



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0217-20
2. Advertiser :	McDonald's Australia Limited
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	App
5. Date of Determination	22-Jul-2020
6. DETERMINATION :	Dismissed
7. IR Recommendation:	Reconfirm the Original Decision

ISSUES RAISED

AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message

AFGC - Quick Service Restaurant Initiative\QSRI 1.3 Products in Interactive Games

DESCRIPTION OF ADVERTISEMENT

This advertisement is a game application called Happy Studio App for McDonalds. It is available for downloading to a mobile device.

THE COMPLAINT

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

1. *The advertisement breaches the QSRI*
The Obesity Policy Coalition (OPC) submits that this advertisement breaches the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI). As a signatory to the QSRI, McDonald's has committed not to advertise its products to children under 14 years in media unless those products represent healthier dietary choices, as determined by the QSRI's Nutrition Criteria.

In our submission the advertisement breaches clause 1.1 and s1.3 of the QSRI because:

- 1. It is an advertising and marketing communication directed primarily to children and an interactive game;*
- 2. All McDonald's Happy Meals do not represent a healthier dietary choice consistent with the QSRI's Nutrition Criteria; and*



3. *It does not sufficiently encourage good dietary habits or physical activity.*

The advertisement is a marketing communication directed primarily to Children

Advertising and marketing communication

The QSRI applies to material that is published or broadcast on television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites. This advertisement has been published on the app Happy Meal and is an interactive game.

The Happy Meal app is clearly an advertising or marketing communication within the meaning of the QSRI, as it is material published by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app.

As per the panel's determination in case number (0545/18) about the previous variant of this app, "the Happy Meal game is clearly branded with McDonald's material and can be considered to be a marketing communication for McDonald's".

The Happy Meal app is also clearly designed to promote a product, McDonald's Happy Meals. The app is called 'Happy Meal' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The Happy Meal app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular. As per the panel's determination in case number (0545/18) about the previous variant of this app, "this is directly advertising a food product, being Happy Meals".

Directed primarily to children

There has been no significant change to the app in the relaunched version and as per the panel's determination in case number (0545/18) the app should again be considered to be directed primarily to children given its theme (games and activities for children), visuals (bright colours and characters) and language (simple directions on how to play the game). The app uses child focused, simple animation and messaging to present a range of children's games and activities.

The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app is '...created around play that has purpose for children' and that it is developed with input from child development experts. McDonald's talks about the app enabling children to 'think like an artist, a musician, an inventor', 'paint a picture, create a song



or build a flying machine'. The app includes the message 'Hey kids, this is advertising'. The nature of the games and activities would not be appealing to older teenagers or to adults.

There is no doubt that the app is directed primarily to children.

*McDonald's Happy Meals do not represent a healthier dietary choice
S1.1(a) of the QSRI provides that any food or beverage advertised to children must represent healthier dietary choices.*

When considering whether the app represented a healthier dietary choice in the original app the Panel noted that "the product promoted in the game (primarily through the Happy character) is the McDonalds Happy Meal" the panel further noted that "in most depictions of the happy meal box character in the game, the meal itself is not shown" – this is true for the relaunched app also.

The only time a meal is shown is when the game launches. In the relaunched app a full Happy Meal including main meal item is shown, this differs from the previous version of the app where the main meal item was not shown. The app is an advertisement for all Happy Meals and not just the Happy Meal fleetingly depicted when the game is launched. As noted in the Panel's determination on the previous version of this app (0545/18) "the advertised product does not meet the requirements of the QSR Initiative by only advertising those products that meet the nutrition criteria, as the advertisement is an advertisement for all Happy Meals, some of which do not meet the nutrition criteria".

As per the Panel's previous determination, Happy Meals are not all healthier dietary choices and as such should not be advertised to children.

The advertisement does not promote good dietary habits or physical activity

S1.1(b) of the QSRI provides that any food or beverage advertised to children must also 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.*

In respect of S1.1(b)(i) – good dietary habits - the app does not sufficiently promote good dietary habits. Six out of the eight games do not feature food in them at all, except the constant reminder of Happy Meals with the Happy meal character featuring prominently. In the two games that do have a food element, this is a minor element of the game (having the Happy Meal box character wear bananas as shoes or kick a tomato) and does not demonstrate to children that it is important that they eat those healthy foods, rather encourages children to play with their food. It also does not make clear that McDonald's Happy Meals are often not a healthy choice. The character is never shown eating healthy food, rather the food is part of the visual



entertainment. There is no messaging encouraging children to eat a healthy diet. In our view, this is not sufficient to meet the requirements of the QSRI.

We note that the Panel determined in the decision of the previous version of this app that “the only food items depicted in the advertisement would be considered by most members of the community to be good dietary choices” and that this element of the QSRI was satisfied. We respectfully disagree with this position as set out above – token placement of healthy food items is not sufficient to encourage good dietary habits.

In respect of S1.1(b)(ii) – physical activity – we respectfully disagree with the Panel’s determination on this point in relation to the previous version of the app.

We do not consider tiny print hidden on a colourful animated screen sufficient messaging to encourage children to engage in physical activity. The app includes the message ‘Balance your play with physical activity every day’ on some screens. This text is always significantly smaller than any other text and paired with colourful images and animations. The message is only displayed briefly as children toggle through the opening screen of the chosen activity, as well as intermittently on the home screen. This message could easily be missed by young children, especially in contrast to the large text and engaging visuals of the games and activities.

We also do not consider the minimal movement undertaken by the Happy Meal character to be sufficient to encourage physical activity - for example when a player makes the character kick a ball in the air. The vast majority of the activities undertaken by the Happy Meal box are not physical activity and children are not actively encouraged themselves to engage in physical activity. In our view, this is not sufficient to meet the requirements of the QSRI.

For these reasons, we do not think that the advertisement meets the QSRI requirement to encourage good dietary habits and physical activity.

Request for action

For the above reasons, the OPC asks Ad Standards to request that McDonald’s withdraws its Happy Meal app.

2. The advertisement breaches the Code for Advertising & Marketing Communications to Children

The OPC submits that this advertisement breaches clause 2.7(b) of the Code for Advertising & Marketing Communications to Children (Children’s Code) because:

- 1. It is an advertising or marketing communication to children, and*
- 2. It contains an appeal to Children to urge their parents, carers or another person to buy a product for them.*

The advertisement is an advertising or marketing communication to children As per the panel’s determination in relation to the previous version of the app (case number 0545/18) the advertisement is directed primarily to children.



The Children's Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on an app, Happy Meal, which can be characterised as new and emerging technology.

The material must be undertaken by, or on behalf of, an advertiser or marketer:

- *over which the advertiser or marketer has a reasonable degree of control, and*
- *that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

The Happy Meal app is clearly an advertising or marketing communication within the meaning of the Children's Code, as it is material undertaken by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation.

The Happy Meal app is clearly designed to promote McDonald's Happy Meals to children. The app is called 'Happy Meal' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The app includes a call to action for children to 'Scan your smile', and asks that the child scans a Happy Meal box – this is encouraging children to buy (or pester their parents to buy) Happy Meals. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app. The Happy Meal app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular.

The Children's Code clearly applies.

Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Children's Code. The app uses child focused, simple animation and messaging to present a range of children's games and activities.

The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app is '...created around play that has purpose for children' and that it is developed with input from child development experts. McDonald's talks about the app enabling children to 'think like an artist, a musician, an inventor', 'paint a picture, create a song or build a flying machine'. The app includes the message 'Hey kids, this is advertising'. The nature of the games and activities would not be appealing to older teenagers or to adults. There is no doubt that the app is directed primarily to children.



The advertisement is also for a product, the McDonald's Happy Meal, that is targeted towards, and has principal appeal to, children. McDonald's Happy Meals include small sized products and a children's toy. It is clear they are designed for and appeal principally to children.

The advertisement appeals to children to urge their parents to buy a product for them. The advertisement includes a call to action to children to 'scan your smile', to begin this game the child is asked to scan a Happy Meal box. This is an implied appeal to children to urge their parents, carers or another person to buy a Happy Meal for them, as children will be motivated by the additional content and are unable to buy a Happy Meal without an adult who can pay for it.

Request for action

For the above reasons, the OPC asks Ad Standards to request that McDonald's withdraws its Happy Meal app.

3. The advertisement breaches the Food & Beverages Advertising & Marketing Communications Code

The OPC submits that this advertisement breaches clause 3.5 of the Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code) because:

- 1. it is an advertising or marketing communication for a food and beverage product, and*
- 2. it includes an appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular children's food or beverage products for them.*

It is clear that the advertisement is an advertising or marketing communication for a food and beverage product.

The Food & Beverages Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on an app, Happy Meal, which can be characterised as new and emerging technology.

The material must be undertaken by, or on behalf of, an advertiser or marketer:

- over which the advertiser or marketer has a reasonable degree of control, and*
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

The Happy Meal app is clearly an advertising or marketing communication within the meaning of the Food & Beverages Code, as it is material undertaken by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation.



Happy Meal app is clearly designed to promote McDonald's Happy Meals to children. The app is called 'Happy Meal' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The app includes a call to action for children to 'Scan your smile' and asks a child to scan a Happy Meal box – this is encouraging children to buy (or pester their parents to buy) Happy Meals. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app. The Happy Meal app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular.

The Food & Beverages Code clearly applies. Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Food & Beverages Code. The app uses child focused, simple animation and messaging to present a range of children's games and activities.

The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app is '...created around play that has purpose for children' and that it is developed with input from child development experts. McDonald's talks about the app enabling children to 'think like an artist, a musician, an inventor', 'paint a picture, create a song or build a flying machine'. The app includes the message 'Hey kids, this is advertising'. The nature of the games and activities would not be appealing to older teenagers or to adults. There is no doubt that the app is directed primarily to children.

The advertisement is also for a product, the McDonald's Happy Meal, that is targeted towards, and has principal appeal to, children. McDonald's Happy Meals include small sized products and a children's toy. It is clear they are designed for and appeal principally to children.

The advertisement appeals to children to urge their parents to buy a product for them. The advertisement includes a call to action to children to 'Scan your smile' and to begin this game the child is asked to scan a Happy Meal box. This is an implied appeal to children to urge their parents or other adult responsible for their welfare to buy a Happy Meal for them, as children will be motivated by the additional content and are unable to buy a Happy Meal without an adult who can pay for it.

Request for action

For the above reasons, the OPC asks Ad Standards to request that McDonald's withdraws its Happy Meal app.



THE ADVERTISER'S RESPONSE

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

Description of advertisement

The Happy Meal App ("App") is a free, online platform designed to help enable families' moments of closeness by allowing children and their parents to play together creatively, imaginatively and socially through a relevant digital experience in today's connected world.

The App was produced and developed with input from child development experts at Fundamentally Children, and a leading game design studio based in the United Kingdom.

The App helps to integrate intentional learning moments with reference to six development pillars: physical, memory/attention, creativity, logic/problem-solving, social/economical skills and communication, as well as share fun, nutritious and well-being messages for children.

Advertiser's response to complaint

Thank you for requesting a response to complaint number 0217-20 (Complaint).

The subject of the Complaint is the Happy Meal App (App). The Complaint is made under:

- 1. Schedule 1.1 and 1.3 of the Quick Service Restaurant Initiative (QSRI);*
- 2. Section 2.7(b) of the AANA Code for Advertising and Marketing Communications to Children (Children's Code); and*
- 3. Clause 3.5 of the AANA Code for Food and Beverages Advertising and Marketing Communications Code (Food Code)*

(collectively referred to as the "Codes").

We submit that McDonald's takes marketing to children seriously and took great care to design the App as a free, online platform designed to inspire moments of closeness for families by allowing children and their parents to play together creatively, imaginatively and socially.

The App was produced and developed with input from child development experts at Fundamentally Children, and a leading game design studio based in the United Kingdom, the App has been created around play that has a purpose for children.

The game frameworks were designed with reference to six child development pillars: 1) physical, 2) memory/attention, 3) creativity, 4) logic/problem-solving, 5) social/economical skills and 6) communication. Additionally, the App also shares fun, nutritious and well-being messages for children.



It is important to note that the concerns raised in the Complaint are generalist comments which do not reflect the intention nor the actual content of the App. We encourage the Panel to download the App in order to make a fair decision on whether the App breaches the Codes.

We submit that the App does not breach the Codes for the reasons stated below:

Schedule 1.1 and 1.3 of the QSRI

Schedule 1.1 of the QSRI provides the following:

“Advertising and Marketing Communications to Children for food and/or beverages must:

- a. Represent healthier dietary choices, as determined by 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 stands; and*
 - ii. Physical activity.”*

With regards to requirement (a), by browsing through the App the Panel will note that any of the food and beverage shown or promoted in the App satisfy the QSRI nutrition criteria.

In case 0545/18, the Panel determined that the previous version of the App where the opening image featured “a Happy Meal box, a CalciYum flavoured milk and apple slices and does not feature the main meal...does not necessarily depict the healthier choice, as the main meal can change the nutrition criteria.” As a result, the modified version of the App (which is also the latest version of the App) shows wholemeal grilled snack wrap with grape tomatoes and pop-top water as an opening image is a QSRI approved meal. In addition, an extra QSRI approved meal is currently in the process of being inserted on the “be an inventor” frame of the App.

We also note that the Panel reiterated in case 0545/18 that “an interactive game does not necessarily have to show the healthier choice option on every occasion that a Happy Meal box is shown”.

In relation to requirement (b)(i), we submit that the App does not feature any food other than balanced side options offered at McDonald’s and other fruit and vegetables that kids can interact with in a fun way. There also many components of the App that encourages good dietary habits, for example:

- The Happy character is seen to be playing with fruits (such as tomatoes, bananas);*



- *There are also digital masks with interactive fruit faces – a fun experience that hopes to help raise greater awareness of nutrition and drive kids to pick a balanced food choice with their Happy Meal;*
- *Berry Building which is a game where children are encouraged to unleash their inner-architect and eat their healthy creation afterwards.*

The role of the Happy character in all McDonald's communications is to encourage children to make balanced choices and promote the importance of engaging in physical activity and positive wellbeing. Happy is also the brand ambassador for the Happy Meal books program worldwide helping promote reading with a character kids are familiar with. The purpose of Happy in this App is to have a children-loved character a part of the child's fun and learning through the App. Similarly, when possible, the App will feature licensed characters during certain promotions that are also used to interact with fruit and vegetables to help draw an interest in kids in those food items. By using these characters, McDonald's is leveraging their recognition to help encourage the balanced options McDonald's offers and balanced food groups generally.

This is also consistent with case 0545/18 where the Panel has determined that the depiction of food items in the previous version of the App are considered by most members of the community to be good dietary choices.

In relation to requirement (b)(ii), we submit that at various points of the game the message "Balance your play with physical activity everyday" is shown and the Happy character is seen in outdoor settings on multiple occasions and doing physical activities such as kicking a soccer ball, painting, singing, etc. Children are also encouraged to participate in those same activities, for example, an activity as part of the App is to make an eco-friendly recycled greenhouse for the child to grow their own cress.

Similarly, we refer to case 0545/18 where the Panel has considered that the aforementioned depiction of physical activities in the previous version of the App meets the requirement of (b)(ii).

In light of the above, we submit that the App complies with schedule 1 of QSRI and as such it does not breach Schedule 1.3 of the QSRI.

Section 2.7(b) of the AANA Code for Advertising and Marketing Communications to Children.

Section 2.7(b) provides that "Advertising or Marketing Communications to Children must not contain an appeal to children to urge their parents, carers of another person to buy a Product for them."

The Complaint states that "the advertisement includes a call to action to children to "scan your smile", to begin this game the child is asked to scan a Happy Meal box. This is an implied appeal to children to urge their parents....to buy a Happy Meal for them,



as children will be motivated by the additional content...” This is incorrect, similar to the previous version of the App children do not require the purchase of the Happy Meal in order to participate in the App to its fullest potential. We draw the Panel’s attention to Image 1 which states at the bottom “Don’t have a Happy Meal box? Go to the Parents Area to unlock the experience without scanning the smile”. Accordingly, parents can unlock this experience without any need to make any purchase.

There is also no language in the App that pressures children to purchase a Happy Meal or that their App experience would be better or any different if they had a Happy Meal. This is also consistent with the Panel’s determination in case 0545/18.

We also submit that the App does not undermine parental authority as parental authority is a critical part of the accessibility of the App. The child will be accessing the App under the supervision of an adult as it is the parent who is required to download and configure the App. The App contains a section for parents which is accessible by holding down the icon in the top right corner for 3 seconds. This section details the background of the App and gives the parent access settings to tailor the functionality of the App (such as the use of the camera). There are no in-app purchases. The App is proactive in seeking parental intervention at the appropriate times.

Ultimately, the App is designed as an interactive aid to parents to help with the six developmental pillars the App was designed to incorporate based on input from child development experts (physical, memory/attention, creativity, logic/problem-solving, social/economical skills and communication) and to enable families moments of closeness.

For the reasons as set out above, we submit that the App does not breach section 2.7 of the Children’s Code.

Issue 3 – Clause 3.5 of the AANA Code for Food and Beverages Advertising and Marketing Communications Code

Section 3.5 states “Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child’s welfare to buy particular Children’s Food or Beverage Products for them.”

For similar reasons outlined under Issue 2, we also submit that the App does not breach clause 3.5 of the Food Code.

Conclusion

For reasons set out above, we submit that the App complies with the Codes and request the Panel to have the Complaint be dismissed.

THE DETERMINATION



The Ad Standards Community Panel (the Panel) 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 Panel noted the complainant's concern that the advertisement is targeted towards children, is for a product that does not represent a healthier dietary choice and does not sufficiently encourage good dietary habits or physical activity.

The Panel viewed the advertisement and noted the advertiser's response.

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

The Panel 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 Panel first considered whether the game 'Happy Studio' is an advertising or marketing communication. The Panel noted that it had previously considered a case about the same app in its decision in 0545-18 and noted that in relation to that interactive game available as an App:

"The Panel considered that the McDonald's Happy Studio game is clearly branded with McDonald's material and can be considered to be a marketing communication for McDonald's."

In the current case the Panel considered that the app still contains McDonald's branding and can be considered to be advertising material.

The Panel then considered whether the advertisement was for a food or beverage product, as the QSRI Code, Food Code and applicable sections of the Children's Code specify that the advertisement must be for a product.

The Panel considered that there is no imagery for McDonalds other than a Happy Meal box. The majority noted that the depiction of the box does not have a Happy Meal logo or any other imagery on it, but considered that it is such a well-known product that it is clearly identifiable as a Happy Meal. The Panel also noted that the main character's eyebrows are the golden McDonald's M. The Panel considered that this is directly advertising a food product, being Happy Meals.

The Panel considered that the McDonald's Happy Studio app is directly promoting a food product.



The Panel noted that McDonald's is a signatory to the QSRI and determined that the provisions of the QSRI apply to this marketing communication.

The Panel 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 Panel noted that with regards to point 1 the Panel must consider whether the communication activity is directed primarily to Children – regardless of its placement.

The Panel noted that the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Panel 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’ used in determining this issue.

The Panel noted the advertiser's response that the App had been created to allow children and their parents to play together creatively and had been designed with input from child development experts to create play that has a purpose for children. The Panel noted the theme (games and activities for children), visuals (bright colours and characters) and language (simple directions on how to play the game) and considered that the communication is directed primarily to children.

Finding that the advertisement did fall under the provisions of the QSRI the Panel considered the complaint under Schedule 1.3 of the Code which provides:

“Signatories must ensure that any interactive game directed primarily to Children which includes the Signatory's food and/or beverage products is consistent with S1.1.”

The Panel noted that Schedule 1.1 of the Code provides:

“Advertising or Marketing Communications to Children for food and/or beverages must:

- (a) Represent healthier dietary choices, as determined by 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.”



With regards to the first requirement (a), the Panel considered what is being promoted in the game.

The Panel considered that the product promoted in the game (primarily through the Happy character) is the McDonalds Happy Meal. The Panel noted in most depictions of the happy meal box character in the game, the meal itself is not shown.

The Panel noted that it had previously upheld a complaint against a previous version of this app in case 0545-18, in which:

“The Panel noted that in this case there is a depiction of a Happy Meal which appears when a game is loading, next to the statement “Balance your play with physical activity everyday”. The Panel reiterated that an interactive game does not necessarily have to show the healthier choice option on every occasion that a Happy Meal box is shown, however considered that this image only features a Happy Meal box, a CalciYum flavoured milk and apple slices and does not feature the main meal. This image therefore does not necessarily depict the healthier choice, as the main meal can change the nutrition criteria.

Additionally, the Panel noted that the image is very small and difficult to see without focussing on it specifically. The Panel considered that that the advertised product does not meet the requirements of the QSR Initiative by only advertising those products that meet the nutrition criteria, as the advertisement is an advertisement for all Happy Meals, some of which do not meet the nutrition criteria.”

The Panel noted the complainant’s concern that the advertisement only shows a fleeting image of a Happy Meal when the game is launched and is an advertisement for all Happy Meals, not just this Happy Meal.

Consistent with the previous determination, the Panel considered that the advertiser does not necessarily have to show the healthier choice option on every occasion that a Happy Meal box is shown. The Panel considered that the only food items which McDonalds sells which are shown is the Happy Meal in the opening frame of the advertisement.

The Panel noted the advertiser’s response that the app had been modified to include a QSRI complaint meal of a wholemeal grilled snack wrap, grape tomatoes and pop-top water.

The Panel noted that it had received advice from the independent arbiter confirming that the meal met the requirements of the QSRI.

Based on the advertiser’s response Ad Standards sought the advice of the Independent Arbiter appointed under the terms of the initiative to provide advice in regard to a product’s compliance with the relevant nutritional criteria. The advertiser provided the relevant nutritional information and in this case the Arbiter advised that:



“the Happy Meal featured in the App, which consisted of a Grilled Wholemeal Snack Wrap, grape tomatoes and water falls within the QSRI Nutrition Criteria, and the App is therefore not in breach of the QSRI.”

Based on this assessment of the advertised product by the independent arbiter, the Panel determined that the advertisement meets the requirements of part (a) of Section 4.1 of the QSRI.

The Panel considered part (i) of the second requirement (b) of Schedule 1.1.

The Panel noted the complainant’s concern that many of the games in the advertisement do not feature food, and that those that do encourage children to play with their food and that the advertisement does not include messaging encouraging children to eat a healthy diet.

The Panel noted that in case 0545-18, it had considered that:

“The Panel noted that the advertisement depicts food items at various points of the game, such as when a screen is loading a carrot, apple or glass of milk is shown as the loading bar. The Panel also noted that some aspects of the game include food items as part of the game. An example of this is a game where players can dress up the main character in costumes, one of which includes bananas as shoes. Another example is a game where players can have the main character kick a ball shaped item in the air, with one option being a tomato.

The Panel considered that the only food items depicted in the advertisement would be considered by most members of the community to be good dietary choices.”

In the current advertisement the loading screens depicted before each game include apple slices, pineapple slices and carrot sticks. The Panel considered that these healthier options are shown in a positive, fun way. The Panel considered that the entire advertisement only featured foods which most members of the community would consider to be good dietary choices. The Panel considered that the game encouraged children to associate the healthier foods with fun and excitement and that this did constitute messaging encouraging good dietary habits.

The Panel considered part (ii) of the second requirement (b) of Schedule 1.1.

The Panel noted the complainant’s concern that tiny print hidden on a colourful screen is not sufficient messaging to encourage children to engage in physical activity.

The Panel noted that in its previous determination of case 0545-18, it found that:

“The Panel considered that at various points of the game, most notably when a new game is loading, there is a message on the screen stating “Balance your play with physical activity everyday”. The Panel noted that the main home screen of the game features the main character in an outdoor setting. The Panel noted that some games



feature the main character in physical activity, for example when a player makes the character kick a ball in the air. The Panel considered that the advertisement does feature physical activity and encourages children to have physical activity every day, and that this meets the requirement of part (ii) of the second requirement (b) of Schedule 1.1.”

In the current advertisement the Panel considered that the message ‘balance your play with physical activity everyday’ still appeared on every loading screen. In addition to this other games such as having the character kicking a ball also featured physical activity. The Panel also noted that one section of the app featured activities for children to undertake outside of the app, such as building a greenhouse. The Panel considered that all of these elements combined did constitute messaging encouraging physical activity.

The Panel considered that the advertisement does feature physical activity and encourages children to have physical activity every day, and that this meets the requirement of part (ii) of the second requirement (b) of Schedule 1.1

Finding that the advertisement did not breach of Schedule 1.1 the Panel determined that the advertisement did not breach Schedule 1.3 of the QSR Initiative.

The Panel 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 Panel considered that the advertisement is directed primarily to Children.

The Panel considered Section 2.7(b) of the Children’s Code which provides: “Advertising or Marketing Communications to Children must not contain an appeal to children to urge their parents, carers of another person to buy a Product for them.”

The Panel specifically considered the complainant’s concern that the advertisement includes call to action for children to “Scan Your Toy” and that this presumably refers to a Happy Meal toy, and that therefore this encourages children to pester their parents to buy Happy Meals.

The Panel noted the advertiser’s response that the information for parents which is included on how to use the augmented reality feature safely, includes an option to unlock the feature without a Happy Meal box.



The Panel considered that the ‘scan your smile’ is a small part of the overall app, and is not required to access most of the games and content. Further, the Panel noted that this feature can be unlocked without the purchase of a product. The Panel considered that there is no messaging or wording in the apps which contained an appeal to children to urge parents to buy a product. The Panel considered that the advertisement did not breach section 2.7(b) of the Code.

For the reasons outlined above, the Panel considered that the advertisement did not breach Section 3.5 of the Food Code, which states “Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child’s welfare to buy particular Children’s Food or Beverage Products for them”.

Finding that the advertisement did not breach the QSR Initiative, the Children’s Code or the Food Code the Panel dismissed the complaint.

INDEPENDENT REVIEWER’S RECOMMENDATION

Background

The advertisement is a game application called Happy Studio App for McDonalds. It is available for downloading to a mobile device. The game is a free online platform designed to encourage parents to play creatively with their children, the games having been designed with input from child development experts to achieve learning objectives as well as share fun, nutritious and well-being messages for children. The Product involved as a meal comprising a wholemeal grilled snack wrap, grape tomatoes and pop-top water. The advertisement included an invitation for children to ‘Scan Your Toy’, referring to a Happy Meal toy.

Summary of Complaint

The following is a summary of the initial complaint from the Obesity Policy Coalition (OPC):

- the advertisement breaches the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI) clause 1.1 and section 1.3 as an advertisement primarily directed to children it promoted McDonald’s Happy Meals which do not represent a healthier dietary choice consistent with QSRI’s Nutrition Criteria and do not sufficiently encourage good dietary habits or physical activity.

RELEVANT CODES, PRACTICE NOTES AND AANA INITIATIVES

AANA Code for Food and Beverages Advertising and Marketing Communications Code (Children’s Code)

Section 1 DEFINITIONS

Advertising or Marketing Communication means:



- a. Any material which is published or broadcast using any Medium or any activity which is undertaken by, or on behalf of an advertiser or marketer:
- Over which the advertiser or marketer has a reasonable degree of control, and
 - That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct. ...

Advertising or Marketing Communication to Children means Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. See also the Practice Note for 'directed primarily to children'.

Children means person 14 years old or younger and Child means a person 14 years old or younger.

Medium means any medium whatsoever, including without limitation cinema, internet, outdoor media, print, radio, television, telecommunications, or other direct-to-consumer media include new and emerging technologies.

Product means goods, services and /or facilities which are targeted toward and have principal appeal to children.

Section 2.7(b) Advertising or Marketing Communication to Children:

(a) ...

(b) must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them;

AANA Food and Beverages Advertising Code (Food Code)

Section 3.5 Advertising or Marketing Communication to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them.

Quick Service Restaurant Initiative (QSRI)

Schedule 1 Core Principles and Marketing Messaging

S1.1 Advertising and Marketing Communications to Children for food and/or beverage must:

- (a) Represent healthier dietary choices, as determined by 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. ...*

Use of Products in Interactive Games

S1.3 Signatories must ensure that any interactive game directed primarily to Children which includes the Signatory's food and/or beverage products is consistent with S1.1.

The Nutrition Criteria are set out in Schedule 2.

There is no question that McDonald's is a signatory to the QSRI Initiative and, that in that context, the company has developed an Action Plan for advertising and marketing with respect to children under the age of 14 years.

PANEL'S FINDINGS

- That the provisions of the QSRI apply to this marketing communication;
- That the theme of the App (games and activities for children), the visuals (bright colours and characters) and language (simple directions on how to play the game) mean the communication is directed primarily to children: Children's Code section 1 definitions and accompanying Practice Note;
- That the product being promoted was a McDonald's Happy Meal, noting the product was not depicted in most depictions of the characters in the game but is shown in the opening frame;
- The independent arbiter from the Allied Health & Human Performance area of the University of South Australia confirmed that the meal met the requirements of the QSRI Sch 1, S1.1(a).
- That most members of the community would consider the food and beverage depicted involved good dietary choices: QSRI Sch 1, S1.1(b)(i).
- That the advertisement does feature physical activity and encourages children to have physical activity every day, and this meets QSRI Sch 1, S1.1(b)(ii).
- Consequently, the advertisement did not breach QSRI Sch 1, S1.1 and S1.3.
- That the advertisement invited children to 'Scan Your Toy', namely a Happy Meal toy, but that this was part of an augmented reality feature which could be unlocked without buying a Happy Meal box and there was no messaging or wording in the app which contained an appeal to children to urge parents to buy Happy Meals, so this did not breach Food Code section 2.7(b).
- Accordingly, the advertisement did not breach section 3.5 of the Food Code.
- Overall, this meant the advertisement did not breach the QSRI, the Children's Code or the Food Code.

ADVERTISER'S RESPONSES TO COMPLAINT

- McDonald's takes marketing to children seriously and took great care to design the App as a free, online platform designed to inspire moments of



closeness for families by allowing children and their parents to play together creatively, imaginatively and socially;

- The concerns raised in the complain are generalist comments which do not reflect the intention nor the actual content of the App;
- The food and beverage shown in the App satisfy the QSRI nutrition criteria: QSRI Sch 1.1(a);
- Case 0545/18 found that *'an interactive game does not necessarily have to show the healthier choice option on every occasion that a Happy Meal box is shown'*;
- The App does not feature any food other than the balanced side options offered at McDonald's and other fruit and vegetables that kids can interact with in a fun way. The use of a children-loved character to interact with fruit and vegetables creates interest in those food items which are good dietary choices and encourages good dietary habits: QSRI Sch 1.1(b)(i);
- At various points in the game the message 'Balance your play with physical activity everyday' is shown and the Happy character is seen in outdoor settings participating in physical activities which children are encouraged to emulate, thus meeting QSRI Sch 1 s1.1(b)(ii);
- Children do not require the purchase of the Happy Meal in order to participate in the App to its fullest potential;
 - Parents can unlock this experience without purchasing a Happy Meal;
 - No language in the App pressures children to purchase a Happy Meal;
 - The App does not undermine parental authority as parental authority is a critical part of accessing the App;
 - Accordingly, the App does not breach the Children's Code section 2.7(b), nor Food Code clause 3.5.

ADVERTISER'S RESPONSE TO REQUESTS FOR REVIEW

There is no substantial flaw in the Panel's decision for two reasons:

- The complainant's request for review is essentially a request to review the nutritional criteria of all Happy Meals, rather than confining it to the nutritional criteria of the App the subject of the complaint;
- The Panel correctly followed its own previous decision in case 0545/18 relating to an advertisement for a Happy Meal which was found to depict only a healthier choice product, and that there is no requirement for each image of the Happy Meal Box to be accompanied by a picture of the healthier choice meal.

ROLE OF REVIEWER



The Independent Reviewer first considers whether the application for review sets out a prima facie case for review and decides whether to accept or not accept the request. That decision depends on whether the complaint meets any of the required but limited grounds for review, namely:

- *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.*
- *Where there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).*
- *Where there was a substantial flaw in the process by which the determination was made.*

The complainant relies exclusively on the 'substantial flaw' ground.

I accepted the claim because the claim was the second occasion on which the OPC had argued that there was a substantial flaw in a complaint involving Happy Meals. That suggested there may be an ambiguity in the advertisement or in the criteria in the relevant Codes which needed to be addressed.

REASONS OF REVIEWER

No objection was taken by the complainant to the following findings of the Panel:

- that the advertisement came within the terms of the Code,
 - being an 'advertising or marketing communication' by McDonald's;
 - using any Medium, namely, an App which is a new and emerging technology;
 - being an advertising or marketing communication directed primarily to children through its themes, visuals and language;
 - relating to an App which can be downloaded online and is accordingly a product; and
 - directly advertised a food product namely, Happy Meals.

The acceptance of these pre-requisites for the complaint to come under the Codes, the Practice Noes and the Initiatives was appropriate.

It is also notable that McDonald's has signed up to the QSR Initiative and has produced an *Action Plan* for advertising and marketing with respect to children under the age of 14 years.

QSRI Sch 1.1 – the advertising or marketing communications to children must represent healthier dietary choices as determined by the Nutrition Criteria in Sch 2.



The complainant submitted that the App ‘is an advertisement for all Happy Meals and not just the Happy Meal fleetingly depicted when the game is launched’. In other words, the Happy Meal depicted is a subliminal image for all Happy Meals.

Citing the previous Panel determination in Case 0545/18 that ‘Happy Meals are not all healthier dietary choices and as such should not be advertised to children’, the complainant’s view was that the advertisement breached QSRI Sch 1.1(a) and Sch 2.

The Independent Arbiter has reported that the Happy Meal depicted in the advertisement did not breach the Nutritional Criteria listed in QSRI Sch 2. That finding is sufficient for the reviewer to conclude that there is no substantial flaw in the Panel’s finding that the Happy Meal shown in the App represents ‘healthier dietary choices, as determined by the Nutrition Criteria’: Sch 1, S1.1(a).

The more contentious and central issue for this review is whether the Happy Meal depicted should be seen as representing ‘all Happy Meals’ as the complainant submits’ or is confined to the Happy Meal shown. The substance of that submission is that the image of a McDonald’s Happy Meal is likely to be seen by children as referring to all Happy Meals, a not unreasonable supposition. It is for that reason that the comment of the Panel cited by the complainant from Case 0545/18 may well have force.

At the same time, it is not possible to know whether other Happy Meals comply with the Nutrition Criteria precisely because they are not depicted and their composition is not known. It is only those depictions which show the composition of the Happy Meal which can be assessed against the Nutrition Criteria. For that reason, in Case 0545/18 the Panel concluded that it was only the depiction in the advertisement under review that could be assessed as the evidence in that Case supported the fact that the advertisement did not breach the Nutrition Criteria in QSRI Sch 1, S1.1(a).

That same conclusion must be reached in relation to the Happy Meal shown in this instance. Whatever, the composition of other Happy Meals, since it is only the ingredients of the Happy Meal depicted in the App which can be and has been evaluated. As the assessment is that the food and beverage of the Happy Meal shown met the terms of the Nutrition Criteria, there is no substantial flaw in the finding of the Panel that the Happy Meal in the App involves ‘healthier dietary choices’: Sch 1, s1.1(b)(i).

QSRI Sch1, S1.1(b)(i) and (ii) – the advertising and marketing communications to children must be ‘designed to appeal to children through messaging that encourages good dietary habits, and physical activity

The complainant’s view is that ‘the app does not sufficiently promote good dietary habits’ as:

- ‘six out of the eight games do not feature food... at all’;



- the two games in which there is a food element, the Happy Meal character wears bananas as shoes or kicks a tomato;
- Such a depiction ‘does not demonstrate to children that it is important that they eat those healthy foods, rather encourages children to play with their food’;
- The character ‘is never shown eating healthy food, rather the food is part of the visual entertainment’; and
- These features of the App are ‘not sufficient to meet the requirements of the QSRI’.

The Panel’s findings are that most members of the community would consider that the food and beverages depicted, being water, tomatoes and wholemeal grilled snack wrap involve good dietary choices (Sch 1, S1.1(b)(i)), and that the advertisement does feature physical activity and encourages children to have physical activity every day: Sch1, s1.1(b)(ii). These findings reflect the submissions of McDonald’s.

Whether a ‘choice’ of healthier food leads to a ‘habit’ of eating healthier food was not assessed by the Panel. A habit is a practice that occurs over time. The process does not occur overnight. It has to be sustained to be regarded as a habit. McDonald’s has not provided any longitudinal study of children under 14 who have experienced the App and have adopted healthier eating habits. Nor could it do so. The use of the App is a new technology and there can be no such evidence at this point in time.

Nonetheless, it is human nature that free adoption of good habits is generally associated with pleasurable outcomes. These outcomes are an incentive to reproduce the experience and hence is more likely to lead to reproduction of the outcome, leading to development of a habit.

The Happy character in the App uses food in a fun way - wearing or kicking it – which would appeal to young children. In addition, the games are intended to involve parents with their children – again such interaction is a source of pleasurable memories for children. As a result they are more likely to associate such foods with fun and good times, thus providing an incentive for good dietary habits. Certainly, the items of food are healthy and eating the meal in the Happy App is likely to lead to better eating habits than advertisements showing fried and other fatty foods. For these reasons, despite the absence of evidence about habitual conduct, I find that there is no substantial flaw in the Panel’s findings: Sch 1, S1.1(b)(i).

The next issue is whether the messaging encourages physical activity: Sch 1, S1.1(b)(ii). The frontispiece advertisement which shows the Happy Meal under consideration also contains the message ‘Balance your play with physical activity everyday’. Just as the Panel has found that every frame does not need to show the Happy Meal, so the message does not need replication. The message is situated in a logical place – beneath the picture of the Happy Meal.

The games in the App – kicking tomatoes and wearing bananas when being active also encourage active participation. The naughtiness of this normally impermissible



behaviour would again appeal to young children – often taught not to play with their food – and encourage activity which is not uncommon in playgrounds. For these reasons, I find there is no substantial flaw in the advertisement because it sufficiently encourages physical activity: Scn1, S1.1(b)(ii). That means the advertisement meets the obligations imposed on signatories, like McDonald’s, of QSRI: Sch 1, S1.3.

Finally, there is the issue of whether the advertisement includes an appeal to children to urge parents or other responsible adults to buy the Happy Meal: Children’s Code section 2.7(b); Food Code section 3.5. As the complainant notes, McDonald’s acknowledges with its message ‘Hey kids, this is advertising’ on the first frame which depicts the Happy Meal, that the App does contain an advertisement presented in a manner which is appealing to children.

Nonetheless, as the Panel found, the invitation to participating children to ‘Scan Your Toy’ refers to a Happy Meal toy which is part of an augmented reality feature which could be unlocked without buying a Happy Meal, and there was no messaging to children encouraging them to urge adults to buy a Happy Meal.

The terms of the Codes under consideration use the terms ‘appeal’ and ‘urge’. ‘Appeal’ can be both a verb and a noun. The usage in the relevant Codes could be ambiguous. In my opinion, in the context of ‘urge’ it is its active sense which is intended. The online App is certainly alerting children to McDonald’s as a source of Happy Meals. The advertisement does encourage children’s subliminal awareness of, and interest in having, a Happy Meal. However, there is no actual voiceover or wording which actively encourages children to pester their parents for a Happy Meal. The meal is pictured only on the introductory advertisement which contains no such wording. In these circumstances and given the ambiguity, I can find no substantial flaw in the Panel’s reasoning and finding on this aspect of the complaint: Food Code section 3.5; Children’s Code section 2.7(b).

CONCLUSION

The Panel’s (and the reviewer’s) role is to view the advertisement. It is the advertisement which must meet the terms of the relevant Codes, Practice Notes, and Initiatives, the subject of AdStandards’ regulatory regime. I find no substantial flaw in the Panel’s findings in relation to the advertisement appearing in the App under consideration.