



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	<b>Case Number</b>	<b>0023/19</b>
2	<b>Advertiser</b>	<b>McDonald's Aust Ltd</b>
3	<b>Product</b>	<b>Food / Beverages</b>
4	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
5	<b>Date of Determination</b>	<b>23/01/2019</b>
6	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

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

## DESCRIPTION OF THE ADVERTISEMENT

The television advertisement opens on a Pineapple Frozen Fanta. The bottom half of the screen swipes to reveal the bottom half of a Raspberry Frozen Fanta. The top half of the screen swipes to reveal the top half of a Blueberry Frozen Fanta. The screen pans out to reveal different flavours of Frozen Fanta swiping to create new flavours. The screen then advertises 36 Frozen Fanta flavours for \$1.

## THE COMPLAINT

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

*They are claiming 36 flavours on both types of ads. There are actually only 6 flavours available. You can choose either 1 flavour twice or 2 separate flavours from the 6. Their claim is dubious as it should specify 36 flavour combinations not 36 flavours.*

## THE ADVERTISER'S RESPONSE

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





#### *Ad description*

*The advertisement opens on a Pineapple Frozen Fanta. The bottom half of the screen swipes to reveal the bottom half of a Raspberry Frozen Fanta. The top half of the screen swipes to reveal the top half of a Blueberry Frozen Fanta. The screen pans out to reveal different flavours of Frozen Fanta swiping to create new flavours. The screen then advertises 36 Frozen Fanta flavours for \$1.*

*Thank you for requesting a response to complaint number 0023/19 (Complaint). The Complaint refers to the McDonald's 36 Frozen Fanta flavours campaign (Advertisement), and is made under section 2.1 of the AANA Food and Beverages Code (Food Code), alleging that the claims made in the Advertisement are misleading and deceptive to consumers.*

*The Advertisement does not breach section 2.1 of the Food Code for the following reasons:*

*Reason 1: There is no clarification advantage by adding the word "combination".*

#### *1.1 Operational background*

*There are 8 base Frozen Fanta flavours. These are Mango, Raspberry, Lime, Blueberry, Pineapple, Sour, Vanilla and Grape (Base Flavours). The customer is able to select a Base Flavour on its own or mix two Base Flavours to create a new flavour. If the customer chooses to create a new flavour, the beverage machine releases the mixed formula of those two selected Base Flavours. See Attachment B for reference.*

*This is the largest range of Frozen Fanta flavours in Australia. There are up to 36 flavours available through this campaign at participating restaurants. Those are:*

- 1. Mango Raspberry*
- 2. Mango Lime*
- 3. Mango Blueberry*
- 4. Mango Pineapple*
- 5. Mango Grape*
- 6. Mango Vanilla*
- 7. Mango Sour*
- 8. Raspberry Lime*
- 9. Raspberry Blueberry*
- 10. Raspberry Pineapple*
- 11. Raspberry Grape*
- 12. Raspberry Vanilla*
- 13. Raspberry Sour*
- 14. Lime Blueberry*



15. *Lime Pineapple*
16. *Lime Grape*
17. *Lime Vanilla*
18. *Lime Sour*
19. *Blueberry Pineapple*
20. *Blueberry Grape*
21. *Blueberry Vanilla*
22. *Blueberry Sour*
23. *Pineapple Grape*
24. *Pineapple Vanilla*
25. *Pineapple Sour*
26. *Grape Vanilla*
27. *Grape Sour*
28. *Vanilla Sour*
29. *Mango*
30. *Raspberry*
31. *Lime*
32. *Blueberry*
33. *Pineapple*
34. *Grape*
35. *Vanilla*
36. *Sour*

1.2 *There is no clarification advantage by adding the word “combination”. To clarify the difference between the word ‘flavour’ and ‘flavour combination’ is a moot point. Through the Advertisement, the creative clearly shows that the 36 Frozen Fanta flavours are made up of combining two Base Flavours or enjoying a Base Flavour on its own. The consumer’s understanding of the promotion is not benefited in any way by the addition of the word ‘combination’. The fact that the complainant describes how the product works in their Complaint exactly as above demonstrates that even they were not misled. McDonald’s has not yet received any complaints to its Customer Service team alleging that the claim in the Advertisement is misleading, which demonstrates that ordinary reasonable consumers are not being misled.*

1.3 *Difference between a flavour and a flavour combination*

*It is McDonald’s position that the clarification between the word ‘flavour’ and ‘flavour combination’ is needless. In the event the Ad Standards board (the Board) requires a legal clarification of the two terms, we remind the Board that the Food Code’s Practice Note states that the Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest. Nonetheless, there is no legal definition for the word ‘flavour’ or ‘flavour combination’. Accordingly, we will interpret the ordinary definition of the two terms. The Oxford dictionary defines ‘flavour’ as a distinctive taste of a food or drink, whereas the same dictionary defines ‘combination’ as ‘a joining or merging of different parts or qualities in which the component*



*elements are individually distinct'. As explained above, the way the product is served is by having the two selected flavours mixed and poured to create a distinct flavour. A scenario where saying '36 Frozen Fanta flavour combinations is more appropriate is if the beverage machine dispensed two of the Base Flavours separately, as most frozen beverage retailers do. In this way, the two Base Flavours remain individually distinct. Similarly, the colour yellow and the colour blue are two distinct colours. When combined, they create the colour green. Green is a distinct new colour despite being created as a combination of two colours. We ask the Board to apply the same reasoning for this matter.*

*Reason 2: The campaign is communicated in a manner appropriate to the reasonable consumer*

*To determine if an advertising or marketing communication is truthful and honest, the Ad Standards board will consider the reasonable consumer's response to the Advertisement. The Advertisement shows exactly what is available at McDonald's, which is, the option to combine the Base Flavours to create a new flavour. The reasonable consumer would not visit a McDonald's restaurant expecting anything otherwise. From the Advertisement, the customer's expectation would not be that there would be 36 distinct flavours such as Honeycomb or Waffle flavour. This is substantiated by the scripts and copy of the Advertisement calling the product "Pineberry" or "Rapple" – this is clearly a combination of the two of the Base Flavours. Nonetheless, due to our large demographic, we have simplified the ordering process by not having distinct names - the customer simply chooses the two Base Flavours they want mix. The Advertisement shows variations of two Base Flavours constantly sliding to show to customers the different flavours they are able to create out of the Base Flavours. The claims in the Advertisement were substantiated to CAD who approved and provided the W rating. Media was bought in accordance with this rating.*

*Accordingly, the Advertisement complies with the Food Code and should be dismissed. We have considered other matters under section 2 of the AANA Code of Ethics and submit that the Advertisement does not breach any of the other matters covered by that section.*

## **THE DETERMINATION**

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainant's concerns that the advertisement is misleading.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the product advertised is Frozen Fanta from McDonald's and



that therefore the provisions of the Food Code apply. In particular the Panel 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 Panel noted the television advertisement features the voice over stating, "Feeling the heat? Grab a pineapple or pineberry frozen Fanta mix at Maccas. With 36 flavours it's the largest range in Australia. Grab one for only one dollar..." The visuals for the ad feature brightly coloured frozen drinks with the tops and bottoms sliding apart to make up different flavours.

The Panel noted the complainant's concern that the advertisement says 36 flavours, when really it is 36 flavour combinations, and that this is misleading.

The Panel noted the advertiser's response that there are eight base Fanta flavours which can be mixed to create 36 unique flavours, and that the advertisement makes it clear that the 36 flavours are made by combining the 8 base flavours.

The Panel considered that while some people may consider two flavours mixed together to be a flavour combination, rather than a unique flavour, the visuals in the advertisement make it clear that the 36 flavours are made up from mixing different base flavours.

The Panel considered that the overall impression of the advertisement was that the 36 flavours could be achieved by mixing different flavours together, and considered that this impression was not misleading or deceptive.

In the Panel's view the advertisement was not misleading or deceptive or otherwise contravenes prevailing community standards, and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code on any other grounds the Panel dismissed the complaint.

