



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0239-21
2. Advertiser :	Domino's Pizza Enterprises Limited
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	25-Aug-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

There are two versions of this television advertisement which promotes a one day sale.

THE COMPLAINT

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

It implied that prices on all pizzas on Thursday July 22nd only would be reduced. At no stage did it state that a discount code would be required when purchasing. It led the viewer to believe that the discount would be automatic on that day alone.

I ordered a pizza that should have cost \$12.00 but when it was delivered I was asked to pay \$28.10; more than twice the price advertised.

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 dated 13 August 2021 enclosing a complaint received by Ad Standards in relation to a Domino's television advertisement for the "Domino's One Day Price Slice" offer (the Advertisement).

Firstly, thank you for providing Domino's with the opportunity to respond to the complaint regarding the Advertisement. Domino's takes its responsibility as an advertiser very seriously and encourages any feedback from the community to better understand and respond to any issues or concerns that may be raised in connection with our advertisements.

Domino's response to the complaint considers the Advertisement in light of the provisions contained within the following codes in so far as they are applicable to the Advertisement; the AANA Code of Ethics (AANA Code), the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code), the AANA Code for Advertising and Marketing Communications to Children (AMCC Code), the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI) and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (QSR Code), all together the "Codes".

Domino's has reviewed the details included in the complaint and makes the following preliminary points in response:

- a) Domino's "One Day Price Slice" was a limited time only offer that was available on Thursday, 22 July 2021 (the Offer).*
- b) There were two (2) versions of the Advertisement that aired in connection with the Offer on the following dates:
 - i. Version 1 on Wednesday, 21 July 2021 (specifies that the Offer was available "tomorrow"); and*
 - ii. Version 2 on Thursday, 22 July 2021 (specifies the Offer was available "today").*We note both versions of the Advertisement were provided by Domino's on 12 August 2021 to the Ad Standards following its request. Domino's submits both versions of the Advertisement again as part of this response in addition to all other supporting material and information request in your letter dated 13 August 2021.*
- c) The two versions of the Advertisement differ only in so far as described in paragraph b) above and are otherwise described as advertising a limited time (one day) only offer for the following Domino's pizzas:
 - i. Large Value pizzas from \$8 each delivered;*
 - ii. Large Traditional pizzas from \$10 each delivered; and/or*
 - iii. Large Premium pizzas from \$12 each delivered.**
- d) The complainant alleges that they viewed the Advertisement "Over several days" which is refuted by Domino's on the basis that there were two (2) versions of the Advertisement in question that aired on the dates specified in paragraph b) above.*

Domino's entirely refutes any suggestion in the complaint or otherwise that the Advertisement breaches the Codes.

We note your letter raises concern about the Advertisement in connection with section 2.1 of the Food Code. We entirely refute any suggestion that the Advertisement



constitutes a breach of section 2.1 of the Food Code. It is Domino's position that the Advertisement does not breach section 2.1 of the Food Code or any of the Codes, for the reasons set out in this response.

AANA Code of Ethics (AANA Code)

As requested in your letter, Domino's provide the following responses in respect of section 2, specifically sections 2.1 to 2.7 inclusive, of the AANA Code.

Section 2.1 – Discrimination or vilification

Domino's does not believe that the Advertisement portrays people or depicts material in a way which discriminates against or vilifies any person or section of a community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Section 2.2 – Exploitative or degrading

Domino's does not believe that the Advertisement employs sexual appeal which is exploitative or degrading of any individual or group of people in any manner whatsoever.

Section 2.3 – Violence

Domino's does not believe that the Advertisement presents or portrays violence in any manner whatsoever.

Section 2.4 – Sex, sexuality and nudity

Domino's does not believe that the Advertisement displays any sex, sexuality or nudity that is not only not sensitive to the relevant audience, but in any manner whatsoever.

Section 2.5 – Language

Domino's does not believe that the Advertisement uses any inappropriate language whatsoever.

Section 2.6 – Health and safety

Domino's does not believe that the Advertisement depicts any material contrary to prevailing community standards on health and safety.

Section 2.7 – Distinguishable as advertising

Domino's does not believe that the Advertisement is not clearly distinguishable as advertising and is relevant to its audience.

Section 3.3 – Other Codes: AANA Food and Beverages Code (Food Code)

We note Section 3.3 of the AANA Code provides that, "Advertising or Marketing Communications for food or beverage products shall comply with AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code." Domino's does not believe that the Advertisement constitutes a breach of Section 3.2 of the AANA Code on the basis the Advertisement is not in breach of the



provisions of the Food Code. Our detailed response to the relevant provisions of the Food Code are below.

AANA Food and Beverages Code (Food Code)

Your letter indicates that the complaint raises concern that the Advertisement is in breach of section 2.1 of the Food Code, which Domino's refutes entirely.

Section 2.1 of Food Code provides that:

"Advertising or Marketing Communication for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits."

Domino's further notes that the Ad Standards Community Panel is likely to consider the Practice Note relating to the Food Code which provides:

"In testing the requirement that an advertising or marketing communication shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest..."

Application Section 2.1 of the Food Code to the Advertisement

Domino's considers that the primary message in the Advertisement is that the customer can purchase the following products as part of the limited time only offer:

- 1. Large Value pizzas from \$8 each delivered;*
- 2. Large Traditional pizzas from \$10 each delivered; and/or*
- 3. Large Premium pizzas from \$12 each delivered.*

The claim to the Offer being for a "limited time only" (one day) is clear in the Advertisement, regardless of whether the complainant has viewed version 1 of the Advertisement (aired on Wednesday, 21 July 2021 only) or version 2 of the Advertisement (aired on Thursday, 22 July 2021 only). Specifically, version 1 claims the Offer as available "TOMORROW ONLY" and version 2 claims the Offer as available "TODAY ONLY". Both versions include a clear disclaimer stating, "Conditions apply. Excludes Gluten Free. Selected stores & limited time only."

The claims in the Advertisement are clear and the products in the Advertisement can in fact be purchased for their advertised prices including delivery; a customer is not required to spend a minimum amount before they are eligible to have the particular product on offer at the stated price in the Advertisement.

The Advertisement was heavily promoted through supporting marketing channels to enable customers to easily purchase the products at the stated prices in the Advertisement (including print, electronic direct mail (eDM), App and web channels).



For example, on the day the Offer was available an immediate pop up was shown customers in the Domino's Online Ordering Platform (<https://order.dominos.com.au/eStore/en/Home>) that automatically applied the Offer to their order cart (as shown in Exhibit A to this response). Similarly, a banner was also displayed in the Domino's Online Ordering Platform (<https://order.dominos.com.au/eStore/en/Home>) on the day the Offer was available (as shown in Exhibit B to this response). The banner also enabled a customer to automatically apply the Offer to their order cart. Alternatively, the products that were the subject of the Offer (and promoted in the Advertisement) were easily able to be ordered at the stated prices in the Advertisement via telephone call to the participating stores.

We consider that the target audience is broad and would include people that regularly consume Domino's pizza and are familiar with Domino's price points and promotions. It is possible that the target audience would also include people that are not frequent customers and who are not familiar with Domino's price point and promotions. It is not relevant which category the complainant falls into. Domino's argues that any reasonable consumer have viewed the Advertisement that subsequently makes the decision to purchase the product on offer in the Advertisement is able to access the Product in the Advertisement very easily having regard to the promotional and marketing material in its support.

Having regard to the above, Domino's submits that a reasonable consumer in the target market would view the Advertisement and consider that it is not misleading or deceptive and clear in its intended message, being that the following Domino's products could be purchased for delivery at the stated prices in the Advertisement for a limited time only (one day); Large Value pizzas from \$8 each delivered, Large Traditional pizzas from \$10 each delivered, and/or Large Premium pizzas from \$12 each delivered. As the Advertisement is communicated in a manner appropriate to the level of understanding of the target audience of the Advertisement, it cannot be considered misleading or deceptive under Section 2.1 of the Food Code. We respectfully submit that there is no basis for the Panel to uphold the complaint on grounds it constitutes a breach of Section 2.1 of the Food Code.

While we strongly disagree that the Advertisement constitutes a breach of Section 2.1, Domino's remains committed to ensuring our advertising continues to aligns with current community sentiment and that we continue to remain best practice in respect of our ongoing compliance with the Codes (and at law). We therefore wish to bring to the attention of the Ad Standards, without any admission that the Advertisement constitutes a breach of Section 2.1 of the Food Code or is in anyway misleading or deceptive, that since receiving the present complaint, Domino's has conducted a "One Day Price Slice" on Thursday, 19 August 2021 and in connection with that offer, the wording, "Voucher Code Required" was included in the television advertisement that aired on the day the offer was available (as shown in Exhibit C to this response). While Domino's position remains that the Advertisement does not constitute a breach of Section 2.1 of the Food Code, we are committed to ensuring our marketing and



advertising materials make redemption of an offer as clear and simple as possible for all consumers in the community.

Further Codes

We further note that the AANA Code also incorporates the AANA Code for Advertising and Marketing Communications to Children and the following initiatives: the Australian Food and Grocery Council Responsible Children's Marketing Initiative and the Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children (Further Codes). As our products are likely to also come within the scope of these Further Codes, we confirm that these Further Codes have also been considered and we do not believe that any section within those Further Codes have been breached by the Advertisement in any way.

For the above reasons, we respectfully submit that the Advertisement is not in breach of the AANA Code, the Food Code or the Codes collectively.

If you require any further information, please do not hesitate to make contact with us.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Code).

The Panel noted the complainant's concern that the advertisement is deceptive as it is advertising pizza at a discount for one day only however the complainant was charged more than advertised and therefore the advertisement is misleading.

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

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply.

Section 2.1 Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

The Panel considered the Practice Note to this section of the Code which provides that:



“The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

“In testing the requirement that an advertising or marketing communication shall be truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest...”

The Panel noted that the target audience would include people that regularly consume Domino’s pizza, however considered that the target audience would also include people that are not frequent customers and who are not familiar with Domino’s price points or ordering practices.

The Panel noted that the deal advertised is predominately used by people ordering online where the offer is promoted at the start of the ordering process. The Panel further noted the advertiser’s response that this offer is available for people who choose to order over the phone.

The Panel noted the advertiser’s response that the products were available for the price advertised and that the price did include the delivery fee. The Panel further noted that the advertisement states that pizzas are available “from” the advertised price and considered that most consumers would be aware that alternations to the standard pizza may incur additional charges.

The Panel considered that it would be preferable that the advertisement clearly state a discount code would be required.

The Panel noted that the disclaimer on screen states and terms and conditions apply and lists common surcharges, such as Public Holiday or Sunday surcharges.

The Panel noted that the advertised promotion is available for consumers as presented, being a range of pizzas available at specific discounted prices and considered that the advertisement was not misleading in its presentation of the offer.

The Panel considered that while the complainant had not received the offer as promoted, the advertisement itself was not misleading.

Section 2.1 Conclusion

The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

Conclusion

Finding that the advertisement did not breach any other section of the Code the Panel dismissed the complaint.