

Ruling

EFL Digital Ltd t/a The EFL

EFL House, 10-12 West Cliff, Preston, PR1 8HU

Papa John's (GB) Ltd

11 Northfield Drive, Milton Keynes, MK15 0DQ

Media: Other
Agency: None – unconfirmed
Complaint Ref: A22-1172914
Complaints: 1



AD DESCRIPTION

Two online calendar events for The English Football League (EFL) and Papa John's:

- a. The first calendar event, seen on 21 October 2022, featured the headline “[football emoji] Papa Johns Trophy: Stevenage vs Tottenham Hotspur U21”. Text within the event stated “We’ve partnered with Papa Johns to offer fans 50% off pizza! Simply show your EFL season or match ticket to staff in a Papa Johns store for half price on your pizza order! [football emoji] + [ticket emoji] = [pizza emoji]”.
- b. The second calendar event, seen on 21 October 2022, featured the headline “[football emoji] Papa Johns Trophy: Burton Albion vs Bradford City” and contained the same text within the event as ad (a).



ISSUE

Sustain's Children's Food Campaign, who understood that the promotion had been received by an individual registered with an under-16 age, challenged whether the ads were for products that were high in fat, salt or sugar (HFSS product ads) that were directed at children through the selection of media or context in which they appeared.



RESPONSE

EFL Digital Ltd t/a EFL clarified that Papa John's were appointed title sponsor of the Papa John's Trophy football competition in October 2020 and continued to fulfil that status. As part of that agreement, Papa John's were entitled to a range of branding and advertising opportunities. Whilst the promotion formed part of the contractual framework with Papa John's, the EFL confirmed that the promotion was not mandated as part of the contract, and as such, did not consider it was paid-for advertising. They further stated that the calendar entries had not included such promotional messages until September 2022.

The EFL explained that the ads were delivered as part of an agreement with a service provider which enabled users to subscribe to have event related information relevant to their chosen Club or specific EFL competition synced with their chosen e-calendar free of charge.

The EFL specified that the promotional message appeared in all synced calendar entries relating to the Papa John's Trophy fixtures to all subscribers from week commencing 5 September 2022 to 14 November 2022. The promotional message was removed as a result of a complaint of a different nature made directly to the EFL. They confirmed that the promotion included in the ads complained of had been removed prior to being made aware of the complaint from the ASA and that they had no intention to reinstate the promotion within similar ads.

The EFL said that the opportunity to sync fixtures to an individual's e-calendar was not intended for specific appeal to those under the age of 16. Since May 2021, all those wishing to subscribe had been required to supply their date of birth, and if they were unable to demonstrate that they were 13 years old or older, they were unable to sync the events to their calendar. They explained that the ages of users were collected to comply with the minimum age by which consent could be obtained from a minor for offer of access to information society services pursuant to the Data Protection Act 2018.

They re-iterated that they did not review the data collected as part of the pre-subscription form to determine whether an individual should receive the promotional message from Papa John's in their synced calendar events. Rather, every individual who subscribed downloaded the same fixture entries and the accompanying promotional message for the applicable football matches. Consequently, they highlighted that targeting tools were not available to distinguish between users at the point of syncing the calendar information. With that in mind, they explained that there were two possible methods to prevent under-16s from receiving the promotional message; either operating two versions of the downloadable fixtures, one for under-16s and one for over-16s, or syncing additional calendar invites which included the promotional message and were delivered to over-16s only. However, they believed that those options were not feasible for a variety of reasons, such as poor user experience, that it would be unduly burdensome to administer, and that it would rely solely on self-declared ages. Because of that, they suggested seeking to exclude under 16s from receiving the promotional message went beyond what would have been a "reasonable step" to expect of a marketer.

The EFL noted CAP Guidance stated that the approach adopted by advertisers to exclude under-16s from the audience of HFSS ads varied according to the type of online media used, the targeting tools available, and the context of the ad placement. They believed that, whilst the guidance was clear in relation to a number of contexts, such as websites and social media, that they were unsure how the guidance applied to downloaded calendar events. They also highlighted that the guidance did not expressly state what approach should be taken in the context of a download that synced to a calendar or other similar media. They further believed it was unclear whether such media could be classified as direct marketing, and therefore, that it was not appropriate to treat the ads as being analogous to "a mailing list for direct or email marketing". Therefore, they understood that because they held evidence that the number of under-16s was significantly less than 25 percent of their total audience of subscribers, they considered that it was not necessary to exclude all of those under 16 years old from receiving the promotional message.

The EFL further detailed the data which they considered demonstrated that the number of under-16s subscribed to the calendar syncing was marginal. Their subscriber database indicated that 0.02% of those who had signed up since May 2021 were under the age of 16. They acknowledged that those who subscribed prior to May 2021, when the requirement for users to confirm a date of birth was introduced, may still sync fixtures to their e-calendar. However, they considered that because the proportion of those under 16 was so low, it did not indicate a significant number of subscribers were under-16. They also shared that 0.08 percent of their fans were identified to be under the age of 16 across the entire EFL Digital customer relations database, which included data

derived from Club and EFL newsletters, audio-visual streaming services, and the fixture syncing service. They re-iterated that because there was only a marginal number of under-16s who were subscribed to the fixture syncing, they considered that the promotional message was not directed at under-16s through the selection of media and the audience did not consist of more than 25 percent of under-16s.

Papa John's agreed with the reasoning set out by EFL and, as such, did not consider that the ads were directed at children either through the medium or context in which they appeared. They highlighted that they did not intend for the ads to be specifically targeted at under-16s. They confirmed that they created the advertising copy, but due to the contractual framework between the EFL and Papa John's, they explained that they did not have control over the way in which the ads were distributed. Furthermore, they said that, because they did not have access to the EFL's subscriber data, they were not able to take an independent decision about whether under 16s would be included in that audience.



ASSESSMENT

Upheld

The CAP Code stated that HFSS product advertisements must not be directed at people under 16 through the selection of media or the context in which they appear and that no medium should be used to advertise HFSS products, if more than 25 percent of its audience is under 16 years of age. The ads, synced calendar events for upcoming fixtures in the EFL, featured a promotional offer applicable to all pizzas available in-store at Papa John's. We understood that the range of pizzas offered by Papa John's were HFSS products and, as such, considered that the promotional messages were ads for HFSS products for the purposes of the Code.

CAP Guidance stated that if data was used to create an audience, for example a mailing list for direct or email marketing, marketers must ensure they had taken all reasonable steps to exclude under-16s from the list or targeting criteria. Anyone with a date of birth that meant they were under-16 should be removed. In instances where that information was available to advertisers, it was not sufficient to show that less than 25 percent of the audience was under 16 years of age.

We understood that as part of the sign-up form for the online calendar events users were required to share their date of birth. Whilst we acknowledged the EFL's argument that the ads were synced calendar events, which were not based on a mailing list, we considered that they had access to that data and were able to remove under-16s from the audience that received the promotional message. They had chosen to allow syncing of the calendar to those who were 13 years old or over, which meant that those who were aged between 13 and 15 years of age were allowed access to the fixture events containing the Papa John's promotional message. We also considered that, because they were able to prevent under-13s from syncing the ads, data had been used to create an audience and it would have been possible to prevent under-16s from receiving the promotional message.

We were not supplied with the number of under-16s who downloaded the fixture events containing the promotional message. Nevertheless, we understood that 0.02% of those who had signed up to sync football fixtures to their e-calendar since May 2021 were under-16. The ads, which contained promotional offers for HFSS products, had therefore been sent to a number of individuals under the age of 16. For that reason, we considered the EFL and Papa John's had not taken reasonable steps to exclude under-16s from the audience, and that the ads had been directed at children through the selection of media in which they appeared. We therefore concluded that they breached the Code.

The ads breached CAP Code (Edition 12) rule 15.18 (HFSS Product Ad Placement).



ACTION

The ads must not appear again in the form complained of. We told EFL Digital Ltd t/a EFL and Papa John's to ensure that HFSS product ads were not directed at children through the selection of media or the context in which they appeared.

CONFIDENTIAL