



Case Report

1	Case Number	0305/17
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	26/07/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code (Children) 3.5 pester power
Advertising to Children Code 2.10 Popular personalities
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

DESCRIPTION OF THE ADVERTISEMENT

The advertisements include a 30 second commercial (TVC30) and a 15 second edited version of the 30 second commercial (TVC15). TVC30 shows a woman and her child in various situations, where the child is wearing a costume from the movie Despicable Me 3. The advertisement begins in a costume shop, where the excited child tries on the 'Minion' costume. The advertisement transitions to the child playing a game of soccer in the same costume, then depicts the mother struggling to convince the child to wear alternative clothing. There is a montage of the child wearing the costume and the mother's struggle with her child wearing it and refusing to wear anything else.

A family of six people, three adults and three children, are depicted at a table in the restaurant, before a close up shot on the products that are available in the Despicable Me 3 Family Box.

THE COMPLAINT

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

The advertisement uses characters from the children's film Despicable Me 3 to promote unhealthy food and beverage choices (in breach of Article 3.1 "S1.1. Advertising and

Marketing Communications to Children for food and/or beverages must: a. Represent healthier dietary choices, as determined by the Nutrition Criteria; and b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages: i. Good dietary habits, consistent with established scientific or government standards." of the AFGC QSR Initiative for Responsible Advertising and Marketing to Children and Section 2.10 of the AANA Code for advertising and marketing communications to children "Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to endorse, recommend, promote or advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.").
This ad does not encourage good dietary habits, encouraging kids to relate a popular children's film with eating unhealthy foods such a burgers and French fries.

The content of the advertisement is clearly aimed at children. The Despicable Me movie franchise is hugely popular with children and any paraphernalia to do with Despicable Me would be highly sort after by children. McDonald's has used the theme of Despicable Me 3 and the Minions characters to their advantage to entice children to pester their parents into purchasing their products which are not regarded as healthier options. The advertisement follows a boy who is obsessed with anything to do with Minions and ends up at McDonalds surrounded by likeminded minion children. The Minions theme is heavily used throughout the advertisement giving it undue prominence in a way to entice children to pester their parents. The visuals used within the ad specifically the shot of a typical day in a child's life, then inside the restaurant with lots of busy children dressed as minions, everyone having fun, the yellow balloons would greatly appeal to a child's imagination and sense of play. Therefore this ad would encourage children to pester their parents into going to McDonald's to be part of the Minions theme thus breaches 3.5 of the AANA Food and Beverage Advertising and Marketing Communications Code. This was viewed on YouTube. I understand YouTube is not allowed for under 13 year olds (although you don't need to be signed in to view YouTube), but it still is a very common website used by children. The QSRI and AANA Code for Advertising and Marketing Communications to Children defines children as under 14, so there is a year where children are allowed to view YouTube and be subsequently exposed to junk food marketing whom would be considered under the QSRI and AANA code. Overall this ad is blatantly targeted at children to entice them to pester their parents. Not a responsible advertisement McDonald's!

THE ADVERTISER'S RESPONSE

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

Reason 1: Advertisement storyline and context

It is important to start by explaining the storyline depicted in 30 second version of the Advertisement (TVC30) as it provides context for the edited 15 second version (TVC15). TVC15 is the last section of the longer TVC30. As is common, the shortened version of the

Advertisement is designed to remind consumers of the longer version, without the need to play it in full. The average consumer, when seeing TVC15 will be directly reminded of TVC30 and the story and context that is behind it.

TVC30 depicts the story of a woman, with a young son who has just received a new 'Minion' costume. The mother initially appears happy that her child loves the costume. The story develops over a montage, told from the mother's perspective as she struggles to convince her son to wear anything other than the costume. The situation is familiar for parents, as children often become fixated on a particular favourite character, costume or outfit, and become obsessed with it. The mother is present in all scenes with her son, before joining with a larger family to share a meal.

For a consumer that only sees TVC15, there is nothing in the Advertisement that directly targets children. At most, TVC15 refers to the 'Minions' characters, but as has been established by the Advertising Standards Board (ASB) on previous occasions, the mere presence of the characters does not mean the Advertisement is directed primarily at children. Despite TV15 using slightly different scenes to TVC30, the scenes in TVC15 complete the story of TVC30; after the mother and child arrive at their local McDonald's restaurant (a scene in both Advertisements), the boy is excitedly hurrying his mother along into the restaurant (only shown in TVC15). The scenes in TVC15 use the same themes, language, colours, words and concepts as TVC30 which are further discussed below.

Reason 2: The content of the Advertisement is directed at parents and families, not children.

The Advertisement incorporates the popular movie franchise Despicable Me, which is widely enjoyed by families and people of a variety of ages. The Complaint argues that the mere use of the Despicable Me 3 characters directly appeals to children. This argument has been considered by the ASB before, and rightly dismissed. The same principles should be applied in this situation as have been applied in several previous ASB decisions which are almost identical. In a prior decision (case 0208/15) "the Board noted the strong connection with the Minion movie and Minion characters and considered that the use of a particular cartoon character from a movie does not immediately make it directed primarily to children. The Board noted that the Minion movie is popular with children but considered that many families would watch the movie together and also enjoy the associated marketing material." As in case 0208/15, the mere presence of the characters in the Advertisement does not mean children are the primary audience. As in previous cases, the Advertisement speaks to parents and families, not children, and accordingly is not subject to the QRSI or Code. In order to determine if an advertisement is directed towards children under the QRSI or Code, overall consideration needs to be given to the colours, words, concepts and themes that are used. We have dealt with these separately below.

2.1 Wording and music of the Advertisement.

The wording of the Advertisement is clearly directed at parents and families. The script says "Treat your family"; this is important for two reasons. Firstly, the use of "treat" in this context allows the consumer and the general public to understand that this meal can be consumed as a treat. The Advertisement does not instruct parents to consume the meal for breakfast, lunch and dinner. Secondly, the phrase "treat your family" is clearly talking to parents and adults; it is saying that parents can treat their family to this meal. The Advertisement shows a price point of \$26.95 for the meal which is clearly for the benefit of

the parents who will be buying it for their families. No reasonable consumer would interpret this as meaning that children should treat their families to the meal, nor would a child think that this Advertisement is talking directly to them.

The music that is heard throughout the longer 30 second Advertisement again provides context to the target audience. The music is soft, subtle and calming to parents and families. The lyrics, "I see you in me, me in you" reflect the notion of a parent watching their child grow and recognising their own qualities developing in their child; this is a concept too complex to be appreciated by children. If this Advertisement was directed to children the music would have a more prominent, playful position.

2.2 Colour and aesthetic of the Advertisement.

It is clear from the colours used in the Advertisement that children are not the target. Throughout the Advertisement real, earthy and contemporary colouring is used to appeal to parents and adults, as opposed to children. In the Advertisement, the use of bright colours is limited. The use of black, yellow, shades of brown and timber make the Advertisement more sophisticated, compared to the bright, vibrant, and high contrast use of colour that is usually used for advertisements directed at children. The production team specifically used aesthetics that were appealing to parents and families rather than bright colouring that would otherwise be used for a children's advertisement.

In contrast to advertising targeted at children, all actors are real people, without any animated characters, again drawing attention to parents and families. In its prior decision mentioned above (case 0208/15) the ASB said "it is essential for the Board to 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. In this instance the Board considered that whilst the theme, visuals and language of the 'Minions Mania' page would be attractive to children it was not considered to be directed primarily to Children". This is an even clearer situation where some children may recognise the character, but the target of the Advertisement, when the words, music, colour and themes are considered, is not children, but parents.

2.3 Themes of the Advertisement

The Advertisement has more nuanced themes that appeal to adults rather than the simple themes that are used in advertising to children. The comedy that underpins the Advertisement would not be understood by children. Adults, families and children alike will appreciate the contradiction of the young boy running around a soccer field in a costume. However, the key theme of the Advertisement is the struggle of a parent dealing with a stubborn and determined child. We see this struggle throughout the Advertisement and specifically when the mother is trying to persuade her child to wear normal clothing, but the child won't wear anything but the costume. This theme requires a more adult perspective of the world to understand and reinforces the position that this does not advertise to children directly.

The Advertisement, in context, does not make a call on children to make a direct association between the Despicable Me 3 movie and the McDonald's Family Box, nor does the Advertisement call on children at all. The Complaint claims that the mere fact the product relates to the Despicable Me 3 movie means that children the Advertisement is directed at

children. However, it is well known that the movie franchise is enjoyed by families and not children alone. The theme of a stubborn child obsessed with their favourite character specifically appeals to parents and the inclusion of the minion character does not automatically appeal to children, but more so to families.

For the reasons outlined above the Advertisement has broad appeal to families and parents, and is not directly advertising to children. Accordingly, the Complaint should be dismissed.

Reason 3: The placement of the Advertisement is not directed to children.

Under the QSRI, an advertisement can be 'directed primarily to children' if it is placed in a medium that is directed at children. The QSRI requires that children are 35% or more of the audience of the medium for an advertisement to be placed in a medium directed at children. In this case, the medium is YouTube. YouTube's terms and conditions clearly state that no one under the age of 13 is allowed to use the website (clause 12). While we acknowledge that some children still access the YouTube website, this is generally done with parent supervision, and children do not constitute 35% or more of YouTube's audience. The ASB has also established in previous decisions that "YouTube is not of itself a medium that is directed primarily to children (case 0172/17).

Reason 4: The amount of food and beverage displayed is appropriate for the number of people shown.

The Advertisement is not advertising directed at children, and as a result, the principles of the QSRI and Code do not apply. Even then, the amount of food and beverage shown, in context and with the number of people shown, is acceptable.

The Advertisement positions the meal primarily in front of the three adults present. Water and apple slices are positioned in front of the children. As mentioned above, the Advertisement also calls out the meal as a "treat".

The average adult daily energy intake is 8700kJ: The total kilojoule value for the meal is 17329kJ, and six people are shown consuming it. If we restrict each child's intake to 2000kJ, each adult would consume 3776kJ if the remainder was split equally. In the context of a "treat" this is not excessive allowing each adult 4924kJ of additional consumption for the other two meals of the day.

While the Advertisement shows two banana shakes, two bottles of water, and a family sized fries, customers can choose four bottles of water and two side salads as an alternative, which would further reduce the kilojoule value of the meal where a lower intake is appropriate.

Taking all of this into consideration, in the context that the Advertisement is for a family treat, and is targeting parents, the food present is suitable for six people. Accordingly the ASB should dismiss the Complaint.

For the reasons set out above, the QSRI and Code do not apply to the Advertisement, and the Advertisement otherwise complies with the AANA codes. Accordingly, the Complaint should be dismissed. We have considered other matters under section 2 of the AANA Code of Ethics and submit that the Advertisement does not breach any of the other matters covered by that section or by any of the other applicable codes.

THE DETERMINATION

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the “Children’s Code”), the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code), and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the ‘QSRI’).

The Board noted the complainant’s concern that the advertisement breaches the QSRI by advertising to children a food product that is not a healthier dietary choice and is not in the context of a healthy lifestyle.

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

The Board noted that McDonald’s is a signatory to the QSRI and determined that the provisions of the QSRI apply to this marketing communication.

The Board noted that the QSRI 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 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 Board 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 Board considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes “television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.” The Board considered that YouTube is covered by this definition.

The Board noted that the references to avoiding C and P rated programs and other rated programs as outlined in the QSRI apply only to television and that for You Tube the Board can only consider the medium itself and whether the particular publication of the advertisement is likely to have a greater than 35% audience of people under the age of 14.

The Board noted the YouTube Terms of Service – Community guidelines which state that:

12. Ability to Accept Terms of Service

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

The Board noted the advertiser's stated efforts to minimise the publication of the advertising in conjunction with children's content on YouTube.

Unlike previous cases that include tied in offers (0166/14), the current advertisement does not appear to be tied in with an accompanying campaign to direct children to this YouTube site in particular and the Board considered it is therefore unlikely to have a greater than 35% child audience.

With regards to points 2 and 3, the Board considered that YouTube is not of itself a Medium that is directed primarily to Children and that the context of this particular advertisement would be unlikely to attract an audience of greater than 35 per cent of children and noted that there is no additional material that ties the advertisement in with another offer or in house purchase etc.

On this basis the Board determined that the advertisement did not meet points 2 or 3 of the QSRI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 percent or more of the audience of the Medium.

The Board noted that with regards to point 1 the Board must consider whether the communication activity is directed primarily to Children – regardless of its placement.

The Board noted that the dictionary definition of "primarily" is "in the first place" and that to be within the QSRI the Board must find that the advertisement is clearly aimed in the first instance at Children under 14 and that it must have regard to the 'theme, visuals and language' used in determining this issue.

The Board noted the complainant's concern that the advertisement is for a "family box" and uses characters from the movie Despicable Me 3 and that this is a product that is targeted to and of appeal to children under the age of 14 years.

The Board noted the advertiser's response that the product advertised, the colour, tone and language used, all direct the advertisement to adults and families, not children and the language of the advertisement itself is directed at parents and families, referring to "treat your family" and the inclusion of minion apparel does not make the advertisement appealing to children.

It is essential for the Board to 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 Board noted that the theme of the advertisement is promoting the meal deal with emphasis on the “Family Box”. The Board considered that the advertising of a meal that is promoting value for the whole family is a concept that is of appeal to parents or broadly an adult audience. The Board noted that the meal promoted in the advertisement is a family box consisting of:

four burgers,
ten chicken nuggets,
twelve potato minions,
one family size fries and
four drinks.

The Board then noted the visual of the advertisement which shows a young boy dressed in a minion costume participating in different activities including a soccer game and jumping on a trampoline all while wearing his minion costume. Toward the end of the advertisement, the boy and his mother head to McDonald’s for a meal with others. The food from the family box is seen on the table and around the table are seated three adults and three children.

The Board considered that the language used included music and a song and the male voiceover describes the “new Despicable Me 3 Family Box, all your favourites plus new potato Minions, made for sharing, made for family.” The Board noted the voiceover did not have a childlike tone and considered that the language was not of principal appeal to children and that the reference to a family box is aimed at adults.

In this instance the Board considered that the theme, visuals and language of the advertisement were advertising a family meal deal, and the message was directed to adults and not directed primarily to Children under 14 years.

Based on the requirements outlined in the QSRI the Board considered that as the advertisement was not directed primarily to Children, did not appear in a medium directed primarily to Children and did not appear in a medium which attracts an audience share of more than 35% of Children, the QRSI does not apply in this instance.

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, “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 food and/or beverage products”.

For the reasons outlined above, the Board considered that the advertisement is not directed primarily to Children and that the family box value meal was not a product targeted to, or of principal appeal to children.

The Board determined that this YouTube advertisement is not directed primarily to Children, and therefore the Children’s Code does not apply.

The Board then considered whether the advertisement complied with all relevant provisions

of the Food Code.

The Board first considered section 2.1 of the Code which requires that ‘Advertising or Marketing Communications 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.’ The Board considered that advertising the product, a family box, is not of itself contrary to prevailing community standards and that the advertisement did not breach section 2.1.

The Board then considered section 2.2 which states: “the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.”

The Board noted that the advertised product is a family box with the addition of potato minions. The Board noted that the promotion is for a limited time. The Board considered that, consistent with previous decisions (McDonald’s 171/17, McDonald’s 172/17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Board noted the AANA Food and Beverages Advertising and Marketing Communications Code – Practice Note which provides that: ‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board considered that the likely interpretation of the advertisement is that the product advertised is intended to be consumed by a family or group of people and that there is no suggestion of frequency of consumption or of consuming multiple family boxes.

The Board considered that the advertisement did not encourage excess consumption.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

The Board then considered section 3.5 of the Code which states that: ‘Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child’s welfare to buy particular Children’s Food or Beverage Products for them.’

The Board noted the complainant’s concern that the advertisement encourages children to pester their parents to take them to McDonald’s.

The Board noted the Practice Note to Section 3.5 of the Food Code which provides, “In its determination of whether any advertising or marketing communication is directed toward children, the Board will apply the same criteria as used in considering complaints under the

AANA Code for Advertising & Marketing Communications to Children.”

The Board noted it had considered that this advertisement did not fall under the Children’s Code, for reasons outlined above, and therefore considered that Section 3.5 of the Food Code did not apply in this instance.

Finding that the advertisement did not breach the QSRI, the AANA Food Code or the AANA Children’s Code, the Board dismissed the complaint.