



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0239/16</b>
<b>2</b>	<b>Advertiser</b>	<b>McDonald's Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food / Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet-Social-FB</b>
<b>5</b>	<b>Date of Determination</b>	<b>08/06/2016</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

## DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a Facebook post with a still frame of a woman and a child sitting at a table. A Create Your Taste meal is in the foreground of the frame, and a Happy Meal box is in the background. A hand reaches into the frame from the right hand side and removes a single fry from the Create Your Taste meal. The hand motion is repeated until the viewer scrolls away or pauses the video.

## THE COMPLAINT

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

*McDonald's Australia advertisement in breach of the Australian Quick Service Restaurant Industry*

*Initiative for Responsible Advertising and Marketing to Children*

*As you are aware, McDonald's Australia is a signatory to the QSRI, has agreed to be bound by this initiative and has submitted a Company Action Plan to the Australian Food and Grocery Council*

*(AFGC), which is publicly available on the AFGC website.*

*We are of the view that the advertisement breaches Core Principle 1.1 of the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI) and the McDonald's Australia QSRI Company Action Plan (Action Plan).*

### *Overview of Advertisement*

*The advertisement features a young girl and her mother seated at a table, with a Happy Meal in front of the child and a Create Your Taste meal drink in front of the mother. A Create Your Taste burger and basket of fries are depicted in the foreground, and there is an animated hand that repeatedly removes a fry from the basket. The wording of the post states 'Receive a Free Happy*

*Meal for the little ones when you buy any Create Your Taste meal. Just be sure to keep an eye on your fries.'*

### *Breaches of the QSRI*

*We submit that this advertisement breaches Core Principle 1.1 of the QSRI. In our view, this advertisement falls within the jurisdiction of the QSRI in that it is featured on an internet website, the McDonald's Australia Face book page, and therefore is a 'Medium' for the purposes of the QSRI definition of 'Advertising or Marketing Communications'.*

#### *1. Advertising or Marketing Communications directed primarily to children under 14 years*

*The QSRI defines 'Advertising or Marketing Communications to Children' as those which, having regard to the theme, visuals and language used are directed primarily to children. The term 'children' is defined to include persons under 14 years of age.*

*We submit that this advertisement is a communication directed primarily to children under the age of 14 years, having regard to the themes and visuals of the advertisement. This conclusion has been drawn with reference to the following:*

*Nature of the product- The advertisement features a Happy Meal box in addition to a Create Your*

*Taste Meal. A McDonald's Happy Meal is universally acknowledged to be a product that is*

*directed to and of appeal to children under the age of 14 years.*

*Age of actors- The advertisement features a young girl (who is approximately 7-8 years of age) eating what appears to be a chicken nugget. While the advertisement appears to take place within a family setting, the young girl is positioned at the centre of the scene, and is featured more prominently than the adult, who is only partially visible.*

*Storyline/theme- The advertisement's theme of 'stealing a fry' is simple, somewhat juvenile and appeals to a child's sense of play.*

*Visuals- The advertisement includes an animation depicting a hand repeatedly reaching into a basket of fries, which is likely to attract the attention of children in that it is akin to a video game.*

*The advertisement also features the Happy Meal box, which is brightly coloured and likely of visual appeal to children.*

*Use of child's perspective- The wording of the advertisement refers to the stealing of the fries by children. It can therefore be deduced that the advertisement is presented from the perspective of a child, whose hand is seen repeatedly taking fries from the basket.*

## *2. Health and Nutrition*

*As you are aware, Core Principle 1.1, found within Schedule 1 to the QSRI, states that:*

*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 standards; and*
  - ii. Physical activity.*

*The advertisement promotes a Create Your Taste meal which appears to feature a haloumi burger with fries and a drink.*

### *a. Nutrition Criteria*

*The Nutrition Criteria for assessing children's meals is outlined in Schedule 2 to the QSRI. Only meals that meet the Nutrition Criteria can be featured within advertising or marketing communications to children. For a meal to meet the Nutrition Criteria, it must not exceed maximum limits of 2080kJ for a child 4-8 years, 2770kJ for a child 9-13 years, saturated fat (0.4g per 100kJ), sugar (1.8g per 100kJ) and sodium (650mg per serve).*

*The McDonald's Company Action Plan (Action Plan) outlines the means by which McDonald's will meet the requirements of the QSRI, and states that in order for a meal to be a 'healthier choice' according to Schedule 2, the meal should reflect the general principles of healthy eating as defined by credible nutrition authorities and must comply with defined criteria for energy (kilojoules), saturated fat, sugar and sodium.*

*The Create Your Taste haloumi burger meal depicted in this advertisement appears to contain haloumi, tomato, lettuce, red onion, beetroot, tomato chilli jam and herb aioli on a ciabatta bun, with a small fries and an unidentifiable drink (the Meal). In accordance with the Create Your Taste*

*Menu Nutrition Information available on the McDonald's Australia website, this burger would provide 2282kJ and, with a small fries (1070kJ) and a small Coke (428kJ), this meal would provide approximately 4320kJ.*

*We note that the Create Your Taste Menu Nutrition Information does not provide details of the carbohydrate, fat, saturated fat, protein, salt or sugar content of individual ingredients used to make a burger. There is, however, a Create Your Taste 'Haloumi Burger' listed (with all the same ingredients, except no beetroot or red onion), which contains 2820kJ, 19.8g saturated fat, 13.0g of sugar and 1740 g of sodium. As a meal with a small fries and a small Coke, this meal contains 21.4g of saturated fat (0.56g per 100kJ), 38.5g of sugar (0.9g per 100kJ) and 2008mg of sodium (2008mg per serve), well above the Nutrition Criteria for a child as outlined in Schedule 2 of the QSRI.*

#### *b. Healthy Lifestyle*

*We are also of the view that the Meal does not fit within the QSRI criteria of a 'good dietary habits', nor does it reflect the 'general principles of healthy eating as defined by credible nutrition authorities' as required by the Action Plan .*

*Containing approximately 21.4g saturated fat, 38.5g added sugar and 2008mg of sodium, the Meal is inconsistent Guideline 3 of the Australian Dietary Guidelines (relevant scientific or government standards), which states that Australians should limit intake of foods containing saturated fat, added sugar or salt, such as commercial burgers and potato chips (fries).*

*We also note that use of an animated hand repeatedly reaching into the basket of fries is suggestive of overconsumption, or consumption at levels inconsistent with Guideline 3, and is*

*inconsistent with good dietary habits. The Australian Dietary Guidelines clearly state discretionary foods, such as commercial burgers, chips and sugar-sweetened beverages, should only be consumed occasionally and in small amounts for good health.*

*Further, the advertisement does not in any way promote physical activity.*

### *Breaches of the McDonald's Australia Company Action Plan*

#### *a. Premium Offer*

*The Action Plan lists a set of commitments through which McDonald's Australia will meet the Core*

*Principles outlined in the QSRI, including a commitment concerning Premium Offers, which states that:*

*McDonald's commits to not use premium offers in any advertising and marketing communications to children less than 14 years for food and/or beverage unless that advertising or marketing communications represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals.*

*We note the term 'Premium' is defined by the Australian Association of National Advertisers Food and Beverages Advertising & Marketing Communications Code to mean 'anything offered free or at a reduced price and which is conditional upon the purchase of a regular product.'*

*In light of our above submissions that the advertisement does not represent a 'healthier choice' and is 'directed to children', we submit that the Promotion, in which the offer of a free Happy Meal conditional upon the purchase of a Create Your Taste meal, is a 'premium offer' within the regular meaning of this term in an advertising context.*

*In this respect, McDonald's Australia has breached section 5 of the QSRI in that it has failed to comply with the Action Plan relating to use of premium offers in advertising to children.*

#### *b. Availability of Nutrition Information*

*The Action Plan states that McDonald's commits to 'continue to provide nutritional profile information (including ingredients and allergens) o;r[their] website and upon request in [their] restaurants.' As noted above, the Create Your Taste Menu Nutrition Information, as available on the*

*McDonald's Australia website does not include details of the nutritional profile of Create Your Taste burger ingredients. McDonald's Australia has further breached section 5 of the QSRI in this respect.*

*We note that the Create Your Taste menu is designed to enable customers to design their own burgers, and given the unique 'creations' that will result, it is essential that the Create Your Taste*

*Menu Nutrition Information includes details of all nutrients for every item.*

*Determination*

*We submit that this advertisement breaches the QSRI, and request that the Board require the advertiser to remove it from the McDonald's Australia Facebook page immediately. An urgent determination in relation to this advertisement is needed, given that the Create Your Taste/Free*

*Happy Meal campaign is likely to be a non-permanent promotion, and a finding made following cessation of the promotion will be futile.*

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for requesting a response to complaint number 0239/16 (Complaint).*

*The Complaint refers to the "Create Your Taste with free Happy Meal" post on the McDonald's Facebook page, at 10:00 pm on 2 May 2016 (Advertisement).*

*The Complaint is made under section 2 of the AANA Advertiser Code of Ethics (AANA Code), which incorporates the AANA Code for Advertising and Marketing Communications to Children (AANA Children's Code) and the AANA Food and Beverages Marketing and Communications Code (AANA Food Code). The complaint also refers to the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (QSRI Code), to which McDonald's is a signatory (all of the above together, the Codes).*

*The Advertisement does not breach the Codes for the reasons stated below. Primarily, the Advertisement does not breach the Codes because it is not marketing directed at children.*

*Reason 1: The Advertisement is not marketing to children because it is on Facebook.*

*The Advertisement appears on Facebook, and can only be viewed by Facebook users with a Facebook account. The Facebook terms and conditions do not permit children to have an account. As part of the account set-up process, a Facebook user must declare their age. Accordingly, the Advertisement could not be viewed by children unless the child falsely declared their age, and obtained an account in breach of the Facebook terms and conditions. Previous ASB decisions have stated that material on social media is not advertising to children because of Facebook's terms and conditions and policies. Guidance on the ASB website also indicates that Facebook material is not considered advertising or marketing to children.*

*Reason 2: The Advertisement is not marketing to children because it is targeted at adults*

*The products advertised, the colour, tone and language used, all direct the Advertisement to adults, not children. The "you" in the advertisement is the adult, not the child.*

*The Create Your Taste range is focussed on premium ingredients for a more advanced palate. The buns, beef, chicken, vegetables, cheeses and sauces promoted are complex flavours, more suited to adult tastes than children. The Create Your Taste product is sophisticated, with elegant black and white packaging, instead of bright colours which might be more attractive to children. There is a product focus on premium ingredients and premium service, which is an attractive offering to adults, but not children.*

*The text of the post itself is directed at adults, referring to children in the third person. The post says that the free Happy Meal is "for the little ones", and in doing so speaks to the adult about the child, not to the child. The mere presence of the child in the frame does not make the Advertisement appealing to children.*

*The Complaint claims that the Advertisement appeals to a child's sense of play, but the visuals, tone and direction of the conversation is towards adults. The Complaint also states that the motion of the hand is akin to a video game, but this statement does not make sense, as there is no interactive or 'game' element to the motion. The viewer does not receive points, control the hand, or in any other way 'play' with the Advertisement.*

*Reason 3: The Create Your Taste meal is the product, not the Happy Meal*

*The free Happy Meal is an offer that is ancillary to the main Create Your Taste offering. The marketing is directed at adults, particularly parents, who want to try our Create Your Taste meal.*

*Value is the key message in this marketing communication, which is a concept that holds more weight with financially aware adults than children. Parents, who are necessarily adults and not children, are the subject of this Advertisement. They are the ones who receive the financial benefit of the free Happy Meal.*

*The image of the Happy Meal box is in the background, and is slightly blurred. There is a sharp camera focus on the Create Your Taste meal, not the Happy Meal.*

*Reason 4: The Advertisement does not promote unhealthy dietary choices to children*

*Even if the Advertisement were held to be advertising to children, the Advertisement does not encourage children to consume the Create Your Taste meal. The Happy Meal is for children, and is shown only as a box, with a single Chicken McNugget in the child's hand. The hand that reaches into the frame to take a fry is an adult hand, and the Advertisement does not suggest that the child is, or should be, eating the fries.*

*Reason 5: The Happy Meal is not a 'premium' advertised to children*

*While the Happy Meal is offer for free with a Create Your Taste meal, it does not breach section 3 of the AANA Food Code, because the Create Your Taste meal is not marketed to children. Section 3 of the AANA Food Code applies only to marketing to children, and as this is not marketing to children, the section does not apply.*

*Accordingly, the Advertisement complies with section 2 of the AANA Code and the Complaint should be dismissed.*

## **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 'QSRI').

The Board noted the complainant's concern that the advertisement breaches the QSRI.

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

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

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

The Board 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 Board 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 Board considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes “television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.” The Board considered that Facebook is covered by this definition. With regards to points 2 and 3, the Board considered that Facebook is not a Medium that is directed primarily to Children or would attract an audience of greater than 35 per cent of Children as Facebook requires an account holder to be over 13 years. The Board considered that the Medium of Facebook is not a Medium that is directed primarily to Children.

On this basis the Board determined that the advertisement did not meet points 2 or 3 of the QSRI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 per cent or more of the audience of the Medium.

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

The Board noted that the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Board 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 Board noted the complainant’s concern that the advertisement shows a Happy Meal which is a product that is directed to and of appeal to children under the age of 14 years and the advertisement features a young girl (approximately 7-8 years of age) eating what appears to be a chicken nugget.

The Board noted the advertiser’s response that the products advertised, the colour, tone and language used, all direct the advertisement to adults, not children and the text of the post itself is directed at adults, referring to children in the third person, and the mere presence of the child in the frame does not make the advertisement appealing to children.

The Board noted that the theme of the advertisement is promoting the Create Your Taste burger with the added value of receiving a free happy meal. The Board considered that the advertising of a meal that is promoting extra value is a concept that is of appeal to an adult audience. The Board noted that the meal promoted in the advertisement is a Create Your Taste burger and considered that the Create Your Taste burger is not a menu item that is typically chosen by children.

The Board then noted the visual of the advertisement which shows a Create Your Taste burger next to a container with fries in the foreground. There is a moving adult hand that repeatedly takes one of the fries from the container. In the background there is a woman with a drink and a child with a chicken nugget in her hand and a Happy Meal box. The Board considered that all portions of food in evidence looked like standard portions. The Board considered the advertisement does not promote inappropriate or excess consumption with the hand moving back and forth from the fries as it is not evident that the fries are being consumed.

The Board noted that the advertisement is an image with written language stating ‘Receive a Free Happy Meal for the little ones when you buy any Create Your Taste meal’. The Board considered that the language used was not child-like or of appeal to children and that the reference to a free Happy Meal is aimed at the adult.

It is essential for the Board to consider all elements of the advertisement and to make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is clearly directed primarily to Children.

In this instance the Board considered that the theme, visuals and language of the advertisement were advertising an adult meal, not a Happy Meal, and the message was directed to adults and not directed primarily to Children under 14.

Based on the requirements outlined in the QSRI the Board considered that as the advertisement was not directed primarily to Children, did not appear in a medium directed primarily to Children and did not appear in a medium which attracts an audience share of more than 35% of Children, the QSRI does not apply in this instance.

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 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 Board considered that the advertisement is not directed primarily to Children and that the Create Your Taste is not a product targeted to children.

The Board determined that as this Facebook advertisement is not directed primarily to Children, and therefore the Children’s Code and Part 3 of the Food Code do not apply.

Finding that the advertisement did not breach the QSRI, the AANA Food Code or the AANA Children’s Code, the Board dismissed the complaint.