



Case Report

1	Case Number	0236/12
2	Advertiser	Nando's Australia Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	27/06/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.15 Food and beverages

DESCRIPTION OF THE ADVERTISEMENT

Dramatic, blockbuster style music is played throughout the entire advertisement and we see dinosaurs, trucks and cars like some sort of disaster scene from a movie with leaves in the foreground and steam in the background. We then see that the leaves are lettuce in a salad and the steam comes from some chips. We then see the boy who has created these scenes looking at some chicken.

The boy plays with his toys, his dinosaur takes a bite out of a car and his plane flies over the chips. His fork hits the chicken, pulls out a piece and makes the journey to the boy's mouth. He eats the chicken and a voiceover says, "And so, another lifelong Nando's fan is born. Nando's. Eat Interesting"

THE COMPLAINT

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

This is clearly aimed at young children (under-fives) as it mirrors the play that they are likely engaged in at early learning settings childcare or kinder/ preschool.

The use of children's common everyday toys of the dinosaurs is drawing children in to watching this and encouraging them to want unhealthy fast food through associating it with normal healthy play. Dinosaurs are also a common "obsessive" type of toy for young boys especially.

I am unsure why Nando's is allowed to advertise to children where other fast food no longer engages in this.

THE ADVERTISER'S RESPONSE

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

We have considered the complaint and the advertisement in question in light of the provisions of the AANA Code of Ethics ("the Code"), the AANA Code for Advertising & Marketing Communications to Children ("Children's Code") and the AANA Food & Beverages Advertising & Marketing Communications Code ("F&B Code").

We advise that Nando's is not a signatory of either the Australian Quick Service Restaurant Industry Initiative For Responsible Advertising And Marketing To Children, or the Australian Food and Grocery Council Responsible Children's Marketing Initiative. Accordingly, these voluntary codes will not apply to this advertisement.

We note that the nature of the complaint relates specifically to the concern that the advertisement in question is aimed at children, and advertises a fast food product. We have carefully considered the Code, Children's Code, and F&B Code, and have assessed the provisions against the content of this advertisement. We submit that the advertisement does not breach any of these Codes on any of the grounds set out in the same.

Looking at firstly the Children's Code, we note that an "Advertising and Marketing Communication to Children" is defined as advertisements which "having regard to the theme, visuals and language used, are directed primarily to Children and are for Product." In our view, having regard to the theme and visuals of the advertisement, the advertisement is not directed at children. We note that the advertisement does show case a child tasting Nando's chicken for the first time, however, the tone of the advertisement is mature in nature, with a dramatic music score and cinematic direction of toy props, intended as a parody of a thrilling action sequence that would be appreciated by adults, rather than a format that would immediately be attractive to children, such as an innocent, playtime like scenario or a fantasy scenario directed at children.

Additionally, we note that the definition for "Advertising and Marketing Communication to Children" includes a provision that the advertisement must be for "Product", which is defined as "goods, services and/or facilities which are targeted toward and have principal appeal to Children." We note that Nando's chicken is not a product that is primarily targeted towards children, nor is it of principal appeal to children, as it is a product that is enjoyed by consumers of all ages, and is traditionally aimed at a more mature adult market.

Accordingly, in our view the Children's Code does not apply to this advertisement.

We note that the advertisement was classified by CAD with a G rating, and was played only during timeslots appropriate for such a classification. However, we can confirm that despite having the freedom to advertise in any timeslot appropriate for the G rating, the advertisement was, at the election of Nando's, primarily broadcast during programs after 7pm, in programming that does not have a principal appeal to children, such as late night movies, or during programs that have a family audience, such as MasterChef, where any children viewers would most likely be supervised by parents when watching television. Accordingly, the primary audience for this advertisement was not intended to be children.

Having said that, even if the Children's Code did apply to the advertisement, in our view the advertisement does not breach any section of the Children's Code. Specifically, we note that Provision 2.15(a) of the Children's Code is the most relevant here, and states "Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits." We note that the product featured in the advertisement, the "Lemon and Herb Chicken" represents a healthy dietary choice for children. We further note that a garden salad and small serving of chips are present in the advertisement, however, these are not the primary focus of the advertisement and further, we confirm that the combined nutritional value of these items does not represent an unhealthy dietary choice. We further note that the child in the advertisement is not depicted as eating an excessive amount of food, or being lazy or inactive. Conversely, the child is shown to be enthusiastic and energetic, and excited at the prospect of trying a new tasty food. Accordingly, the advertisement does not promote any unhealthy eating or drinking habits, nor does it promote an unhealthy lifestyle and we submit that the advertisement does not breach Provision 2.15(a), or any other provision of the Children's Code.

Looking at the F&B Code, we note that there is some overlap with the above Children's Code in the form of Provision 2.2, which states: "Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as 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." We further note the provisions of Provision 3 of the F&B Code related to advertising and marketing to children, in particular, Provision 3.2 which states "Advertising or Marketing Communications to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s." In our view, the same considerations as outlined above in relation to Provision 2.15(a) of the Children's Code also apply here, and accordingly, and we submit that the advertisement does not breach Provisions 2.2 and 3.2, or any other provisions of the F&B Code.

Finally, we have considered the standard Code, and in our view, there are no provisions that are specifically relevant to this advertisement. Accordingly, we submit that the advertisement is not in breach of any provision of the Code.

If you require any further assistance or information please do not hesitate to contact me.

THE DETERMINATION

The Advertising Standards Board ('the Board') considered whether this advertisement breaches 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 Code').

The Board noted the complainants' concerns that the advertisement does not represent a healthy dietary choice for children and undermines the importance of a healthy, active lifestyle.

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

The Board considered the definition of advertising or marketing communication. Under the Children's Code, advertising and/or marketing communication means "...or (a) matter which is published or broadcast using any Medium in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public or a segment of it to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct"

The Board agreed that the television advertisement would 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 and that the Children's Code did apply.

The Board then considered whether the website is an advertising or marketing communication to children 14 years or younger

The Board considered whether the advertisement is directed primarily to children (14 years or younger). 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 consider the advertiser's 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 advertisement, the visuals and the language and considered that the advertisement was not primarily directed to children but acknowledged that young children would enjoy some of the components of the advertisement particularly the young boy and the adventure he was having with the toy dinosaur and his meal presented before him. The Board agreed that the advertisement would be attractive to children but that the images of the product and the overall theme were directed at adults. The Board considered that the advertisement was therefore not directed primarily at children.

Having determined that the website is not directly primarily to children the Board considered the Children's Code did not apply.

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

The Board then 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 noted that the advertised product is Nando's range of products and that the child is seen to eat a grilled chicken piece, and there are images of salad and hot chips.

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.”

The Board considered that, consistent with previous decisions (Retail Food Group 0229/12, Muffin Break 0233/12), 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 considered the use of the phrase “another lifelong Nandos fan is born” is of mild concern in its insinuation that a child would become devoted to eating a particular style of food for life. The Board considered however that the advertiser was able to use ‘gimicks’ or ‘catch phrases’ to promote their product and reasonable members of the community would not consider this a lifelong contractual arrangement.

The Board did not consider that the advertisement is suggestive that children should be encouraged to consume excessive amounts of takeaway food but rather to see the fun and enjoyment in tasty foods including salads.

The Board considered that the advertising or promotion of a meal in this advertisement does not promote excess consumption in the manner it is depicted in the advertisement and determined that the advertisement did not breach the AANA Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.