



Ad Standards Community Panel
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Case Report

1. Case Number :	0299-20
2. Advertiser :	Ben & Jerry's Chatswood
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Promotional Material
5. Date of Determination	21-Oct-2020
6. DETERMINATION :	Upheld - Modified or Discontinued

ISSUES RAISED

AANA Food and Beverages Code\4.2 Must comply with QSRI
AFGC - Quick Service Restaurant Initiative\QSRI 1.5 Product/vouchers at children's sporting events

DESCRIPTION OF ADVERTISEMENT

This voucher features the words, "This certifies that _____ is an A-MOO-ZING ACHIEVER. Well done! For your a-moo-zing achievement go to Ben and Jerry's Chatswood Scoop Shop to get a FREE scoop in a choc dipped cone." The voucher includes a picture of an ice-cream and a cow.

THE COMPLAINT

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

This clearly breaches the Core Principles of the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children. In particular Children's Sporting Events S1.5. Signatories must not give away food and/ or beverage products or vouchers to Children as awards or prizes at Children's sporting events unless those products meet the Nutrition Criteria. Under the AANA Food and Beverages Code, Section 4.2 Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI. Therefore the principle stated above applies to this company.



It is also clearly advertising or marketing to children according to the definitions contained in those codes as it is a voucher handed to a child to provide them with free food.

The Australian Dietary Guidelines state that ice cream is a discretionary food therefore such a food should not be advertised to a child.

If the AANA wants to truly protect children from junk food marketing then companies should not give vouchers for junk food to children. The public clearly knows that an ice cream is not food that children should be encouraged to eat as part of a healthy diet. This is sending the wrong messages to our children who are participating in a healthy sporting activity.

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 (REF 0299-20) to strongly disagree with the position held by the complainant.

As a socially responsible ice creamery with a long track record of supporting local community, we are always mindful of our brand and engagement with the public. We understand that our business operates in the discretionary, treats and occasional, space and we believe that the average consumer is under no misconceptions about the benefits of our product. The average consumer is aware that our product is a treat, to be enjoyed in moderation and as part of a balanced diet.

Firstly our offer is not directed at children - as determined by the language on the voucher. The vouchers were donated to Chatswood Rugby as part of local community support to recognise and reward its members at their sole discretion. It's our understanding that members can consist of players, coaches, parent-helpers or volunteers. Furthermore, the club represents members from 4 years of age to over 60 years of age. The voucher do not specifically call out the player of the day or children for this matter.

Secondly our offer do not fall under the definition of a meal by the Nutrition Criteria of Schedule 2. Our product, as mentioned above and stated by the complainant, operates in the discretionary space. The average consumer (or parent in this case) will not mistaken our product as a substitute for a meal.

Last but not least, our offer is a one-time offer. Discretionary food when taken occasionally, and in moderation, can form part of a balanced diet. As a responsible business, we do not advocate the over-consumption of our product.



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).

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

The Panel noted the complainant's concern that the advertisement is advertising unhealthy food choices food to children.

The Panel noted that the product advertised is a promotion for Ben & Jerry's food products and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply.

The Panel considered Section 4.2 of the Food Code which provides "Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable".

The Panel noted that QSRI refers to the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and noted that the QSRI is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

The Panel 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 Panel 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 Panel considered each element of the definition. The Panel considered that the theme, visuals and language used, are directed primarily to Children and are for food products.



The Panel considered whether the material published in a 'medium' directed to children?

The Panel noted that the advertisement is a voucher which is featured on a sports certificate handed out to a child for Player of the Day at a football competition. The advertisement features the words, "This certifies that _____ is an A-MOO-ZING ACHIEVER. Well done! For your a-moo-zing achievement go to Ben and Jerry's Chatswood Scoop Shop to get a FREE scoop in a choc dipped cone." The voucher includes a picture of an ice-cream and a cow.

The Panel noted that the definition of Medium in the QSRI is 'television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.' The Panel considered that the material in question was not easily identifiable as any of these mediums. However the Panel noted that the substantive provisions of the QSRI refer to 'products or vouchers' as a matter within the purview of the QSRI and also considered the objectives of the QSRI which include 'reducing advertising and marketing communications to children for food and beverage products that do not represent healthier choices.' The Panel considered that the absence of a reference to vouchers in the definitions section of the QSRI does not render its operative provisions ineffective. Alternatively, a broad interpretation of the definition of 'medium' to include a form mentioned elsewhere in the QSRI (i.e. a voucher) would be consistent with the stated objectives of the QSRI. The Panel therefore considered that the advertising material (a Ben & Jerry's food voucher handed to a child after a sporting event) is, relevantly, material published to an audience which would be more than 35% children, as the voucher is given to children at a sporting event.

The Panel considered that this advertisement did fall under the provisions of the QSRI on the basis that it is a marketing communication directed primarily to children for a food product.

The Panel considered the complaint under Schedule 1.5 of the Code which provides:

"Signatories must not give away food and/or beverage products or vouchers to Children as awards or prizes at Children's sporting events unless those products meet the Nutrition Criteria."

The Panel noted that the advertisement was a voucher given to a child as an award at a sporting event.

The Panel noted that Schedule 2 of the QSRI details the Nutrition Criteria for assessing children's meals according to the initiative. The Panel noted S2.1 of the QSRI states:

"S2.1. Meal composition

- a. The meal must be comprised of at least a main and a beverage.
- b. The meal should reflect general principles of healthy eating as defined by credible nutrition authorities."



The Panel noted that the voucher was for a 'scoop in a choc dipped cone' and considered that this would not meet the Nutrition Criteria in Schedule 2 of the QSRI as it does not include a beverage.

The Panel determined that the advertisement was a voucher given to a child at a sporting event that was not for a product that meets the nutritional criteria and therefore the advertisement did breach S1.5 of the QSRI.

Finding that the advertisement breach S1.5 of the QSRI the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

It's unfortunate that the Panel did not agree with our views. We do not have control over the distribution of the vouchers. Regardless we respect the Panel's decision.

The vouchers were once-off as described in the case notes. Which means it will not be repeated, we've also determined to stop supporting local sport events with vouchers to avoid a similar outcome.