following:

1. What are the implied message(s) that a child may reasonably take away from viewing the packaging? and,
2. Can those messages be substantiated?

It is a well settled principle of advertising law that an advertiser is responsible to substantiate all reasonable interpretations of its claims.<sup>9</sup> Because no consumer evidence was submitted in this case, CARU used its experienced judgment to decide what messages a child could reasonably take from the pictures and copy on the packaging of Pop-Tarts®. To make this determination, CARU examined the packaging and all of the other evidence in the record.

The packaging contains pictures of strawberries, which appear on the front, side, top and bottom of the box. Further, on the front of the box, one of the strawberries, which is touching the pastry, contains the express claim,

Made with Real Fruit

CARU determined that the express claim, "Made With Real Fruit," combined with the pictures of strawberries all over the package, could easily lead a child to believe that the product contains substantial amounts of strawberries.<sup>10</sup> Because several other flavors of Pop-Tarts® with fruit in their name have similar packaging related to the named fruit, CARU determined that packaging for those products also implies to children that the product contains substantial amounts of the named fruit.

With respect to the implied claim, i.e., that the product contains substantial amounts of strawberries, CARU determined that the claim is not supported by the evidence in the record. In fact, the "Nutrition Facts" for various fruit flavored Pop-Tarts® disclose that the amount of the named fruit is 2% or less, and the total amount of fruit is 4% or less or 6% or less. For instance, the Frosted Strawberry variety contains less than 2% of dried strawberries. These percentages clearly do not represent a substantial amount of fruit.

## **Conclusion:**

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**KIDS:** This page may contain a product or promotion advertisement.

<sup>9</sup> L'Oreal USA, Inc. (L'Oreal Kids Strawberry Smoothie and Fast Dry Shampoos), Case #3938, NAD Case Reports, (July 2002), Unilever United States, Inc. (Popsicle Real Fruit Juice Pops), Case #4237, NAD Case Reports, (October 2004).

<sup>10</sup> See, Kellogg Company. (Pop-Tarts®), Case #4515, *NAD/CARU Case Reports*, (June 2006); Unilever United States, Inc. (Popsicle Real Fruit Juice Pops), Case #4237, NAD Case Reports, (October 2004).

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CARU concluded that the advertising on product labeling in this case is directed to children and comes under CARU's jurisdiction. CARU also concluded that because the claim "made with real fruit" along with the depiction of the strawberries on the packaging could potentially mislead children regarding the fruit content of these products, the implied claim should not be made in child directed advertising, in all media, including labeling, for these products.

**Advertiser's Statement:**

Consistent with Kellogg's commitment under the Children's Food and Beverage Advertising Initiative (CFBAI), Kellogg does not advertise Pop-Tarts(r) toaster pastries to children. The claim that is the subject of this inquiry is used only in adult-targeted media, including print, television and online and appears on front-of-pack only. The packaging at issue in this inquiry, with the Cut & Collect promotion on the back panel, is no longer our current packaging. While it may still be on shelf in some locations, we stopped printing those packages on December 1, 2009. Kellogg continues to believe that the front panel of the packaging for Kellogg's(r) Pop-Tarts(r) toaster pastries, which contains the "made with real fruit" claim, is not advertising primarily directed to children. Nonetheless, we respect the self-regulatory process and will take CARU's decision into consideration in future advertising. (**#5165 PBS, closed 04/23/2010**)