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Case Report

1. Case Number :	**0287-21**
2. Advertiser :	**Grill'd**
3. Product :	**Food/Bev Venue**
4. Type of Advertisement/Media :	**TV - On Demand**
5. Date of Determination	**13-Oct-2021**
6. DETERMINATION :	**Upheld – Modified or discontinued**

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive
AANA Advertising to Childrens Code\2.4 Sexualisation
AANA Advertising to Childrens Code\2.6 Social values
AANA Environmental Code\2 Genuine Environmental Benefit
AANA Code of Ethics\2.3 Violence
AANA Code of Ethics\2.4 Sex/sexuality/nudity

DESCRIPTION OF ADVERTISEMENT

There are two versions of this TV-on-demand advertisement, a 15 second version and a 30 second version.

Both versions of the advertisement feature an animated clown in an alleyway standing facing two children and opening his trench coat, which is then shown to reveal toys. A burger superhero appears and throws wooden spikes at the clown pinning him to the wall. He then jumps on a ladder hanging from a helicopter and flies away.

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

It's just disgusting. Depicting any character in such a despicable way is disgusting! Where are the standard?

Ad Standards Community Panel

The ad is suggestive of sexual promiscuity and violence towards children and is not an appropriate way to advertise a family eatery.

The advertisement is displayed during a normal documentary show Mysteries of the Missing which is educational and appeals to curious children. Displaying an advertisement that makes fun of a Ronald McDonald type person in a trench coat creeping up to two children who are alone in an alley is extremely inappropriate for children to view and encourages them to minimise the danger of sexual assault and pedophilia by unknown adults.

THE ADVERTISER'S RESPONSE

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

1. Applicable Codes

We have considered the complaints and the advertisement in question in light of the provisions of the AANA Code of Ethics ("the Code"), the AANA Environmental Claims Code ("Environmental Code"), the AANA Food and Beverages Code ("the F&B Code"), the AANA Children's Advertising Code ("the Children's Code") and the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children ("QSRI").

We note that the majority of the complaints relate to concerns that the advertisement in question contains material which is in breach of the Code, specifically in relation to the depiction of the clown with the children, and depictions of violence.

We have carefully considered the Code, the Environmental Code, the F&B Code, the Children's Code and the QSRI, and have assessed their respective applicable provisions against the content of this advertisement. We submit that the advertisement does not breach the Code, the Environmental Code, the F&B Code, the Children's Code and the QSRI, on any of the grounds set out in the same.

2. AANA Code of Ethics

We understand complaints have been raised in respect of provisions 2.3 and 2.4 of the Code.

We note that provision 2.3 of the Code sets out that "Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised."

We note that the advertisement depicts some forms of violence in a mild animated form. The cartoon nature of the violence is consistent with animated superhero programs and is justifiable in the context of the product being advertised in this fashion. We note that the superhero persona of the burger is consistent with the messaging of the advertisement, being a "righteous" figure who combats against

perceived "evils" in the industry (in this case, offering plastic toys to children as an enticement to purchase fast food products).

We note some of the complaints received express concern at how menacing or frightening the clown looks, however we submit that the clown's appearance as slightly disheveled and mischievous looking is justified in the context of the scene and his appearance overall is extremely mild.

Accordingly, we submit that the advertisement does not breach provision 2.3 of the Code as the violence portrayed therein is justifiable in the context of the product being advertised.

We further note that provision 2.4 of the Code sets out that "Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience." We note this provision has been raised due to the depiction of the clown opening up his coat to the children. We note however that the very next shot in the sequence clarifies that the clown is fully clothed underneath and is showing toys to the children. On this basis, we note it is clear to the audience that there is nothing sexual about this scene at all. Accordingly, the advertisement does not breach provision 2.4.

In respect of the remaining provisions of the Code, we submit that there is nothing else in the advertisement that would breach any other provisions.

3. Environmental Code

We note concerns have been raised in respect of provisions 2(b) and 2(c) of the Environmental Code.

We note that the Environmental Code applies to "Environmental Claims", which are defined as "any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment."

We note that the only portion of the advertisement that could possibly be regarded as an Environmental Claim is the inclusion of the word "Sustainable" in the final frame. In this respect, please refer to the attached substantiation document with regard to the "Sustainable" claim.

Accordingly, in respect of provision 2(b) the Environmental Code, we note that based on the information presented on our website, the claim of simply being "Sustainable" cannot be regarded as being overstated.

Further, in respect of provision 2(c), we note that nothing in the advertisement implies that Grill'd products are more social acceptable than others, the advertisement simply highlights some negative practices of the industry generally and positions Grill'd as a champion against these causes.

On this basis, we submit that the advertisement does not breach the Environmental Code.

4. AANA Food and Beverages Code

In respect of the F&B Code, we note that provision 2.1 sets out 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."

We note that no nutritional or health claims are made in the advertisement. The advertisement primarily advertises the Grill's brand and its values, by casting its brand as an anthropomorphic superhero burger that fights against figures that are broadly representative of competitors in the market. We note the final frame of the advertisement makes broad claims that Grill'd burgers are "Natural, Sustainable and Healthy". Grill'd is capable of substantiating these claims, please refer to the attached substantiation document for more information.

Accordingly, we submit that the advertisement does not breach provision 2.1 of the F&B Code, nor any of the other provisions.

5. AANA Children's Code

In respect of the Children's Code, we note that "Advertising or Marketing Communications to Children" is defined as "Advertising or Marketing Communication 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, visuals and language used in the advertisement, the advertisement cannot be considered be an "Advertising or Marketing Communication to Children". We note that whilst the advertisement is in an animated form, this does not in of itself have sole or primary appeal to children. The advertisement is produced in a form of animation that is intended to be broadly appealing to all ages, however we note that Grill'd products are generally aimed at, and have traditionally been more appealing to, a mature audience. Further, we note that the advertisement was only placed in programming consistent with its "PG" rating, meaning it only appeared in programming aimed at a primarily adult audience. Accordingly, we submit that the advertisement is not of primary appeal to children and the Children's Code does not apply to this advertisement.

That said, even if the advertisement were to be considered "Advertising or Marketing Communications to Children", we submit that the advertisement would not breach any provision of the Children's Code.

Specifically, we note provision 2.4 of the Children's Code, which sets out that Advertising or Marketing Communication to Children: (a) must not employ sexual appeal; (b) must not include sexual imagery; and (c) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.

As already discussed above in respect of the Code, the advertisement contains no sexual imagery or appeal whatsoever. The brief image of the clown opening his coat is immediately qualified in the next scene of him showing toys to the children.

Further, we note provision 2.6 of the Children's Code, which sets out that Advertising or Marketing Communication to Children: (a) must not portray images or events in a way that is unduly frightening or distressing to Children; and (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability."

Again as noted above, the appearance of the clown is mild and would not be regarded as unduly frightening or distressing.

On this basis we submit that the advertisement does not breach provisions 2.4, 2.6 or any other provisions of the Children's Code.

6. QSRI

Lastly, in respect of the QSRI, we note "Advertising or Marketing Communications to Children" is defined in the QSRI as "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, and 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 where Children represent 35 per cent or more of the audience of the Medium."

As noted above, our view is that, having regard to the theme, visuals and language used in the advertisement, it is clear that it is not directed primarily at children. Further, the placement of the advertisement is limited by its classification of "PG", meaning it could not be placed in programs for which children would be the primary audience, or comprise at least 35% of the same. Accordingly, as the advertisement would not be considered as "Advertising or Marketing Communications to Children" under the QSRI, and thus the QSRI should not apply.

7. Conclusion

On this basis, we submit that the advertisement does not breach any relevant provision of the AANA Code of Ethics or any other relevant codes. There is no breach of

any of the relevant provisions of any of the AANA codes noted above, and the advertisement is not primarily directed at children.

Accordingly, we submit that all complaints should be summarily dismissed.

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 Food Code), AANA Code for Advertising and Marketing Communications to Children (the Children's Code), AANA Environmental Claims in Advertising and Marketing Code (the Environmental Code) and the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement:

- Is suggestive of sexual promiscuity and violence towards children
- Is inappropriate to be viewed by children
- Encourages children to minimise the danger of sexual assault and paedophilia

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

The Food Code

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 Noted the Practice Note to this section of the Food Code which includes:

"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 for this advertisement would be anyone watching free-to-air television, particularly those interested in healthier eating.

Righteous
The Panel noted that the advertisement ended with the words 'Righteous Burgers' on screen underneath the Grill'd logo.

The Panel noted that the word righteous was not a specific claim about the burgers, and this statement would most likely be interpreted by members of the target audience to be advertising puffery, and not to be misleading.

Natural
The Panel noted the advertisement includes a photo of a burger with the words 'Natural. Sustainable. Healthy.'

The Panel noted the advertiser had provided information to show that its beef, lamb and chicken is 100% antibiotic free, hormone free, chemical free and preservative free, its buns are free from refined sugar and that all its burgers have no artificial colours, flavours and preservatives, excluding a few specific identified ingredients, such as vegan cheese, in certain burgers.

The Panel considered that the average member of the target market would interpret the word 'natural' to mean made of naturally occurring ingredients and without artificial ingredients. The Panel considered that the vast majority of the burger range would meet this definition, and therefore the average consumer would reasonably regard the claim of 'natural' to be truthful and honest.

Sustainable
The Panel noted the advertisement includes a photo of a burger with the words 'Natural. Sustainable. Healthy.'

The Panel noted that the advertiser also includes a range of vegan and vegetarian options on its menu.

The Panel noted the advertiser had provided information to show that it sources its food products locally, recycle cooking oil, use packaging made from sustainably planted forests, is in the process of making more restaurants powered by Green Energy and established a Meat Free Monday campaign to encourage more sustainable eating.

The Panel considered that the claim of 'sustainable' is not qualified in the advertisement, however it's appearance under the burger would lead consumers in the target market to believe that the burger products are produced in a sustainable way. The Panel considered that the information provided by the advertiser shows that the advertiser in undertaking multiple initiatives to increase the sustainability of its products, and the average consumer would reasonably regard the claim of 'sustainable' to be truthful and honest.

Healthy

The Panel noted the advertisement includes a photo of a burger with the words 'Natural. Sustainable. Healthy.'

The Panel noted that substantiation provided by the advertiser shows that all its burger products are high in protein and fibre and provide at least seven essential vitamins, minerals and nutrients including thiamine, iodine, niacin, magnesium, phosphorous, iron and selenium. The Panel further noted the advertiser's response that 88% of Grill'd burgers pass the Nutrient Profiling Scoring Calculator established by Food Standards Australia and New Zealand as a benchmark for whether a product is healthy overall.

The Panel noted that healthy is a subjective term which can be defined by different people to mean different things. However, based on the information provided by the advertiser on the nutritional content of the Grill'd burger range, the Panel determined that the average consumer would reasonably regard the claim of 'healthy' to be truthful and honest.

Section 2.1 Conclusion

Overall, the Panel considered that the advertisement was not designed to be misleading or deceptive and was communicated in a manner appropriate to the understanding of the target audience.

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

Food Code conclusion
The Panel found that the advertisement did not breach any other Section of the AANA Food and Beverages Advertising and Marketing Communications Code.

The Children's Code

The Panel considered whether the advertisement complied with the Children's Code. To fall within this 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".

Is the advertisement directed primarily to children?

The Panel considered whether the advertisement is directed primarily to children (14 years or younger). The Panel noted the Children's Code defined advertising and marketing communications to children as "*Advertising or Marketing Communication which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product.*"

The Panel noted that Product is defined as: *"goods, services and/or facilities which are targeted toward and have principal appeal to Children."*

Is the theme of the advertisement directed primarily to children?

The Panel considered that the theme of the advertisement is simple good vs evil, and features a superhero character rescuing children from a villain. The Panel noted that the advertisement also contained messaging around eating healthier, and healthy products being better than junk food.

The Panel considered that the main theme of the advertisement was good vs evil, and this simple concept would be more attractive to children under 14 than an adult audience.

Is the language of the advertisement directed primarily to children?

The Panel noted that the advertisement included a fast-paced song which included the lyrics, "In the world of good and bad there's a little burger man who is sticking up for all that is right. He's got a little wooden stick and he's fighting clowns with it... He's a righteous burger guy".

The Panel considered that the song lyrics were simple and easy to understand and the fast-paced exciting music would be attractive to children.

The Panel noted the advertisement included words on the screen, including "Natural. Sustainable. Healthy." And "Righteous Burgers". The Panel considered that this wording would appeal mainly to an older audience, with the word 'righteous' being popularised in the eighties and not a word most children would use regularly.

Overall, the Panel considered the advertisement would have general appeal to both adults and children, and was not directed primarily to children.

Are the visuals of the advertisement directed primarily to children?

The Panel considered that the advertisement featured cartoon imagery similar to children's superhero cartoons. The Panel noted that the style of the advertisement would have some nostalgic appeal to adults who watched cartoons as children, however would have primary appeal to children.

Is the content of the advertisement overall directed primarily to children?

The Panel reiterated that it is essential that they 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.

The Panel considered that the overall advertisement would attract children's attention through the use of themes visuals and language, more than an adult's attention. Overall, the panel considered that the overall advertisement was directed primarily to children.

Is the advertisement for a product of principal appeal to Children?

The Panel noted that the advertisement is for the burger chain Grill'd. The Panel noted that it was an adult-sized burger depicted in the advertisement and there was no reference to children's meals.

The Panel considered that the advertised product is the burger chain, and this was a product of general appeal to adults and children, and not a product of principal appeal to children.

Conclusion: is the advertisement directed primarily to children?

Finding that the advertisement is not promoting Children's Product, the Panel determined that the provisions of the Children's Code did not apply.

Children's Code conclusion
The Panel determined that the provisions of the AANA Code for Advertising and Marketing Communications to Children do not apply to this advertisement.

The Environmental Code

Is an environmental claim being made?

The Panel considered whether the advertisement made an Environmental Claim.

The Environment Code applies to 'Environmental Claims' in advertising and marketing communications.

The Code defines Environmental Claims as *"any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment".*

The Panel noted the complainant's concerns that:

- Although Grill'd has more sustainable practices than other food outlets doesn't make their products sustainable
- The advertisement claims their burgers are more natural than others
- The farming industry is the leading driver of the climate catastrophe, and this advertisement's claim of sustainability is misleading

The Panel noted the advertisement includes a photo of a burger with the words 'Natural. Sustainable. Healthy.'

The Panel considered that the advertisement includes the implied environmental claim that its burger products are natural and sustainable.

2 b) Environmental Claims must…not overstate the claim expressly or by implication

The Panel noted that the Practice Note for this Section includes:

"Advertisers and marketers should avoid making claims that expressly or impliedly overstate an environmental benefit. Consideration should be given to whether there is sufficient disclosure of any negative impacts. For example, whether negative impacts have been withheld which, if known, would diminish the positive attribute."

The Panel noted the advertiser had provided substantiation documents in relation to the claims made in the advertisement of the burgers being natural and sustainable.

The Panel noted the advertiser had provided information to show that it sources its food products locally, recycle cooking oil, use packaging made from sustainably planted forests, is in the process of making more restaurants powered by Green Energy and established a Meat Free Monday campaign to encourage more sustainable eating.

The Panel noted the advertiser had provided information to show that its beef, lamb and chicken is 100% antibiotic free, hormone free, chemical free and preservative free, its buns are free from refined sugar and that all its burgers have no artificial colours, flavours and preservatives, excluding a few specific identified ingredients, such as vegan cheese, only in certain burgers.

The Panel considered that the claims of 'sustainable' and 'natural' had been reasonably substantiated by the advertiser. The Panel considered that the claims made were not overstated and were reasonable summaries of the product.

The Panel considered that the advertisement did not overstate the claim expressly or by implication.

Section 2 b) conclusion
The Panel determined that the advertisement did not breach Section 2 b) of the Environmental Claims Code.

Environmental Code conclusion
The Panel found that the advertisement did not breach any other Sections of the AANA Environmental Claims in Advertising and Marketing Code.

The AANA Code of Ethics

Section 2.3: Advertising shall not present or portray violence unless it is justifiable in the context of the product or service advertised

The Panel noted the complaints' concerns that:

- The ad is suggestive of sexual promiscuity and violence towards children
- The ad encourages children to minimise the danger of sexual assault and paedophilia

The Panel noted that the Practice Note to the Code includes:

> *"Although the depiction of violence in an advertisement may be relevant to the story being told in the advertisement, any violence must also be justifiable in the context of the product being advertised, or else will be in breach of this section of the Code. …In considering whether the violence or menace depicted in an advertisement is justifiable, the Community Panel may have regard to the audience of the advertisement. Graphic depictions of violence or a strong suggestion of menace have been found to present violence in an unacceptable manner especially when visible to a broad audience which includes children…More leeway is permitted where the depiction is stylised rather than realistic. However, advertisers should exercise caution when using cartoon violence as a cartoon style may be attractive to children."*

The Panel noted that the advertisement featured a number of scenes which contained violence, including:

- The menacing depiction of the clown cornering the children and opening his trench coat
- The clown kicking off his shoe, then producing a blade from the end of it and swiping through the middle of the burger character (only in the 30 second version)
- The burger character punching the clown in the chin (only in the 30 second version)
- The burger character throwing sharpened wooden sticks towards the clown character, pinning him to a wall.

A minority of the Panel considered that the animated violence was highly stylised and unrealistic, and that the overall impression was of very low-level violence which would be justifiable in the context of advertising the product.

The majority of the Panel considered that the opening scene of the advertisement, where the children were cornered in the alley and the clown opens his trench coat, was menacing and suggestive of sexualised violence. The Panel considered that even though the moment was resolved as being the clown showing the children toys in his coat, the suggestion of sexual violence at the start of the advertisement was extremely inappropriate in an advertisement for burgers.

Further, the Panel noted the additional scenes of cartoon violence, while relevant to the narrative of the advertisement, were not related to the burger products being promoted.

The Panel noted that the advertised product was a burger chain and that there was no clear link between this product and violence.

The Panel determined that the advertisement did contain violence, and that this violence was not justifiable in the context of advertising a burger chain.

Section 2.3 Conclusion

The Panel determined that the advertisement did present or portray violence which was not justifiable in the context of the product or service advertised and did breach Section 2.3 of the Code.

Section 2.4: Advertising shall treat sex, sexuality and nudity with sensitivity to the relevant audience.

The Panel noted the complainants' concern that the advertisement

- is suggestive of sexual promiscuity and violence towards children
- Is inappropriate to be viewed by children
- Encourages children to minimise the danger of sexual assault and paedophilia

Does the advertisement contain sex?

The Panel considered whether the advertisement contained sex. The Panel noted the definition of sex in the Practice Note is "*sexual intercourse; person or persons engaged in sexually stimulating behaviour*".

The Panel considered that the advertisement did not contain sex.

Does the advertisement contain sexuality?

The Panel noted the definition of sexuality in the Practice Note is "*the capacity to experience and express sexual desire; the recognition or emphasis of sexual matters".*

The Panel noted that there was a strong suggestion at the start of the advertisement that the children were being sexually harassed through the clown character appearing to expose himself to them. The Panel considered that this did constitute sexuality.

Does the advertisement contain nudity?

The Panel noted that the definition of nudity in the Practice Note is "*the depiction of a person without clothing or covering; partial or suggested nudity may also be considered nudity".*

The Panel noted that when the clown is pinned to the wall his pants fall down so that he is exposed to the children, although the clown's genitals are hidden by the flag on the top of one child's burger. The Panel considered that this is suggested nudity.

Is the issue of sexuality and nudity treated with sensitivity to the relevant audience?

The Panel noted that the definition of sensitivity in the Practice Note is "understanding and awareness to the needs and emotions of others".

The Panel considered that the requirement to consider whether sexual suggestion is 'sensitive to the relevant audience' requires them to consider who the relevant audience is and to have an understanding of how they might react to or feel about the advertisement.

The Panel noted that the advertisement received a 'PG' classification from FreeTV and therefore may be broadcast at any time of day, except during P and C programs or adjacent to P or C periods.

The Panel considered that the relevant audience for the advertisement was therefore broad and would include children.

A minority of the Panel considered that the beginning of the advertisement was quickly resolved to show the clown was not exposing himself to the children, and then later in the advertisement the clown's genitals were not actually seen. The minority of the Panel considered the sexual suggestion in the advertisement to be mild and not inappropriate for the relevant audience.

The majority of the Panel considered that most members of the community would consider the suggestion of sexualised violence aimed towards children to be inappropriate, even if the situation had been resolved. The Panel considered that the scenes would shock and upset viewers and did not treat the issue of sexuality with sensitivity to the relevant audience. The Panel noted the scene where the clown's pants fall down and he appears to be exposed to the children and considered this scene further adds to the inappropriate sexual nature of the advertisement.

The Panel considered that the sexual suggestion in the advertisement was not treated with sensitivity to an audience which would include children.

Section 2.4 Conclusion

The Panel determined that the advertisement did not treat sex, sexuality and nudity with sensitivity to the relevant audience and did breach Section 2.4 of the Code.

Code of Ethics conclusion

The Panel found that the advertisement did breach Section 2.3 and Section 2.4 of the AANA Code of Ethics.

Conclusion

Finding that the advertisement did breach Section 2.3 and Section 2.4 of the AANA Code of Ethics, the Panel upheld the complaints.

THE ADVERTISER'S RESPONSE TO DETERMINATION

In response to the upheld complaint determination received 21 October 2021, Grill'd will take steps to modify the advertisement to take into account the Panel's concerns.