



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0211-21</b>
<b>2. Advertiser :</b>	<b>Yum Restaurants International</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>Email</b>
<b>5. Date of Determination</b>	<b>11-Aug-2021</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This email advertisement promotes a July feast with free delivery when ordering through the KFC app.

### THE COMPLAINT

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

*The product purchased via the app using the pickup option is \$49.95. Choosing the delivery option the product states free delivery but the cost changes to \$52.95. This is not free delivery.*

### THE ADVERTISER'S RESPONSE

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

*We refer to the above matter and in particular to your letter of 19 July 2021 (Letter) relating to an anonymous complaint received by Ad Standards on 13 July 2021 (Complaint).*



*The Advertisement has appeared on the following:*

- a. Online – Video On Demand 6”*
- b. Social video 6” on Facebook, Instagram and Snapchat*
- c. Radio 10” live read, and*
- d. KFC owned channels e.g. eDM, KFC in App messages.*

*The Advertisement is targeted at adults and will be run until 9th August 2021.*

*The Complaint identifies that the price of the Christmas in July Feast on the KFC app varies based on whether the consumer elects to pick up their order instore, or have their order delivered. We understand that the Complaint expresses concern that the Advertisement breaches section 2.1 of the AANA Food and Beverages Code in that it may be misleading and/or deceptive with reference to “free delivery”.*

*In responding to the Complaint, we note:*

- a. The Complaint is correct in identifying that there is a price differential between the delivery and pick up price of menu items on the KFC app.*
- b. The price differential between delivery and pick up of menu prices has been in place since 23rd February 2021. The Christmas in July promotion started on 13th July 2021. The KFC menu prices did not change as a result of the promotion of free delivery within the Advertisement.*
- c. You will note that on the order page the KFC app clearly states that “Pricing may vary by order mode or store location”.*
- d. We believe that the pricing differential, with higher menu pricing for delivery, is standard practice across the quick service and takeaway/delivery food sectors and is expected by consumers in this sector.*
- e. The reference to “free delivery” is a reference to a waiver of the delivery fee (which is clearly shown as a separate delivery fee when customers place their order). We believe most consumers would interpret the reference to “free delivery” as the waiver of the \$8.95 delivery fee. As advertised, we have honoured the waiver of the delivery fee for all customers who have purchased the delivery of the Christmas in July Feast via the KFC app.*

*For the reasons stated above the Advertisement complies with the provisions of section 2.1 of the AANA Food and Beverages Code.*

*Notwithstanding this to provide even greater clarity our marketing agency has updated the Advertisement, and any future free delivery promotions, with the following additional disclaimer:*



*“Not everywhere, not forever and subject to availability. Our free delivery offer waives the \$8.95 delivery fee only.”*

*We trust that this action will address any concerns the Panel may have with the Advertisement and free delivery promotions.*

## **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 misleading as it states the deal is available with free delivery however the pick-up price and delivery price are different in the app with delivery being more expensive.

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 considered that there are two key messages in the advertisement – the primary message being ‘free delivery’ and the second being ‘KFC app only’.

The Panel noted the advertiser’s response that the delivery fee (\$8.95) was waived in the promotion, and that the pricing differential, with higher menu pricing for delivery,



is standard practice across the quick service and takeaway/delivery food sectors and is expected by consumers in this sector.

The Panel noted that the target audience would include people that regularly consume KFC products, however considered that the target audience would also include people who are not familiar with KFC's pricing strategies.

The Panel considered that a reasonable consumer in the target market would view the advertisement and note that there is a Christmas in July feast available with free delivery, only through the app.

The Panel considered that a reasonable consumer in the target market would interpret the advertisement to mean that there was no additional cost for delivery and that therefore the price for the deal would be the same as pick-up.

The Panel considered that the promotion of free delivery makes the deal particularly appealing for consumers at the moment because they can obtain the offer without having to leave their house to collect, for the same price as if they had had to collect. The Panel noted however that this is not the case, and that the price for delivery is higher than the price for pick-up, no matter how such a price difference is calculated or how it is described.

The Panel considered while the intent of the advertiser was not to be misleading, the overall advertisement is not communicated in a manner appropriate to the level of understanding of the target audience of the advertisement and is likely to mislead.

### **Section 2.1 Conclusion**

The Panel determined that the advertisement did breach Section 2.1 of the Food Code.

### **Conclusion**

Finding that the advertisement did breach Sections 2.1 of the AANA Food Code the Panel upheld the complaint.

### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We confirm that the advertisement, the subject of reference number 0211-21, was modified prior to Ad Standards releasing its case report and ceased on 9 August 2021.