



Case Report

1	Case Number	0161/12
2	Advertiser	Hungry Jacks
3	Product	Food and Beverages - QSR
4	Type of Advertisement / media	TV
5	Date of Determination	09/05/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.8 Price
Advertising Message QSR - 4.1 - Advertising and Marketing Message

DESCRIPTION OF THE ADVERTISEMENT

Voice over says, "Burgers are so cute, they come in pairs". Cheeseburger minis and rodeo minis are advertised. "Minis plus small fries and coke for just \$4.95".

THE COMPLAINT

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

We write to complain about the Hungry Jacks advertisement that we consider to be in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRII) and the Australian Association of National Advertisers (AANA) Code for Advertising and Marketing Communications to Children.

We believe that the advertisement breaches clause 4.1 of the QSRII because it is Advertising and Marketing Communication to Children for food (Hungry Jacks minis).

We believe that the advertisement also breaches clause 2.8a of the AANA Code for Advertising and Marketing Communications to Children.

The advertisement was directed to children as it was shown multiple times during 3 different programs which are popular with children including Home and Away Young Talent Time and The Lion King.

Broadcast

- *During Young Talent Time rated PG on Channel 10;*
- o *January 29th 2012 at 6.42pm*

- o February 26th 2012 at 6.38pm
- o March 4th 2012 at 7.02pm
- o March 11th 2012 at 7.17pm
- During Home & Away rated PG on Channel 7;
- o February 8th 2012 at 7.00pm
- o February 10th 2012 at 7.15pm
- o February 15th 2012 at 7.00pm
- During The Lion King rated G on Channel 7;
- o March 10th 2012 at 7.02pm

Advertising and Marketing Communication to Children

This advertisement was broadcast during 3 television programs which are all popular with children. The Lion King is particularly of appeal to children with a G rating and was shown during a Saturday movie timeslot.

Nutrition criteria

The nutrition criteria for assessing meals outlined in clause 3 of Appendix 1 of the QSR II require that a meal must not exceed maximum limits of 2770kJ for children 9-13 years saturated fat (0.4g per 100KJ) sugar (1.8g per 100KJ) and sodium (650mg per serve). Nutrition information is not available for Hungry Jacks minis apart from mandatory energy labelling. The cheeseburger mini is 1654kJ and the BBQ rodeo mini is 2217kJ. This means the overall meal contains 3470kJ or 4033kJ far exceeding the QSR II criteria for energy and hence is not a healthy option for children.

AANA Code for Advertising and Marketing Communications to Children

During the advertisement the voice over says that the meal is “just \$4.95”. The use of “just” directly breaches clause 2.8a which states that “Price... must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as ‘only’ or ‘just’.”

THE ADVERTISER’S RESPONSE

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

Hungry Jack’s - Complaint reference number 0161/12

We write in response to your letter dated 20 April 2012 enclosing a copy of a complaint (Complaint) made on 18 April 2012 in relation to an advertisement for a product known as ‘Hungry Jack’s Minis’. The advertisement for Hungry Jack’s Minis aired during a variety of programs on a variety of channels (Advertisement).

THE COMPLAINT

The Complaint involves allegations that the Advertisement is in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR II) and the Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children (AANA Children Code).

QSR II

We understand that the Complaint alleges that the Advertisement is in breach of the QSR II because it does not meet the requirements of clause 4.1 of the QSR II, which relates to, among other things, offering a healthy alternative.

AANA Children Code

The Complaint also alleges that the Advertisement is in breach of clause 2.8(a) of the AANA Code because, during the Advertisement a voiceover says that the meal is "just" \$4.95, with 'just' being a prohibited qualifier. We note at this point that while the script for the 15 second version of the Advertisement anticipates the voiceover saying "for the mini price of", the voiceover of the 15 second version does use the word "just".

THE QSR II AND AANA CHILDREN CODE DO NOT APPLY

The Advertisement will only be subject to the QSR II and AANA Children Code if it is "an Advertising or Marketing Communication to Children". The Complaint proceeds on the assumption that the Advertisement is such a communication. However, for the reasons which follow, it is not and neither the QSR II nor the AANA Children Code apply to the Advertisement.

Advertising and Marketing Communications to Children

For an advertisement to be subject to the QSR II and AANA Children Code, it must be an advertising or marketing communication to Children (our emphasis). For the purposes of the QSR II and the AANA Children Code, "Children" are defined as persons under the age of 14. When determining whether the Advertisement is an advertising or marketing communication to Children, regard must be had to whether "the theme, visuals and language used in the Advertisement (our emphasis) is directed primarily to Children".

In this case the Advertisement does not satisfy that test.

Rather the Advertisement is general in nature, showing the components of, and construction of, Hungry Jack's Minis. There is nothing in the theme, visuals and language of the Advertisement that directs it primarily to Children. In particular, the Advertisement does not:

- (a) portray Children in any form;*
- (b) make reference to Children in any form; and*
- (c) make use of popular personalities or licensed characters, colours or other marketing devices that might appeal to Children.*

To the contrary, the voiceover used in the Advertisement is an adult male voice and the structure and theme of the Advertisement is similar to that used in other Hungry Jack's advertising campaigns which portray the ingredients used in the products it sells.

The Complaint seems to suggest that notwithstanding this, the Advertisement is nevertheless subject to the QSR II and AANA Children Code because it was broadcast during specific television programs which Complainant says "are popular with children".

It may well be the case that those programs are popular with children – though there is no evidence to support such an assumption. However, as already noted, that is not the basis upon which the application of the QSR II and the AANA Children Code is determined. That is of course understandable, for if it were determined in that way it would put advertisers and their agencies in an almost impossible position as it would operate to make many advertising and marketing communications that are manifestly not directed at children subject to the QSR II and the AANA Children Code.

We should also make three further points in relation to the approach adopted by the Complainant (even though it is not strictly necessary to do so because, as already noted, it is the advertisement that is to be considered not the programs during which an advertisement appears or the classification zone in which it is broadcast – and on that test the Advertisement does not fall within the QSR II and the AANA Children Code).

1. In each of the broadcast periods identified in the Complaint the applicable classification (and thus, that within which the Advertisement was shown) was "PG" (Parental Guidance): not C (for Children), P (for Pre-school), or G (General). These television classification zones were (and are) set independently by CAD and advertisers place advertisements according to those classifications.

Ultimately, it is a matter for the individual networks to determine what content they then broadcast during a given classification zone, so long as that program does not have a classification beyond that permitted in the relevant zone. For example, in this case the network chose to broadcast a "G" rated program (Lion King) in the "PG" classification zone.

2. There is a second reason why the AANA Children Code does not apply to the Advertisement. Before that Code will apply the advertisement in question must not only be primarily directed to Children, but it must also be in respect of products that "are targeted towards and have principal appeal to Children". In this instance, there is nothing in respect of Hungry Jack's Minis that is targeted to Children – to the contrary, they are targeted to adults – as is made clear by the inclusion of Minis in Hungry Jack's better tastes menu (which includes its entire meal offerings which are all directed towards adults).

3. Finally, it might be noted that Hungry Jack's does have meals and products that are specifically targeted to Children, such as the Smart Picks Kids Meal. Hungry Jack's is well aware of its obligations when advertising such products and is careful to ensure compliance with the QSR II and the AANA Children Code. However, those products were not the subject of the Advertisement. That is, in our view, yet another confirmation that the Advertisement was not one "the theme, visuals and language [of which was] ... directed primarily to Children".

For the reasons set out above, the QSR II and AANA Children Code do not apply to the Advertisement. The Complaint should therefore be dismissed.

Compliance with the AANA Code and the AANA Food Code

For the sake of completeness, Hungry Jack's submits that the Advertisement is compliant with the general Australian Association of National Advertisers Code (AANA Code) and the Australian Association of National Advertisers Food and Beverage Code (AANA Food Code). For the reasons contained in this response, the only Codes that apply to the Advertisement are the AANA Code and the AANA Food Code. The Advertisement is compliant with those Codes. On that basis, Hungry Jack's submits that the Complaint should be dismissed. I look forward to hearing from you in due course. Meanwhile, please contact me if there is any further information that Hungry Jack's can provide to the ASB that will be of assistance in considering the Complaint.

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), the AANA Code for Advertising and Marketing Communications to Children, the AANA Food and Beverages Advertising and Marketing Communications Code and Section 2 of the AANA Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concern that the advertisement is directed to children, and that the price is minimized by using the words "mini" at \$4.95.

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

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

The Board noted that the QSR Initiative applies to ‘advertising or marketing communications to children’ which means ‘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 program in which the advertisement is shown is not relevant to the determination of whether or not an advertisement is directed primarily to children.

The Board noted that the advertisement features images of the mini burger against large utensils etc exaggerating the small size of the burger. A voiceover describes the value meal deal on offer.

The Board noted that the images of the meal do not include any child focused products and would likely have principal appeal to adults. The Board considered that the language used in the voiceover was aimed at adults.

The Board considered that the overall theme (the Mini’s meal), visuals (images of the burger and contents) and the language used are not directed to children. The Board considered that this advertisement is not directed primarily to children and therefore that the provisions of the QSR Initiative do not apply.

The Board considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children' in the AANA Children's Code is largely the same as that in the QSR Initiative. For the same reasons noted above, the Board considered that this advertisement is not primarily directed to children; therefore the provisions of the Children's Code are not applicable in this case.

The Board considered the AANA Food and Beverages Code (Food Code). The Board considered the provisions within Food Code and determined that in this instance the advertisement did not breach the Food Code.

Finding that the advertisement did not breach any of the Codes on any grounds, the Board dismissed this complaint.

