



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0169-21
2. Advertiser :	Domino's Pizza Enterprises Limited
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	TV - Pay
5. Date of Determination	23-Jun-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

DESCRIPTION OF ADVERTISEMENT

This Pay TV advertisement promotes pizzas delivered for \$15. There is vision of wood chips, beef brisket landing on a hot grill and being sliced, hot oil drizzling over crispy duck, crumbling cheddar, and pizza. The text, "From \$15 ea delivered" is shown, along with the disclaimer, "Conditions apply. Limited time & participating stores only. Prices subject to change. Excludes Gluten Free. 15% surcharge applies on public holidays. 10% surcharge applies on Sundays."

A voice-over states, "This can't be a Domino's ad. These can't be Domino's ingredients. And surely Domino's couldn't...do Super Premium pizzas like this...from just \$15 delivered. Or could they? Bring it in."

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

They are advertising pizza delivered for 15 dollars and yet minimum delivery cost is 22 dollars. You cannot get a pizza delivered for 15 dollars. False Advertising in my opinion.

THE ADVERTISER'S RESPONSE



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

We refer to your letter dated 10 June 2021 enclosing a complaint received by Ad Standards in relation to a Domino's television advertisement. Domino's has reviewed the details included in the complaint and makes the following preliminary points:

- a) the complaint alleges the television advertisement it advertises "...pizza delivered for 15 dollars and yet minimum delivery cost is 22 dollars. You cannot get a pizza for 15 dollars." The complaint does not include any other description, details or particulars to identify or describe the television advertisement.*
- b) the complaint does include in respect of the television advertisement the time, date and channel it aired, being 16.41pm on 31 May 2021 on Foxtel channel 108. Domino's has relied on this to conclude that the television advertisement that is the subject of the complaint is for the new Domino's Super Premium Range pizza that is being promoted at the specified price of "from \$15 each delivered" (the Advertisement).*
- c) Domino's submits all supporting information and material requested in your letter in connection with the Advertisement as part of this response (including a link to view the Advertisement).*

Firstly, thank you for providing Domino's with the opportunity to respond to the complaint regarding the Advertisement. Domino's takes its responsibility as an advertiser very seriously and encourages any feedback from the community to better understand and respond to any issues or concerns that may be raised in connection with our advertisements.

Domino's response to the complaint considers the Advertisement in light of the provisions contained within the AANA Code of Ethics (AANA Code), the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code), the AANA Code for Advertising and Marketing Communications to Children (AMCC Code), the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI) and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (QSR Code), all together the "Codes".

Domino's entirely refutes any suggestion in the complaint or otherwise that the Advertisement breaches the Codes.

We note your letter raises concern about the Advertisement in connection with section 2.1 of the Food Code. We entirely refute any suggestion that the Advertisement constitutes a breach of section 2.1 of the Food Code. It is Domino's position that the Advertisement does not breach section 2.1 of the Food Code or any of the Codes, for the reasons set out in this response.

AANA Code of Ethics (AANA Code)



As requested in your letter, Domino's provide the following responses in respect of section 2, specifically sections 2.1 to 2.7 inclusive, of the AANA Code.

Section 2.1 – Discrimination or vilification

Domino's does not believe that the Advertisement portrays people or depicts material in a way which discriminates against or vilifies any person or section of a community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Section 2.2 – Exploitative or degrading

Domino's does not believe that the Advertisement employs sexual appeal which is exploitative or degrading of any individual or group of people in any manner whatsoever.

Section 2.3 – Violence

Domino's does not believe that the Advertisement presents or portrays violence in any manner whatsoever.

Section 2.4 – Sex, sexuality and nudity

Domino's does not believe that the Advertisement displays any sex, sexuality or nudity that is not only not sensitive to the relevant audience, but in any manner whatsoever.

Section 2.5 – Language

Domino's does not believe that the Advertisement uses any inappropriate language whatsoever.

Section 2.6 – Health and safety

Domino's does not believe that the Advertisement depicts any material contrary to prevailing community standards on health and safety.

Section 2.7 – Distinguishable as advertising

Domino's does not believe that the Advertisement is not clearly distinguishable as advertising and is relevant to its audience.

AANA Food and Beverages Code (Food Code)

Your letter indicates that the complaint raises concern that the Advertisement is "deceptive" under section 2.1 of the Food Code, which Domino's refutes entirely.

Section 2.1 of Food Code provides that:

"Advertising or Marketing Communication 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, 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."



Domino's further notes that the Ad Standards Community Panel (Panel) is likely to consider the Practice Note relating to the Food Code which provides:

"In testing the requirement that an advertising or marketing communication shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest..."

Application Section 2.1 of the Food Code to the Advertisement

The Advertisement is for Domino's new Super Premium range pizzas. The details in the complaint are as follows:

"They are advertising pizza delivered for 15 dollars and yet minimum delivery cost is 22 dollars. Cannot get a pizza for 15 dollars."

The following claims are made in the Advertisement (at 0:09-0:10):

- a) "From \$15 ea delivered." (visual graphic/text); and*
- b) "Disclaimer: Conditions apply. Limited time & participating stores only. Prices subject to change. Excludes Gluten Free. 15% surcharge applies on public holidays. 10% surcharge applies on Sundays." (visual graphic/text);*
- c) "...from just \$15 delivered." (audio).*

Domino's considers that the primary message in the Advertisement is that the customer can purchase any pizza in the new Domino's Super Premium Range from \$15 each delivered. The claims in the Advertisement are clear and the product in the Advertisement (being a new Domino's Super Premium Range pizza) can in fact be purchased from \$15 each including delivery; a customer is not required to spend a minimum amount before they are eligible to have the particular product on offer at the stated price in the Advertisement.

The Advertisement is part of a national campaign that is voucher code driven and heavily promoted with marketing materials (including print, electronic direct mail (eDM), App and web channels) that enable the customer to easily purchase the product at the stated price in the Advertisement. For example, on the Domino's Online Ordering Platform, an immediate pop up is shown to the customer to apply the voucher code for the product that relates to the Advertisement (see example in Exhibit A). Alternatively, the product would be easily able to be purchased via telephone at the customer's request.

We consider that the target audience is broad and would include people that regularly consume Domino's pizza and are familiar with Domino's price points and promotions. It is possible that the target audience would also include people that are not frequent customers and who are not familiar with Domino's price point and promotions. It is not relevant which category the complainant falls into. Domino's argues that any reasonable consumer who has viewed the Advertisement that subsequently makes the decision to purchase the product on offer in the Advertisement is able to access the Product in the Advertisement very easily having regard to the promotional and marketing material in its support. We are seeing high redemption in connection with the product that is the subject of the Advertisement, which suggests our target



audience generally are finding it easy to access. We submit that reasonably includes target audience members who are making the decision to purchase the Product after viewing the Advertisement.

Having regard to the above, Domino's submits that a reasonable consumer in the target market would view the Advertisement and consider that it is not misleading or deceptive and clear in its intended message, being that any new pizza in the Domino's Super Premium Range is from \$15 each including delivery. As the Advertisement is communicated in a manner appropriate to the level of understanding of the target audience of the Advertisement, it cannot be considered misleading or deceptive under Section 2.1 of the Food Code. We respectfully submit that there is no basis for the Panel to uphold the complaint on grounds it constitutes a breach of Section 2.1 of the Food Code.

Further Codes

We further note that the AANA Code also incorporates the AANA Code for Advertising and Marketing Communications to Children and the following initiatives: the Australian Food and Grocery Council Responsible Children's Marketing Initiative and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (Further Codes). As our products are likely to also come within the scope of these Further Codes, we confirm that these Further Codes have also been considered and we do not believe that any section within those Further Codes have been breached by the Advertisement in any way.

For the above reasons, we respectfully submit that the Advertisement is not in breach of the AANA Code, the Food Code or the Codes collectively. If you require any further information, please do not hesitate to make contact with us.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement is deceptive as it is advertising pizza delivered for \$15 however minimum delivery cost is \$22, and therefore the advertisement is misleading.

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 Food Code apply.

Section 2.1 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 considered the Practice Note to this section of the Code which provides that:

***“The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.*”**

***“In testing the requirement that an advertising or marketing communication shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest...”*”**

The Panel noted that the target audience would include people that regularly consume Domino’s pizza, however considered that the target audience would also include people that are not frequent customers (this is a new product range which is not part of the usual Domino’s pizza range) and who are not familiar with Domino’s price point.

The Panel noted the advertiser’s response that the product itself (Super Premium Pizza) costs \$15 including delivery, and that customers are not required to spend a minimum amount before they are eligible to have the particular product on offer delivered.

The Panel noted that the deal advertised is predominately used by people ordering online where the offer is promoted at the start of the ordering process. The Panel further noted the advertiser’s response that this offer is available for people who choose to order over the phone.

The Panel considered that while there is typically a minimum delivery cost associated with ordering this product, most consumers would recognise that this advertisement is promoting a new range of pizzas and that there is a deal available for the pizzas. The Panel noted that the advertisement is not promoting ‘free delivery’ nor is it promoting other pizzas available.

The Panel noted that the disclaimer on the screen states that terms and conditions apply and lists common surcharges, such as Public Holiday or Sunday surcharges.

The Panel noted that the advertised promotion is available for consumers as presented, being a Super Premium range pizza delivered for \$15 and considered that the advertisement was not misleading in its presentation of the offer.

Section 2.1 Conclusion



The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.