



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

1	Case Number	0107/18
2	Advertiser	Hungry Jacks
3	Product	Food / Beverages
4	Type of Advertisement / media	Internet-Social-Inst
5	Date of Determination	21/03/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.14 Food and beverages
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message
must comply

DESCRIPTION OF THE ADVERTISEMENT

This Instagram advertisement features a frozen coke being animated to look like a rocket. The accompanying text is "Blast off into refreshment with Hungry Jack's Frozen Coke."

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, Hungry Jack's has committed not to advertise its products to children under the age of 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 clause s1.1 because: -

- 1. The Hungry Jack's Frozen Coke does not represent a healthier dietary choice consistent with the QSRI's Nutrition Criteria; and*
- 2. It does not encourage good dietary habits or physical activity.*

The advertisement is a marketing communication directed primarily to Children

The Instagram posts are clearly advertising or marketing communications within the meaning of the QSRI, as they are material published by, or on behalf of, Hungry Jack'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 or the organisation. The posts are designed to draw public attention to promote Hungry Jack's and its Frozen Coke.

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 internet site Instagram (<https://www.instagram.com>) and therefore the QSRI applies.

We submit that the advertisement is directed primarily to children because of its themes and visuals as well as its placement. This advertisement is, on any common sense view of its themes, visuals and language, a marketing communication directed primarily to children, within the meaning of the QSRI.

The Board is requested to carefully consider the following features, which the OPC argues conclusively establish the advertisement is directed primarily to children:-

- 1. Although use of animation is not, of itself, determinative on the issue of whether an advertisement is directed to children, the advertisement uses a simple and playful animation style that would have primary appeal to children.*
- 2. The theme of the advertisement is of a frozen sugar based drink, turning into a fun toy, namely an animated rocket ship.*
- 3. The advertisement is aimed to capture a child's imagination and to communicate directly to children less than 14 years of age. The depiction of a frozen coke turning into a toy accompanied by the sound of jet engine and a bubbling drink, is clearly designed to appeal to the simple sense of humour of children, rather than adults.*
- 4. In addition the tagline, Blast off into refreshment with Hungry Jack's Frozen Coke. Land on a Large for just \$1." is designed to appeal to children as it is very inexpensive*



and therefore within their price range

The placement of the advertisement also supports a conclusion that it is directed primarily to children. The advertisement was available on Instagram, social media which is popular with young Australians, including children under 14 years of age. We acknowledge that Instagram's policy is to restrict usage to those over 13 years of age, 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 Instagram. While it is difficult to obtain current data on Instagram usage in Australia, it is reasonable to assume it would resemble data from Britain, where 43% of 8-11 year olds are on Instagram.

We submit that the audience for this advertisement is particularly likely to have a significant number of viewers under 14 because of the way Instagram operates. Users of Instagram receive a post in their feed either because they have chosen to follow an organisation that posts on Instagram or because the post is sent to them as a paid advertisement.

If a user follows Hungry Jack's, the user would see the post of the advertisement in their Instagram feed. Children under the age of 14 are more likely to follow Hungry Jack's because children under 14 are eager consumers of both fast food and sugar sweetened beverages. Consequently it is quite likely that significant numbers of children would have seen the Hungry Jack's Frozen Coke advertisement in their Instagram feed.

Children who are not following Hungry Jack's may also have seen the advertisement if they have been targeted by paid advertising on Instagram. It is the practice of those who advertise on Instagram to target particular demographics. For instance an advertiser could request that their post be directed to those who, through their user profile, have shown an interest in fast-food or soft drinks, or who are of a particular age. Given we know that children under 14 are eager consumers of fast food and sugar sweetened beverages, it is possible that there are a significant number of children under 14 who have viewed this advertisement on Instagram as they may have been targeted due to their age or their history of following other fast-food providers on Instagram.

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

Hungry Jack's Frozen Coke 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 item promoted in the advertisement is a drink alone. The failure to promote a main with a beverage in a communication to children amounts to breach of Article 2.1 of the QSRI.

In addition the Hungry Jack's Frozen Coke contains levels of a nutrient that means it is not a healthier dietary choice as set out in s2.3 of the Nutrition Criteria of the QSRI which provides limits that meals must not exceed. For example, the nutrition criteria state that the maximum limit of sugar is 1.8g per 100kJ. The large slurpee contains 45.8 grams of sugar which is the equivalent of over 11 teaspoons of sugar which is a concentration of 5.86 per 100kJ.

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 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 consumption of discretionary food for each of those properties. In the Australian Guide to Healthy Eating the Australian Government advises that sugar sweetened beverages such as slurpees should be consumed only sometimes and in small amounts. The World Health Organization (WHO) also supports the limited intake of sugar, releasing updated guidelines regarding the health impacts of sugar consumption and recommending daily sugar intake be reduced to 5-10% of daily dietary intake. This translates to roughly 6-12 teaspoons a day for adults. A large slurpee, at 11 teaspoons, contains almost the recommended maximum daily amount of sugar consumption recommended by the WHO for adults.

The advertisement does not promote good dietary habits or physical activity

Even in the case of a product that represents a healthy dietary choice, the QSRI provides that Hungry Jack'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 the intended audience through messaging that encourages:

- 1. Good dietary habits, consistent with established scientific or government criteria;*



and

2. Physical activity.

The Board has previously noted, in its decision 0454/11, that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, which Hungry Jack's has failed to do in this advertisement.

The advertisement does not positively encourage good dietary habits as the only food or drink shown to be consumed is Hungry Jack's Frozen Coke. No 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 Hungry Jack's withdraw the Hungry Jack's Frozen Coke advertisement immediately on the basis that it breaches the QSRI.

2. The advertisement breaches AANA Code for Advertising and Marketing 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 Instagram internet site, accordingly 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 promotes unhealthy eating habits

The advertisement promotes the consumption of Hungry Jack's Frozen Coke and



associates it with a sense of fun. As outlined above, Hungry Jack's Frozen Coke is an unhealthy product that contains high amounts of sugar. The promotion of this product encourages children to consume it and thereby promotes unhealthy eating habits.

Request for action

For the above reasons, the OPC asks the ASB to request that Hungry Jack's withdraw the Hungry Jack's Frozen Coke advertisement immediately on the basis that it breaches the AANA Code for Advertising and Marketing to Children.

THE ADVERTISER'S RESPONSE

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

As a proud Australian brand, Hungry Jack's has dedicated itself to improving foods standards across the board covering a wide range of initiatives including 100% Aussie (locally sourced) beef that is hormone free, fresh cage free eggs and real vegetables.

We can confirm that the Instagram post regarding a frozen coke beverage was not targeted at children under the ages of 14 and that the audience of the programs Hungry Jack's advertises within are also not directed at children.

Hungry Jack's can also confirm that Instagram post has not breached the below advertising codes:

- 2.1 There is no discrimination towards or vilification of anyone in this communication*
- 2.2 There is nothing visually or verbally that is exploitative or degrading*
- 2.3 There is no violence*
- 2.4 There is no sex, sexuality or nudity present*
- 2.5 There is no use of inappropriate language*
- 2.6 There is no risk to health or safety of the individual's featured and the kilo joules are displayed as per guidelines*
- 2.7 The advertising is clearly distinguishable as advertising*

With regards to this particular post, the post was not published nor, did it run with paid support. The design and nature of the animation within the post did not look to target children. The animation was created by a third party and highlighted the



specific paper animation style of the third-party artist, and the rocket-ship and bubbly animation incorporated into this post was to highlight the refreshing and fizzy nature of the beverage, rather than to appeal to children.

The artist had created a series of frozen beverage animations for a previous campaign in 2016. The campaign was targeted at those aged between 18 and 39. This age specific targeting is reflected in Hungry Jack's Facebook promotion, which covers the same product.

To ensure consumers have a range of options, Hungry Jack's provides a variety of beverage choices on its menu, including natural or sparkling water, orange juice and non-sugar carbonated soft drinks.

Based on the above, Hungry Jack's would like to provide the below points addressing the concerns outlined in the ASB complaint:

o Hungry Jack's did not target its post to children under the age of 14

o We do not dispute that the post is designed to draw public attention to Hungry Jack's brand and product

o Animations are not the exclusive preserve of children and are a meaningful form of communication with older audiences

o We accept your acknowledgement that Instagram's policy is to restrict usage to those over 13 and over

o Despite the claims of the complainant, there is no verifiable data easily available to Hungry Jack's that supports the premise that a significant number of Instagram users are under the age of 13

o The one-dollar price point is highlighted for those who may not have disposable income or are moneyminded individuals

o The sounds and vision were created to appeal to an audience of 18+; this was both the brief from Hungry Jack's and the execution delivered by the artist

Please accept our commitment to the QSRI and our unwavering support to ensure that we follow the AANA Code of Ethics.

Please do not hesitate to contact us should you require anything further.

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) and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the ‘QSRI’).

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

The Panel noted that Hungry Jacks 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 Instagram is covered by this definition.

The Panel noted the complainant’s statement that data on Instagram usage in Australia is hard to find but research in the UK has found that 43 per cent of 8-11 year olds are on Instagram. The Panel considered that Instagram is a Medium which is



meant to be restricted to over 13 year olds and without relevant Australian data to the contrary the Panel would need to assume that less than 35 per cent of uses of Instagram in Australia would be under 14.

On this basis the Panel 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 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 shows an animated frozen coke which is a product that is directed to and of appeal to children under the age of 14 years.

The Panel noted the advertiser’s response that the advertisement was a non-promoted post designed to target people between the ages of 18 and 39.

The Panel then noted the visuals of the advertisement which shows an animated frozen coke on a bright background produce wings and rocket propulsion and fly around the screen. The Panel noted that the colours are bright and fun and that the pop-art style animation was designed to attract attention. The Panel considered that the animation would be attractive to children but would be equally attractive to adults.

The Panel noted that the advertisement includes bubbling sound effects and the sound of rocket propulsion, but no spoken words. The Panel noted the advertisement was accompanied by the blurb ‘Blast off into refreshment with Hungry Jack’s Frozen Coke. Land on a Large for just \$1’. The Panel considered that the language used was not child-like or targeted to children.

It is essential for the Panel 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 Panel considered that the theme, visuals and language of the advertisement were advertising a beverage, and the message was directed equally to



adults and not directed primarily to Children under 14.

Based on the requirements outlined in the QSRI the Panel 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 Panel then considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (The Children's Code).

To fall within this Code, or Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (The Food Code), "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 Product".

For the reasons outlined above, the Panel considered that the advertisement is not directed primarily to Children.

The Panel determined that as this Instagram advertisement is not directed primarily to Children, the Children's Code and Part 3 of the Food Code do not apply.

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

The Panel then considered section 2.2 which states: "the advertising or marketing communication...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 Panel noted that the advertised product is a frozen coke. The Panel considered that, consistent with previous decisions (Hungry Jacks 282/11, 0132/17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

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

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

