



Ad Standards Community Panel
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Case Report

1. Case Number :	0067-20
2. Advertiser :	McDonald's Australia Limited
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	App
5. Date of Determination	26-Feb-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message
AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive
AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption
AANA Food and Beverages Code\3.5 Pester Power

DESCRIPTION OF ADVERTISEMENT

This advertisement is games within the mymacca's app. There are three games available, mini golf, a maze, and a lucky dip. The games are animated with a character avatar used and feature food products, such as chips as the walls of the maze and sauce packets as the lucky dip.

Prizes available to win include: Free Big Mac, Free Small McCafe Coffee/Tea, Free Hash Brown, Free McChicken, Free Regular Sundae, Free Small Fries, \$1 Hash Brown, \$1 Regular Sundae, \$2 Cheeseburger, \$2 Small McCafe Coffee/Tea, \$2 Large Shake, \$2 McFlurry, \$3 Big Mac, \$3 6 McNuggets, \$3 McChicken, \$3 Filet-O-Fish, \$3 Quarter Pounder, \$5 10 McNuggets, \$5 Small Big Mac Meal + Cheeseburger, \$9 Small 10 McNuggets Meal



THE COMPLAINT

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

The animation and 'cool looking game' appealed to my children. The advergaming on the app is primarily directed at children as it uses simple language, easy to use and has an image of a child completing the tasks. To quote Brent Clarke the Digital Director of McDonalds 'They're quick, they're fun and they're easy.' (Daily Mail). The games use McDonalds foods as obstacles (e.g. nuggets and burger images) and has an image of a child running through the obstacles to win instant prizes. This would greatly appeal to children. The constant images of the food products coupled with 'winning an instant prize' not only promotes gambling but also consumption of unhealthy foods. Where are the salads?? It's all about burgers, nuggets and chips. This game promotes power and at the least should have an age gate so kids cannot get into the app.

THE ADVERTISER'S RESPONSE

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

Thank you for requesting a response to complaint number 0067-20 (Complaint).

The Complaint refers to advertisements as part of the Macca's Mini Games promotion (Advertisement). The Complaint is made under sections 1.1 and 1.3 of the Quick Service Restaurant Industry Initiative (QSRI) and section 3.5 of the AANA Food and Beverages Code (Food Code).

The key issue in this Complaint is whether the Advertisement is targeted at children. Our submissions below outline why the Advertisement is of broad appeal, and not targeted primarily at children. The Advertisement does not breach the QSRI or the Food Code for the reasons stated below:

Reason 1: The content of the Advertisement is of broad appeal, and not targeted primarily to children.

As the Board have noted in previous decisions (e.g. 0132-17), the mere presence of animation does not make the advertisement directed to children. All elements of the advertisement are to be considered with the overall impression made to determine whether an advertisement is directed primarily to children. In this case, the Advertisement is merely a projection of the two young actors' experience of the mini games. This is reflected with the camera panning in directly into the phone of the actor playing the game, and the actor reacting to their experience in the game. The Advertisement demonstrates to the audience what is involved in the game in order to attract the audience into participating.

Reason 2: The placement of the Advertisement is not directed to children.



Under the QSRI, an advertisement can be 'directed primarily to children' if it is placed in a medium that is directed at children. The QSRI requires that children are 35% or more of the audience of the medium for an advertisement to be placed in a medium directed at children. The Advertisement was not placed in either of those mediums.

For the reasons outlined above, the Advertisement has broad appeal and is not directly advertising to children. Accordingly, the QSRI does not apply and section 3 of the Food Code does not apply.

Reason 3: Children under 14 are restricted from accessing the mymacca's app.

Nonetheless, to participate in the promotion, a mymacca's account is required. The terms and conditions of the mymacca's app are located at this link: https://mcdonalds.com.au/mymaccas/terms-and-conditions?_ga=2.85046873.1351173585.1581988467-1833890519.1561003500. Parts 7 and 9 of these terms and conditions restrict access to the mymacca's club, and participation in the club, to persons 14 years and over, with those under 18 requiring parental consent. While we acknowledge there is a chance that children under 14 still access the mymacca's club with a fake age, this still would not constitute 35% or more of the mymacca's app's audience.

In conclusion, the Advertisement complies with the Codes and the Complaint 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 or by any of the other applicable codes.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children's Code), the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSRI).

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

The Panel noted that McDonalds is a signatory to the QSRI and determined that the provisions of the QSRI apply to this marketing communication.

The Panel noted that the QSRI is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.



The Panel considered the definition of advertising or marketing communications to children within the QSRI. The definition states that ‘Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.’ Under this initiative children means “persons under the age of 14 years of age.”

The Panel noted that the QSRI captures Advertising and Marketing Communications to Children where:

1. ...the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products;
2. Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or
3. Where Children represent 35 per cent or more of the audience of the Medium.

The Panel considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes “television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.” The Panel considered that an interactive game within an app is covered by this definition.

The Panel considered that the McMaccas app would not be considered to be a medium directed primarily to children. The Panel considered that the MyMaccas app would not have more than 35% of its audience being children under 14, as its’ main purpose is to order food through the app. The Panel noted that users of the app must sign up with an email address and agree to terms and conditions which stipulate that users must be over 14.

On this basis the Panel determined that the advertisement did not meet points 2 or 3 of the QSRI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 percent or more of the audience of the Medium.

The Panel noted that with regards to point 1 the Panel must consider whether the communication activity is directed primarily to Children – regardless of its placement.

The Panel noted that the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Panel must find that the advertisement is clearly aimed in the first instance at Children under 14 and that it must have regard to the ‘theme, visuals and language’ used in determining this issue.

The Panel noted the complainant’s concern that the advertisement is targeted towards children and promotes unhealthy foods.



The Panel noted the advertiser's response that the advertisement is of broad appeal and not targeted directly to children, and that children under 14 are restricted from using the app according to the terms and conditions a user agrees to when signing in to the app.

The Panel noted that there are three games available to play, and that users can only play one game per day to win a prize. If a user plays one game, all three become locked for the remainder of the day.

The Panel noted the theme of the advertisement, an interactive game in App format, involving the completion of tasks to win prizes and collect tokens. The Panel noted that the skill level of the game is relatively simple but considered that it was similar to games such as Farmville or Fruit Ninja, which are also simple to play, and in the Panel's view, given the popularity of such games amongst adults as well as children, the theme of the Maccas Mini Games game is directed at a broad audience. The Panel noted that players can win food prizes when winning a game, and can collect tokens to enter a draw for a weekly cash prize. The Panel considered that this is a reward which is appealing to people who pay for food and would be incentivised to play the game and use the vouchers when visiting the advertiser's restaurants. The Panel considered that this aspect of the game is likely to be most appealing to older teenagers but would be attractive to children and adults. Overall the Panel considered that whilst the simplistic nature of the game itself could be of appeal to children in the Panel's view the overall theme is not clearly directed in the first instance to Children under 14yrs.

The Panel noted the visuals of the advertisement. The Panel noted that it had considered a number of advertisements containing cartoon imagery, including cases where the Panel upheld the complaints (0545-18, 0204-15) and cases where the Panel dismissed the complaints (0262-18, 0550-17). The Panel noted that in the current advertisement while the simple visuals would be of appeal to children the Panel considered they would also be of appeal to adults who enjoy playing such interactive games. The Panel also noted that the characters in the games are not children, but are images of adults.

The Panel noted that including cartoon images will not of itself mean that an advertisement is directed primarily to children. It is essential for the Panel to consider all elements of the advertisement (theme, visuals and language) and to make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is clearly directed primarily to children.

The Panel then considered the language used in the advertisement. The Panel noted the background music and considered that it is repetitive and likely to be irritating after listening to for some time, and in the Panel's view children would be more likely to tolerate this noise than adults. The Panel noted however that the sound is not integral to the playing of the game and considered that as the sound can be muted,



this background music is not a key factor in deciding whether the advertisement is directed primarily to children or not. The Panel noted the onscreen text which includes instructions for playing the game as well as information when the game ends, “You have won!” and considered that while this language is relatively simple in the Panel’s view it is consistent with the type of language used in interactive games and is not language which is directed primarily to children.

In this instance the Panel acknowledged that the interactive game would be of appeal to children but considered that the theme, language and visuals are commonly used in similar games which are attractive to adults and in the Panel’s view the Maccas Mini Games game has a broad appeal and was not directed primarily to Children under 14.

Based on the requirements outlined in the QSRI the Panel considered that as the advertisement was not directed primarily to Children, did not appear in a medium directed primarily to Children and did not appear in a medium which attracts an audience share of more than 35% of Children, the QSRI does not apply in this instance.

The Panel then considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (The Children’s Code).

To fall within this Code, or Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (The Food Code), “Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product”.

For the reasons outlined above, the Panel considered that the advertisement is not directed primarily to Children.

The Panel determined that as this advertisement is not directed primarily to Children, the Children’s Code and Parts 3 and 4 of the Food Code do not apply.

The Panel then considered whether the advertisement complied with all relevant provisions of the Food Code.

The Panel considered section 2.1 of the Food Code which provides:

“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 of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”



The Panel considered whether promoting a game that provides non-healthy food as a prize is contrary to prevailing community standards.

The Panel noted that McDonalds is a business which is legally allowed to sell and advertise their products, and considered that competitions and promotions are frequently used by businesses to promote their products.

The Panel noted that many of the prizes are discounted food products, rather than free products.

The Panel considered that, consistent with previous decisions (MacDonalds 0378/18, Ferrero 0345/17, Hungry Jacks 282/11, and Mondelez 0550/17), promotion of a product which may have a particular nutritional composition is not in itself contrary to Prevailing Community Standards.

The Panel determined that the advertisement did not breach Section 2.1 of the AANA Food Code.

The Panel then considered section 2.2 of the Food Code which provides:

“Advertising or marketing communications...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

The Panel noted that the advertisement appears to be promoting McDonalds products, and encourages consumption by awarding prizes daily upon completion of a game/task.

The Panel noted that the advertisement has no messaging around frequency of purchase or consumption, however noted that food prizes are only valid for one day. The Panel considered that this ensures users cannot stockpile prizes and make a large purchase at one time. The Panel considered that a promotion based on winning food prizes cannot be reasonably interpreted to be encouraging excessive purchasing/ordering or promoting ‘order every day’ without a more specific call to action in the advertisement. The Panel determined that the advertisement is not encouraging excess consumption of the products depicted in the advertisement.

The Panel considered that the advertisement did not encourage excess consumption and did not breach section 2.2 of the Food Code relating to excess consumption.

The Panel considered whether the products identified in the advertisement consisted of a depiction which undermines a healthy balanced diet.

The Panel noted that the advertisement depicts a number of McDonald’s products.



The Panel considered that, consistent with previous decisions (Ferrero 0345/17, Hungry Jacks 282/11, and Mondelez 0550/17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy balanced diet and considered that the promotion of McDonald's products generally and of the images in the advertisement did not of themselves undermine the importance of a healthy balanced diet. The Panel then considered whether the products of poor nutritional value that were depicted were depicted in a manner that undermine the importance of a healthy balanced diet.

The Panel considered that the products were considered in the context of being available as prizes, but in the context depicted they were not shown as preferable to healthier products or as replacements for healthier products. The Panel considered that overall the products in the advertisement were not depicted in a manner that suggested the consumption was in place of a healthy balanced diet, and overall gave no context other than a depiction of certain products being consumed on one social occasion.

Overall, the Panel determined that the advertisement did not breach Section 2.2 of the Food Code.

Finding that the advertisement did not breach the QSRI, the AANA Food Code or the AANA Children's Code, the Panel dismissed the complaint.