



Case Report

| | | |
|---|-------------------------------|------------------|
| 1 | Case Number | 0134/17 |
| 2 | Advertiser | Hungry Jacks |
| 3 | Product | Food / Beverages |
| 4 | Type of Advertisement / media | Internet |
| 5 | Date of Determination | 12/04/2017 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

Add a NEW Sour Bomb to your Large Frozen Coke for a tongue-twisted sour taste' Also commencing with the large hand pouring sherbet into a drink, this advertisement then depicts a male cartoon drinking the beverage, pulling a series of faces. The character adds more sherbet to the drink, takes another sip and an a long pink tongue comes shooting out of his mouth, twisting around.

THE COMPLAINT

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

*To the Advertising Standards Board
Hungry Jacks Advertisements – QSRI*

We are writing to complain about two advertisements for a Hungry Jacks Sherbet Sour Bomb frozen beverage that are featured on the Hungry Jack's Australia YouTube channel, the Hungry Jacks Australia Instagram page and the Hungry Jack's Australia Facebook page.

As you are aware, Hungry Jack's Australia Pty Ltd is a signatory to the Australian Food and Grocery Council (AFGC) Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) and has agreed to be bound by this initiative. We are of the view that the advertisement breaches Core Principles 1.1 and 1.6 of the QSRI.

1. Advertising or Marketing Communications to Children

The QSRI defines 'Advertising or Marketing Communications to Children' as

communications which, having regard to the theme, visuals and language used, are directed primarily to children. The term 'children' is defined to include persons under 14 years of age. We submit that the advertisements are clearly communication directed primarily or 'in the first instance' to children under the age of 14 years. This conclusion has been drawn with reference to the following factors:

Storyline/theme and visuals - The advertisements each feature an exciting cartoon-like animated scene, drawing upon a child's sense of imagination. The animations are highly evocative and are likely to attract the attention of children, in that each character experiences a dramatic reaction to consuming the drink. The sherbet added to the drink is bright and rainbow coloured, 'magically' transforming the beverage, akin to a toy that changes colour, particularly given that the sherbet is sold in a small test tube like vessel. When additional sherbet is added to the drink, it causes the female character's mouth to joyfully 'shoot off' and the first male character's tongue to shoot out and twist, effects that are likely to appeal to a child's sense of playfulness. The last scene of the advertisement features bold text that is highlighted by a 'paintball' effect, against a background of brightly coloured paintball splashes.

Language – The advertisement features catchy, jingly music with cartoon-like sound effects that are clearly designed to appeal to children under the age of 14. The only language used in the advertisement appears in the last scene and is communicated through paintball highlighted text, such that it is likely to appeal to children in that it is simple and playful.

Nature of the product – As noted above, the beverage is sold with rainbow coloured sherbet that is contained within a test tube. In this respect, we submit that the product itself is akin to a toy and is designed to appeal to children under the age of 14.

2. Healthier Dietary Choice

As you are aware, QSRI Core Principle 1.1 states that advertising and marketing communications to children must:

(a) Represent healthier dietary choices, consistent with 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.

We submit that the Hungry Jacks Sherbet Sour Bomb Frozen Drinks (the Drinks) do not represent a healthier dietary choice. We note that the Nutrition Criteria set out in the QSRI apply to children's meals. While the Drinks are not marketed as a children's meal, the advertisements clearly establish the Drinks as products marketed to children and breach the Nutrition Criteria the maximum limits for sugar (1.8g per 100g). While the Hungry Jacks Australia website does not make available the exact nutrition information for the Drinks and, we note that a large Hungry Jacks Frozen Coke contains 12.9g of sugar per 100g.

Further, we submit that the advertisement does not reference a healthy lifestyle through messaging that encourages good dietary habits or physical activity. In ASB decision 0454/11, the Board found that subsection (b) of Core Principle 1.1 denotes a 'positive obligation on the advertiser to ensure that the advertisement encourages both good dietary habits and physical activity.' The Board noted further in this matter that omitting references to unhealthy dietary habits was not sufficient to discharge this obligation and that the mere suggestion of 'adventure' in advertisement 'did not amount to an implication or encouragement of physical activity.'

We submit that the advertiser has made no attempt to act in accordance with this obligation, given that there is nothing in the advertisement to suggest to children viewing the advertisement that the Drinks should be consumed only occasionally or that frequent consumption may not be consistent with healthy dietary choices. The advertisement does not

include a depiction of any characters or children participating in physical activity.

3. Availability of Nutrition Information

We submit that Hungry Jacks is in breach of Core Principle 1.6 of the RCMI on the basis that the nutrition profiles for the Drinks are not available on the Hungry Jacks Australia website.

Determination

We submit that this advertisement breaches the RCMI, and request that the Board require the advertiser to remove it from the Hungry Jacks Australia YouTube channel, the Hungry Jacks Australia Instagram page and the Hungry Jacks Australian Facebook page. An urgent determination in relation to this advertisement is needed as a finding made following cessation of the promotion will be futile.

THE ADVERTISER'S RESPONSE

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

At Hungry Jack's, we fully support industry self-regulation on advertising and are committed to abiding to the guidelines outlined in the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children.

Hungry Jack's Sherbet Sour Bomb promotion was a short-term online marketing campaign that used social media as a platform to inform our target customers aged 16 to 39 years old of the offer. The promotion was advertised on Facebook, YouTube and Instagram.

The creative was intended to only target young adults over the age of 16. We used young adult talent and colourful content, any animation shows characters who are depicted as young adults and purposefully avoided child-like characters.

All the channels in which this creative was advertised require the user to be a minimum age of 14 years. Any media purchased by our media buying agency was purchased with the intent of targeting users over the age of 16.

Nutritional information on the product was available on the Hungry Jack's website, along with all other Limited Time Only offers as well as on all menu boards in-store. Hungry Jack's is committed to providing customers with the information they need to make informed decisions according to their individual taste and dietary preferences.

The product in question was available in restaurants nationally for a limited time only. The product is no longer available, all advertising has ceased and we have no intention of running this creative in the future.

THE DETERMINATION

The Advertising Standards Board (the "Board") 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 Board reviewed the advertisement and noted the advertiser's response.

The Board noted that Hungry Jacks 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 Youtube is covered by this definition. With regards to points 2 and 3, the Board considered that Youtube is not a Medium that is directed primarily to Children or would usually attract an audience of greater than 35 per cent of children. The Board considered that in this instance the Medium of Youtube 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' of the advertisement in determining this issue.

The Board noted the complainant's concern that the advertisement shows an animated

character pulling faces after consuming the beverage with the added sherbet which is a product that is directed to and of appeal to children under the age of 14 years.

The Board noted the advertiser's response that the advertisement was a short term online marketing campaign that used youtube to inform the target customers aged 16-39 years old of the offer.

The Board noted the product advertised, the colour, tone and language used and noted that the mere presence of an animated character does not make the advertisement directed to children.

The Board noted that the theme of the advertisement is promoting the limited offer of a sherbet sour bomb with large frozen drink for \$2. The Board considered that the advertising of a beverage that is promoting extra value is a concept that is of appeal to an adult audience. The Board noted that the beverage promoted in the advertisement is a frozen drink and considered that the frozen drink range is not a menu item that is chosen only by children.

The Board then noted the visuals of the advertisement which shows an animated character sipping some of the drink and then pulling a face. This is followed by a long tongue coming out of his mouth that twists around as well. The Board noted that the colours are bright and fun, and considered that the age of the character would be older teen or young adult and that the reaction of fireworks would appeal equally to an adult audience.

The Board noted that the advertisement includes images and a jingle but no spoken words. The Board noted the text at the end of the advertisement reads "Sherbet sour bomb with large frozen drink \$2" and the Hungry Jacks logo. The Board considered that the language used was not child-like or of principal appeal to children.

Noting that 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, is the basis 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 a limited time offer 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 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).

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 Board considered that the advertisement is not directed primarily to Children and that the sherbet sour bomb frozen drink is not a product targeted to or of principal appeal to children.

The Board determined that as this Youtube advertisement is not directed primarily to Children, and therefore the Children’s Code does not apply.

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

The Board considered section 2.1 of the Code which requires 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.’ The Board considered that advertising the product Frozen drink with sherbet is not of itself contrary to prevailing community standards and that the advertisement did not breach section 2.1.

The Board 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 Board noted that the advertised product is a frozen drink with the addition of sherbet. The Board noted that the character is seen taking one sip of the beverage and the promotion is for a limited time frozen drink offer. The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), 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 Board noted the AANA Food and Beverages Advertising and Marketing Communications Code – Practice Note which provides that: ‘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 that the beverage is shown on screen and the character takes a sip of the drink reacting to the sour taste. The Board considered that the likely interpretation of the advertisement is that the product (a frozen drink) advertised is intended to be consumed by the one person and that there is no suggestion of frequency of consumption or of consuming multiple drinks.

The Board considered that the advertisement did not encourage excess consumption.

The Board 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 Board dismissed the complaint.