



## Case Report

1	Case Number	0036/17
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/02/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens with the words 'cheeseburger meal deal'. The voiceover says that a cheeseburger, small fries, small Coke and a sundae are available for \$4. From the 8 second mark until the 14 second mark the following legal lines appear in clear, legible and easily readable text at the base of the screen: "Available 10:30am – midnight at participating restaurants for a limited time. Excludes McDelivery®." The final frame appears for one second and shows the Golden Arches on a red background with the slogan "more bang for your buck".

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*I verily believe that the McDonalds Ad for an alleged special "4 for \$4" is misleading and deceptive.*

*After the advert ran on TV I went to the drive thru of McDonalds Main Street Kangaroo Point Queensland about lunch time on Wednesday 04/01/2017 and ordered a "4 for \$4 Special" and was told that it was only available if the advert was currently showing on the electronic board of the drive thru. I had driven there specifically for the special after seeing the advert on the TV. I felt I was misled and deceived as I was not aware of the requirement that the special only applied if shown on the electronic board in the drive thru. If this is the case then why advertise on the TV? The special is therefore not available at prescribed time*

*ie it is ad hoc and up to the McDonalds to run the advert on the drive thru. Surely, the intention is to mislead and deceive people to come and then not be guaranteed the special.*

*Since my visit to McDonalds, I have again seen the ad and paid special attention to the small print displayed on the bottom of the page. I am not kidding about the “small print”. It was tiny, the colour did not stand, and there was no words detailing that T&C’s applied. I note that the fine print does not appear for the full length of the ad but only appears for the final few seconds. I note that the small print only outlines that the special is only available at participating stores. What does this mean? It is either a special at McDonalds or not. If it is not available at all stores then the ad should detail which stores it is available at. Further, the ad makes no mention that “participating stores” means stores that run the ad in the drive thru. That means you have to dive into the drive thru to determine if it a “participating store”. This reinforces that McDonalds are trying to mislead and deceive.*

*I feel I should be reimbursed for my time and costs along with all other customers (or McDonalds should donate the equivalent of all “4 for 4” sales to Ronald McDonald House, the ACCC prosecute McDonalds, McDonalds stop the ad and apologize, and all TV networks stop the ad.*

## **THE ADVERTISER’S RESPONSE**

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*McDonald’s thanks the Advertising Standards Bureau (ASB) for the opportunity to provide a response to complaint 0036 of 2017 (Complaint). The television commercial the subject of the Complaint (TVC) is the 4 for \$4 television commercial advertising a meal deal with four items available for \$4.*

### *Description of the TVC*

*The TVC opens with the words ‘cheeseburger meal deal’, a cheeseburger and a spinning roundel with the Golden Arches on one side and ‘\$4’ on the other. The TVC voiceover says that a cheeseburger, small fries, small Coke and a sundae are available for \$4.*

*The TVC is 15 seconds long, and from the 8 second mark until the 14 second mark the following legal lines appear in clear, legible and easily readable text at the base of the screen: “Available 10:30am – midnight at participating restaurants for a limited time. Excludes McDelivery®.”*

*The final frame appears for one second and shows the Golden Arches on a red background with the slogan “more bang for your buck”.*

### *The Complaint*

*The Complaint alleges that the TVC is misleading and deceptive. The ASB has raised this issue under section 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Code) which states that “advertising or marketing communications for food or beverage products shall be truthful and honest, shall not be or be*

*designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience...”*

### *Submissions*

*The TVC makes it very clear to the target audience that the offer is only available at participating restaurants. McDonald’s operates a franchise system and cannot force all restaurants to participate in every offer. Unless an offer is available at every single restaurant in Australia, our advertising materials will state that the offer is only available at participating restaurants. This is standard for all businesses that have multiple outlets operating under one brand. The phrases “available at participating restaurants” and “available at participating retailers” are incredibly common in Australia and are well recognised by consumers. The meaning of these phrases is also well understood.*

*The legal disclaimer was shown clearly and legibly for a sufficient amount of time for the ordinary reasonable person to be able to read and understand it. By the complainant’s own admission, the disclaimer was present in the commercial and clearly said “at participating restaurants”. On one hand the complainant says that the text is too small to read and is not shown on the screen for long enough to read, yet on the other hand the complainant is able to identify that the disclaimer is there and has been able to reproduce the key wording of the disclaimer in the complaint. The fact that the complainant has been able to identify and understand the disclaimer contradicts their claim that they have been misled.*

*The complainant’s contention that we ought to list in the TVC which restaurants are participating and which restaurants are not participating is unreasonable and impractical. In 15 seconds it is not possible to list which of our over 950 restaurants is offering the deal and which restaurants are not offering the deal. The best way to let customers know if a restaurant is offering the deal is for it to be shown at the restaurant or not shown at the restaurant (as applicable). This was explained to the customer at the point of ordering. While the customer may prefer that we provide a list of exactly which restaurants are participating and which are not, but there is no legal requirement to provide this level of detail. In any event, a failure to provide that detail in the particular desired format of the customer does not constitute misleading and deceptive conduct.*

*We understand that the ASB will also review the TVC against all parts of section 2 of the AANA Code. We submit that the TVC does not depict any content which discriminates, vilifies, exploits, degrades or contains any content which is obscene, promotes violence, is a risk to health and safety or insensitive to sex.*

*Having considered clause 2.1 the Code and more generally the entirety of clause 2 of the AANA Code, we are of the view there is no breach as there is no misleading or deceptive conduct.*

*Accordingly, we respectfully request that the Complaint be dismissed.*

## **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board noted the complainants’ concerns that the advertisement is misleading as it is not clear that the advertised offer of \$4 meal deals are not available at all McDonald’s restaurants but rather only at participating restaurants.

The Board viewed the advertisement and noted the advertiser’s response.

The Board noted that the product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Board considered section 2.1 of the Food Code which provides:

'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

The Board noted that the advertisement features a promotion for a \$4 cheeseburger meal at McDonald’s.

The Board noted the advertiser’s response that the advertisement does depict a disclaimer which states, “Available 10.30am – midnight at participating restaurants for a limited time. Excludes McDelivery”, and is visible at the bottom of the advertisement for almost half its airtime. The Board noted the complainant was aware of the disclaimer but still considered the advertisement to be misleading as the print is small and does not list participating stores.

The Board noted the number of McDonald’s restaurants in Australia and considered that it was not feasible or practical for an advertisement to list each and every store and whether or not they are participating in a particular offer. The Board acknowledged that the disclaimer is small and considered that it would have been clearer had the voiceover also stated that the offer was only available in participating restaurants. The Board noted that McDonald’s has a global presence and considered that it was not unreasonable to expect advertised offers based around the cost of a meal to apply to all restaurants. The Board considered however that most Australians would be aware that McDonald’s restaurants are franchises and in their view, as the advertiser had used a disclaimer to advise of the limited availability of the cheeseburger meal, the advertisement is not misleading or deceptive, even though to some people it may not be overly clear.

Based on the above the Board considered that the advertisement was not misleading and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.

