



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0069-20
2. Advertiser :	Domino's Pizza Enterprises Ltd
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	26-Feb-2020
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement for Domino's pizza states:

“Domino’s declares war on delivery charges. Any large pizza just fifteen bucks. Delivered. No minimum spend. No surprises. “

Text on screen states:

Any large pizza from \$15 each
Delivered
No minimum spend
No surprises

THE COMPLAINT

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

I object to the insinuation that there is no minimum spend.

THE ADVERTISER’S RESPONSE



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

We refer to your letter dated 14 February 2020 enclosing a complaint received by Ad Standards in relation to a television advertisement for our 'From \$15 each delivered' campaign (the Advertisement).

As a preliminary point, we note the Advertisement in question is no longer on air.

Firstly, thank you for providing Domino's with the opportunity to respond to the complaint regarding the Advertisement. Domino's takes its responsibility as an advertiser very seriously and encourages any feedback from the community to better understand and respond to any issues or concerns that may be raised in connection with our advertisements.

We look to respond to the complaint provided while carefully considering the Advertisement in light of the provisions contained within the AANA Code of Ethics (the AANA Code), the AANA Food and Beverages Code (the F&B Code), the AANA Code for Advertising and Marketing Communications to Children (the AMCC Code), the Australian Food and Grocery Council Responsible Children's Marketing Initiative (the RCMI) and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (the QSR Code), and for the purposes of this letter, all together referred to as the "Codes".

In summary, our assessment concludes that the Advertisement does not breach the AANA Code (or the Codes) on the grounds set out below.

The AANA Code of Ethics

As requested in your letter, we have addressed all parts of Section 2 (2.1 to 2.7 inclusive) of the AANA Code specifically as follows:

Section 2.1 – Discrimination or vilification

Domino's does not believe that the Advertisement portrays people or depicts material in a way which discriminates against or vilifies any person or section of a community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Section 2.2 – Exploitative or degrading

Domino's does not believe that the Advertisement employs sexual appeal which is exploitative or degrading of any individual or group of people in any manner whatsoever.

Section 2.3 – Violence

Domino's does not believe that the Advertisement presents or portrays violence in any manner whatsoever.

Section 2.4 – Sex, sexuality and nudity



Domino's does not believe that the Advertisement displays any sex, sexuality or nudity that is not only not sensitive to the relevant audience, but in any manner whatsoever.

Section 2.5 – Language

Domino's does not believe that the Advertisement uses any inappropriate language whatsoever.

Section 2.6 – Health and safety

Domino's does not believe that the Advertisement depicts any material contrary to prevailing community standards on health and safety.

Section 2.7 – Distinguishable as advertising

Domino's does not believe that the Advertisement is not clearly distinguishable as advertising and is relevant to its audience.

AANA Food and Beverages Code (F&B Code)

As a preliminary point, we again bring to the Ad Standards attention that the Advertisement is no longer aired in any region within Australia. Notwithstanding, we note that the Ad Standards has identified Section 2.1 of the F&B Code as the "Issues raised to date" and we have taken the liberty to address this point in response to the complaint at hand.

We have reviewed this section, and also considered the balance of the F&B Code. We do not believe that any section within the F&B Code has been breached by the Advertisement.

Section 2.1 of F&B Code provides that:

"Advertising or Marketing Communication 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."

Application Section 2.1 of the F&B Code to the Advertisement

The Advertisement highlights a clear product offering of any Large Premium, Traditional, and Value range pizza delivered from \$15.00. The price point is an inclusive price for a product the related service for that product, being delivery. In this regard, we respectfully refute the complaint at hand and say that the Advertisement contains makes the product offering clear and direct by stating, "Any Large pizza from \$15 each / Premium, Traditional & Value, DELIVERED" (refer to 0:00:10-0:00:11 of Advertisement).



The Advertisement is intended to address the consumer tension of additional or unexpected delivery charges, particularly when consumers are ordering via an aggregator service. This is expressed via the statement, “[Domino’s] declares war on delivery charges” (refer to 0:00:07-0:00:09 of Advertisement). Further to this, the statement “No minimum spend” directly relates to the particular product offering (product and delivery service) and the fact it is presented at an inclusive price point, regardless of the particular customer ordering and where they may be located. To this end, we again respectfully refute the complaint at hand and say that the message is clear to customers that they are not required to spend a minimum amount before they are eligible to have the particular product on offer delivered.

Notwithstanding our position as stated above, the F&B Code Practice Note suggests that the intent of section 2.1 of the F&B Code is primarily concerned with stated health, nutrition and ingredient components of the food or beverage product within advertisements and whether these are truthful and honest and not be misleading or deceptive. We note that the Advertisement does not feature any specific food products, given the focus is on the range and as such does not make any statements as to health, nutrition or ingredient components.

Further Codes

We further note that the AANA Code also incorporates the AANA Code for Advertising and Marketing Communications to Children and the following initiatives: the Australian Food and Grocery Council Responsible Children’s Marketing Initiative and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (Further Codes). As our products are likely to also come within the scope of these Further Codes, we confirm that these Further Codes have also been considered and we do not believe that any section within those Further Codes have been breached by the Advertisement in any way.

For the above reasons, we respectfully submit that the Advertisement is not in breach of the AANA Code or any Further Codes.

If you require any further information, please do not hesitate to make contact with us.

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 is deceptive as it states there is no minimum spend but a consumer must spend a minimum of \$15 to get delivery.

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



The Panel noted the advertiser's comment that the intent of the Code as indicated in the Practice Note is to only address issues regarding truth and accuracy of health and nutrition claims in advertisements for food. The Panel disagreed, noting that section 2.1 clearly states that advertising 'shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards **AND ...**', and that the reference to clear communication of particular nutritional and health information is an additional requirement to the basic requirements of truth in advertising.

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 shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest..."

The Panel noted the advertiser's response that the product itself (any large pizza) costs \$15 including delivery, and that customers are not required to spend a minimum amount before they are eligible to have the particular product on offer delivered.

The Panel noted that the target audience would include people that regularly consume Domino's pizza, however considered that the target audience would also include people that are not frequent customers and who are not familiar with Domino's price point.

The Panel considered that the advertisement focuses on the \$15 pizza price, but includes reference to this price applying to 'premium, traditional and value.' And then concludes with the statement 'no minimum spend.'



The Panel considered that reasonable consumers in the target audience, which includes people familiar with Domino's pizza, would be aware that, in particular the Domino's Value Range of pizzas are less than \$10 per pizza.

The Panel considered that there are two key messages in the advertisement – the primary message being 'free delivery' and the second being 'no minimum spend'.

The Panel considered that the reference to \$15 was confusing as it was used in conjunction with products that were \$15, but also used in conjunction with references to products such as 'value' pizzas which are less than \$15. The reference to free delivery was also confusing as there was not a clear indication of whether this applies only to some pizzas or more broadly to all products.

The Panel considered that a reasonable consumer in the target market would view the advertisement and consider that there is free delivery of large pizzas, with no minimum spend but that it was also possible that a reasonable consumer would think that the free delivery was not just restricted to large pizzas. The Panel noted that this is not the message intended by the advertiser, with the advertiser intending to convey the message that the pizzas identified in the advertisement are available for delivery for \$15 with no additional spend over \$15.

The Panel considered that while the intent of the advertiser was not to be misleading, the overall advertisement is not communicated in a manner appropriate to the level of understanding of the target audience of the advertisement and is misleading.

The Panel determined that the advertisement did breach Section 2.1 of the Food Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

We refer to the determination of the Ad Standards Community Panel (the Panel), dated and received 2 March 2020. We note the Panel's decision to uphold the complaint against our advertisement and respectfully provide the following statements in response:

- (a) We confirmed in our initial response to the Panel dated 21 February 2020 that the advertisement in question had already been removed from air, prior to our receipt of the complaint from Ad Standards. Further to this, we now confirm the advertisement in question was last aired on 9 February 2020; and
- (b) We have modified messaging in our current 'From \$15 each delivered' campaign to remove any reference to "No minimum spend". Subject to print lead-times,



we note this reference will remain in our print marketing material until 23 March 2020 but has otherwise been removed from all other mediums as at 9 March 2020.

We are highly committed to ensuring all our marketing material is compliant at all times, and meets the expectations of the wider community.