



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0221/12</b>
<b>2</b>	<b>Advertiser</b>	<b>McDonald's Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/06/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Personality/Characters - QSR - 4.2 - Personalities/Characters  
Advertising to Children Code - 2.15 Food and beverages  
Advertising Message - QSR - 4.1 - Advertising and Marketing Message

### DESCRIPTION OF THE ADVERTISEMENT

Happy Meal Website - [www.happymeal.com.au](http://www.happymeal.com.au) The homepage includes images of zoobles and bright coloured animations and things to win.

### THE COMPLAINT

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

*We wish to complain about the latest content of the McDonalds Happy Meal website (<http://www.happymeal.com.au>) which has changed since 2011 and believe it is in breach of the AANA Code for Advertising and Marketing Communications to Children (AANA Children's Code) and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR II).*

*The website & prior complaints*

*We note that a similar complaint was made in 2011 (reference number 0103/11) regarding the Happy Meal website. However the content of the website has altered since the complaint and the changes are contradictory to advice given by the ASB hence reinvestigation by the ASB is warranted.*

*In the boards' determination and case report for this prior case "The board cautioned that advertiser owned microsites directed to children must clearly avoid any reference to*

*particular products and minimise organisational promotion in order for the website as a whole NOT to be considered as an advertising and marketing communication”.*

*The website previously only contained “one substantive reference to McDonalds or Happy Meals in the form of the Happy Meal logo” (ASB case report 0103/11). We believe that the current website should be considered as an advertising and marketing communication as it now includes an image of the Happy Meal red box with the “golden arches” handle as the main background for the webpage and in fact remains on all links clicked on through this website. That image clearly establishes this site as an advertisement for a happy meal and would certainly reinforce the image of a happy meal box in the mind of any child spending time on this site playing games etc. In addition cartoon characters Ronald McDonald (in the balloon) Grimace (advertising “join” or log in” and Birdie the Early Bird (advertising the tray mat competition) are now featured on the main page of the website. Clearly a strong association between the website and Happy Meals as a McDonald’s product is being created by the content of the website. Given this additional website content the board should consider the website to be marketing to children and hence the QSR II and AANA Children’s Code now apply.*

*The website continues to contain themes visuals and language that are directed primarily to children. This includes the use of games animations and references to popular children’s toys which are currently sold with Happy Meals.*

#### *QSR II breaches*

*We believe the website is in breach of clause 4.1 of the (QSR II). The Happy Meal promoted by the website does not represent a Healthier Choice as several types of Happy Meal are available with many of these not meeting the QSRI nutrition criteria. For example a happy meal consisting of cheeseburger small fries and small chocolate shake contains 3550kJ 12.4g of saturated fat 45.9g of sugar and 1243mg of sodium. These energy and sodium contents are above those set out in the QSRI nutrition criteria. Saturated fat and sugar contents are also unsuitably high however as the QSRI criteria utilise grams per 100kJ the large kJ content results in the meal being below these two criteria. This is a significant flaw in the QSR II nutrition criteria. Nevertheless the sodium and energy contents exceed the criteria and hence the website promotes a product that is in breach of clause 4.1 of the QSR II. Clause 4.1 of the QSR II additionally states that physical activity as well as healthy dietary choices are to be promoted. We note that as well as advertising unhealthy foods the website does not promote physical activity of any kind.*

*The website also breaches clause 4.2 of the QSR II which states that popular personalities or licensed characters must not be used in marketing communications to children which promote food or beverage products. The website currently (May 2012) promotes My Little Pony and Transformers Prime toys as they are available with Happy Meals. The website also includes reference to the toys which are to be sold with Happy Meals next month being Zoobles and Pokemon Black & White. These characters are popular children’s animated characters and their use is a breach of clause 4.2 of the QSR II.*

#### *AANA Children’s Code*

*The website breaches clause 2.15a of the Children’s Code that; “Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits”. As stated above the website promotes various versions of the Happy Meal with any combination of main (chicken wrap or cheeseburger) side (fries or apple slices) and drink (various soft drinks juice or milkshakes). Many of these combinations represent an unhealthy dietary choice. For example a happy meal consisting of cheeseburger small fries and small chocolate shake contains 3550kJ 12.4g of saturated fat 45.9g of sugar and 1243mg of sodium.*

*The Dietary Guidelines for Children and Adolescents in Australia advise to “limit saturated fat and moderate total fat intake” “consume only moderate amounts of sugars and foods containing added sugars” and “choose foods low in salt”. The high saturated fat sugar and sodium contents of Happy Meals illustrates that they are not a healthy dietary choice. As stated earlier the energy and sodium contents are in breach of the QSR II nutrition criteria. Due to the fact that various Happy Meals which do not represent a healthy dietary choice are promoted by the Happy Meal website the website is in breach of clause 2.15a of the AANA Children’s code.*

## **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 and thank the Advertising Standards Bureau (ASB) for the opportunity to make submissions.*

*We do not consider that the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Code) or the AANA Code for Advertising and Marketing Communications to Children (AANA Children’s Code) apply to the Happy Meal Website (Website) and further submit that if the ASB were to find that the QSR Code or AANA Children’s Code (together Codes) did apply to the Website, that the Website would not be in breach of the Codes.*

*We encourage the ASB to refer to the findings of the independent review in complaint number 0103 of 2011 (Previous Complaint) which we submit related to similar subject matter to the Complaint. This fact has also been confirmed by the complainant in the Complaint.*

*The website address is [www.happymeal.com.au](http://www.happymeal.com.au).*

### *Characterisation of Website*

*We confirm our view which has been put to the ASB on previous occasions, that the Website is not correctly characterised as “advertising and marketing communications” but is in fact a product itself. The Website is not for the promotion of food or beverages, but is an extension of the Happy Meal product and brand. Accordingly, the Codes do not apply.*

*The complainant claims that the Complaint is distinguished from the Previous Complaint as a result of a change in the content of the Website. We agree that changes have been made to the content of the Website. The Website like any other website is constantly updated to provide new and interesting content. However, we do not agree that the changes to the Website, for example, the inclusion of the stylised red Happy Meal box background, are substantial enough to result in any change to the characterisation of the Website as a product. We also note the inclusion of more than one reference to McDonald’s or to Happy Meal on the Website does not alter the characterisation of the Website rendering it “advertising and marketing communications.” This point is inferred from the following statement of the independent review of the Previous Complaint:*

*“I make this finding having regard to the comprehensive submission made by the complainant and recognising that the Board arguably erred in noting that the website contains only one substantive reference (apart from the website address) to McDonald’s or to Happy Meal/s.”*

*The independent review confirmed the ASB board’s earlier decision after recognising that there was more than once reference to McDonald’s/Happy Meals on the Website.*

*Accordingly, while the number of references may be a relevant consideration, the addition of one or more references or the alteration of those references does not necessarily lead to a change in characterisation of the Website as a whole.*

*Further, we submit that the Website changes are not contradictory to prior advice of the ASB and that the Website does not as a whole reference or promote particular products.*

#### *Codes Compliance*

*It is our view that the Complaint does not raise arguments which distinguish it from the Previous Complaint and therefore the Complaint does not support a different finding by the ASB from the Previous Complaint.*

*However, if the ASB were to form a view contrary to that in the Previous Complaint, we would submit that the Website complies with the Codes in any case. With reference to the relevant sections of the Codes referred to in the Complaint, we note as follows:*

*- QSR Code 4.1 - The Website does represent healthier choices and a healthier lifestyle. The complainant states that "...the website does no promote physical activity of any kind." This statement is incorrect. We note that there are mini tutorials on the Website on tennis and basketball technique which strongly encourage active play.*

*- QSR Code 4.2 - The use of licensed characters on the Website is not used to promote non complying food and beverage products. Further, the Website does not advertise or promote food or beverage that does not meet the nutrition criteria and there is accordingly no limitation on the way in which licensed characters can be used on the Website.*

*- AANA Children's Code Clause 2.15(a) – As noted immediately above, the Website does not encourage or promote an inactive lifestyle or unhealthy eating or drinking habits and in fact, the Website includes content which encourages a healthy lifestyle through active play.*

#### *Conclusion*

*As found in the independent review of the Previous Complaint, the threshold issue is "whether this website is an advertising or marketing communication as defined in the Codes."*

*The Board's view in the Previous Complaint was that "The Board considered that this website does not promote the organisation (McDonald's) of the Happy Meal product or actively encourage children to buy the product."*

*We support the ASB's view set out in the Previous Complaint that the Codes do not apply to the Website and accordingly the complaint should be dismissed.*

*However, if the ASB were to form the view that the Codes did apply, we submit that the Website does not breach the Codes and the complaint should be dismissed.*

*We thank the ASB for providing us the opportunity to respond to the Complaint and look forward to learning the outcome. McDonald's takes its responsibilities under the Codes seriously and is committed to ensuring compliance.*

## **THE DETERMINATION**

The Advertising Standards Board ('the Board') considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the 'QSR Initiative') and the AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code') and the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food and Beverages Code').

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

The Board noted the complainant's concern that the advertisement is directed to children and does not represent a healthier choice according to the QSR Initiative nutrition criteria and that it features licensed characters in contravention of the QSR Initiative. The Complainant also asserts that the advertisement breaches the AANA Children's Code by advertising unhealthy dietary choices.

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.'

The Board noted that both the complainant and the advertiser referred to a previous decision of the Board (0103/11) in which the Board determined that the Happy Meal website was not an advertising or marketing communication.

The Board noted that in 0103/11 the Board commented 'The Board determined that the website does not of itself constitute an advertisement or advertising communication as it is not drawing the attention of children to Happy Meals in a manner calculated to promote Happy Meals. However the Board cautioned that advertiser owned micro sites directed to children must clearly avoid any reference to particular products and minimize organizational promotion in order for the website as a whole NOT to be considered an advertising or marketing communication. ...'

The Board considered the definition of advertising or marketing communication. Under the QSR Initiative 'advertising or marketing communications means any matter generated by a participant which is published or broadcast using any medium for payment or other valuable consideration and which draws the attention of the public or a segment to it, to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person organization or line of conduct...'

The Board noted that the ASB's advice is that micro sites are matter generated by, in this case, a participant, and are published for payment or other valuable consideration. The Board then considered whether the micro site could be considered to draw the attention of a segment of

the public to a product in a manner calculated to promote or oppose directly or indirectly that product.

The Board considered the micro site. It noted that the image of a hot air balloon with the logo “Happy Meal [www.happymeal.com.au](http://www.happymeal.com.au)” is prominent on the screen at all times. The Board noted that each of the Games commences with a depiction of the same HappyMeal logo on the game screen. The Board noted that each Toy page includes the statement ‘one toy per HappyMeal’, in the case of the Pokémon toy a statement ‘Every Pokémon Happy Meal toy comes with...’, in the case of the Ice Age toys the statement ‘one toy per HappyMeal’, that the Activity pages include similar statements, with each Paper Art downloadable kit being headed with the HappyMeal logo and the Robot selector including the HappyMeal logo at all stages. The Board also noted that the website includes functionality to enable a child to become a member and that the registration or log in page invites children to ‘customise your HappyMeal experience. Parents can join up too.’

The Board also noted the advertiser’s argument that the micro site is ‘not for the promotion of food or beverages, but is an extension of the HappyMeal product and brand.’ The Board strongly disagreed with this argument – noting that the HappyMeal product is, as known and purchased throughout Australia comprised of various food items, a beverage and a toy. The Board noted that the product has evolved in recent years to give consumers a choice of food and beverage products but that the essential characteristic of the product itself has not changed. The Board determined that the micro site is not an ‘extension’ of that product and is not part of that product.

The Board noted the importance of consistency in decision making in order to provide certainty to advertisers and the community but also noted the importance of properly applying community standards to the industry codes and initiatives it has been asked to adjudicate on.

In the Board’s view the HappyMeal website makes significant reference to a product ‘HappyMeal’ throughout all pages and stages of the website. In the Board’s view it has no choice other than to conclude that the micro site draws the attention of visitors to that site to the McDonald’s product ‘HappyMeal’ and, in the Board’s view, the attention drawing nature of the website is intended either directly or indirectly to promote HappyMeals. The Board therefore determined that the micro site is an advertising or marketing communication for a product HappyMeals.

The Board then considered whether the micro site is an advertising or marketing communication to children under 14 years of age.

The Board considered that the visuals, language and theme of this advertisement create an overall impact of this advertisement that is directed primarily to children. The Board considered that the website has components that are directed to adults such as party bookings but that the overall website is directed primarily at children and is for a food product.

The Board considered therefore that the QSR Initiative applied to this micro site. Having determined that the QSR Initiative applied to this micro site the Board had to consider Article 4.1 of the QSR which states:

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

- (a) Represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children’s meals, and/or
- (b) Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
  - (i) Healthier choices, as determined by a defined set of Nutrition Criteria for assessing children’s meals
  - (ii) Physical activity”

The first issue for consideration is whether the product promoted represents healthier choices. The Board noted that the micro site does not depict or mention any specific HappyMeal – other than in the Birthday Party menu part of the website. The Board noted that the advertiser has purposely not depicted any images of the food or beverage components of the Happy Meal and has presumably done this in a genuine endeavour to reduce the impact on children of exposure to the food or beverage product.

Regardless of the advertiser’s good intention however, the Board determined that, consistent with previous decisions, (Hungry Jacks 428/10, McDonald’s 523/10) the promotion of a ‘happy meal’ in general terms is the promotion of ALL happy meals. The Board noted that the advertiser is required by their initiative to only show food and beverages that represent healthier choices to children. In the Board’s view, the lack of depiction of the healthier choice HappyMeal is a breach of 4.1(a) of the QSR Initiative. The Board considered that this breach would be remedied by the inclusion in a prominent position on the website of the HappyMeal products which meet the defined Nutrition criteria for assessing children’s meals.

The Board determined that as the advertisement does not meet the requirements for 4.1 (a) the requirements of 4.1 (b) do not need to be considered.

The Board then noted the complainant’s assertion that Article 4.2 of the QSR prohibits the use of licensed characters in advertising which promotes food or beverage products. The Board noted that the complainant has misstated the requirement of the QSR Initiative.

Article 4.2 of the QSR Initiative states, “Popular personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications complies with the messaging options set out in Article 4.1 and the specific requirements of Section 22 (Promotions and Endorsements by Program Characters) of the Children’s Television Standards 2005.” The Board noted that Section 22 of the CTS does not apply as this is an internet advertisement.

The Board noted that the use of licensed characters is allowed on micro sites provided that the product advertised meets the requirements of 4.1 i.e.: represents a healthier choice and has the appropriate reference to healthier choices and physical activity. In the case of this micro site, having already determined that the micro site breaches 4.1 (by promoting all HappyMeals not just the healthier choice HappyMeal) the Board agreed that the microsite's depiction of the various licensed characters is a breach of 4.2 of the Initiative.

For the same reason the Board determined that the Interactive Games on the micro site which featured licensed characters also breached 4.4 of the Initiative.

The Board determined that the advertisement breached articles 4.1, 4.2 and 4.4 of the QSR Initiative.

The Board noted that its interpretation of the QSR Initiative, as articulated in this case and in previous decisions, provides very significant limits upon the ability of an advertiser to undertake advertising directed primarily to children. In the Board's view its interpretation is consistent with the objective wording and intent of the QSR Initiative but acknowledges that this interpretation may lead to results that are more limiting than was initially intended by signatories.

The Board 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 and Beverages Code), the advertisement must be "having regard to the theme, visuals and language used [...] be directed primarily to children and are for product."

The Board first considered whether the advertisement is directed primarily to children. The Board noted the practice note for the Food and Beverages Code which requires that "in its determination of whether any advertising or marketing communication is directed toward children, the Board will apply the same criteria as used in considering complaints under the [Children's Code]. The Board will consider the advertisers stated intent but will also make an evaluation based on its own review of the advertising or marketing communication material and the product being promoted."

The Board noted that the dictionary definition of "primarily" is "in the first place" and that to be within the Children's Code the Board must find that the advertisement is aimed in the first instance at children. The Board considered the theme of the website, the visuals and the language and considered that the advertisement was primarily directed to children but acknowledged that young children would likely be assisted in reaching the website and, particularly in the parts of the micro site which refers to children's parties, would be likely to be under adult supervision.

The Board then considered whether the product is 'a good that is targeted to and of principal appeal to children' as required by the Children's Code. The Board considered that a Happy



Meal, while able to be enjoyed by all ages, is of principal appeal to children. The Board determined that the product is a product of “principal appeal to children”.

As the advertisement is directed primarily to children and is for product, the Board considered that the Children’s Code and Part 2 and Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) do apply to this marketing communication.

The Board considered whether the website complied with section 2.15(a) of the Children’s Code which states that “Advertising or marketing communications to children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits”.

The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, encouraging or promoting an inactive lifestyle or unhealthy eating habits. The Board considered that there was nothing in this particular marketing communication that would be considered by reasonable people to be a depiction of an inactive lifestyle or unhealthy eating habits.

The Board determined that the advertisement did not breach Section 2.15(a) of the Children’s Code.

The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board noted section 2.1 of the Food Code which provides that: 'advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...'

The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, something which is contrary to prevailing community standards.

The Board noted section 2.2 which states: “the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.”

As discussed above, the Board considered that the advertising or promotion of a Happy Meal product is not inconsistent with or undermining of a balanced diet or healthy lifestyles and determined that the advertisement did not breach the AANA Food Code or Children’s Code.

Finding that the advertisement breached the QSR, the Board upheld the complaint

## **ADVERTISER RESPONSE TO DETERMINATION**

McDonald's thanks the ASB for the opportunity to provide comments in response to the Case Report for complaint number 0221 of 2012.

While McDonald's view remains that the QSR Code and the AANA Children's Code do not apply to the Happy Meal website in its current form, McDonald's supports the intent behind the voluntary advertising codes and is keen to work co-operatively with the ASB in this matter. Accordingly, McDonald's will make the recommended revisions to the Happy Meal website, which satisfy the Nutrition Criteria under the QSR Code.

We trust that the above modification to the Happy Meal website is the only action which the ASB requires McDonald's to take in respect of this matter.