



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0105/18
2	Advertiser	Nando's Australia Pty Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	07/03/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

This Facebook advertisement features the words 'Lunch on us!' and pictures of food.

THE COMPLAINT

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

I arrived at 1:30pm to be told there was a limit of the first 250 people so to get in early when it starts so you don't miss out. No where does the advertising suggest this limit and I find that to be misleading and disappointing.

THE ADVERTISER'S RESPONSE

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

The heavily geo-locked Facebook advertisement was targeted to potential customers





in the local area of the newly refurbished Nando's restaurant at Nedlands, Western Australia. The advertisement consisted of two parts – the main image, and the explanatory text posted alongside the image. The main image referred to the Nedlands restaurant's short-term "Lunch on us" offer, that ran between 5-9 February between the hours of 11am and 2pm, at the Nedlands restaurant. The main image visually featured food items that could be claimed under the offer and provided a link to the full terms and conditions for the offer (which were also available by click-through link). The explanatory text adjacent to the main image also explained some of the key limitations on the offer, being the specific meals that were available each day. The full terms and conditions also stipulated various other limits impacting the offer, including that there was a cap on claims, which was 250 per day.

The audience of the advertisement is not predominately children and children were not targeted directly by the advertisement.

The advertisement ran only during the offer period and has not appeared since. The advertisement will not be run again.

At the outset, Nando's considers that none of the provisions of section 1 or 2 of the Code of Ethics are breached by the offer advertisement in this case, or section 2.1 of the Food and Beverage Code.

Regarding the complaint, the complainant states that the limit of 250 claims per day was not stated in the advertisement, and that this is misleading. Nando's disagrees but, without admission of liability, takes the complainant's point on board and will address this in future offer advertisements.

Nando's ensured that the full offer terms were available for review by clicking the link provided/visiting the URL as provided in the advertisement. It is unfortunately true that the advertisement did not state the offer limit of 250 claims per day, however the offer was considerably more popular than Nando's/the restaurant had projected. Simply, the Nedlands restaurant's offer was unique when compared to other offers run previously, and it was absolutely not expected that 250 claims per day would be made and thus the restaurant did not consider that the limit would be reached. This limit was stated as a catch-all in the terms and conditions due only to potential stock shortages/issues in the extreme event of 250 claims being made, not for any other purpose, and was essentially an afterthought and not something that consumers would ever be impacted by. The success of the offer surprised Nando's and the restaurant was unfortunately 'caught short'.

A small number of customers had not reviewed the offer terms and conditions in full and appeared at the restaurant to make a claim, but after the daily 250 claims had expired. The complainant appears to unfortunately have been one of those customers.



In each case, the restaurant policy was that customers who were unable to claim on the day they visited due to the claims limit received a sincere apology for the mixup and were provided a free chips offer to claim on their next visit or else a free meal of equal or greater value depending on the circumstances of each complaint.

Nando's does not agree that the original advertisement was misleading but it is clear that some customers were confused/not adequately informed, and from a communications perspective this is certainly regrettable. As outlined above, Nando's has pulled the advertisement and will not use similar language in the future. For absolute transparency, Nando's has taken legal advice and liaised with its creative agencies and internal marketing teams on how to ensure that claims limits (such as the 250 claims a day in this case) are better analysed before offers are run and are better communicated to consumers more obviously and more clearly, even where Nando's reasonably considers such limits to be extremely unlikely to be reached. As is the case here, where offers are more popular than expected these limits can be triggered and Nando's customers deserve to be totally clear about our offers. These issues will not arise again.

On the above bases, Nando's submits that the advertisement did not breach provision 2.1 of the Food and Beverage Code (or any other provision of that code), and did not breach the Code of Ethics, however since the advertisement has already been pulled and will not reappear the matter is somewhat moot in any event.

THE DETERMINATION

The Ad Standards Community Panel ("Panel") considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainant's concerns that the advertisement was misleading in its statements about a free lunch.

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

The Panel noted that the product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Panel considered section 2.1 of the Food Code which provides:

'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene



prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

The Panel noted that the advertisement features the words 'Lunch is on us' and 'Monday 5th Feb. 11am-2pm' and the address for the Nando's Nedlands store, along with pictures of food.

The Panel noted the complainant's concern that he arrived at the store at 1:30 only to be told the offer was for the first 250 people, and that they consider the advertisement was misleading in its suggestion that everyone who arrived between 11am and 2pm would receive free food.

The Panel noted the advertiser's response that there was a link to the full terms and conditions in the advertisement and that the 250 person limit was stated in the terms and conditions.

The Panel considered the content of the advertisement and the overall impression created by the promotion. The Panel considered that it was unreasonable to expect people viewing a Facebook post to click through to the website to read the full terms and conditions. The Panel considered that it would be reasonable to expect that an important limitation to the offer would be a clear part of the advertisement.

The Panel considered that the advertiser had not intended to mislead the public but considered that the overall impression of the advertisement is that anyone in the store between 11am and 2pm would receive a free meal. The Panel considered that as this was not the case the advertisement was misleading.

The Panel considered that the advertisement was misleading and did breach Section 2.1 of the Food Code.

Finding that the advertisement breached the Food Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

Nando's acknowledges the determination of the Panel and while Nando's does not necessarily agree with the finding, respects the decision nevertheless. For the record, as stated in Nando's original response to the complaint, the advertisement in question was pulled/discontinued many weeks ago and will not reappear. Therefore no



modifications are required per se, as the advertisement will not be continuing.