



**Ad Standards** Community Panel  
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Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0080-20</b>
<b>2. Advertiser :</b>	<b>McDonald's Australia Limited</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>11-Mar-2020</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>
<b>7. IR Recommendation:</b>	<b>Reconfirm the Original Decision</b>

### ISSUES RAISED

AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message

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AANA Food and Beverages Code\4.2 Must comply with QSRI

AANA Advertising to Childrens Code\2.14 Food and beverages

AANA Code of Ethics\2.0 Other

AANA Code of Ethics\2.1 Discrimination or Vilification

AANA Code of Ethics\2.3 Violence

AANA Code of Ethics\2.4 Sex/sexuality/nudity

AANA Code of Ethics\2.6 Health and Safety

### DESCRIPTION OF ADVERTISEMENT

This television advertisement has two versions:

The 30 second version begins with a little girl holding a McDonalds toy. Scenes then show her cleaning her room; pulling sticky arrows off pictures of her brothers; painting over a cubby house to cover text; removing stickers from dining table; washing a pink dog in the kitchen sink. The advertisement ends with the family at McDonalds, and the little girl stealing one of her brother's chips.

The 60 second version begins with a little girl holding a McDonalds toy. Scenes then show her cleaning her room; putting a head back on her brothers toy; picking up toy snakes and spiders from the couch; pulling sticky arrows off pictures of her brothers; pulling off labels from containers in pantry (salt is sugar, sugar is salt); pulling car keys



out of fish tank; removing stickers from dining table; painting over a cubby house to cover text; washing a pink dog in the kitchen sink. The advertisement ends with the family at McDonalds, and the little girl stealing one of her brother's chips.

### **THE COMPLAINT**

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

*I feel that this commercial suggests that it is acceptable that females to not show respect towards males.*

*This advertisement is directed at children as it focuses entirely on a little girl. Furthermore, the simple 'comedic' storyline of her getting into mischief would greatly appeal to children. It is irresponsible to promote high fat, salt and sugar meals to children when we are in an obesity crisis. The fact that she gets 'rewarded' for fixing her bad behaviour with a trip to McDonalds for a toy and a high fat/salt/sugar meal conveys a bad message and encourages children that they should do the same to get a toy and junk food. A very covert pester power tactic. Furthermore it promotes violence (arrow in brothers head) and animal cruelty (dog's fur died pink).*

*Seemingly applauding bullying behaviour*

*As is well-known, this song has the theme of how to dump an adulterous lover. This is not appropriate for their audience of children.*

*AANA Code of Ethics section 2.4 states:*

*2.4 Advertising or Marketing Communication shall treat sex, sexuality and nudity with sensitivity to the relevant audience. Ref:*

*[http://aana.com.au/content/uploads/2018/07/AANA\\_Code-of-Ethics\\_July2018.pdf](http://aana.com.au/content/uploads/2018/07/AANA_Code-of-Ethics_July2018.pdf)*

*The song theme of dumping an adulterous lover, is inappropriate for children.*

*Reasons for complaint - the advertisement breaches the QSRI*

*The Obesity Policy Coalition (OPC) submits that the Denise Ad breaches the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI). As a signatory to the QSRI, McDonalds has committed not to advertise its products to children under 14 years in media unless those products represent healthier dietary choices AND are in the context of a healthy lifestyle, encouraging good dietary habits and physical activity.*

*In our submission the advertisement breaches s1.1 and s1.2 of the QSRI because:*

- 1. it is an advertising and marketing communication directed primarily to children;*
- 2. the prominent foods advertised do not represent healthier dietary choices; and*
- 3. it does not encourage good dietary habits or physical activity.*

- 1. The advertisement is a marketing communication directed primarily to Children Advertising and marketing communication*



*The QSRI applies to material that is published or broadcast on television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites. The Denise Ad appears nationally on television and online. The Denise Ad is clearly an advertising or marketing communication within the meaning of the QSRI, as it is material published by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product (Happy Meals) or the organisation (McDonalds).*

*Directed primarily to children*

*Based on its themes and visuals, the advertisement is clearly directed primarily to children.*

*The OPC argues the following features of the Denise Ad conclusively establish the advertisement is directed primarily to children:*

- a) It promotes children's Happy Meals, a product for children. It begins and ends with a Happy Meal toy being featured prominently, and in fact the toy itself is Lucy's inspiration to do something to get back to McDonalds for another Happy Meal and to get another toy. In the scene at McDonalds the viewer sees three Happy Meals in addition to the Mother's food (burger, chips and drink).*
- b) The scenes are depicted from the point of view of the child. The opening scene depicts Lucy alone in her room with her toys. The ad then focuses on the child's delight when she gets the idea to correct her mistakes and get rewarded with a meal at McDonalds. The advertisement continues on to show Lucy rectifying her previous bad behaviour and her expectation that her brothers and parents see this as her being 'good' – her smile and expression upon 'fixing' things shows her interpretation that she has now 'done good' and should be rewarded. The shots of other family members are taken from the perspective of Lucy herself, showing what she sees as the responses to her behaviour. The remark from the mother, "ok Lucy, that's enough" is seen through Lucy's eyes and implies that Lucy has now done enough to warrant a meal at McDonalds. Exactly what Lucy wanted. The point of view of the Denise Ad is asking children to put themselves in the position of Lucy - 'this could be me!'*
- c) The theme of the advertisement - a child behaving in a certain way just to get something in return - would have strong appeal to children under 14 years of age, in particular with their sense of quid pro quo and their sense of entitlement to reward for work done (regardless of whether or not they created the work in the first place).*
- d) The outcome of the advertisement - a child getting exactly what they planned for and wanted - would appeal to children.*
- e) The sense of mischief and playfulness in the advertisement would also appeal to children. The images of things children may have done themselves, like damaging a sibling's toy, hiding pretend spiders to scare mum and dad or putting stickers on the furniture, will appeal to children and make them relate to the advertisement 'I've done that too!'*
- f) Children identify with representations of other children, particularly children of their own age, in this case a 7-8-years-old.*

*We anticipate that the respondent may claim that the themes of family togetherness and children being cheeky are designed to appeal to adults. We would counter that whilst the advertisement may appeal to adults for these reasons this is not the primary*



*target audience. The advertisement is primarily directed to children, to encourage them to behave in ways that result in their parents rewarding them with McDonalds or to encourage them to plant the idea that McDonalds should be a reward for 'good' behaviour. Children would focus on all the features described above, rather than the togetherness of the family particularly as most of the advertisement focuses on one child and her actions and not the family as a unit.*

*The placement of the advertisement also supports a conclusion that the Denise Ad is directed primarily to children. The Denise Ad has been screened many times during prime time viewing including during Bondi Rescue and Dancing with the Stars, both reality TV shows. In 2016 it was found that four of the five top shows that children watched were reality TV, showing a strong preference for children to be watching reality TV rather than shows created solely for children. The analysis also showed that there is a peak in children's TV watching between 6pm and 9pm, and over half of the screenings of the Denise Ad between 2-18 February were during this time period.*

## *2. Prominent food items in the Denise Ad do not represent a healthier dietary choice*

*The scene of Lucy and her family at the table at McDonalds shows a burger and chips prominently in the foreground with a Happy Meal box behind them.*

*S1.1 of the QSRI provides that any food or beverage advertised to children must represent healthier dietary choices, as determined by the Nutrition Criteria. The Nutrition Criteria for assessing children's meals is outlined in Schedule 2 to the QSRI. The energy criteria in s2.2 of the QSRI lists the maximum energy limit for children aged 4-8-years-old as 2080kJ per meal. Any Happy Meal containing a burger (cheeseburger or hamburger), small fries and a drink (anything other than water) exceeds this maximum limit.*

*We acknowledge that the particular Happy Meal the children are shown eating in the Denise Ad meets the requirements to be considered a 'healthier' dietary choice under the QSRI. We argue, however, that the Denise Ad is not only an ad for the type of Happy Meal the children are eating. The Denise Ad promotes Happy Meals generally (including those that do not meet the QSRI's nutrition criteria), through the emphasis on the Happy Meal box toy shown at the beginning and the end of the ad, as well as McDonalds food generally.*

*We argue that the food that is most prominent in the advertisement is the burger and chips. The burger and chips are in the foreground of the scene at the table and are zoomed in on as the scene progresses. Attention is further drawn to the chips when Lucy sneakily takes some of her brother's.*

*The advertisement does not encourage the purchase and consumption of healthier dietary choices available but of burgers and chips and, Happy Meals generally, many of which do not meet the Nutrition Criteria.*

## *3. The advertisement does not promote good dietary habits or physical activity* *Even in the case of a product that represents a healthier dietary choice, the QSRI provides that McDonald's may only advertise the product to children if the advertising*



*and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:*

- a) good dietary habits, consistent with established scientific or government standards; and*
- b) physical activity.*

*This advertisement does not sufficiently promote good dietary habits or physical activity.*

*a) Good dietary habits*

- The Denise Ad encourages children to do things to get food as a reward. It also implies that Lucy has been rewarded for 'good' behaviour by a visit to McDonalds in the past. The Queensland Health website quotes clinical and research dietitian Jessica Freese on the negative impacts of food rewards "[Food rewards] can contribute to the child forming unhealthy relationships with food, like eating 'sometimes food' when ... they've done something that they feel proud of as a reward. If those habits do carry over into adulthood, it can lead to emotional eating, where food is used as a reward ..." and "Not only [do food rewards] create unhealthy relationships with foods, but it can also contribute to weight gain, with the excess consumption of high fat and high sugar foods." Rewarding children with food is clearly not a good dietary habit and is clearly what the Denise Ad is depicting.*
- The main character has chips directly in front of her and is only shown eating chips, one of the least healthy food items shown on the table. In addition to this is it shows Lucy taking chips surreptitiously from her brother, implying that chips are to be coveted and are so good that your brother wouldn't share them, and you would need to 'steal' from him to have some. Lucy's mother also sees her taking her brother's chips and does nothing to stop her, further reinforcing that cheeky and mischievous behaviour can result in food rewards.*
- The example set by Lucy's mother is also not one of good dietary habits. She is not shown eating a healthier choice option but with a burger and chips.*
- In addition to not demonstrating good dietary habits in the themes and imagery of the advertisement there is no messaging encouraging children to eat a healthy diet.*

*In our view, this is all insufficient to meet the good dietary habits limb of the QSRI requirements.*

*b) Physical activity*

*There are no representations of physical activity in the Denise Ad and accordingly this limb of the QSRI requirements has not been met.*

*For these reasons, we do not think that the advertisement meets the QSRI requirement to encourage good dietary habits and physical activity.*

*Request for action*

*For the above reasons, the OPC asks the Ad Standards Community Panel to request that McDonald's withdraws the Denise Ad from all media, including television and online.*



## 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 0080-20 (Complaint).*

*The Complaint refers to the McDonald's brand commercial (Advertisement). The Complaint is made under section 2.3, 2.6, 2 of the AANA Code of Ethics (Code of Ethics), sections 1.1 and 4.2 of the Quick Service Restaurant Initiative (QSRI), 2.14 of the AANA Food and Beverages Code (Food Code) (together, the Codes).*

*The Advertisement shows a young child attempting to correct her wrongdoings, being watched by her suspicious family as this is not normal behaviour for her. It can be assumed she is doing so in order to go to McDonald's, however, the motive is not relevant for the purposes of deciding whether this is a breach of the Codes.*

*The key issue in this Complaint is whether the Advertisement is targeted at children. Our submissions below outline why the Advertisement is clearly targeting parents and families, has broad appeal, and is not targeted primarily at children.*

*The Advertisement does not breach the QSRI for the reasons stated below:*

*Reason 1: The content of the Advertisement is directed at parents and families, not children*

*In order to determine if an advertisement is directed toward children under the QSRI, overall consideration needs to be given to the colours, words, concepts, and themes that are used. We have dealt with these separately below.*

### *2.1 Wording and music of the Advertisement*

*The wording of the Advertisement is clearly directed at parents and families. The advertising copy says, "For family time, we'll be here". The phrase, 'for family time'. Children 14 years and under would not appreciate the concept of family time and would not associate the 'we' as being McDonald's.*

*The music that is heard throughout the Advertisement again provides context to the target audience. The music is 'These boots are made for walking' by Nancy Sinatra, which is discussed to be a song about taking revenge against a deceitful man.*

*Whatever the meaning of the song, it is a song enjoyed by older adults from its release in the 60s.*

### *2.2 Colour and aesthetic of the Advertisement*

*It is clear from the colours used in the Advertisement that children are not the target. Throughout the Advertisement, the use of bright colours is very limited. In contrast to advertising targeted at children, all actors are real people, without any animated characters, again drawing attention to parents and families. In its prior decision mentioned above (case 0208/15) the ASB said "it is essential for the Board to consider all elements of the advertisement 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".*



### *2.3 Themes of the Advertisement*

*The Advertisement has more nuanced themes that appeal to adults rather than the simple themes that are used in advertising to children. The comedy that underpins the Advertisement would not be understood by children. Adults, families and children alike will appreciate the suspicious behaviour behind a child righting their wrongdoings without being clear on the reason why. This theme requires a more adult perspective of the world to understand and reinforces the position that this does not advertise to children directly.*

*Reason 2: The placement of the Advertisement is directed at parents and families, not 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. A full listing of where the Advertisement is placed is attached to this response and confirms this.*

*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. In the event that the Board find that the Advertisement is advertising to children, the Complaint should still be dismissed for the following reasons.*

*Reason 3: There is no element of pester power in this Advertisement.*

*Despite the QSRI and section 3 of the Food Code not applying to this Advertisement, we address the Complaint surrounding pester power. The Food Code practice note guides that, "an advertising or marketing communication must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products". Even if this was found to be considered pester power, the child is actually being helpful, rather than a nuisance. Furthermore, a mischievous child does not mean the parent has lost authority.*

*Reason 4: The children are enjoying a QSRI compliant meal*

*The children, although not totally visible, are enjoying the following Happy Meal combination: Grilled Chicken Bites, small fries and 250ml Pop Top water. The saturated fat of each of those items is 0.8g, 0.8g, 0g per serve respectively, sugar is 0.5g, 0.1g, 0g per serve respectively and sodium is 440mg, 194mg, 5mg per serve respectively. The energy content is 860kJ, 469 kJ, 0kJ per serve respectively. These amounts are eligible as a QSRI compliant meal.*

*Additionally, this Advertisement meets the standards of the AANA Code of Ethics.*

*Reason 5: There is no cruelty to animals*

*McDonald's received confirmation from Kirsko Film Animals that the Jack Russell Terrier starring in the Advertisement was comfortable in his role. Preproduction training was carried out with the dog to test his temperament and reaction to the action required. Human/animal safe products were only directed to be used with the dog, with a small test patch at first to check that he did not have any allergic reaction*



*to the products. The dog showed no intolerance to the products or the action. It was reported that he loved his time in the Advertisement. Furthermore it is not unusual to put a hand within a fish tank.*

*Reason 6: The Advertisement does not encourage bullying*

*The AANA Code of Ethics practice note guides that “The age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards”. It is consistent with prevailing community standards that siblings poke fun at each other which is simply what this Advertisement depicts. It is not a fair assumption that the boys in the Advertisement are particularly bothered by what their sister has done.*

*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), the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSRI) and the AANA Code of Ethics (the Code).

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

The Panel noted that there are two versions of this advertisement, a 60 second version and a 30 second version.

The Panel noted the complainants’ concerns that the advertisement:

- Promotes high fat, salt and sugar meals to children
- Suggests that it’s acceptable for females to not show respect to males
- Depicts violence
- Depicts animal cruelty
- Normalises bad behaviour
- Features music with sexualised themes that is inappropriate for children

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 television is covered by this definition.

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 as it features a young child, promotes Happy Meals (a children’s product), is depicted from the point of view of the child, the theme of being rewarded and the theme of mischief and playfulness.

The Panel noted the advertiser’s response that the advertisement is of broad appeal and not targeted directly to children.

The Panel first considered the language in the advertisement. The Panel noted that the advertisement included the song ‘these boots are made for walking’ by Nancy Sinatra which was released in the 60s. The Panel noted that the text on the advertisement states, “for family time, we’ll be here”. The Panel considered that the song would have nostalgic value for older audiences and would not be of strong appeal younger children. The Panel considered the dialogue in the advertisement was



limited, and the text at the end of the advertisement was directed towards parents and carers. The Panel considered that the language in the advertisement was directed primarily towards adults, particularly those with children.

The Panel then considered the visuals of the advertisement. The Panel considered the advertisement featured primarily footage of a young girl attempting to fix things which she had done wrong. The Panel noted that this included interacting with a toy, rubber snakes and spiders, plastic arrows, salt and sugar containers, a fish tank, stickers stuck on the legs of a chair, words painted on a garden shed and a dog which had been dyed pink. The Panel considered that some of the items in the advertisement, especially the toys, would attract the attention of children. The Panel considered the use of child actors, particularly the young girl, would also attract the attention of children. The Panel considered that the advertisement included several shots of the parents' faces reacting to the girl's actions, and that these would not be of interest to children and would convey the parent's amusement at the situation to adult audiences. The Panel considered that many of the toys depicted in the advertisement were toys that had been around for decades and there was a strong sense of nostalgia associated with some of the scenarios in the advertisement. The Panel considered that the visuals in the advertisement would be equally attractive to both adults and children and were not directed primarily to children under 14.

The Panel then considered the theme of the advertisement. The Panel considered that a usually mischievous child is doing good things in order to be rewarded with McDonalds. The Panel considered that this was a theme which adults would find humorous due to the transparency of the girl's behaviour and the knowing looks of the parents. The Panel considered that some elements of the child's behaviour would attract the attention of children, but that overall the themes of this advertisement were directed to adults.

The Panel considered that the call to action at the end of the advertisement was to families, and that the overall themes, visuals and language of the advertisement were attractive to both adults and children, and were not directed primarily to children under 14.

In this instance the Panel considered that the theme, visuals and language of the advertisement were advertising McDonalds as a place for families, and the message was equally attractive to adults and children and was not directed primarily to Children under 14.

The Panel then considered whether the advertisement met points 2 and 3 in relation to being directed to children.

The Panel noted the advertisement had been given a 'W' rating by CAD. The Panel noted that advertisements with a W rating "May be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in G programs principally directed to children." (<https://www.clearads.com.au/wp-content/uploads/2019/11/ClearAds-Handbook-Edition-8.pdf>)



The Panel noted the advertiser's response that the advertisement was not placed in programs primarily directed to children, or with an audience of over 35% children. The Panel was provided with a copy of the spot list for this advertisement.

The Panel noted that the advertisement had not been played in any programs which were directed primarily to children. The Panel considered that the advertisement did not meet Point 2 for being directed primarily to children.

The Panel noted that the advertiser had identified 22 incidences which indicated that the audience was over 35% children aged 0-12, these included:

- American Ninja Warrior at 6pm and 6:30pm on weeknights
- STIHL Timbersports at 4pm on a weeknight
- Doomsday Preppers at 4pm and 4:30pm on a weekend
- Rides Down Under at 3:30pm on a weekend
- America's Game: The Super Bowl at 3pm on a weekday
- City of Angels (movie) at 9:30pm and 10pm on a weekend
- Shipping Wards ay 5pm on a weekend
- Jail: Big Texas on 11:30pm on a weekend
- Outback Truckers at 5:30pm on a weekend
- Bondi Rescue at 6:30pm on a weekday
- Road Hawks at 5pm on a weekday
- Oh God! Book II (movie) at 6:30pm on a weekend

The Panel noted that the advertiser had provided further information regarding this placement, stating:

"We do not have any actual post data available for this campaign yet. This means we have applied actual surveys to the first 3 weeks of the campaign, and have only included markets which have audience data available. These include Sydney, Melbourne, Adelaide, Perth, NSW, SNSW, Victoria and Tasmania.

We have highlighted programs in red that are above the 35% tolerance for P0-12. And then for those programs, we have run eTam numbers to confirm.

Although some specific programs in some specific markets/channels have over indexed for P0-12, all eTam numbers confirm that on average, these programs are well clear of the 35% threshold.

When we look closer at the list, while some programs have a high %, they are on air late at night, or in programs we would consider not typical for P0-12 to be watching."

The Panel noted that it had previously determined in a number of other cases that the advertisement did not breach the audience threshold for being broadcast in shows which had a high percentage of child audience, where these figures appeared to be



erroneous or anomalous did not meet point 2, and were not considered directed primarily to children (0117-17, 0338-18, 0213-19).

The Panel considered that the advertisement had only been played in 22 spots which recorded a child audience of over 35% out of a total 1,900 spots (1.1%).

The Panel acknowledged that many of the programs showing an audience of over 35% of children aged 0-12 were unlikely to be seen by most people as likely to attract large child audiences. The Panel considered that programs such as STIHL Timbersports and the two movies could not have been predicted to have such high child audiences.

However, the Panel noted that the average audience for American Ninja Warrior between 3:30 and 6:30 pm (as provided by the advertiser) was predicted to be 25.86%. The Panel noted the advertiser had not provided average audience data for the program at 6:00pm and 6:30pm, which were the times recorded as having an audience of over 35% children.

The Panel considered that the advertisement had been placed in the show American Ninja Warrior nine times, and of those times five recorded an audience of over 35% children aged 0-12, and seven recorded an audience of over 35% children aged 0-17. The Panel noted that data is not recorded for children aged 0-13 so the percentage of audience under 14 was not known.

The Panel considered that it is not unlikely or unpredictable that the show American Ninja Warrior would have a high percentage of children under 14 watching.

On this basis the Panel determined that the advertisement did meet point 3 of the QSRI in that it was broadcast in a Medium where Children represent 35 percent or more of the audience of the Medium.

Finding that the advertisement did fall under the provisions of the QSRI, based on the placement of the advertisement, the Panel considered the complaint under Schedule 1.1 of the Code which provides:

“Advertising or Marketing Communications to Children for food and/or beverages must:

(a) Represent healthier dietary choices, as determined by the Nutrition Criteria; and  
(b) Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:

- i. Good dietary habits, consistent with established scientific or government standards; and
- ii. Physical activity.”

The Panel considered the first requirement (a) of Schedule 1.1.

The Panel noted the advertiser’s response that the children in the advertisement are eating a QSRI compliant meal of grilled chicken bites, small fries and water.



The Panel noted the advertisement was for McDonalds. The Panel noted that the advertisement featured a mother, father, older brother, younger brother and Lucy eating McDonalds food items at the end of the advertisement. The Panel noted that the meals of the older brother and father can't be seen. The Panel noted that the two young children were shown eating happy meals consisting of water, grilled chicken bites and a small order of fries. The Panel also noted that the younger brother is eating apple slices. The Panel noted that the mother's meal considered of a burger, fries and soft drink.

The Panel noted that whilst the components of the children's meals may be compliant with the McDonald's Company Action Plan, there are other food items in the advertisement which are unlikely to be compliant with the Company Action Plan, such as the Mother's meal.

The Panel considered the advertisement is not an advertisement specifically for Happy Meals, but for all products which families can enjoy McDonalds, and that these products do not all fall within the definition of healthier dietary choices.

The Panel considered that that the advertised product does not meet the requirements of first requirement (a) of Schedule 1.1 of the QSR Initiative by only advertising those products that meet the nutrition criteria, as the advertisement is an advertisement for multiple McDonald's products, some of which do not meet the nutrition criteria.

The Panel considered part (i) of the second requirement (b) of Schedule 1.1.

The Panel considered that there was no additional messaging in the advertisement encouraging good dietary habits, and that although some of the products in the advertisement were a healthier choice, not all of the products that were depicted would be considered to be good dietary habits.

The Panel considered that the advertisement did not encourage healthier dietary choices, and that this did not meet the requirement of part (i) of the second requirement (b) of Schedule 1.1.

The Panel considered part (ii) of the second requirement (b) of Schedule 1.1.

The Panel considered that the young girl was seen undertaking various activities, such as painting and cleaning, however considered that there was no direct call to action encouraging physical activity itself.

The Panel considered that the advertisement did not feature physical activity and did not encourage children to have physical activity every day, and that this did not meet the requirement of part (ii) of the second requirement (b) of Schedule 1.1.



Finding that the advertisement did not meet parts (a) or (b) of Schedule 1.1 the Panel determined that the advertisement breached Schedule 1.1 of the QSR Initiative.

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

The Panel noted that Section 2.2 of the Food Code provides:

“Advertising or Marketing Communication for Food or Beverage Products shall not shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as 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 unlike the requirements of the QSRI, there is not a requirement for messaging to actively encourage healthy lifestyles and diets, rather this section of the Food Code requires that the overall impression of the advertisement does not undermine their importance.

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.

The Panel noted that the young girl in the advertisement was depicted as being active, even though to achieve a reward, and that the advertisement did not undermine the importance of healthy or active lifestyles.

The Panel considered that the portion sizes and product depicted in the advertisement were not disproportionate to the setting.

The Panel considered that the advertisement did not breach Section 2.2 of the Food Code.

The Panel noted that Section 4.2 of the Food Code provides:

“Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable.”

Noting that the advertisement breached Schedule 1.1 of the QSRI, the Panel determined that the advertisement breached Section 4.3 of the Food Code.

The Panel then considered whether the advertisement complied with all relevant provisions of the Children’s Code.



The Panel noted that the definition of advertising and marketing communications to children in this Code:

“Advertising or Marketing Communication to Children means Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Community Panel shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communication are to children under this definition.”

Similar to the discussion in the QSRI above, the Panel considered that the theme, visuals and language used in the advertisement would be of appeal to children, but were not directed primarily to children. Further, the Panel considered that the product advertised is all McDonald’s products, and not just children’s meals.

The Panel determined that the provisions of the Children’s Code do not apply.

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

The Panel noted the complainants’ concern that the advertisement normalises bad behaviour in children.

The Panel acknowledged that many members of the community would consider the suggested prior behaviour of the child to be inappropriate, however noted that this was not an issue which fell within the Codes.

The Panel considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

“Discrimination – unfair or less favourable treatment.

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.”

The Panel noted the complainants’ concern that the advertisement suggests that females should not respect males.

The Panel considered that the behaviour depicted by the girl in the advertisement towards her brothers was a depiction of typical sibling rivalry. The Panel considered that the advertisement did not depict the boys in the advertisement receiving unfair or less favourable treatment because of their gender, rather the advertisement depicted a young child behaving mischievously towards a sibling and being caught out by a parent. The Panel considered there was nothing in the advertisement which



humiliates, intimidates, incites hatred, contempt or ridicule anyone in the advertisement in relation to their gender.

The Panel determined that the advertisement does not discriminate against or vilify a person or section of the community on account of gender and did not breach Section 2.1 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.3 of the Code. Section 2.3 states: "Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised".

The Panel noted the complainants' concerns that the advertisement depicted unnecessary violence in the form of plastic arrows stuck to the photos of the boys.

The Panel considered that the girl in the advertisement was seen removing plastic arrows from photographs, and this behaviour was not violent or threatening. The Panel considered that the advertisement did not contain violence.

The Panel noted the complainants' concerns that the advertisement depicted cruelty to animals.

The Panel considered that the dog and fish in the advertisement are not shown to be distressed or alarmed by the actions of the girl. The Panel considered that it is not uncommon for some people to dye their pet's hair and dress them in costumes and considered that most members of the community would not consider this behaviour to be cruel, especially when the animal does not appear upset. The Panel considered that a set of keys, especially ones without a battery, being placed in a fish tank would not have upset or distressed the fish. The Panel considered that the advertisement did not depict cruelty to animals.

The Panel considered that the advertisement did not portray violence and considered that the advertisement did not breach Section 2.3 of the Code.

The Panel considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Panel noted the complainants' concerns that the song used in the advertisement had sexualised themes which were inappropriate for the general audience.

The Panel considered that the song was well known and used in a variety of popular media and the initial story behind the advertisement would not be known by most people viewing the advertisement. The Panel considered that whilst the lyrics may have a general theme of someone leaving a partner who has been cheating on them, there is nothing explicitly sexual or clearly inappropriate in the lyrics as presented in the advertisement.



The Panel considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience of online news services and determined that the advertisement did not breach Section 2.4 of the Code.

The Panel considered whether the advertisement complied with Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Panel noted the complainants’ concerns that the advertisement featured bullying.

The Panel considered that the advertisement depicted the girl attempting to fix previous bad behaviour, such as putting a head back on her brother’s action figure, painting over a word underneath the words ‘brothers are’, packing away toy spiders and snakes and removing plastic suction arrows from photos of her brother. The Panel considered that the bad behaviour in itself is not shown in the advertisement. The Panel considered that the actions of the girl aren’t violent and the boys in the advertisement do not appear upset or hurt by her behaviour, rather they appear bemused by her attempts to be good. The Panel considered the advertisement depicted behaviour which most members of the community would consider exaggerated sibling interactions, and which did not constitute bullying.

The Panel determined that the advertisement did not depict material that would be contrary to Prevailing Community Standards on health and safety, and did not breach Section 2.6 of the Code.

Finding that the advertisement did breach Schedule 1.1 of the QSRI and Section 4.2 of the AANA Food Code the Panel upheld the complaints.

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

As a founding member of the Quick Service Restaurant Initiative (QSRI) for Responsible Advertising and Marketing to Children we take our responsibility as an advertiser seriously. We are disappointed with the outcome of the complaint, however, we respect the final decision from Ad Standards. It has been removed.

### **INDEPENDENT REVIEWER’S RECOMMENDATION**

I have received a request for review of Ad Standards Decision 0080-20.

#### **Background**

The complaints related to a McDonald’s Australia Ltd advertisement known as the *Denise Ad*. The advertisement initially shows a young girl holding a McDonald’s toy. It is notorious that McDonald’s offers a series of collectable toys when Happy Meals are purchased. She is then pictured cleaning her room and taking steps to reverse the results of a series of naughty actions in which she has been engaged, apparently in a



desire to be rewarded with another McDonald's Happy Meal. Her behaviours are looked on with bemusement by her parents.

The advertisement concludes with a picture of the family at McDonald's. The three children of the family, two boys and the young girl, with at least the two youngest being under the age of 12, are eating Happy Meals comprising water, grilled chicken bites and a small order of fries. The younger brother is shown with apple slices at his place, while the mother has a burger, chips and drink. The meals of the father and elder brother are not shown. The daughter's naughtiness is once again apparent as she steals some small fries from the younger brother. Her mother responds with a warning look.

The complaints were primarily that the advertisement is primarily directed at children, and the prominent foods in the advertisement did not represent healthier dietary choices, and did not encourage good dietary habits or physical activity. These outcomes are claimed to breach provisions in the Australian Food and Grocery *Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children* (QSRI) and the *AANA Food & Beverages Advertising Code* (AANA Food Code), as it applied from 1 June 2019, which in section 4.2 states that advertising for food or beverage products by a Quick Service Restaurant '*must comply with Schedule 1 of the QSRI*'.

The Community Panel (Panel) of AdStandards found the advertisement came within the QSRI Sch 1, s 1.2 Core Principles - *Product Placement* – which requires signatories not to:

*... pay for the placement of, or actively seek to place, food and/or beverage products in the program or editorial content of any Medium directed primarily to Children unless such food and/or beverage products are consistent with s 1.1'.*

The Panel found that the advertisement was primarily directed to children in that the advertisement '*had been placed in the show American Ninja Warrior nine times*' of which '*five recorded an audience of over 35% children aged 1-12, and seven recorded an audience of over 35% children aged 0-17*'.

The next step followed by the Panel was that under Schedule 1.1 the advertisement breached Schedule 1.1(a) of the QSRI which required advertisement only to include '*those products that meet the Nutrition Criteria*', contrary to QSRI 1.1(a) on the grounds that '*the advertisement is an advertisement for all of McDonald's products, some of which do not meet the nutrition criteria*'.

The Panel also found that the advertisement '*did not encourage healthier dietary choices*': QSRI Schedule 1.1(b)(i). Nor did the advertisement '*feature physical activity and did not encourage children to have physical activity every day*': QSRI Schedule 1.1(b)(ii). As such the advertisement breached Schedule 1.1 of QSRI. As a consequence, the Panel found that the advertisement breached section 4.2 of the AANA Food Code.



Other complaints were that the advertisement also breached the AANA's Code of Ethics. These complaints were not upheld by the Panel, and no independent review has been sought of this aspect of the Panel's decision.

Following the finding of breach of the QSRI and the Food Code, McDonald's agreed to withdraw the advertisement. Subsequently, however, McDonald's provided further evidence not seen by the Panel and following advice that the Panel could not at that point reconsider its decision, but that the material could be considered by an Independent Reviewer, McDonald's sought that avenue of review.

#### **Advertiser's response to Panel findings for purposes of review**

The complainant relied solely on one ground, namely, that *'there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence)'*.

In support of this ground the complainant made the following points:

(1) In relation to the finding that *'children represent 35 per cent or more of the audience of the Medium'*:

- the external agency used by the advertiser had advised that the 35 per cent or more relied on by the Panel resulted from spot checking by an external agency, and had produced an outcome which was too small to be reliable. The external agency, accordingly, had also produced figures based on 'rolling averages'. Those figures produced no results in which the 35 per cent threshold had been breached.
- Even if the number of times the 35 per cent threshold had been breached was nine, using the spot method of statistical analysis, this result was a small percentage (0.47 per cent) of the media bookings across metropolitan and regional stations. That result should have been treated like case number 03338/18 in which one inadvertent breach was not sufficient to meet the threshold audience of children of 35 per cent or more in the equivalent provisions in the QSRI.

(2) In relation to findings that *'the advertisement did not meet parts (a) and (b) of Schedule 1.1 of the QSRI, and breached s 4.2 of the AANA Food Code'*:

- The advertisement was compliant with schedule 1.1 of the QSRI/RCMI as the children were shown eating a Happy Meal which represents *'healthier dietary choices'* within QSRI Schedule 1.1 (a); and *'messaging good dietary habits'* within QSRI Schedule 1.1(b)(i); and



- The advertisement '*encourages physical activity*' within QSRI Schedule 1 (b)(ii) since the young girl '*performs numerous physical activities*' and there is no requirement in the provision that this activity, as the Panel asserted in its findings, occur '*every day.*'

Accordingly, the advertiser claimed there were '*substantial flaws*' in the Panel's decision.

In addition, the advertiser submitted the following further points in an email of 19 March 2020:

- *In the weeks of 2 February to 23 February, The Advertisement was placed in 92 spots which had a Kids 0-12 index greater than 35%;*
- *However, when reviewing the same programs on a rolling 12 month average, none of the listed programs indexed higher than 26.5% against Kids 0-12;*
- *The 12 month average audience figures for all bought programs are often reviewed and more relied upon in order to achieve the most robust understanding of audience profile percentages and ensure McDonald's is only present in brand safe environments. Please note, this only represented 1% of total spots purchased;*
- *Especially, Ninja Warriors, cannot be reasonably concluded to be considered programming of primary appeal to children. It is a television show of broad appeal;*
- *In addition, the majority of the activity landed in off-peak and multi-channel which often draws a lower audience, this combined with the limited scale of the TV ratings panel will often deliver inconsistent audience profile results.*

### **Code Principles**

The underlying aim of the QSRI is that '*only food and beverages that represent healthier choices are promoted directly to Children*' (QSRI 1. Background) (emphasis added).

The relevant Core Principles of the QSRI are set out in Schedule 1:

*S 1.1. Advertising and Marketing Communications to Children for food and/or beverages must:*

- a. Represent healthier dietary choices, as determined by the Nutrition Criteria;*  
*and*
- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:*
  - i Good dietary habits, consistent with established scientific or government standards; and*
  - ii Physical activity.*



### *Product placement*

*S1.2. Signatories must not pay for the placement of, or actively seek to place, food and/or beverage products in the program or editorial content of any Medium directed primarily to Children unless such food and/or beverage products are consistent with S1.1.*

The definitions provision in s 3 of the QSRI states:

- *'Children'* is defined as *'Persons under 14 years of age'*;
- *'Medium'* is defined to include television;
- *'Nutrition Criteria'* is defined as those specified in QSRI *Schedule 2*.

McDonald's is a signatory to QSRI. QSRI provides that complaints are to be determined by an independent body. AdStandards Australia has been nominated as that body.

### **AANA Food & Beverages Code (as from 1 June 2019)**

*4.1 Except as set out in section 4.2, Advertising or Marketing Communication for Food or Beverage Products must comply with Schedule 1 of the RCMI, where applicable.*

*4.2 Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable.*

### **Role of reviewer**

The Independent Reviewer first considers whether the application for review sets out a prima facie case for review and decides whether to accept or not accept the request. That decision depends on whether the complaint meets any of the required but limited grounds for review, namely:

- *Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.*
- *Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).*
- *Where there was a substantial flaw in the process by which the determination was made.*

The complainant relied solely on one ground, namely, that *'there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence)'*.

### **Reviewer's reasons**



### *Finding that the advertisement was an 'Advertising or Marketing Communication to Children'*

The application for review focused solely on that part of the Panel's reasons which accepted that the advertisement was shown in a 'Medium', namely, television, '*where Children represent 35 per cent or more of the audience of the Medium*'. In other words, the advertiser responded to the finding of the Panel that the advertisement was '*directed primarily at children*'. Accordingly, the reviewer has confined the first part of the review to the issues relating to this finding.

#### *Sampling*

The argument based on statistical sampling was that the spot sampling technique involved numbers which were too small to be statistically significant. The advertiser provided figures based on an alternative 'rolling averages' method which it maintained did not produce audiences of children which exceeded 35 per cent.

The advertiser used as evidence for the unreliability that one of the programs during which the advertisement was shown, American Ninja Warriors, viewed on 9 February between 6.00 pm and 6.29 pm, was watched by 2,600 children aged between 1-12 years, representing a children audience of 60 per cent. In other words, the advertiser admitted that on this occasion the audience was in excess of the benchmark in QSRI. Indeed, if the QSRI definition of 'children' had been adopted, and the sampling conducted was for children aged 0->14 years, rather than 0-12 years, the percentage of children watching that program and the advertisement would have exceeded 60 per cent.

Additional evidence relating to the 9 February viewing of American Ninja Warriors shown from 6.00pm to 6.29pm on 9 February 2020 was provided. The figures relating to that program on that day are represented as 75% for 'Booked P 0-17 Difference', and 65% for 'Booked P 0-12 Difference'. The figures, it can be assumed are based on the spot sampling method not the 'rolling averages' method, given the percentages which are well in excess of 35 per cent.

The evidence provided initially by McDonald's to the Panel was based on the spot sampling methodology. It was open to the Panel to rely on that evidence. Choice by McDonald's of an alternative 'rolling averages' method, was only adopted after the adverse decision by the Panel, is not clearly explained, and has been adopted to advantage the advertiser. For these reasons alone, the reviewer is not satisfied that the alternative method should be accepted as one which it was open to, and reasonable for, the Panel to have adopted.

In addition, the advertiser in an email of 19 March 2020, stated, '*between the weeks of 2 February to 23 February, The Advertisement was placed in 92 spots which had a Kids 0-12 index greater than 35%*'. This indicates that 5.2% of the total of 1,780 occasions on which the advertisement was shown were potentially viewed by an audience in excess of 35 per cent of children. These percentages are based on the spot checking sampling method.



The subsequent 'booked' figures, in the absence of sampling 0->14 year olds, are the percentage of children in the sample for 0-12 years olds as compared with 0-17 year olds. There are clearly at least 22 in the 0-12 year old category with an audience of in excess of 35 per cent. A small number may be added to that figure if the difference between the 0-12 year old and the 0-17 year old percentages are considered. At 22 plus occasions, the total of programs in which the advertisement was shown would be in excess of 1.23 per cent. That remains a significant number and percentage.

Whether the program, such as American Ninja Warriors, is of primary appeal to children is irrelevant to the test. This is no 'inadvertent' occasion for which a waiver might be given as in the Case number 03338/18. The criteria on which the finding is based is whether the number watching exceeded 35 per cent. Nor to the point are the advertiser's instructions to the media buying agency to '*only buy into TV programs with audience profile of less than 35% against children aged 0->14 at all times*' or the advertiser's surprise at the size of the audience of children watching a particular program. It is whether in fact, there were potentially a significant number of children watching the program. Given the time slots of 6.00pm to 6.30pm for some of the programs where the number was exceeded, the reviewer is not surprised that the percentage audience of children exceeded 35 per cent.

In view of these figures, the significant number of occasions on which there was an audience of in excess of 35 per cent of children, the advertisement involved a breach of the QSRI, the provisions of which are to be complied with by signatories such as McDonald's. Accordingly, it is the reviewer's opinion that the Panel's finding that the audience exceeded the children viewing level of 35 per cent can be maintained. That opens the path to a consideration of the QSRI Schedule 1.1 requirements.

### **Breaches of QSRI Schedule 1.1(b)**

#### *Healthier dietary choices*

The QSRI Nutrition Criteria in Schedule 2 are provided by meal composition and energy criteria for particular age groups. The ages of the children are not provided hence any precise discussion of the Nutrition Criteria is not possible.

The advertiser maintains that the Happy Meal represents '*healthier dietary choices*' and that the younger brother has pieces of apple in his choice. The composition of the Happy Meal shown comprises grilled chicken bites, a drink, and a small order of fries. The meal does comprise a '*main and a beverage*'. The fries are part of the Happy Meal in all cases.

It is well known that children have a choice of drink, and of whether to have apple slices or another choice of the available food. The energy level of the fries would be significant. The reviewer agrees that if the choice of apple slices and water is made, depending on the ages of the children as shown in the advertisement, that the nutrition criteria may be met, despite the inclusion of the small portion of fries. The choice available is likely to be capable of meeting QSRI Schedule 1.1(a).



### *Good dietary habits*

That is not sufficient to meet the criteria in section 1.1 which are cumulative. The issue is whether the '*messaging ... encourages good dietary habits*' (S 1.1(b)(i)). There is no indication of messaging encouraging the healthier dietary choice, thus meeting the '*good dietary habits*' criterion. Indeed, the mother's mild warning look when the daughter steals some more high energy fries is insufficient to indicate that eating more fries than are included in a standard Happy Meal is not good dietary behaviour. There is no other messaging on the Happy Meal packages, or shown in the advertisement about good dietary habits.

The mother's choice of meal of a burger, chips and drink is clearly apparent in the advertisement. This offends the underlying objective of the QSRI to which McDonald's has subscribed that advertisements which fall within those covered by QSRI, namely, those involving advertising and marketing communications primarily to children, should '*only*' promote food and beverages that represent healthier choices. In combination with the daughter's sneaking extra chips from her brother's portion, the visual images in the advertisement do not promote healthier choices.

The incentive of acquiring another McDonald's collectable toy if purchasing the Happy Meal could have been used to encourage good dietary habits, had the benefits of a Happy Meal which always fulfilled the nutrition criteria been adopted. However, the possibility of choices which do not meet those nutrition criteria means this opportunity, and the absence of any messaging indicating which are the healthier options, has not been taken.

As the criteria in Schedule 1.1 (a) and (b) are cumulative, the advertiser is in breach of this provision as the advertisement fails to meet s1.1(b)(i).

### *Physical activity*

The advertiser has submitted that as the girl is shown undertaking various physical activities as she takes steps to undo her naughty actions, she is involved in physical activity. The advertiser maintains that 'physical activity' should not be equated with 'exercise'. That argument may be conceded. Nonetheless, underpinning the QSRI Initiative is the need to not only promote 'healthy dietary choices' but also, 'healthy lifestyles' among Australian children. The daughter's activities are undertaken to obtain another collectable toy as a consequence of eating a Happy Meal at McDonald's. The purpose of the daughter's actions is to obtain those rewards. They are not undertaken in order to achieve a healthier lifestyle. The context of the messaging does not encourage physical activity designed to achieve a healthy lifestyle. So the criterion in Schedule 1.1(b)(ii) has also not been met.

### **Conclusion**

In the opinion of the reviewer, the breaches of QSRI Schedule s 1.1 justify the Panel's decision. There is accordingly no need to remit the matter to the Panel for reconsideration.

**Suggestion**

The reviewer suggests that it would be helpful if the AFGC, in conjunction with AdStandards agreed on a common definition of 'Children' in the Initiatives and the relevant Codes taking into account the criteria adopted by commercial sampling agencies. In addition, this matter has raised the need for the inclusion in the Initiatives and the Codes of some indication of the methodology to be adopted in assessing the 35 per cent audience of children involved.