



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

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0045-20</b>
<b>2. Advertiser :</b>	<b>Hungry Jacks</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>App</b>
<b>5. Date of Determination</b>	<b>22-Jan-2020</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

This advertisement is a promotion on the Hungry Jacks app. It features the heading 'Vouchers' and promotions for a medium thickshake for \$2.00 and a Whopper + Rebel Whopper for \$8.95.

### THE COMPLAINT

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

*Tried redeeming this at Hungry Jack's Cairns Airport store, only to be told that because they are a franchise, they do not accept these App vouchers offers, and will only accept the "shake and win" type offers - where you shake the phone (app), and two random offers per day are presented.*

*I believe if they are going to have such prominent advertising of offers (to "bait" you) at least make it clear from the prominent ad that not all stores are participating on that main advertising page.*

*To me, it's quite deceptive, as the validity of the offer is discretionary, so by the time you reach the counter and are told the offer is not valid, you will order something else.*

### THE ADVERTISER'S RESPONSE



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

*Hungry Jack's national network is made up of both franchised and company-owned and operated restaurants. Hungry Jack's franchised restaurants are independently run small businesses. To ensure a consistent experience for all our Customers Hungry Jack's Head Office strongly encourage all our Franchisees to offer the discounts and vouchers we make available to them. However there will be circumstances where this is not viable, and it is within the rights of the Franchisees to gain approval from Head Office to be exempt. To ensure our Customers are appropriately informed of this, we clearly display 'At participating restaurants only' in all voucher disclaimers well before any order or payment is made.*

### **THE DETERMINATION**

The Ad Standards Community Panel (the 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 concern that the advertisement does not display prominently that not all stores are participating and that this is deceptive.

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

The Panel noted that the product advertised is food 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.'

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

"The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design



misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.”

The Panel considered what information the consumer who uses the app would take from the information in the app.

The Panel noted that once you have entered the app, you can click on the vouchers icon at the bottom right of the screen to see available vouchers. The Panel noted the image provided by the complainant shows these vouchers in a list, in this case vouchers for \$2 milkshakes and a Whopper and Rebel Whopper for \$8.95.

The Panel noted the advertiser’s response that the disclaimer ‘at participating restaurants only’ is visible on all vouchers before a purchase is finalised.

The Panel noted that once a voucher had been clicked on, terms and conditions for the use of the voucher appear, including that the voucher is only available at participating locations.

The Panel noted the advertiser’s response that they encourage all franchises to participate and considered that there is no intention by the advertiser to mislead or deceive.

The Panel considered however that the vouchers page on the app did not provide a clear indication that there were terms and conditions attached to the voucher, or that the vouchers had to be clicked on to reveal the terms and condition and to be redeemed.

The Panel considered that from viewing the initial vouchers page the target audience would expect to be able to redeem the offers at any available Hungry Jacks store and the limit to the offer was not necessarily visible until the customer was already in store.

The Panel considered that the advertisement did not make it clear that the vouchers could only be used at participating stores, and that this is misleading. The Panel determined that the advertisement did breach Section 2.1 of the Food Code.

Finding that the advertisement did breach Section 2.1 of the AANA Food Code the Panel upheld the complaint.

## **THE ADVERTISER’S RESPONSE TO DETERMINATION**

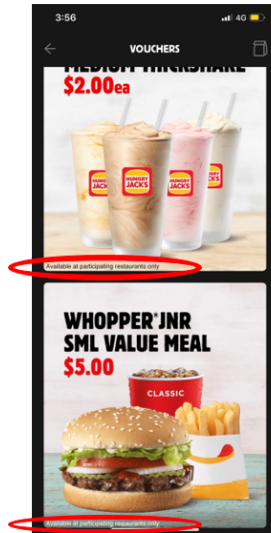
In regards to the below statement -

“The Panel noted the complainant’s concern that the advertisement does not display prominently that not all stores are participating and that this is deceptive.”

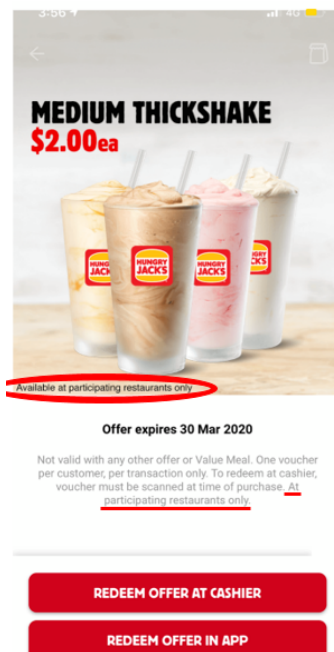


We have now addressed this by ensuring that we are providing accurate information to the consumer well before redemption and payment. We have added clear disclaimers at the following points:

1. The Customer Voucher Wallet section on all voucher artwork (Clearly placing the disclaimer upfront before a customer clicks to see details or redeem the offer):



2. The Voucher Detail Page (Clearly stating twice – once in the voucher image and once below the voucher in the terms and conditions – that this offer is redeemable at participating stores only) – placed on all vouchers within the Hungry Jack's app:





We are confident that the above modifications remove any concern of deception or confusion. Please regard this as confirmation that we have taken steps toward modifying the advertisement to prominently display that the offer is available at participating stores only.