



Case Report

1	Case Number	0084/11
2	Advertiser	McDonald's Aust Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	13/04/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Product Placement QSR - 4.3 - Product Placement
2.8 - Food and Beverage Code undermines healthy lifestyle

DESCRIPTION OF THE ADVERTISEMENT

The TVC begins asking "How much lunch would you expect to get for \$4.75?". We then see a cheeseburger, medium fries, medium coke and a chocolate sundae appear with a large \$4.75.

THE COMPLAINT

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

The National Heart Foundation of Australia (WA Division) is a charitable organisation dedicated to reducing the impact of cardiovascular disease on the community through supporting medical research assistance to patients and implementing health promotion and prevention programs.

The Heart Foundation is extremely concerned about the increasing prevalence of obesity in the community where almost two-thirds of adults are overweight or obese as are one-quarter of 12- to 17-year-olds. Consequently it is estimated that for the first time in a century the life expectancy of children born in Australia today will be shorter than that of their parents.

The Heart Foundation believes that this advertisement breaches Provision 2.2 of the Code which states:

Advertising or marketing communications for food or beverage products shall not encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting is portrayed or by means otherwise regarded as contrary to prevailing community standards.

According to the Nutrition Information available on the McDonald's Australia website the '\$9.95 Lunch Deal' contains a total of 6782 kilojoules 66.9 grams of fat including 24.1 grams of saturated fat and 2276 milligrams of sodium.]

As you may be aware Food Standards Australia and New Zealand sets reference values for the daily dietary intakes for an average Australian adult at 8700 kilojoules 70 grams of fat at 24 grams of saturated fat and 2300 milligrams of sodium² The '\$9.95 Lunch Deal' therefore represents 78% of total daily energy intake 96% of total fat and 100% of saturated fat daily intake and 99% of daily sodium intake for the average adult.

I am sure you will appreciate the Heart Foundation encourages Australians to moderate their food energy intake and reduce their consumption of saturated fat and sodium to reduce their cardiovascular disease.

The '\$9.95 Lunch Deal' is promoted for an individual to consume in a single meal and represents in excess of three-quarters of an average adult's daily energy intake. Clearly the promotion of this product encourages excessive consumption in a single meal and is in breach of Provision 2.2 of the Code.

In considering this complaint the Heart Foundation requests that the Advertising Standards Bureau provide a definition of ... 'what would reasonably be considered as excess consumption.

I look forward to the determination of this complaint by the Australian Advertising Standards Bureau.

McDonald's Advertisement in breach of the Quick Service Restaurant Industry Initiative

We write to complain about the McDonald's advertisement that we consider to be in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR II).

We believe that the advertisement breaches clause 4.1 of the QSR II because it is Advertising and Marketing Communication to Children for food (McDonald's lunchtime knockout meal) which does not represent a healthier choice according to the QSR II nutrition criteria.

The advertisement was directed to children as it was shown during the children's movie Madagascar- Escape 2 Africa and My Kitchen Rules.

Overview of advertisement

The ad begins with a picture of a McDonald's cheeseburger and the voiceover "how much lunch would you expect to get for \$4.75". A cheeseburger medium fries medium coke and sundae are shown and then later a tick approved meal.

The advertisement was broadcast

At 7:2pm 19th February on Seven Digital Sydney during Madagascar- Escape 2 Africa a children's movie; and during My Kitchen Rules on Seven Digital Sydney on 2 February at 7:47pm and 8:19pm 8 February at 8:21pm and 9 February at 8:05pm and 8:26pm.

Advertising and Marketing Communication to Children

The advertisement for McDonald's lunchtime knockout was shown in the children's movie Madagascar- Escape 2 Africa which started at 6:30pm which is indicative of Channel 7 considering it to be a children's movie. It was also shown during My Kitchen Rules a program with a large children's viewing audience.

Nutrition criteria

The nutrition criteria for assessing meals outlined in clause 3 of Appendix 1 of the QSR II require that a meal must not exceed maximum limits of 2770kJ for children 9-13 years saturated fat (0.4g per 100KJ) sugar (1.8g per 100KJ) and sodium (650mg per serve).

The meal which takes up the greatest proportion of the advertisement that is the cheeseburger medium fries medium coke and sundae is 4712kJ and contains 1.9 g of sugar per 100kJ and 1313mg of sodium per serve. This meal therefore fails to meet the QSR II nutrition criteria.

For the reasons set out above we believe the McDonald's advertisement breaches clause 4.1 of the QSR II.

THE ADVERTISER'S RESPONSE

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

We refer to complaint number 0084 of 2011 and thank the Bureau for the opportunity to respond. As the Bureau and Board are aware, McDonald's is committed to the self-regulation of the advertising industry and we take our obligations as a national advertiser very seriously.

We are firmly of the opinion that this advertisement is not in breach of any of the advertising codes of practice, and we set out our response below for the Board to consider.

BASIS OF COMPLAINT

We note that the reason for the complainant's concern is that she believes the McDonald's "Knockout Deals" television commercial (TVC) is in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Code), specifically clause 4.1 of that Code.

Clause 4.1:

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

(a) represent healthier choices as determined by a defined set of Nutrition Criteria for assessing children's meals; and/or

(b) represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

(i) healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals; and

(ii) physical activity".

ADVERTISING AND MARKETING TO CHILDREN

It is important to note the definition of "Advertising and Marketing Communications to Children".

"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 food/beverage products" [emphasis added].

This complaint is not considering the "theme, visuals and language" of the TVC, but instead is focusing on the placement of the TVC during "PG" rated programming stating "The advertisement was directed to children as it was shown during the children's movie Madagascar – Escape 2 Africa and My Kitchen Rules". This ignores the distinction between advertising and advertising to children. Please also note that Madagascar – Escape to Africa is rated PG (parental guidance) on account of the film containing mild animated violence. My Kitchen Rules cannot reasonably be classified as a program that children would traditionally be attracted to, but is shown during prime time.

There are genres of film and television that appeal only to children – for example, The Wiggles, Sesame Street, Playschool. There are genres of film and television that are clearly only for adults, for example crime dramas like Law & Order or shows dealing with adult

themes like *Sex and the City*. The television ratings system reflects this, and the Children's Television Standard 2009 regulates the placement of advertising for children in periods of programming that are specifically for children alone.

However, there are also a very wide range of film and television genres that appeal to a broad spectrum of ages that one would reasonably expect would be watched by all members of a family - for example popular animated films, PG rated films, television programs that are appropriate for all ages like cooking shows, travel shows and talent shows. Just because a television commercial is placed in a program that might be watched by a small proportion of children, does not automatically mean that the advertisement is "directed primarily" to children, and certainly this is not what the QSR Code states.

The Children's Television Standard 2009 sets out the rules for when advertisements meant for children can be aired, this is not the role of the QSR Code. The role of the QSR Code is to ensure that where signatories to the code are advertising to children, that the content of the advertisements fits the parameters of the code. Whether a particular piece of advertising can be classified as "Advertising or Marketing to Children" is assessed by "having regard to the theme, visuals and language" of the advertisement. For example, some of our Happy Meal advertising is intended for children and parents. Using fun colours, music and effects, with stories featuring kids doing fun, exciting things, there is no doubt that the theme, visuals and language of those advertisements is directed primarily to children. All of these advertisements are put together with the greatest regard for the QSR Code and always adhere to the nutritional criteria.

IS THIS TVC "DIRECTED PRIMARILY TO CHILDREN"?

To establish the answer to this question, the QSR Code requires that the Board have regard to the theme, visuals and language.

THE THEME OF THE TVC: VALUE

The TVC in question here is a TVC promoting a new, limited time range of lunch offerings called "Knockout Deals". The main theme of this TVC is value. Value is something that matters very little to children, as it is widely understood that children, especially younger children, generally do not have a clear concept of the value of money. It is our understanding that this is the reason why clause 2.8 of the Code for Advertising & Marketing Communication to Children has been included – as children don't really have a concept of the difference between \$2 and \$200 and so it would be unfair for an advertiser to say in an advertisement directed to children that a toy is "ONLY \$200!" as a child could easily be led to believe \$200 is not a lot of money based on the presentation and language. Value is, however, a key driver for adults and an important factor in purchasing decisions for many, if not most, adults. Adults have a keen concept of what value for money is and what type of pricing represents good value for money. This is clearly not a theme that is directed to, or would even appeal to, children as most children don't understand or care about the concept of value.

THE VISUALS OF THE TVC – SIMPLE, FOCUS ON THE VALUE

The visuals of this TVC are very simple and very plain. In fact, the TVC almost has an unfinished quality as it shows the background or "making of" the commercial - we can see the clips holding up the background of the set, even the stand holding up the end frames is left in shot. The background of the food shots is mainly white with no animation or special effects. The focus is on (a) what the meal deals include, and (b) the great price points.

The meal portions shown are clearly adult portions directed at adult customers. The TVC does not feature any of our children's products such as Happy Meal, CalciYum Milk etc.

There are no toys or premium offers.

As per the script, the background music for the TVC is a light, upbeat instrumental tending towards soft rock or country music. It is not childish or whimsical.

THE LANGUAGE OF THE TVC

Please refer to the script we have provided.

The voiceover is spoken by a male who sounds like he is probably in his late twenties or early thirties. He asks “How much lunch would you expect to get for \$4.75?”. Clearly, the voiceover is focussing in on the value proposition of the meal deal. It is not childish, fun or whimsical, but focuses in on the content of the two meals and the value prices.

In addition, the deals are lunch deals that are available between 12 and 3pm. As most children are at school five out of seven days a week during this time, it is clear that this offering is primarily placed to appeal to adults and is intended for an adult audience.

NUTRITIONAL CONTENT

The ASB has requested that we provide the nutritional content of the two Knockout Deals. Please find this information attached. This information is also freely available on our website, www.mcdonalds.com.au and is independently verified by Accredited Practising Dieticians. Neither meal meets the QSR Code criteria as neither meal is intended for children. Both are adult meals.

CONCLUSION

This TVC cannot reasonably be said to be “Advertising or Marketing to Children” within the context of the QSR Code, or any other code for that matter. It is quite clearly an advertisement that is directed primarily to adults. To classify an advertisement by reference to its placement is incorrect and not in accordance with the QSR Code, which requires a consideration of the “theme, visuals and language” when making this judgement. Provided that the placement of the commercial is not in breach of the Children’s Television Standards 2009 then placement has no other relevance under the QSR Code.

Accordingly, this advertisement is not in breach of clause 4.1 or the QSR Code. On reflection of the other applicable codes, we believe that this advertisement is compliant in all respects.

We thank the Bureau and Board for accepting our submission and look forward to the Board’s determination in due course.

THE DETERMINATION

The Advertising Standards Board (‘The Board’) considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSR Initiative), Section 2 of the AANA Advertiser Code of Ethics (the “Code”) and the AANA Code for Advertising and Marketing Communications to Children.

The Board noted the complainants’ concern that the advertisement breaches 2.2 of the Food and Beverage Code (excess consumption) by virtue of the meal comprising $\frac{3}{4}$ of an adult’s daily recommended energy intake and that the advertisement breaches the QSR Initiative as it is shown in children’s programming (Madagascar 2 and My Kitchen Rules)

The Board reviewed the advertisement and noted the advertiser’s response.

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

The Board noted that the QSR Initiative applies to ‘advertising or marketing communications to children’ which means ‘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 Board noted that the program in which the advertisement is shown is not relevant to the determination of whether or not an advertisement is directed primarily to children.

The Board noted that the advertisement features a description of a Knockout lunchtime meal (Cheeseburger, medium fries, soft drink and a Sunday and also shows one of the heart tick approved meals), with the voiceover describing the value of the lunchtime deals available. The Board considered that the lunchtime deals as described in this advertisement – primarily in terms of value and then images of a range of the products which do not include any of the particularly child focused products - would have principal appeal to adults. The Board considered that the language used in the voiceover was aimed at adults.

The Board considered that the overall theme (the lunchtime knock out value meal) visuals (the foods) and language used are not directed to children. The Board considered that this advertisement is not directed primarily to children and therefore that the provisions of the QSR Initiative do not apply.

The Board then considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children' in the AANA Children's Code is largely the same as that in the QSR Initiative. For the same reasons noted above, the Board considered that this advertisement is not primarily directed to children; therefore the provisions of the Children's Code are not applicable in this case.

The Board then considered the advertisement under the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code). The Board considered that an advertisement for a family pack meal is not, of itself, an advertisement that would 'otherwise contravene prevailing community standards'. In the Board's view, the advertising of a product that is high in fat and salt and does not meet criteria for a 'healthy choice meal' does not of itself breach community standards. The Board determined that the advertisement did not breach section 2.1 of the Food Code.

The Board then considered section 2.2 of the Food Code which provides that: 'Advertising or marketing communications for food or beverage products 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 sized disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.'

The Board also noted the AANA Food and Beverages Code Practice Note which the Board must apply in interpreting the Food Code. In relation to section 2.2 the Practice Note provides;

This section contains two separate obligations. Failure to meet either one will be considered a breach of the Code.

The Board will not apply a legal test, but consider material subject to complaint as follows:

- In testing whether an advertising or marketing communication undermines the importance of a healthy lifestyle, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise.

Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication.

- In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.

The Board will also consider the age of the person shown in association with the product, recognizing for example, that a teenage male may often consume more than a female or younger child and this may not be a representation that encourages excess consumption in the situation portrayed.

In relation to the first component of section 2.2 the Board noted that the advertisement depicts the meal as a lunchtime deal. There is no reference, explicit or implied, that the meal should be consumed daily or even regularly. The Board also noted that the advertisement contains reference to a healthier choice option for the lunchtime deal. The Board considered that the depiction of a product that is of itself high in fat, salt and energy is not disparaging of healthy food choices. The Board considered that the advertisement does not, by the mere advertising of a particular product, undermine healthy dietary choices messages, and in the case of this particular advertisement, there is a clear reference to healthier choices being available. The Board determined that the advertisement did not breach the first element of section 2.2.

The Board considered the second element of section 2.2 relating to excess consumption. The Board considered that the advertisement did not represent the product or portion size in a manner that was disproportionate to the setting portrayed. The Board also considered that it is not a current community standard that advertising or consumption of a 'meal' such as the advertised product is of itself unacceptable on an occasional basis. The Board considered that the advertisement makes no reference to frequency of consumption and that the overall impression of the advertisement is not a message that condones excess consumption even if consumption of the particular product on one occasion will lead to a high energy intake. The Board determined that the advertisement did not breach the second element of section 2.2.

The Board noted that Part 3 of the Food Code does not apply as the advertisement is not directed primarily to children and is not for a product that is of principal appeal to children and determined that the advertisement did not breach any other provisions of the Food Code and.

Finding that the advertisement did not breach any of the Codes on any grounds, the Board dismissed this complaint.