



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0244/13</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>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>24/07/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

RCMI a - Advertising Message AFGC - Advertising Message  
QSR - 4.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

### DESCRIPTION OF THE ADVERTISEMENT

The TVC features an animated cartoon with three Minion characters from the Despicable Me 2 movie and a Happy Meal box playing together. One of the Minion characters (Minion 1) and the Happy Meal box are painting a white wall when the Happy Meal box accidentally paints Minion 1. Minion 1 and the Happy Meal box get into a playful "paint fight" with one another, which results in the Happy Meal box cheekily removing the paint roller cover from its paint roller and using Minion 1 as a paint roller cover. The Happy Meal box paints the wall using its paint roller with Minion 1 as a paint roller cover. The other Minions are observing the incident nearby and giggling. The TVC also features the Happy Meal product being advertised which comprises a chicken snack wrap, apple slices fruit bag and a CalciYum flavoured milk.

### THE COMPLAINT

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

*As with the Kellogg's advertisements, it is in breach of the Responsible Children's Marketing Initiative (RCMI). It encourages children to want to visit McDonalds. McDonalds is responsible for some of the most fattening and nutrition-poor food around. It is not responsible for us to allow them to advertise their products to children.*

## **THE ADVERTISER'S RESPONSE**

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

*McDonald's Australia Limited (McDonald's) thanks the Advertising Standards Bureau (ASB) for the opportunity to provide a response to complaint number 244 of 2013 (Complaint). The Complaint asserts that the television commercial the subject of the Complaint (TVC) is in breach of the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCM Initiative). McDonald's is not a signatory to the RCM Initiative and accordingly the RCM Initiative does not apply to McDonald's advertising or marketing communication to children.*

*We have further considered the matters raised in the Complaint with respect to the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (together the Codes), which do apply to McDonald's advertising and marketing communication to children.*

*The TVC features an animated cartoon with three Minion characters from the Despicable Me 2 movie and a Happy Meal box playing together. The TVC also features the Happy Meal product being advertised which comprises a chicken snack wrap, apple slices fruit bag and a CalciYum flavoured milk.*

*The tone of the TVC is silly and playful. All of the characters are featured giggling and laughing, and engaging in harmless and light-hearted horseplay. The TVC does not contain any misleading or deceptive elements or any imagery, events or materials which would be deemed inappropriate for the viewing of children, undermine the authority of parents or guardians of children or is contrary to prevailing community standards. In addition, the TVC features a Happy Meal product consisting of healthy food options which promotes healthy eating choices and good dietary habits.*

*It is our strong view that the TVC appropriately advertises the Happy Meal product to children in a manner which is consistent with the Codes. Accordingly, we respectfully request that the Complaint 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 'QSR Initiative'), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food and Beverages Code'), AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code') and the AANA Code of Ethics for Advertising (the Code).

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

The Board noted the complainant's concern that the advertisement is advertising that encourages children to want to visit a fast food outlet that is an irresponsible promotion.

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 considered the definition of advertising or marketing communications to children within the QSR Initiative. 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 also noted that the QSR Initiative captures Advertising and Marketing Communications to Children where:

1. The communication is directed primarily to Children (regardless of its placement); or
2. The Medium is directed primarily to Children (in relation to television this includes all C and P programs and G rated programs that are directed primarily to Children); or
3. The Medium attracts an audience share of greater than 50% of Children.

The Board first considered whether the communication itself was directed primarily to children.

The Board noted the advertisement features characters from the recently released movie ‘Despicable Me 2’. The visuals feature three Minion characters from the Despicable Me 2 movie and a Happy Meal box playing together. One of the Minion characters (Minion 1) and the Happy Meal box are painting a white wall when the Happy Meal box accidentally paints Minion 1. Minion 1 and the Happy Meal box get into a playful "paint fight" with one another, which results in the Happy Meal box removing the paint roller cover from its paint roller and using Minion 1 as a paint roller cover. The other Minions are observing the incident nearby and giggling.

The Board noted the theme of the advertisement (the playful paint fight), the visuals (Minion characters talking, laughing and playing) and the language (a child voiceover describing the contents of the happy meal box and the free toy) and considered that overall the advertisement is directed primarily to children.

Based on the requirements outlined in the initiative, the Board considered that as the advertisement was directed primarily to Children, the QSR applies.

The Board noted that the QSR initiative does not prohibit advertising all food to children under the age of 14 but rather restricts the circumstances under which advertisers can promote food to children.

The Board noted section 3 of the QSR Initiative relating to the Advertising and Marketing Message that states that:

- 3.1. Advertising and 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 (Appendix 1); and
  - b. Represent a healthy lifestyle, designed to appeal to the intended audience through

messaging that encourages:

- i. Good dietary habits, consistent with established scientific or government criteria; and
- ii. Physical activity.

The Board noted that the advertised product is a Happy Meal containing a chicken snack wrap, apple slices fruit bag and a CalciYum flavoured milk. The Board noted that the independent Arbiter has previously considered the content of the chicken wrap meal (case reference 0224/13) and determined that it does meet the nutrition criteria set out in Appendix 1 of the QSR initiative.

On the basis that the advertised product meets the criteria set out in Appendix 1, then the product is permitted to be advertised to children.

The Board then considered whether the messaging through the advertisement represents a healthy lifestyle that encourages good dietary habits and physical activity.

The Board considered that the depiction of the Happy Meal product containing a healthy choice option was consistent with established scientific criteria and was therefore encouraging of good dietary habits.

The Board noted that the Minions used are playful and actively involved in painting a wall. The characters themselves are moving about and laughing with their friends. The Board considered that the act of painting, particularly the painting of large spaces would be considered an active task, but agreed that the portrayal of cartoon characters painting was not of itself a message that was promoting or encouraging physical activity to the target audience of children.

Finding that the advertisement did not include messaging that encourages physical activity the Board determined that the advertisement did breach section 3.1 of the QSR.

The Board then noted section 3.2 of the QSR. Section 3.2 states that popular personalities, program characters 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 section 3.1 (above).

The Board noted that the use of licensed characters is allowed provided that the product advertised meets the requirements of 3.1 i.e.: represents a healthier choice and has the appropriate reference to healthier choices and physical activity. In the case of the television advertisement having already determined that the advertisement breaches 3.1 (by not utilising messaging that encourages physical activity) the Board agreed that the depiction of the various licensed characters is a breach of 3.2 of the Initiative.

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 “having regard to the theme, visuals and language used [...] be directed primarily to children and are for product.”

For the reasons mentioned above, the Board considered that the advertisement is directed primarily to children and that a Happy Meal is a product of principal appeal to children therefore the Children’s Code and the Food Code do apply.

The Board noted that Part 2.2 of the Food Code states that “Advertising or Marketing Communications for food or Beverage products shall not undermine the importance of a healthy or active lifestyles nor the promotion of healthy balanced diets.....”

The Board noted that the advertisement shows images of a healthy food option and recognisable characters having a good time, which does not of itself undermine the importance of healthy or active lifestyle and therefore does not breach the Food Code.

The Board considered that the advertisement did not breach any of the sections within the Code of Ethics.

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

## **ADVERTISER RESPONSE TO DETERMINATION**

We refer to Advertising Standards Board (Board) determination dated 24 July 2013 in respect of complaint with case number 0244/13 (Determination) and thank the Board for the opportunity to respond to the Determination.

McDonald's would like to take this opportunity to confirm its commitment to uphold the relevant codes for advertising and marketing food and/or beverages to children including the AANA Code of Ethics, the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (together the Codes).

The Determination

McDonald's notes the Board's concern that the television commercial the subject of the complaint (TVC) breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Initiative). The Board determined as follows:

1. that overall the TVC is directed primarily to children and therefore the QSR Initiative applies;

2. that the QSR Initiative does not prohibit advertising of all food to children under the age of 14 years but rather restricts circumstances under which advertisers can promote food and beverages to children. Pursuant to section 4.1 of the QSR Initiative, advertising and marketing communications to children for food and beverages must:

(a) represent healthier choices as determined by a defined set of nutritional criteria for assessing children's meals; and

(b) represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:

(i) good dietary habits consistent with established scientific or government criteria; and

(ii) physical activity;

3. that the advertised product, being a Happy Meal containing a chicken snack wrap, apple slices fruit bag and a CalciYum flavoured milk, does meet the nutritional criteria for assessing children's meals. Accordingly, the product is permitted to be advertised to children;

4. that the depiction of a Happy Meal product containing a healthy choice option was consistent with established scientific criteria and was therefore encouraging of good dietary habits; and

5. that notwithstanding the portrayal of the characters in the TVC performing an active task (being the act of painting, particularly the painting of large spaces) was not itself a message that was promoting or encouraging physical activity to the target audience of children.

The Board found that the TVC did not contain a message that encourages physical activity to children and accordingly breaches section 4.1 of the QSR Initiative.

McDonald's response to the Board's determination McDonald's confirms the Board's understanding that the TVC is directed primarily at children and accordingly the QSR Initiative applies to the TVC. McDonald's agrees with the Board's determination that the Happy Meal product being advertised to children represents healthier choices and good dietary habits consistent with established scientific criteria. McDonald's maintains its commitment to developing healthier food and beverage options for children which are consistent with good dietary habits and established scientific criteria.

McDonald's respectfully disagrees with the Board's determination that the TVC is not promoting or encouraging of physical activity to children and for this reason is in breach of section 4.1 of the QSR Initiative.

The Commonwealth Department of Health and Ageing (Department) recommends on its website that 5-12 year olds and 12-18 year olds should engage in a combination of moderate and vigorous activities for at least 60 minutes each day. The Department provides that examples of moderate activities include a brisk walk, a bike ride or any sort of active play.

The TVC depicts a Minion character from the Despicable Me 2 movie and a Happy Meal box vigorously painting a large space. The TVC also depicts two other Minion characters observing the incident nearby and giggling. Painting is an activity commonly seen at school,

the benefits of which include development of hand eye coordination, fine motor skills, creative thinking and expression, and control of larger muscles (for painting of larger spaces). McDonald's view is that

painting could be considered "active play" within the Department's contemplation of moderate activity. That is, the characters in the TVC are shown engaged in active play. In addition, the characters in the TVC are shown laughing and having fun with their friends and the tone of the TVC is generally playful and positive which reinforces the message of active play. The use of characters engaged in a physical activity shown in a fun and upbeat light encourages children to

also engage in physical activity as they would want to emulate the characters and recreate the fun. The overall messaging in the TVC amounts to an implication or encouragement of physical activity by children, which is consistent with the Board's statement in previous cases (refer to case numbers 0180/13 and 0144/13).

Measures to be taken by McDonald's

The Codes and prevailing community standards inform McDonald's standard for communicating to children, which requires McDonald's to communicate to children balanced food choices, encourage physical activity, provide nutritional information for foods and engage subject matter experts and informed third parties to help guide its efforts. McDonald's strives and will continue striving to do what is right and socially responsible and consistent with the Codes with respect

to marketing and advertising food and beverages to children.

Notwithstanding its views of the Determination, McDonald's confirms that the TVC will cease being aired from 7 August 2013.