



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0309-21
2. Advertiser :	McDonald's Australia Limited
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Email
5. Date of Determination	10-Nov-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\3.1 Must not target children
AANA Food and Beverages Code\3.4 Giveaway products/vouchers

DESCRIPTION OF ADVERTISEMENT

This advertisement is an email from Basketball Victoria to recipients in Basketball Victoria's mailing list that contains the following message:

"Bounce into Macca's for your Free Big Mac. Thanks to our partner Macca's we have an app-exclusive offer for you! It's time to open up the mymacca's app and activate this offer today to secure your free Big Mac. Terms and Conditions: Offer is single use only and available for a limited time. Redeem the offer by applying it to your mobile order in the mymacca's® app. Not to be used in conjunction with any other offer. Offer must be used in a single transaction. This offer must not be distributed or redeemed by a child under 15 years. Available at participating Victorian restaurants only. Not redeemable via McDelivery®. Offer may be revoked for any reason in McDonald's ultimate discretion. Available after 10:30am".

THE COMPLAINT

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



Parents' Voice is a movement of parents from across Australia who advocate for improved food and physical activity environments for Australian children. Parents' Voice is financially supported by Diabetes Victoria and VicHealth.

This advertisement was sent to us for further action by a concerned parent member after their 13-year-old child received it via direct email.

"I signed my 13-year-old up for a summer season of basketball with a local club last week. This email arrived today. I could not be more horrified. Not just a McDonald's burger offer (no healthy option) but also a mandatory Macca's smartphone app install required. That also means registering for an account. Just shocking to see kids sport so compromised."

We agree with this parent, and would like to bring your attention to the following points.

The advertisement breaches the overall intent of the AFGC Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI), namely that advertisements directed to children should represent and encourage healthier dietary choices.

McDonald's Australia and Basketball Victoria would've been fully aware of the age of the children that were targeted by this email and have actively chosen to send this promotion directly to them.

McDonald's Australia is a signatory to the QSRI, and under S1.5. Children's Sporting Events signatories must not give away food to children under 14 years of age that do not meet the Nutrition Criteria. A Big Mac is not a children's burger and with each burger containing 2360kJ, 11.8g saturated fat and 1020mg of sodium, a Big Mac clearly does not meet the QSRI Nutrition Criteria.

In particular, under Schedule 2 Nutrition Criteria, the meal must include a main and a drink and be under a total of 2770kJ per meal. Although the email promotes the Big Mac and not a meal, if the Big Mac is consumed with a small Coca-Cola the total kilojoules is 2789kJ and if it is consumed with a Pop Top Apple Juice the total kilojoules for the meal is 2873kJ. These are just illustrations, the advertisement does not suggest a drink, which means it is not a 'meal' and a further breach of the QSRI.

Additionally, a Big Mac has 0.5g of saturated fat per 100kJ (above the maximum limit of 0.4g/100kJ), and 1020mg of sodium per serve (above the maximum limit of 650mg per serve).

Children should not be encouraged with a free offer to purchase food they should not be consuming, especially when it involves downloading and signing up for the mymacca's app. Making this advertisement is a clear breach of the QSRI.



Parents' Voice, therefore, formally requests that the ASB investigates this issue, with a view to directing McDonald's Australia and Basketball Victoria to cease this promotion.

THE ADVERTISER'S RESPONSE

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

Thank you for requesting a response to complaint number 0309-21 (Complaint).

We note that the Complaint has raised issues under the following codes of practice: AANA Food and Beverages Advertising Code – sections 3.1 and 3.4;

McDonald's takes its obligations seriously in respect of adherence to all the codes of practice administered by Ad Standards. McDonald's entirely refutes any suggestion in the complaint or otherwise that the email advertisement breaches the Codes. Please see details below.

AANA Food and Beverages Advertising Code

In the current case, the complaint notes that the email was sent to a 13-year-old child after the parent signed them up to a local basketball competition. The complaint also claims that "McDonald's Australia and Basketball Victoria would've been fully aware of the age of the children that were targeted by this email and have actively chosen to send this promotion directly to them". As well as "children should not be encouraged with a free offer to purchase food they should not be consuming, especially when it involves downloading and signing up for the mymaccas app".

Section 3.1 of the Code: Is the post advertising or marketing communication that targets children?

Section 3.1 of the code provides the following:

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

We refer to the AANA Food and Beverages Advertising Code Practice Notice regarding section 3.1 which states that "Advertisers must be able to demonstrate that they have evaluated or that care has been taken to evaluate the expected average audience composition before the placement of Occasional Food or Beverage advertisements to ensure they are not targeted at children."

In partnering with Basketball Victoria, McDonald's provided clear instructions to Basketball Victoria that the email must only be distributed to those over the age of 15, and such instructions were provided verbally and also in writing. In this regard, please refer to Annexure B



In addition, we ensured that only a person over the age of 15 can redeem the offer, this restriction is clearly stated in the terms and conditions that "Offer must not be distributed or redeemed by a child under 15 years". In this regard, please refer to Annexure A.

We submit that McDonald's has carefully evaluated the target audience of this advertisement and took all reasonable pre-cautions to ensure that children are not targeted.

We are informed by Basketball Victoria that their email database comprises of parents who have created an account via their website at playhq.com and then register either themselves or their children to a particular competition or event. This means the recipients should be PlayHQ profile owners who are either parents of kids or senior domestic participants. Please refer to Annexure C for a statement we have obtained from Basketball Victoria to this effect.

In this instance it is likely that when the parent signed up their 13-year-old for a summer season of basketball, he/she inserted the child's name instead which means the email was addressed to the child despite the actual recipient being the parent. As such the advertisement was not targeted at children.

We further submit that the presentation of the advertisement based on its theme, images, colours, wording, music and language used does not have a principal appealing to children, since the advertisement has a few static, non-animated pictures, with our standard brand colouring, and contains extensive text that would have general audience appeal. The language used in the advertisement is aimed at older people who have a smart phone and can follow the written series of steps to activate the offer. The product being promoted is a Big Mac burger that has broad appeal to consumers of all ages.

Section 3.4 of the Code: Did the advertiser give an award, prize, or voucher to children for occasional food or beverage products?

Section 3.4 of the code provides the following:

"Advertisers must not give to Children as awards or prizes Occasional Food or Beverage Products or vouchers that can be used for Occasional Food or Beverage Products."

We submit that the offer is not an award or prize, it is an offer for a free Big Mac to the members of Basketball Victoria. In addition, it is not given to children for the reasons as set out above. Therefore, this section of the Code does not apply.

AANA Advertising to Children Code

We note that this Code is only applicable if the advertisement is considered as Advertising or Marketing Communications to Children. We submit that this Code is not applicable to the advertisement on the reasons set out above.



Section 2 of the AANA Code of Ethics

McDonald's does not believe the post is in breach of the following parts of section 2 of the Code of Ethics:

- *2.1 – Discrimination or vilification;*
- *2.2 – Exploitative and degrading;*
- *2.3 – Violence;*
- *2.4 – Sex, sexuality and nudity;*
- *2.5 – Language;*
- *2.6 – Health and Safety; and*
- *2.7 – Distinguishable as advertising*

Conclusion

For the reasons above McDonald's concludes that the email does not breach any of the AANA Codes and has taken all reasonable care and pre-cautionary measures to ensure that occasional food and beverages are not targeted at children. Therefore, McDonald's respectfully disagrees with the complaint and requests that the Panel dismiss the complaint.

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 targeting unhealthy food to children.

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

The Panel noted that the complaint refers to the AFGC Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) and details the manner in which the advertisement breaches that Initiative. The Panel noted that that Initiative had been superseded by the updated AANA Food and Beverages Code on November 1, 2021 and that the Panel's consideration of this case would be under the updated Code.

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 free Big Mac. 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 likely have advised as much as the case would then be dismissed, and therefore concluded that the Big Mac product does not meet the FSANZ criteria and is an occasional food 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:

- *Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- *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)."

The Panel further noted the Practice Note for this section of the Food Code which provides:

"Advertisers must be able to demonstrate that they have evaluated or that care has been taken to evaluate the expected average audience composition before the placement of Occasional Food or Beverage advertisements to ensure they are not targeted at children. Where a meal deal is being advertised, each item in that meal deal must meet the Food Standards Australia Nutrient Profile Scoring Criterion, otherwise the advertisement will be considered to be for Occasional Food and Beverage Products."

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

The Panel considered that the promotion of a free Big Mac may be appealing to children however would be equally if not more appealing to adults. The Panel considered that the product would not be significantly appealing to children due to it being a plain burger with no toy.

The Panel considered that the product was not principally or 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 considered that the call to action in the advertisement is to redeem a voucher for a free burger through the mcmacca's app. The Panel considered that the theme of receiving a free product is of wide appeal and is not principally appealing to children.

Are the visuals of the advertisement principally appealing to children?

The Panel noted this advertisement was an email. The Panel noted that the advertisement is quite plain with only generic icons showing a mobile phone, and a large simple image showing a person dunking a burger like a basketball. The Panel noted this image is largely red with yellow linework. The Panel considered that the red imagery was consistent with the colouring of the brand and was not in itself principally appealing to children. The Panel noted the remainder of the advertisement was plain text on a white background. Overall, the Panel considered the visuals of the advertisement would not be appealing to children.



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

The Panel noted that the language in the advertisement was quite simple, with a heading stating “Bounce into Macca’s for your Free Big Mac” and further instructional text about how to access the offer. Overall, the Panel considered the language of the advertisement would not be 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 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 principally appealing to children.

The Panel considered that the overall impression of the advertisement was that it was promoting a free burger and providing instruction on redeeming the offer.

The Panel considered that the advertisement’s content was not principally appealing to children under 15.

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

The Panel noted that this advertisement was an email, and noted the complainant’s concern that it was sent to a child under 13.

The Panel noted that this advertisement was emailed by Basketball Victoria.

The Panel noted the advertiser’s response, specifically that clear instruction were provided to Basketball Victoria that the email must only be distributed to those over the age of 15, and that terms and conditions on the email state that the offer can only be redeemed by a person over the age of 15.

The Panel noted that it was unclear whether the 13 year old child involved in the complaint had an email account and received the email themselves, or if it was addressed to them but sent to the parents’ email address.

The Panel considered that the advertiser had done everything in its power to comply with the provisions of the Code. The Panel noted that Basketball Victoria may wish to introduce some measures to ensure that the information used to send such promotions was accurate and that players under 15 are not inadvertently sent material intended for adults.

Section 3.1 conclusion



The Panel determined that the advertisement was not targeted towards children and did not breach Section 3.1 of the Food Code.

Section 3.4 - Advertisers must not give to Children as awards or prizes Occasional Food or Beverage Products or vouchers that can be used for Occasional Food or Beverage Products.

The Panel considered that the advertisement was a general marketing promotion rather than an award or prize. The Panel noted that there is no language in the advertisement suggesting that the promotion was delivered as a reward for or as a result of signing up to Basketball Victoria.

Section 3.4 conclusion

The Panel determined that the advertisement did not breach Section 3.4 of the Food Code.

Conclusion

Finding that the advertisement did not breach any other section of the Food Code the Panel dismissed the complaint.