



**ADVERTISING
STANDARDS
BUREAU**

Level 2, 97 Northbourne Avenue, Turner ACT 2612
Ph (02) 6173 1500 | Fax (02) 6262 9833
www.adstandards.com.au
ACN 084 452 666

Case Report

1	Case Number	0154/14
2	Advertiser	Yum Restaurants International
3	Product	Food / Beverages
4	Type of Advertisement / media	Free TV
5	Date of Determination	14/05/2014
6	DETERMINATION	Upheld - Modified or Discontinued
7	Date of reviewed determination	09/07/2014
8	Determination on review	Upheld - Modified or Discontinued

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement follows various scenarios of families and groups of friends happily catching up in social situations, as well as interacting in different meal environments, around the kitchen island bench, a girls' night in, a family picnic lunch, and at home on the back deck.

THE COMPLAINT

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

I believe the amount of food shown for the relatively small family groups eating to be grossly excessive.

With the health and anti - obesity messages in our community being as strident as they are, these ads should be withdrawn, or at least heavily modified.

THE ADVERTISER'S RESPONSE

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

The Complaint

The Complainant stated the following concerns in respect of the Advertisement: “that the amount of food shown for the relatively small family groups eating to be grossly excessive”.

Relevant Codes & Initiatives

Australian Association of National Advertisers Code of Ethics (the Code)

No sections of the Code are cited as being relevant in the “issues raised to date.”

Food and Beverages Advertising and Marketing Communications Code (F&B Code)

Section 2.2 of the F&B Code has been cited as relevant and the “issues raised to date” states “Healthy Lifestyle and Excess Consumption.”

Has the Code been breached?

KFC considers that the Advertisement does not breach section 2.2 of the F&B Code.

Section 2.2 of the F&B Code provides:

“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 presentation of product/s or portion sizes disproportionate to the settings portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.2, provide:

“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.”

KFC considers that the food it offers is available for consumers to eat in such portions as they feel is appropriate. Our sales data shows that consumers feel it is most appropriate to eat KFC food as a weekend treat or on a special occasion. The Advertisement therefore highlights people getting together on special occasions that are different from the everyday comings and goings that can characterise mealtimes. The Advertisement does not make any statement that these foods should be eaten frequently or in excessive proportions, nor does it make a statement as to how much or how little food should be consumed as evidenced by the

fact that the food bundles and the number of people in each scenario differ throughout the Advertisement. People are seen eating a chip here and there, or a piece of chicken, and they are grazing on the food rather than eating in a gluttonous and excessive way. In this way, KFC is aiming to promote the occasion of sharing food for example “the confessional” as referenced in one scene of the Advertisement, rather than a specific food amount or item.

KFC also considers that because the image of the bucket containing multiple chicken pieces is a bold red colour, that this may make it appear as if the number of chicken pieces contained in the buckets is excessive. However, the Advertisement only showcases the chicken in this manner as the simplest way to display chicken in a bucket, which when shot for a television advertisement at this angle would not have been visible in the action otherwise. The Advertisement ends with offering consumers the option of buying KFC foods for these special occasions with “dinners from \$19.95” which would allow consumers to buy six pieces of Original Recipe chicken, three Crispy Strips, six nuggets, two large chips and two sauces and hence would not be considered excessive in any of these scenarios given the number of people depicted in each scene in the Advertisement.

By advertising that KFC has shared meals that are suitable for groups, KFC does not in any way make any disparaging comments about healthy foods, or food choices, nor is it disparaging of physical exercise in the Advertisement.

The Advertisement does not, in any way, seek to encourage that KFC foods should be eaten to the exclusion of healthy foods, or that excessive portion sizes should be preferred. KFC does not condone or promote inactive lifestyles and nothing in the Advertisement suggests this. In any event the Advertisement promoting the shared meals ceased airing on 3 May, 2014.

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’) and the AANA Food and Beverages Advertising and Marketing Communications Code (the ‘Food and Beverages Code’).

The Board noted the complainants concerns that the advertisement promotes unhealthy products and promotes excessive consumption.

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

The Board noted that the advertisement features various scenarios of families and groups of friends catching up in social situations, as well as interacting in different meal environments, around the kitchen island bench, a girls’ night in, a family picnic lunch, and at home on the deck.

The Board noted that as a signatory to the QSRI the provisions of the initiative do apply.

The Board first considered whether the advertisement is an advertising or marketing communication to children.

The Board noted that the definition of children within the QSRI is persons under 14 years of age.

In determining whether the advertisement was material for children, the Board first considered the content of the advertisement and considered whether having regard to the

theme, visuals and language, was the advertisement directed primarily to Children and are for food and/or beverage products.

The Board agreed that the advertisement was for KFC and was clearly an advertisement for food products offered by KFC.

The Board considered the theme (gathering together to share a meal), the visuals (images of families and friends together indoors and outdoors) and the language (music only and text to reflect the groups and the price).

The Board considered that while some parts of the advertisement may appeal to children the overall content was directed to adults and the advertisement was not directed primarily to children under the age of 14 years.

The Board then considered the placement of the advertisement and noted that within the QSRI, placement is defined as:

"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 where Children represent 35 per cent or more of the audience of the Medium."

The Board noted the response and spot placement provided by the advertiser which indicated that the advertisement was unintentionally broadcast in children's programming on approximately 11 occasions.

Based on the above, the Board considered that the advertisement was clearly placed in programs that were directed to children or where children represent 35 per cent or more of the audience. The Board considered that the appearance of the advertisement in as many as 11 spots was not appropriate considering the requirements within the initiative and that the advertisement did breach the provisions of the QSR initiative in relation to placement. The Board noted that this programming was not intentionally placed by the advertiser.

The Board noted that S1.1 of the QSRI states that "Advertising and Marketing Communications to Children for food and/or beverages must: a. represent healthier dietary choices, as determined by the Nutrition Criteria; and...."

The Board noted that the range of meals depicted were not healthier choice products and therefore failed to meet the requirement within the initiative and was a breach of the QSRI. The Board then considered whether the advertisement complied with all relevant provisions of the AANA Food and Beverages Code.

The Board noted in particular 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 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 will also consider the age of the person shown in association with the product,

recognising 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.’

The Board noted that the advertiser confirmed that the food shown in the advertisement in each of the scenes was food that formed the basis of a meal deal but that it did include “add ons”. The Board noted that it is not their role to comment on whether customers should be able to purchase add ons to their meals but only about the depiction of the food shown in the advertisement.

The Board noted that in most of the scenes, the food that was still in the KFC packaging was in addition to food that was already on the plates in front of the people. The Board noted that in particular, the container (bucket) of chicken featured in the advertisement was very large and was depicted as full. The Board considered that in most of the scenarios the amount of food depicted was disproportionate to the number of people gathered to consume the food. The Board noted that although the advertisement was showing food that was not part of a ‘meal deal’ it was food that could be purchased. The Board noted that the characters in the advertisement are not seen consuming all of the food however the amount of food in relation to the groups in each scene is considered disproportionate and in the Board’s view is disproportionate to the settings portrayed. The Board noted that in more than one scene the group included children who were quite young and that the amount of food consumed by children of that age would be minimal in comparison to the amount of food depicted. The Board agreed that this would leave a large quantity of food remaining to be consumed by only few adults. In the Board’s view the depiction of such large amounts of food was a depiction that would reasonably be considered as disproportionate to the setting and was contrary to prevailing community standards regarding excess consumption.

Finding that the advertisement breached the AANA Food Code and the QSRI the Board upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We confirm that the advertisement that was the subject of the determination finished airing on 3 May, 2014 and that it will not be aired again in the near future.

We are disappointed with the Board’s decision concerning the breach of the QSRI Code, particularly given our long standing commitment to not advertise children’s meals nor target advertising campaigns directly to children. While we do not dispute that the advertisement did appear during some programs that had a greater than 35 per cent viewership by children under 14 years of age, as the Board recognised, these were not intentionally placed by KFC. Instead, this occurred inadvertently as a result of last minute programming changes by the networks.

In relation to the Board’s determination that clause 2.2 of the AANA Code has been breached we believe that aspects of the determination are flawed and that it sets a poor precedent for many advertisers. Accordingly, we will be requesting a review of that part of the determination.

INDEPENDENT REVIEWER'S RECOMMENDATION

This is an application by Yum Restaurants International (the advertiser) for review of the decision of the Advertising Standards Board (the Board) dated 14/5/14 Case Number

0154/14, finding that a television advertisement was in breach of Section 2.2 of the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food and Beverages Code').

The advertisement is described in the Case Report as follows:

“ The advertisement follows various scenarios of families and groups of friends happily catching up in social situations, as well as interacting in different meal environments, around the kitchen island bench, a girls' night in, a family picnic lunch and at home on the back deck”.

The grounds for seeking a review of the decision of the Board are as follows:

1. Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.
2. Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).
3. Where there was a substantial flaw in the process by which the determination was made.

The Appellant's appeal was based on grounds 1, 2 and 3 above.

The original complainant's comments are summarised in the Case Report as follows:

“I believe the amount of food shown for the relatively small family groups eating to be grossly excessive. With the health and anti-obesity messages in our community being as strident as they are, these ads should be withdrawn or at least heavily modified”.

The Advertiser's response to the complaint as noted in the Case Report included the following:

KFC considers that the Advertisement does not breach section 2.2 of the F & B Code (Food and Beverages Advertising and Marketing Communications Code).

The Advertiser quotes section 2.2 of the F & B Code which states:

“Advertising or Marketing Communications for Food and 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 presentation of product/s or portion sizes disproportionate to the settings portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

The Advertiser then refers to the Practice Notes to the F & B Code which state, in relation to Section 2.2:

“In testing whether an advertising or marketing communications 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 Advertiser’s response also includes the following:

KFC considers that the food it offers is available for consumers to eat in such portions as they feel is appropriate. Our sales data shows that consumers feel it is most appropriate to eat KFC food as a weekend treat or on a special occasion. The Advertisement therefore highlights people getting together on special occasions that are different from the everyday comings and goings that can characterise mealtimes. The Advertisement does not make any statement that these foods should be eaten frequently or in excessive proportions, nor does it make a statement as to how much or how little food should be consumed as evidenced by the fact that the food bundles and the number of people in each scenario differ throughout the Advertisement. People are seen eating a chip here and there, or a piece of chicken, and they are grazing on the food rather than eating in a gluttonous and excessive way. In this way, KFC is aiming to promote the occasion of sharing food for example “the confessional” as referenced in one scene of the Advertisement, rather than a specific food amount or item.

KFC also considers that because the image of the bucket containing multiple chicken pieces is a bold red colour, that this may make it appear as if the number of chicken pieces contained in the bucket is excessive. However, the Advertisement only showcases the chicken in this manner as the simplest way to display chicken in a bucket, which when shot for a television advertisement at this angle would not have been visible in the action otherwise. The Advertisement ends with offering consumers the option of buying KFC foods for these special occasions with “dinners from \$19.95” which would allow consumers to buy six pieces of Original Recipe chicken, three Crispy Strips, six nuggets, two large chips and two sauces and hence would not be considered excessive in any of these scenarios given the number of people depicted in each scene in the Advertisement.

The Advertiser goes on to say that the advertisement does not make disparaging comments about healthy foods/food choices or physical exercise. In addition, the Advertiser says the advertisement does not seek to encourage that KFC foods be eaten to the exclusions of healthy foods, or that excessive portion sizes should be preferred. KFC, according to the Advertiser, does not condone or promote inactive lifestyles and the advertisement does not suggest this. The Advertiser notes that this particular advertisement ceased airing on 3 May 2014.

The Determination

The Board firstly considered whether the advertisement breached the Australian Quick Service Industry Initiative for Responsible Advertising and Marketing to children (the ‘QSR Initiative or QSRI’. The Board noted that the advertisement had, according to the Advertiser,

been unintentionally broadcast in children's programming on 11 occasions. Accordingly the Board found that the Advertisement did breach the provisions of the QSRI in relation to placement. In addition, the Board found that the range of meals depicted were not healthier choice products and therefore failed to meet the requirement within the Initiative and also constituted a breach of the QSRI.

The Reviewer notes that the determination by the Board regarding the QSRI is not the subject of the review application.

The Board then considered whether the Advertisement complied with all relevant provisions of the AANA F&B Code, noting in particular Section 2.2, which has been quoted above. The Board also noted the AABA F&B Code Practice Note relating to Section 2.2, which has also been quoted above.

In its Determination, the Board commented that although the Advertiser had confirmed that the food shown in the advertisement was food forming the basis of a meal, it also included 'add ons', it was not the role of the Board to comment on whether customers should be able to purchase add ons to their meals but only to address the depiction of the food shown in the advertisement.

In considering the advertisement the Board noted that most scenes contained food that was still in the KFC packaging in addition to the food that was already displayed on the plates in front of people. In particular, the Board commented that the container (KFC bucket) of chicken featured in the advertisement was very large and was depicted as full. The Board stated that it considered that in most of the scenarios contained in the advertisement, "the amount of food depicted was disproportionate to the number of people gathered to consume the food". Although food shown included items that were not part of a 'meal deal' it was food that could be purchased. The Board noted that although people in the advertisement were not seen consuming all of the food, "the amount of food in relation to the groups in each scene is considered disproportionate and in the Board's view is disproportionate to the settings portrayed". The Board further noted that quite young children appeared in more than on scene and that they would consume a minimal amount of food in comparison to the amount of food depicted. This would, according to the Board, "leave a large quantity of food remaining to be consumed by only few adults". In summary, the Board stated that in its view "the depiction of such large amounts of food was a depiction that would reasonably be considered as disproportionate to the setting and was contrary to prevailing community standards regarding excess consumption".

Accordingly, the Board also found that the advertisement breached the AANA F&B Code.

Review Application

As noted above, the Advertiser cites grounds 1, 2 and 3 as the basis for its application for review of the Board's determination.

In its review application dated 16 June 2014 the Advertiser makes the following comments in support of these three grounds:

Ground 1.

That new or additional evidence was now available which could have significant bearing on the decision: The advertisement was aired between 16 September and 12 October 2013 and between 21 October and 2 November 2013 and to the knowledge of the Advertiser no complaints were received about the advertisement during these periods. This is evidence that the advertisement is not contrary to prevailing community standards. This information not previously provided as Advertiser did not anticipate Board's determination.

Ground 2.

There was a substantial flaw in Board's decision because the Board did not give proper consideration to the nature of the settings in the advertisement – being informal gatherings of families and groups of friends on weekends. In such social gatherings it is common for hosts to offer guests more food than may actually be consumed with a view to offering guests a variety of foods. It is also common for leftovers to be saved. Therefore the display of a range of food for people to choose from is not a depiction which could be said to be 'disproportionate to the settings portrayed' when the settings are informal weekend social gatherings comprising groups of people. Nor is it contrary to prevailing community standards. It reflects the reality of what happens when families and friends get together on the weekend for an informal picnic or buffet style meal.

Ground 3

There was a substantial flaw in the process by which the decision was made because the Board has failed to properly follow the AANA Practice Note for section 2.2 of the Code in reaching its determination. Contrary to AANA Practice Note 2.2 the Board has failed to consider "whether members of the community in the target audience would most likely take a message condoning excess consumption". As previously advised in Advertiser letter of 7 May to ASB, the target audience for the advertisement is families and groups of friends.

The Advertiser goes on to comment on content of the advertisement saying it does not condone excess consumption nor does it convey a message to the target audience that they must eat everything in front of them. To the contrary, according to the Advertiser, the advertisement shows groups of people consuming sensibly in normal social settings in line with community standards. The Advertiser states: "We believe the target audience would understand that the food being showcased is for representational purposes only (recognising that a table or picnic rug with little food on it does not provide the right imagery) and that such display does not translate into, nor encourage, a particular form of behaviour (such as excess consumption)".

The original complainant was invited to comment on the Advertiser's review application but did not do so.

Independent Reviewer's Recommendation

Ground 1

The information offered by the Advertiser in support of this ground for review does not constitute new or additional relevant evidence which could have a significant bearing on the determination. When considering a case, the Board is well aware of the number of complaints which have been made against an advertisement. The ASB documentation makes it clear that

there was one complaint about this advertisement and the Advertiser itself, in its correspondence of May 7, refers to that one complaint. Ground 1 is not made out.

Ground 2

The Advertiser claims that there was a significant flaw in the Board's determination because it did not give proper consideration to the nature of the settings in the advertisement – being informal gatherings of families and groups of friends on weekends. There is no reference in the advertisement itself to that fact that these gatherings occur on weekends. The Advertiser, in its response to the complaint, refers to “people getting together on special occasions that are different from the everyday comings and goings that can characterise mealtimes”. Special occasions are again referred to later in the Advertiser's response. Weekends are not mentioned at all in the response or the covering letter.

The advertisement self-evidently shows informal gatherings of families and groups of friends. The Board specifically states that “the advertisement features various scenarios of families and groups of friends catching up in social situations, as well as interacting in different meal environments, around the kitchen bench, a girls' night in, a family picnic lunch and at home on the deck”. The Board also considered the theme (gathering together to share a meal), the visuals (images of families and friends together indoors and outdoors) and the language (music only and text to reflect the groups and the price). The comments made by the Advertiser in its application for review regarding the appropriateness of the amount of food offered when families and friends gather, could well have been made in the Advertiser's response to the complaint, but were not. However, the Board must make its determination based on the content of the Advertisement as it stands, regardless of any back-story suggested by the Advertiser. The Board, in making its determination, has given proper consideration to the settings of the advertisement (informal gatherings of families and friends) both from viewing the advertisement itself and from considering the response of the Advertiser. Ground 2 is not made out.

Ground 3

The Advertiser claims that there was a substantial flaw in the process by which the decision was made because, contrary to AANA Practice Note 2.2 the Board failed to consider ‘whether members of the community in the target audience would most likely take a message condoning excess consumption’.

Practice Note 2.2 has been quoted in full above in this document. It states that when testing whether an advertisement encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to community standards, “the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption” (my emphasis).

In its determination, the Board states that it ‘noted’ AANA F&B Code Practice Note 2.2 and goes on to quote the relevant section of the Practice Note. However, nowhere in its determination does the Board articulate or refer to any consideration it has given as to whether “members of the community in the target audience would most likely take a message condoning excess consumption”. The Board was advised of the target audience of the Advertisement by the Advertiser in its letter to ASB dated May 7, which states: “The

Advertisement is targeted at families and groups of friends”. Though this is not strictly a demographic description of the target audience it is a reasonable everyday description of that audience. In addition, the Advertisement itself identifies the kinds of groups of friends the Advertiser had in mind as recipients of its advertising message.

The AANA Practice Notes are clear as to the expectations of the way the Board goes about making determinations. Throughout the Practice Notes the word ‘will’ is used in describing how the Board should go about its task. If there was an intention to simply suggest a discretionary approach to any aspect of that task, the Notes could have used the word ‘may’ instead of ‘will’. It is clear that by using the word ‘will’ the Practice Notes mean to indicate the way the Board should undertake its testing of whether various provisions of the Code are breached by an advertisement.

In this case, despite noting the existence of Practice Note 2.2, the Board has failed to provide any indication in its determination that it considered ‘whether members of the community in the target audience would most likely take a message condoning excess consumption’ as required by Practice Note 2.2. Ground 3 is therefore satisfied.

Accordingly, I recommend that the Board reconsider its decision and determine whether there has been a breach of the Code, taking into account the comments made above regarding the decision making process.

THE DETERMINATION ON REVIEW

The Board noted that it was reconsidering its decision in relation to whether or not the advertisement breached Section 2.2 of the AANA Food & Beverages Advertising & Marketing Communications Code (Food Code).

The Board noted the request for review, the advertiser’s points of concern about the Board’s first decision and also noted the recommendation of the Independent Reviewer.

The Board noted that the Independent Reviewer considered that there was a substantial flaw in the process by which the determination was made, in that the Board, whilst noting Practice Note 2.2, had failed to provide any indication in its determination that it considered ‘whether members of the community in the target audience would most likely take a message condoning excess consumption’ as required by Practice Note 2.2.

The Board noted its discussion in the initial decision about whether the advertisement was in breach of Section 2.2 of the Food Code, in particular:

“The Board noted that although the advertisement was showing food that was not part of a ‘meal deal’ it was food that could be purchased. The Board noted that the characters in the advertisement are not seen consuming all of the food however the amount of food in relation to the groups in each scene is considered disproportionate and in the Board’s view is disproportionate to the settings portrayed. The Board noted that in more than one scene the group included children who were quite young and that the amount of food consumed by children of that age would be minimal in comparison to the amount of food depicted. The Board agreed that this would leave a large quantity of food remaining to be consumed by only few adults. In the Board’s view the depiction of such large amounts of food was a depiction that would reasonably be considered as disproportionate to the setting and was contrary to prevailing community standards regarding excess consumption.”

The Board noted that the Independent Reviewer has recommended that the Board consider

the requirement of the Practice Note which is that the Board should take into account “whether members of the community in the target audience would most likely take a message condoning excess consumption”.

The Board considered that the Practice Note’s reference to the target audience should be taken as a reference to the target audience as defined by the Advertiser. In this case the Board noted that the advertiser has stated the target audience of the advertisement ‘families and groups of friends.’

The Board noted the advertiser’s comments that the advertisement does not show people consuming excessive quantities of food and that by showing groups of people the suggestion is that the food should be shared.

The Board noted that the people in the advertisement are shown to eat some of the food and considered that the amount of food eaten in the advertisement is minimal and that there is no depiction of excessive consumption during the advertisement.

The Board noted that it is common for leftovers to be saved after a meal or social gathering but considered that the suggestion of saving excess food is not actually made in the advertisement.

Following considerable discussion the Board maintained the strong view that the amount of food shown in the advertisement does normalise large portion sizes and is disproportionate for the settings portrayed. The Board noted however that the Practice Note to Section 2.2 sets a high bar in that in order for the Board to determine that the advertisement encourages what would reasonably be considered excess consumption, the Board must find that families and groups of friends would most likely take a message condoning excess consumption.

A minority of the Board considered that the target audience would be likely to take a message condoning excess consumption. The majority of the Board however considered that whilst the amount of food depicted in the advertisement is, in its view, excessive for the number of people shown in each scene, in the Board’s view the target audience would be likely to recognise these depictions as a way of displaying the particular foods available, the range of options available in the family packs and an element of puffery about the meal. The majority of the Board also noted that there is no depiction of people eating to excess or having eaten a large amount of food. The Majority of the Board considered that the target audience would not take a message condoning excess consumption, even if there is a representation of portion sizes disproportionate to the setting.

The Board determined upon reconsideration that the advertisement did not breach Section 2.2 of the Food Code but noted that its original determination to uphold the advertisement under S1.1 of the QSRI remained in place.