



Thursday 3 October 2019

Mr Rami Greiss

Executive General Manager, Enforcement
Australian Competition & Consumer Commission
Email: infocentre@accc.gov.au

Dear Mr Greiss,

CHOICE Shonky Awards 2019 Winner: suggested case for investigation and enforcement

On Thursday 10 October 2019 CHOICE will announce the 'winners' of our annual Shonky Awards. Each year CHOICE reviews members' complaints and carries out tests, research, investigations and consumer feedback to determine the shonkiest products and services available in Australia. Awards are given to businesses that have caused significant consumer detriment or outrage due to factors such as product faults, misleading advertising or poor customer service.

CHOICE encourages the ACCC to investigate one of this year's Shonky Award winners, Freedom Foods' XO Crunch breakfast cereal, as this product is likely to have breached provisions of the Australian Consumer Law (ACL). Freedom Foods presents its XO Crunch as healthy with a clear on pack statement that the product is 'good for you!'. Looking at the nutritional composition of this product, particularly the high sugar content, we think this claim is misleading consumers.

Misleading marketing practices

Freedom Foods' XO Crunch is a breakfast cereal marketed as a children's food. This product makes numerous claims on packaging about the health benefits of the product, including:

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- 'With the **goodness** of whole grains'
- '**No nasties** - no artificial colours, flavours or preservatives'
- 'Fun and **nutritious** way to start your kids' day'
- '**Good** for you!'
- '**Eat well** today, feel better tomorrow'

These claims fail to prominently disclose that the product is made from 22.2% added sugar in the form of cane sugar and golden syrup.

This product cannot claim to be healthy based on international measures. The World Health Organisation recommends that added sugars should account for less than 10% of total energy intake¹ for the prevention of unhealthy weight and dental caries. Just one recommended serving of Freedom Foods' XO Crunch would account for 15.4% of the recommended daily intake for adults, and more for children.

Over-consuming added sugar causes significant harm to consumers. In the case of Freedom Foods' XO Crunch, CHOICE believes that the manufacturer uses misleading marketing language to position XO Crunch as a nutritious product that delivers health benefits, without acknowledging the product's high sugar content.

It is even more concerning that this product is explicitly marketed as a children's product through statements like: 'fun and nutritious way to start **your kids**' day' and 'convenient **lunch box** snack'. The cereal's noughts and crosses shapes, and packaging complete with a picture of a children's toy makes the target market explicitly clear.

ACCC action on misleading health marketing

The ACCC has previously taken action against sugary products with misleading marketing. In 2018, the Federal Court ordered H.J. Heinz Company Australia Ltd (Heinz) to pay penalties totalling \$2.25 million for making a misleading health claim that its Little Kids Shredz products were beneficial for young children.

Though nutrition content claims and health claims made by food businesses in advertising are covered by Standard 1.2.7.², health marketing that does not fall under the banner of:

- general level health claims (based on 200 pre-approved food-health relationships in the Standard or self-substantiate a food-health relationship in accordance with detailed requirements set out in the Standard);
- high level health claims (based on a nutrient or substance in a food and its relationship to a serious disease or to a biomarker of a serious disease); or,
- nutrient content claims (claims about the content of certain nutrients or substances in a food)

¹ For adults, this is approximately 50 grams/12 teaspoons

² This instrument is a standard under *Food Standards Australia New Zealand Act 1991* (Cth).

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The Standard leaves a gap for food companies to use unsubstantiated, misleading health marketing practices, such as the language used on Freedom Foods' packaging for XO Crunch. CHOICE emphasises that while Freedom Foods may not have contravened Standard 1.2.7, the claims made about XO Crunch are likely to mislead the average person and appear to have breached the consumer law.

Recommended action

CHOICE encourages the ACCC to investigate Freedom Foods for misleading and deceptive conduct in relation to the marketing claims made about XO Crunch and take enforcement action if this product is found to breach the ACL.

Direct action is needed to resolve the XO Crunch issue, but there is scope for broader work in relation to health food marketing. CHOICE has identified a number of additional products targeted at young children using similarly misleading health marketing practices across language, packaging design and positioning in the health food aisle and toddler snacks product category (Appendix 2). Consumer comments indicate that people are being misled by these health marketing practices into believing that these products are healthy are also supplied (Appendix 3).

Misleading health marketing would benefit from a targeted ACCC Market Study in order to quantify the widespread detriment to consumers' health that results from this. We also encourage the ACCC to consider health-based claims as one of the ACCC's key priorities in the coming years.

For further information please contact CHOICE on linda@choice.com.au

Yours sincerely,



Linda Przhedetsky
Campaigns and Policy Adviser

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Appendix 1.

freedom
FOODS

Always
GLUTEN FREE
WHEAT FREE
NUT FREE

285g e

Delicious Cocoa Puffs

XO Crunch

4
HEALTHY
RATING

SOURCE OF FIBRE

with the goodness of 3 grains

MADE IN AUSTRALIA

Serving Suggestion

freedom
FOODS

**XO
Crunch**

GOOD FOR YOU!

NO PRESERVATIVES | LOW SALT | HIGH-CHEF
NO ARTIFICIAL COLOURS OR FLAVOURS | SOURCE OF FIBRE | LOW FAT

EAT WELL TODAY,
FEEL BETTER
TOMORROW

CHAT FEEL-GOOD
FOOD WITH US.

www.facebook.com/freedomfoodsaustralia

Free call number: 1800 646 222
CPOB call: 08 8222 2222
CPOB call Fax: 08 8222 2222
PO Box 10000
Perth WA 6001

freedom
FOODS

**XO
Crunch**

GOODNESS OF 3 GRAINS
MADE WITH A COMBINATION OF SORGHUM, RICE AND CORN TO HELP FUEL THEIR ACTIVE DAY

LUNCH BOX
POP SOME IN A BAG FOR A CONVENIENT LUNCH BOX SNACK

FUN IN A BOWL
PLAYFUL FUN SHARES JUST MADE BREAKIE A WHOLE LOT MORE FUN

A FUN AND NUTRITIOUS WAY TO START YOUR KIDS' DAY!

FIBRE
FROM UNIQUE INGREDIENTS LIKE WHOLE GRAIN SORGHUM, CHICKPEA FIBRE AND PSYLLIUM HUSK TO KEEP THEM MOVING

NO NASTIES
NO ARTIFICIAL COLOURS, FLAVOURS OR PRESERVATIVES

DELICIOUSLY TASTY
MADE WITH THE NATURAL GOODNESS OF DELICIOUS COCOA THAT KIDS WILL LOVE... JUST ADD MILK FOR A YUMMY CHOCOLATE TASTE

freedom
FOODS

**XO
Crunch**

FREE FROM

GLUTEN* | NUTS*
WHEAT* | SOY*
EGGS*

*Free from items as found in Wheat, Rice, Barley, Malt and Oats. Does not contain Gluten.

Freedom Foods are passionate about ensuring our products are gluten free. Our rigorous process includes testing of our materials, ingredients in the production process, and testing every batch of finished product using internationally validated methods.

* This product is made in a dedicated nut free facility. Ingredients used in this product have been tested for the presence of Almonds, Peanuts, Hazelnuts and Walnuts.

NUTRITION INFORMATION			
Serving per package: 8 Serving Size: 35g			
	Average Quantity Per Serving (35g)	Average Quantity Per 100g	
Energy	530 kJ	1570 kJ	
Protein	2.5 g	7.1 g	
Gluten	Not Detected	Not Detected	
Fat, Total	0.9 g	2.9 g	
Saturated	0.4 g	1.0 g	
Carbohydrate	25.2 g	72.6 g	
Sugars	2.1 g	6.2 g	
Dietary Fibre	2.8 g	8.0 g	
Sodium	25 mg	70 mg	
Potassium	190 mg	560 mg	

All values are considered averages unless otherwise indicated.

Freedom Foods is a registered trade mark of Freedom Foods Group Limited.

INGREDIENTS: Gluten Free Flour Mix (65%) (Rice Flour, White Grain Sorghum Flour, Malted Flour), Cocoa Sugar, Cocoa Powder (90%), Psyllium Husk, Chickpea Fibre, Golden Syrup, Emulsifier (Sunflower Lecithin), Flavour, Salt.

Made in Australia from at least 91% Australian ingredients

FREEDOM FOODS GROUP
TRADING PTY LTD
80 BICK RD, TAKEN POINT
NSW 2219 AUSTRALIA
WWW.FREEDOMFOODS.COM.AU

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Appendix 2.

- **Rafferty's Garden Strawberry Yoghurt Buttons**

This 'baby food' is marketed at toddlers aged one year and older. Though the package advertises that its contents are '97% yoghurt and fruit', the product is 63.2% sugar, the bulk of which is added sugar.

Rafferty's Garden uses health marketing such as 'made with probiotic cultures' to make this product seem healthier than it is.



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- **Whole Kids Organic Popcorn - Manuka Honey**

This product contains more added sugar (a total of 50.5% - 37% cane sugar 11.5% glucose and 2% honey) than it does popcorn (45%). The claims of 'organic', 'Nothing artificial', and 'free from all artificial colours, preservatives and flavours' create a health halo that makes this product appear healthier than it is.

Whole Kids markets this food as a healthy product for children, but it has more sugar than other clearly unhealthy popcorn products, such as Kettle Salted Caramel Popcorn (17% sugar).



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● **Lowan Whole Foods Cocoa Bombs**

Lowan knows 'how important it is to start your day right with brekky!', according to the package. The company's Cocoa Bombs are presented as a 'good' option, with a range of claims including 'source of fibre', 'low in fat', 'no artificial flavours or colours'. These claims are misleading as they distract from the fact that this product is 22.7% sugar.



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● **Only Organic Yoghurt Rice Cakes**

As we've already demonstrated, the word 'yoghurt' conjures up a healthy image, and in this case it's the on-pack image and not just the word that's misleading to consumers.

The image on the front of this pack of snacks for 'Kindy' kids aged 1-5 depicts wholesome-looking whole grains of puffed rice with a large spoonful of real yoghurt, but this isn't an accurate depiction of what's inside. The 'yoghurt topping' on Only Organic's Yoghurt Rice Cakes consists of cane sugar, cocoa butter, skimmed yoghurt powder, full-cream milk powder and emulsifier, changing a perfectly healthy rice cake into a snack that's high in saturated fats and sugar.



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Appendix 3

- **Freedom Foods XO Crunch**



jbutxxx said
23 Aug 2019
12:19 am

Love this!

★★★★☆ 4 out of 5

I always get these when they are half price (\$2) otherwise they are quiet expensive. But at half price it's really great value (the same as the sugar filled cereal, which sadly are always cheapest). I eat this with a protein shake as the milk and it's the perfect pre work out. My little one and partner love them too so always have a box on hand.

- **Rafferty's Garden Strawberry Yoghurt Buttons**



Simone said
29 May 2019
5:06 pm

yummy buttons

★★★★☆ 4 out of 5

this children's snack is fairly healthy and tastes quite nice (apparently). it is made up of high quality ingredients and is quite cheap to buy too. love that there is yoghurt in them!



mom182652 said
13 Jul 2017
2:50 pm

Great Product

★★★★☆ 4.5 out of 5

My little one loves these as a special little treat. Great little healthy treat. Would be nice if they had come in other flavours for a change.

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lollies for bubbas

★★★★★ 5 out of 5

We call these lollies and all 3 of kids LOVE THEM. They are great for bubba because they melt in the mouth and seriously they taste amazing. We use them as rewards in our house and they think they are getting something naughty when in fact they are actually quite healthy

- **Whole Kids Organic Popcorn - Manuka Honey**

REVIEW: This was our favourite of the range - Manuka Honey YUMMMO! I relived caramel popcorn as a child when I tried these but in a healthier option. This was a very generous serving amount for the kids which I don't think you would find the younger ones getting through all of the serving.

- **Lowan Whole Foods Cocoa Bombs**

Definitely worth trying out, even if gluten is not an issue for you. A great tasting cereal, healthier than average with lower sugar and more pleasant taste than more standard variants of the same product.

Excellent alternative to the hyper-sugary main brand name products. It has a light cocoa taste and some sweetness. I found it suitable for my children, one of who we suspected was gluten intolerant for a while.

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I'm a bit of a cereal buff, but I am conscious of sugar and carbohydrates so I usually go with cereals like wheat-bixs and sustain but I love to throw in the occasional favorite CC pops but they are very expensive and sugar packed, anyway while looking for something without wheat I found this new lowan product, buy it for 3.49 always at my IGA really nice with hi-lo milk, definitely recommend.

Tasty, cheap and healthier version of the sugar cereal family.

Like with any cereal, to much without excerise is going to do some damage.

I was fed up with the amount of sugar in childrens breakfast cereals. All the advertising pushed at kids for the 'cool' cereals, means its a battle to get them to eat anything they consider 'boring'.

I spotted Cocoa Bombs in Woolies, and thought I'd give them a try. The kids devoured them. They were happy with the taste, and texture.

They have less sugar than other brands, which means I'm happier to allow the kids to have them. There are less additives, which, in this day and age is a good thing.

The price is very reasonable.

taste, made kids happy, less additives, less sugar

- **Only Organic Yoghurt Rice Cakes**



● Simone said
29 May 2019
5:00 pm

yummy rice cakes

★★★★☆ 4 out of 5

this children's snack is fairly healthy and tastes quite nice (apparently). it is made up of high quality ingredients and is quite cheap to buy too. great rice cakes!



● mom183717 said
31 May 2016
10:53 pm

Loved by all

★★★★★ 4.5 out of 5

These rice snacks are loved by my little boys. They are easy for them to eat, they love the taste and mummy loves their nutritious

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