



Case Report

1	Case Number	0102/17
2	Advertiser	Yum Restaurants International
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet - Social
5	Date of Determination	08/03/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption

Advertising to Children Code 2.14 Food and beverages

QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

QSR - 1.3 - Products in Interactive Games Products in Interactive Games

DESCRIPTION OF THE ADVERTISEMENT

The advertisement to which the Complainant refers to is a Snapchat lens that features KFC's Buckethead experience (Advertisement). We enclose screenshots of the Advertisement at Annexure 1 and an audio-visual demonstration of the Advertisement. The Advertisement was available to Snapchat users on Saturday 28 January 2017 for a period of 24 hours to coincide with the final cricket match of the KFC Big Bash League ("Event"). The Advertisement was promoted on a stadium billboard at the Event and via KFC's social media sites on Facebook, Twitter and Instagram.

The Advertisement's interactive filter enabled Snapchat users to snap themselves wearing a virtual KFC bucket on their head. As well as the the bucket appearing on the user's head, zinc stripes were also placed on the user's cheeks. If a user opened their mouth, they saw visual images of the bucket spinning, flying chicken pieces and exploding fireworks. The Advertisement included male voiceover commentary from Sydney's Nova 96.9 radio presenter, Michael Wipfli (aka "Wippa").

THE COMPLAINT

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

Reasons for complaint

1. *The advertisement breaches the QSRI*

The Obesity Policy Coalition (OPC) submits that this advertisement breaches the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI). As a signatory to the QSRI, KFC has committed not to advertise its products to children under 14 years in media unless those products represent healthier dietary choices, as determined by the QSRI's Nutrition Criteria.

In our submission the advertisement breaches clauses s1.1 and s1.3 of the QSRI because: -

- 1. It is a communication directed primarily to children and an interactive game including KFC fried chicken;*
- 2. KFC fried chicken does not represent a healthier dietary choice consistent with the QSRI's Nutrition Criteria; and*
- 3. It does not encourage good dietary habits or physical activity.*

The advertisement is a marketing communication directed primarily to Children

The KFC Snapchat lens is clearly an advertising or marketing communication within the meaning of the QSRI, as it is material published by, or on behalf of, KFC 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 or the organisation. The Snapchat lens is clearly designed to draw public attention to promote KFC and its fried chicken products.

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. This advertisement has been published on the app Snapchat and can be considered an interactive game as it requires users to interact and snap a picture of themselves and then follow instructions given to unlock additional features. This is consistent with a broadly recognised definition of a game, being 'an activity that one engages in for amusement' (reference: Oxford dictionary online accessed at <https://en.oxforddictionaries.com>) Users would then be encouraged to interact with others by sending the snap to friends.

We also argue that the advertisement should fall within the definition of an internet site, as although Snapchat is an app, it must be downloaded using the internet and relies on an internet connection to send and receive data.

We submit that the advertisement is directed primarily to children because of its themes and visuals as well as its placement.

Based on its themes and visuals, the advertisement is clearly a marketing communication directed primarily to children within the meaning of the QSRI. The advertisement enables users to wear a virtual KFC bucket on their head and to have flying KFC chicken explode into fireworks. This interaction and the animated visual effects would have strong appeal to children under 14 years of age, in particular their sense of fun and imagination.

The placement of the advertisement also supports a conclusion that it is directed primarily to children. The advertisement was available on Snapchat, a social media app popular with young Australians, including children under 14 years of age. We acknowledge that Snapchat's policy is to restrict usage to those over 13 years, however we know from research on the use of other types of social media that there are likely to be many children under that age who use Snapchat. (footnote: For example, a 2013 report into young Australians' experience of social media found that Facebook (which, like Snapchat, has a policy of restricting access to children aged over 13 years) was popular with younger children, with 16 per cent of 8-9 year olds and 31 per cent of 10-11 year olds having used it. See Australian Communications and Media Authority 'Like, post, share: Young Australians' experience of social media', 2013. Accessed at <http://www.cybersmart.gov.au/About%20Cybersmart/Research/~//media/Cybersmart/About%20Cybersmart/Documents/Newspoll%20Quantitative%20Like%20Post%20Share%20%20final%20PDF.pdf>)

This particular Snapchat lens was also likely to be especially popular with children, as it was released to coincide with the final of the KFC Big Bash League (BBL) cricket. The BBL is extremely popular with children (average of 17 755 viewers under 12 years old between 1 January 2017 and 28 January 2017 (reference: ETAM, Consolidated, 1/1/17 – 28/1/17, People 0-12, Melbourne)), and heavily promotes its major sponsor KFC to the large numbers of children who attend the matches as well as those who watch it on TV. This extensive advertising of KFC to children through the BBL means that the brand's profile is likely to have been increased among those child spectators and viewers, making it more likely that they follow KFC on Snapchat or other social media channels and were therefore exposed to the advertisement. We note that KFC promoted the Snapchat lens advertisement on its other social media accounts, including Instagram, Twitter and Facebook, directing users to add them on Snapchat to 'discover the secret'. Those social media channels would then have directed additional children to the Snapchat account and advertisement.

We argue that the placement of the advertisement on Snapchat, its link to the BBL and its themes and visuals have the combined effect of directing the advertisement primarily to children, in contravention of the QSRI.

KFC fried chicken does not represent a healthier dietary choice

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 Appendix 1 to the QSRI. Relevantly, s2.1 of the Nutrition Criteria requires that:

- a. The meal must be comprised of at least a main and a beverage.*
- b. The meal should reflect general principles of healthy eating as defined by credible nutrition authorities.*

The advertisement does not depict a meal comprising of a main and a beverage and is therefore not consistent with the Nutrition Criteria. The advertisement depicts fried chicken on its own, which is not a complete meal and would ordinarily be consumed with other items, for example a beverage and a side such as chips, a salad and/or another fried chicken product. These combination and shared meals can be seen on KFC's online menu.

The advertisement is also inconsistent with the Nutrition Criteria as it does not reflect general principles of healthy eating as defined by credible nutrition authorities. The advertisement depicts a KFC bucket and fried chicken pieces. It is reasonable to assume that it is promoting KFC's original recipe chicken, as it resembles the chicken displayed in the advertisement. KFC's 21 piece original recipe chicken also appears to be served in a bucket similar to that used in the advertisement, based on the picture accompanying that product on KFC's online menu. That product contains 18899 kJ, 59.7g of saturated fat, 16.8g of sugar and 9506mg of sodium. We accept that the product is not intended to be consumed by one person, however even when split between several people it is not a healthy dietary choice.

Credible nutrition authorities would recognise KFC's fried chicken to be an unhealthy option. The Australian Dietary Guidelines recommend limiting intake of foods containing saturated fat, added sugars and added salt. Australian Government recommendations also provide some guidance on appropriate limits for each of those properties, with KFC's original chicken exceeding the recommended levels of saturated fat, total fat and sodium per 100g.

As well as providing those general rules, the QSRI Nutrition Criteria provide limits on the amount of energy, saturated fat, sugar and sodium that can be included in children's meals considered healthier dietary choices. As no meal is depicted in the advertisement, no complete assessment can be made against these criteria. We note, however, that based on the nutrition information on KFC's website, less than 2 pieces of KFC original recipe chicken would be sufficient to exceed the amount of sodium permitted in an entire children's meal under the QSRI, and that is not taking into account the additional sodium, saturated fat or sugar provided by any accompanying drinks and sides.

In our view it is clear that the advertisement is not promoting a healthier dietary choice. We also note that, regardless of the health profile of the product in question, in its QSRI Company Action Plan, KFC has undertaken not to engage in any marketing or advertising directed primarily at children for any food or beverage products, including in interactive games.

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 KFC 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:

- 1. Good dietary habits, consistent with established scientific or government standards;*
- and*
- 2. Physical activity.*

This advertisement does not promote good dietary habits or physical activity in any way. It promotes the consumption of KFC's fried chicken products, which is not consistent with good dietary habits. No healthy foods or representation of physical activity is incorporated into the advertisement.

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 ASB to request that KFC does not publish any similar advertisements in the future.

2. The advertisement breaches the Code for Advertising & Marketing Communications to Children

The OPC submits that this advertisement breaches clause 2.14 of the Code for Advertising & Marketing Communications to Children (Children's Code) because:

- 1. It is an advertising or marketing communication to children, and*
- 2. It encourages and promotes unhealthy eating habits*

The advertisement is an advertising or marketing communication to children

The Children's Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on the app Snapchat, which can be characterised as new and emerging technology. The Children's Code clearly applies.

Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Children's Code.

The advertisement enables users to wear a virtual KFC bucket on their head and to have flying KFC chicken explode into fireworks. This interaction and the animated visual effects would have strong appeal to children 14 years of age and younger, in particular their sense of fun and imagination.

The advertisement promotes unhealthy eating habits

The advertisement promotes the consumption of KFC fried chicken and encourages children to associate the product with fun and social activity. As outlined above, KFC fried chicken is an unhealthy product with high levels of sodium and fat. The promotion of this product encourages children to consume it and thereby promotes unhealthy eating habits. In addition, the advertisement encourages excess consumption by showing a KFC bucket, an item that is typically associated with large serves of KFC products, such as the 21 pieces of original recipe chicken discussed above. Consumption of such a bucket would result in children consuming an excessive amount of this high fat, high sodium product.

Request for action

For the above reasons, the OPC asks the ASB to request that KFC does not publish any similar advertisements in the future.

3. The advertisement breaches the Food & Beverages Advertising & Marketing Communications Code

The OPC submits that this advertisement breaches clause 2.2 of the Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code) because:

1. *It is an advertising or marketing communication for a food and beverage product, and*
2. *It undermines the importance of healthy lifestyles, undermines the promotion of healthy balanced diets and encourages what would reasonably be considered as excess consumption through the representation of products and/or portion sizes disproportionate to the setting portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.*

It is clear that the advertisement is an advertising or marketing communication for a food and beverage product.

We argue that due to its nutritional profile, in particular its high levels of fat and sodium, the consumption of KFC fried chicken has no place as part of a healthy lifestyle and a healthy balanced diet. We submit that by promoting this unhealthy product to children, associating it with fun and social activity and by encouraging children to consume it, this has the effect of undermining the importance of healthy lifestyles and the promotion of healthy balanced diets.

We also argue that the advertisement encourages excess consumption of the product by depicting a bucket that is associated with very large serves of the KFC fried chicken product, such as the 21 pieces of original recipe chicken discussed above. We consider this to be a portion size that is disproportionate to the setting. We highlight the Food & Beverages Code Practice Note, which says that when considering whether an advertisement encourages excess consumption, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption. We argue that children aged 14 years and younger are the target audience of this advertisement, and that they are most likely to receive a message that condones excess consumption, being that it is appropriate to consume a very large serve of KFC fried chicken.

We also submit that the advertisement contravenes prevailing community standards by promoting excess consumption using a Snapchat lens, sophisticated new technology to engage children in visually appealing, engaging and social activities. We are concerned that children will be particularly attracted to the advertisement due to its presence on Snapchat and may be unable to perceive the promotional or commercial nature of the communication. The OPC submits that the vulnerability of children to these innovative activity-based marketing techniques renders the advertiser's efforts to engage children in these activities highly unethical and contrary to prevailing community standards.

Request for action

For the above reasons, the OPC asks the ASB to request that KFC does not publish any similar advertisements in the future.

THE ADVERTISER'S RESPONSE

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

The Complainant has expressed concern that the Advertisement was directed primarily to children and subsequently did not represent healthier dietary choices or promote good dietary habits or physical activity.

The Complainant has also claimed that the Advertisement encouraged excessive food consumption by showing a KFC bucket.

Relevant Codes & Initiatives

Australian Association of National Advertisers Code of Ethics (“Code of Ethics”) Section 2 of the Code has been cited as relevant.

Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (“QSRI”)

There is a suggestion that the Advertisement breaches clauses 1.1 and 1.3 of the QSRI.

Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children (“Children’s Code”)

There is a suggestion that the Advertisement breaches clause 2.14 of the Children’s Code.

Australian Association of National Advertisers Food and Beverages Marketing and Communications Code (“F&B Code”)

There is a suggestion that the Advertisement breaches clause 2.2 of the F&B Code.

Has the Code of Ethics, QSRI, Children’s Code or F&B Code been breached?

KFC considers that the Advertisement does not breach the Code of Ethics, QSRI, Children’s Code or F&B Code. The Advertisement was not, having regard to the age restrictions, theme, visuals and language used, directed primarily to children being persons under 14 years of age.

Objective of Advertisement

The primary objective of the Advertisement was to capture the attention of young adults in order to celebrate the final game of the KFC Big Bash League. To achieve this objective, the Advertisement created a KFC Buckethead experience. The Advertisement allowed the Snapchat user to virtually see themselves wearing the KFC bucket on their head, as they would have been able to do, had they been at stadium during the final cricket match of the KFC Big Bash League.

KFC has been a Gold Partner of Cricket Australia since 2003 and has been a major sponsor of the Big Bash League for a number of years. As part of its cricket sponsorship campaign, KFC has often used a bucket in light-hearted ways to bring an element of fun to the game. As fancy dress is a tradition within the sport of cricket itself, KFC’s light-hearted use of the bucket has resulted in an at-match tradition of cricket fans dressing up with KFC buckets on their heads and zinc stripes on their face, now known as a “Buckethead”.

As such, dressing up with the KFC bucket has become a favourite pastime for many

Australian cricket fans and KFC consumers. KFC encourages cricket fans in this “Buckethead” experience at cricket games by providing them with empty, unused, KFC branded buckets to wear on their heads. The use of the KFC bucket and zinc stripes in this fashion, otherwise known as the KFC Buckethead experience, is a central tenet and inextricably linked to the KFC brand sponsorship of the cricket.

Age Restrictions

We note that the use of Snapchat is not primarily intended for children. Snapchat requires users to be 13 years or over to access the app itself, as well as the different lenses available, such as the one created for the Advertisement. This age restriction is stated in section 1 of Snapchat’s Terms of Service as follows:

“No one under 13 is allowed to create an account or use the Services.”

Snapchat’s demographic data, sourced from our agency MediaCom, confirms the following usage across age ranges:

- 13-17 y/o (23%)*
- 18-24 y/o (31%)*
- 25-34 y/o (28%)*
- 35+ y/o (18%)*

The above data supports the fact that all users under the age of 17 years comprise 23% of Snapchat’s database, which itself falls well under the 35% audience exposure limit for children (i.e. persons under 14 years of age) specified by the QSRI. It also reinforces the adult nature of the app with the vast majority of users falling into older age brackets.

Themes, Visuals & Language used in Advertisement

The Advertisement incorporated adult themes and was created for the amusement of an adult audience.

Firstly, the voiceover of Wippa saying “Wow!... Go you Buckethead” could be heard by the user in the Advertisement. Wippa’s renowned light-hearted and comic radio personality resonates and is targeted to a young adult audience. The Advertisement therefore included the male voiceover of Wippa in order to specifically appeal to that young adult age demographic.

Secondly, the Advertisement featured an image of the KFC bucket. This image replicated the size of a bucket that caters for 15 pieces of KFC when it is used in store for packaging purposes. Of greater relevance, this specific size of bucket is used for our Buckethead experience at cricket games to appropriately fit an adult’s head, and as such is the reason why this specific size of bucket is depicted in the Advertisement.

Lastly, as the Advertisement featured a specific KFC bucket visual on one’s head alongside the zinc stripes often used by cricketers during play, it was clearly referencing the brand’s celebration of the final cricket match of the Big Bash League and the Buckethead experience. The use of the KFC bucket in the Advertisement was to illustrate the tradition of dressing up at the cricket, rather than for storing pieces of chicken for consumption.

The KFC brand is renowned for its quality chicken. The inclusion of a few flying, exploding chicken pieces in the Advertisement was designed to add humour for adult users to find entertaining, and add dramatic effect to the fun of the user being able to dress up with the KFC bucket on their head. The fireworks were displayed in the Advertisement to mimic the fireworks and fire displays at the final cricket match of the Big Bash League.

The Advertisement did not use the chicken pieces to promote their consumption. For instance, the KFC lens was not designed to enable a user to see themselves eating the chicken pieces and there were no images of the chicken pieces inside the bucket. Furthermore, the Advertisement did not promote any KFC meals or offers. Therefore, the Advertisement in no way promoted or condoned excessive consumption of food.

Notwithstanding the above, KFC is a signatory to the QSRI, and as such, is committed to setting a high standard for responsible marketing to children. A key principle of this commitment is KFC's policy not to advertise directly to children.

KFC is committed to supporting responsible dietary choices for people of all ages and focuses on supporting parental responsibility with respect to children's nutritional intake. In this regard, KFC has taken a number of steps to improving the nutritional quality of its food, part of which has involved reducing salt content in KFC products and using canola oil to cook KFC products in store. Customers can access nutritional information about KFC's products on KFC's website at www.kfc.com.au.

Contrary to the Complainant's views, the Advertisement was not directed primarily to children and therefore does not breach the above-mentioned Codes or the QSRI. We trust this addresses the Complainant's concerns.

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 "QSRI"), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food Code') and the AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code')

The Board noted the complainant's concern that the advertisement breaches the QSRI.

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

The Board noted that YUM - KFC is a signatory to the QSRI and determined that the provisions of the QSRI apply to this marketing communication.

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

The Board 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 Board 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 Board 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 Board considered that the Snapchat app is covered by this definition. With regards to points 2 and 3, the Board considered that Snapchat is not a Medium that is directed primarily to Children or would attract an audience of greater than 35 per cent of Children as Snapchat requires an account holder to be over 13 years. The Board considered that the Medium of Snapchat is not a Medium that is directed primarily to Children.

The Board noted that the promotion of the Snapchat App appeared on a stadium billboard at the final game of the Big Bash League (BBL). The Board noted that this medium would include children but would equally include a large adult audience. The Board considered that the medium of the stadium billboard in this instance is not a medium that is directed primarily to children.

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

The Board noted that with regards to point 1 the Board must consider whether the communication activity is directed primarily to Children – regardless of its placement. The Board noted that the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Board 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 Board noted the advertisement was promoted on a stadium billboard at the cricket event and on various social media platforms. This Snapchat lens features KFC’s Buckethead experience. The advertisement’s interactive filter enables users to snap themselves wearing a virtual KFC bucket on their head. If the user opens their mouth, flying pieces of chicken and fireworks were seen. The advertisement included male voiceover commentary from Michael Wipfli (aka ‘Wippa’).

The Board noted the filter was available to users for a period of 24 hours.

The Board noted that the theme of the advertisement is promoting the final game of the Big Bash cricket. The Board noted that KFC has been a long time sponsor of the cricket and that

viewers recognise the logo and the association with cricket sponsorship. The Board noted that the Snapchat filter is the KFC bucket that hold several pieces of chicken and that the bucket head theme is one that is shared by adults and children who may choose to wear the empty bucket on their heads.

The Board then noted the visual of the advertisement which shows a virtual bucket on the user's head that spins. There is the addition of zinc stripes and flying chicken when the user opens their mouth. The Board noted that the bucket hat may appeal to children but considered that there are many other filters available on Snapchat that would be more childlike in appearance and that the bucket hat would appeal equally to an adult audience.

The Board considered the pieces of flying chicken and noted that the pieces are images of virtual chicken and do not go in the user's mouth but fly straight past the user's face.

The Board noted that the advertisement includes commentary by 'Wippa' who is a radio presenter for Sydney station Nova 96.9. The Board considered that the language used was not child-like or of appeal primarily to children and that the presenter is not one that children would be familiar with or recognise.

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.

In this instance the Board considered that the theme, visuals and language of the advertisement were advertising an adult app and filter, and the message was directed to adults and not directed primarily to Children under 14 years.

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

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

The definition of what is 'advertising and marketing communications to children' in the AANA Children's Code means: means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition.

The Board noted that the definition is largely the same as that in the QSRI. For the same reasons outlined above, the Board considered that the advertisement is not directed primarily to Children and that the Snapchat filter is not a product targeted to children and therefore the Children's Code did not apply.

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

The Board noted section 2.1 which states that: “Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”

The Board noted that the promotion was for a Snapchat filter offered for a 24 hour period and promoted in conjunction with the final of the Big Bash cricket. The Board noted that the concept is a light hearted one and is not intended to mislead or to be deceptive and does not include any claims or references to health benefits. The Board noted the advertisement does not otherwise contravene prevailing community standards and does not breach section 2.1 of the Code.

The Board then noted section 2.2 which states: “Advertising or Marketing Communications shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

The Board noted the Practice Note to the Food Code regarding section 2.2 of the Code which contains two separate obligations. The Practice Note states that the Board will not apply a legal test, but consider material subject to complaint as follows:

Firstly, 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.

The Board noted that the theme of the advertisement is a new bucket head filter for use via the Snapchat App. The Board noted that the omission of identifiable physical activity does not of itself undermine the importance of healthy or active lifestyles.

The Board noted that the advertised product is KFC. The Board considered that, consistent with previous decisions (0280/12, 0097/14 and 0128/15), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

Secondly, 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 noted the complainant’s concern that the amount of KFC in a bucket of this size is 21 pieces and considered this to be a portion size disproportionate to the setting. The Board considered that there was no indication that the people featured in the App with the bucket on their heads had consumed a bucket of chicken themselves. The Board noted that the flying

pieces of chicken were used for dramatic effect and added to the humorous element of the user's experience of this Snapchat interactive filter. The Board noted that the bucket head filter was a novel concept and it was not possible based on the visual in the advertisement to make any accurate analysis of any quantity of chicken that may have been consumed and noted that the pieces of chicken that fly up in the App are also not consumed by the young man and woman.

The Board considered that as there is no chicken consumed, the Board is not able to state that the advertisement encourages consumption at all or that consumption is excessive. Therefore, based on the advertiser's response and the Board's own view of the images in the advertisement, the Board considered it did not promote or depict excess consumption.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

The Board then considered Part 3 of the Food Code relating to advertising and children and noted the definition of children in the Food Code means persons 14 years old or younger and Child means a person 14 years old or younger. The Board noted that for the reasons outlined above, the Snapchat advertisement is not directed primarily to Children, and therefore Part 3 of the Food Code did not apply.

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

INDEPENDENT REVIEWER'S RECOMMENDATION

THE DETERMINATION ON REVIEW

ADVERTISER'S RESPONSE TO IR DETERMINATION