

Case Report

1. Case Number :	0258-22
2. Advertiser :	Hungry Jacks
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Transport
5. Date of Determination	23-Nov-2022
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Food and Beverages Code\3.1 Must not target children

DESCRIPTION OF ADVERTISEMENT

This transport advertisement features an image of a young woman with purple skin and purple and green hair holding a colourful drink. The promotion is for Jelly Belly Bursties.

THE COMPLAINT

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

This advertisement is targeting children with a unhealthy sugar sweetened beverage. The beverage itself takes up 1/4 of the advertisement promoting excess consumption. One serve of the raspberry bursties slushie is over 10 teaspoons of sugar!! The imagery (excited young female with coloured hair wearing a tshirt that is desgined for youth) and the bright colours would predominately appeal to children. Lastly being placed on a bus that is FOR SCHOOL CHILDREN can not be overlooked. This ad is primarily targeted at children and breaches the code.

THE ADVERTISER'S RESPONSE

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

We write in response to the complaint received on 10/11/2022 about the Hungry Jack's Jelly Belly Bursties frozen drink bus side advertisement. The inquiry expressed concern that the product was advertised "on the side of a bus that is dedicated to transport school children" "on a bus designated for school children".

As you are aware Hungry Jack's does not target any media or communication at people below the age of 16 and we would not book advertising on a bus dedicated to transportation of children. The campaign featured 18 year old actors and was aimed at the 18-25 year old demographic.

We booked with two bus advertising companies and both supplied the following response to this inquiry:

JCD's Response

Our Transit team advised that in nearly all states operators use normal route buses for school runs and that there aren't dedicated vehicles just for the school routes.

MOOVE's Response

Moove Media confirmed they did not specifically allocate any Hungry Jack's Bursties on known school buses in our fleet.

As requested, below are comprehensive comments in relation to the complaint for the entirety of Section 2 of the AANA Code of Ethics.

- 2.1 - This advertisement does not breach any discrimination or vilification codes*
- 2.2 – This advertisement is not exploitative or degrading*
- 2.3 – This advertisement does not show any violence*
- 2.4 – This advertisement does not feature any sex, sexuality or nudity*
- 2.5 – This advertisement does not have any offensive language*
- 2.7 – This advertisement is clearly distinguishable as advertising*
- 2.6 - Health and Safety*

The ad is aimed at our adult consumers aged 18-25 years old. This advertising was not targeted to children. As per the AANA Food and Beverages Marketing and Communications Code Hungry Jack's does not target children. As signatories to the Quick Service Restaurant Initiative for Responsible Advertising to Children, we have proudly abided to the guidelines.

THE DETERMINATION

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

The Panel noted the complainant's concern that the advertisement is for an occasional food product and its imagery and bright colours target children especially as it is placed on a school bus.

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

Is the advertisement for an Occasional Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: *“food or beverages products which do not meet the Food Standards Australia Nutrient Profile Scoring Criterion as published from time to time by Food Standards Australia New Zealand”*.

The Panel noted the advertisement is promoting a frozen beverage with Jelly Belly jellybean flavoured balls in it. The Panel noted that the advertiser had not provided information about whether the product meets the FSANZ criteria. The Panel considered that if the product did meet the criteria the advertiser would have said so. The Panel therefore concluded that the beverage product does not meet the FSANZ criteria and is an occasional beverage product.

Section 3.1 Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children.

The Panel noted that the Food Code defines “target children” as:

“Target Children is determined by the context of the advertisement and the following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children.”*

The Panel noted that the Practice Note provides guidance on the interpretation of “target children”:

“All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that*

is incidental to the ad placement, the audience of that incidental Children's concert or event will not be captured.

- *C&P programmes.*
- *Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- *Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision)."*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel noted the advertiser's response that the product is aimed at adult consumers aged 18-25.

The Panel noted that the test is whether the product is *principally or significantly* appealing to children, not *only* appealing to children, and the Panel considered that frozen product is colourful, sweet and would be of significant appeal to children.

The Panel considered that frozen sugary drinks are generally a product which children enjoy and considered that the product was significantly appealing to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel noted that to be within Section 3 of the Food Code the Panel must find that the advertisement is aimed in the first instance at children under 15.

Is the theme of the advertisement principally appealing to children?

The Panel noted that the theme of the advertisement is promoting a collaboration with Jelly Belly to provide additional flavours for the beverage. The Panel considered that the theme of this advertisement is that people can choose flavours which are as vibrant and unique as they are.

The Panel considered that while Jelly Belly lollies would have some nostalgic appeal for adults, they are a product that is of significant appeal to children. The Panel considered that the theme that this is a product enjoyed by colourful people, or that can make you a colourful person, is one which would be of significant appeal to children under 15.

The Panel considered that the theme would be more appealing to children under 15 than to older teenagers or adults.

Are the visuals of the advertisement principally appealing to children?

The Panel noted that advertisement depicted a woman with bright coloured hair, purple-tinted skin, colourfully painted nails, and wearing a t-shirt with a colourful heart and flower design. The Panel considered that the woman's colourful hair, skin, makeup and clothing were similar to that of popular children's toys and cartoon characters.

The Panel considered that the font of the word 'Bursties' is cartoon-like and would also attract the attention of children under 15.

Overall, the Panel considered that the visuals were bright and colourful, and would be principally appealing to children under 15.

Is the language/wording/music of the advertisement principally appealing to children?

The Panel noted that the advertisement did not feature many words, apart from the Hungry Jacks and Jelly Belly logos, the name of the product 'Bursties', the label 'New' and the disclaimer 'serving suggestion only'.

The Panel considered that the wording of the advertisement was simple but not overly child-like. However, the Panel considered that the minimal wording with recognisable logos would attract the attention of children, over a more wordy advertisement.

The Panel considered that the language of the advertisement would be attractive to children, but may not be principally appealing to children.

Is the content of the advertisement overall principally appealing to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and 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 principally appealing to children.

The Panel considered that the overall impression of the advertisement was the colourful visuals and the theme of the product being exciting and colourful. Overall, the Panel considered that the advertisement would attract the attention and interest of children under 15 ahead of any other audience.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted the complainant's concern that the advertisement was on a school bus, and that they had provided a picture of the advertisement on a bus marked "School 756".

The Panel noted the advertiser's response that they had contacted their bus advertising companies who had stated the ads weren't specifically placed on any known school routes.

The Panel noted that the advertisement had been placed on at least one school bus, but that it had also likely been placed on many other public bus routes.

The Panel considered that both school buses and public buses would have a broad audience which would include children, however as children under 15 don't make up 25% of the Australian population, children would be unlikely to make up 25% of the viewers of these bus ads. The Panel noted that buses are one of the main forms of transport for children under 15.

However, the Panel noted that this advertisement for an occasional food or beverage product had been placed on a school bus in at least one instance, and that the expected audience for this may exceed 25% of the total audience, given the bus would be stopping to collect child passengers and stopping outside of schools.

The Panel noted that the overall bus ad does not have an expected average audience which would include a significant proportion of children, however the school bus ad may have an expected audience of over 25% children.

Does the advertisement target children

The Panel noted that in order to determine whether an advertisement targets children it is required to weigh each of the three criteria above.

The Panel considered that the product being advertised is significantly attractive to children and the overall presentation of the advertisement is principally appealing to children. The Panel noted that the general audience of the advertisement would not have an audience with a large proportion of children, but that in at least one instance the audience may have included a significant proportion of children.

Overall, the Panel considered that Points 1 and 2 were strongly met, and that these two criteria were sufficient to determine that this advertisement was targeted to children under 15.

Section 3.1 conclusion

The Panel noted that this advertisement for an Occasional Food or Beverage Product did target children, and therefore the Panel determined that the advertisement did breach Section 3.1 of the Food Code.

Conclusion

Finding that the advertisement did breach Section 3.1 of the Food Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

We are writing to confirm that we have taken steps towards removing the advertisement from Bus sides. Hungry Jack's have instructed our media company to remove and replace these panels, however we strongly disagree that this advertising breaches the Advertising to Children Code and we intend to pursue an independent review of the Community Panel's determination