



Case Report

1	Case Number	0336/15
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	App
5	Date of Determination	09/09/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
Food and Beverage Code (Children) 3.5 pester power
Food and Beverage Code (Children) 3.6 premium
Advertising to Children Code 2.11 Premiums
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

DESCRIPTION OF THE ADVERTISEMENT

The Application is an application designed for Apple and Android devices titled Happy Readers. Once downloaded, the Application contains three interactive digital books that are accessible and downloadable without a unique code. The other 13 books can be downloaded separately with a unique code that forms part of the Happy Meal Product. The Application allows children to read, listen and create their own stories by adding their own words and sounds effects. The Application includes picture books and comics that may be of interest to different children.

The Application can be downloaded by searching "Happy Readers" on the App Store or Google Play Store. It can be downloaded until 30 September 2015.

THE COMPLAINT

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

The in-app bookstore and the Happy Meal box clearly display the titles that the child has yet to collect. To collect all 10 books and 16 digital readers, children would need to consume 23

Happy Meals in an 8 week period.

Premium

We believe that this is a clear breach of the Code For Advertising & Marketing Communications To Children, particularly section 2.11 Premiums:

(f) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

'Premium' is defined under this Code to mean anything offered either free or at a reduced price, or with an additional cost and which is conditional upon the purchase of an advertised product.

We believe the books and digital readers are premiums according to this definition as they are offered free, conditional upon the purchase of a Happy Meal.

In previous decisions, the Advertising Standards Bureau (ASB) has decided that a toy offered as part of a fast food meal is an integral part of the product and consequently not a premium. However, we ask the ASB to reconsider this interpretation in light of a decision by the Australian Communications and Media Authority (Investigation Report No. 2364, 2372, 2389, 2390 and 2391, dated 18 August 2010) in which it was found that a toy in a fast food meal, such as a McDonald's Happy Meal, may constitute a 'premium' in breach of clause 20(2) of the Children's Television Standards 2005.

The definition of a premium in the CTS is similar to the definition under the Quick Service Restaurant Industry Initiative as it refers to "anything offered with or without additional cost that is intended to induce the purchase of an advertised product or service". In its decision, the delegate confirmed the view of ACMA that a toy in a fast food meal (Happy Meal) can meet the definition of a premium under the CTS, regardless of whether it is part of an advertised product or service.

We do not believe there is any logical policy rationale for distinguishing between a toy that is offered "as part of" a product and a toy that is offered free with a product. In both cases, the offer of a toy has exactly the same effect on children – it makes children want fast food products so that they can collect the toy on offer, and encourages them to pester their parents to take them to the fast food restaurant. It is highly unlikely that children would recognise the distinction between a toy offered 'as part of' a product and a toy offered free with a product. We also do not understand the basis for suggesting that a plastic toy, or in this case a book or digital reader, is 'part of' a fast food meal. Clearly an inedible plastic toy or book is separate to a food and beverage product, irrespective of whether or not the toy or book is offered regularly with that product or just as a one-off. In this case, the book/digital reader is clearly not necessary to the completeness of the meal advertised. In addition, different toys are available at different times, depending upon movies or characters being promoted. McDonalds is a fast food restaurant franchise, whose business is selling food not toys. The inclusion of a free toy or book with the meal is intended to entice children to desire and request food and beverage products from McDonalds.

On the same basis, this marketing communication also breaches clause 3.6 of the Food & Beverages Advertising & Marketing Communications code:

Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered.

Pester Power

In addition, we believe that this marketing tactic also breaches the Food & Beverages Advertising & Marketing Communications Code, section 3 Advertising and Children: 3.5 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 in-app bookstore features the Happy Meal box character and although the Happy Meal featured is a 'healthier choice', as defined by McDonald's own Nutrition Criteria For Assessing Children Meals, the default food option when a parent purchases a Happy Meal in store is not the 'healthier choice'.

The Parents' Jury, therefore, formally requests that the ASB investigates this issue, with a view to directing McDonald's 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:

McDonald's thanks the Advertising Standards Bureau ("ASB") for the opportunity to provide submissions in response to complaint number 0336 of 2015 ("Complaint") in respect of the Happy Readers Application ("Application").

We submit that the Application is not in breach of the Australian Food and Grocery Council Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children ("QSR Initiative"), the AANA Code for Advertising and Marketing Communications to Children ("AANA Children's Code") or the AANA Food and Beverages Advertising and Marketing Communications Code ("AANA Food Code") (together, the "Codes").

In the spirit of Book Week, McDonald's took the view that providing a reading program as part of our Happy Meal Product would be appropriate to encourage children to read and enjoy books. We submit that the educational nature of this month's Happy Meal Product appeals more directly to parents than children. In order to deliver this messaging, McDonald's worked closely together with legal to ensure that the Application was compliant with the Codes.

We provide our reasons in respect of each of the Codes below.

Description of Application

The Application is an application designed for Apple and Android devices titled Happy Readers. Once downloaded, the Application contains three interactive digital books that are accessible and downloadable without a unique code. The other 13 books can be downloaded separately with a unique code that forms part of the Happy Meal Product. The Application allows children to read, listen and create their own stories by adding their own words and sounds effects. The Application includes picture books and comics that may be of interest to different children.

We submit that the Application will be used by Children, but will likely only be accessed under the supervision of a parent or guardian.

The Application can be downloaded by searching "Happy Readers" on the App Store or Google Play Store. It can be downloaded until 30 September 2015.

Premium

We refer to previous decisions of the ASB (see for example Case Reports 103/05 and 572/09)

which it has been held by the ASB that toys which come with a Happy Meal do not fall within the definition of “Premium” under the Codes as they are part of the Happy Meal and are not a product that is additional to the regular product.

We submit that consistent with previous decisions of the ASB, the toys which come with Happy Meals are not a “Premium” for the purposes of the Codes. The Happy Meal toy is part of the Happy Meal that changes regularly and is an integral part of the Happy Meal Product.

Further, McDonald’s notes that the Application is free of charge and is not conditional on any purchase from McDonald’s. Whilst users can unlock further books with a unique code, it is important to recognise that users are able to access and play the Application without a unique code.

AANA Food Code

We submit that the Application does not breach the AANA Food Code. We set our reasons below.

Pester Power

We understand the ASB’s view on the intention of the “pester power” sections under the Codes to be the prevention of advertisements containing blatant encouragements for children to ask for a product to be purchased. We do not agree with the Complainant that the Application breaches section 3.5 of the Food Code. It is our view that there is no express appeal to children to urge their parents or guardians to buy a product for them and that such a conclusion cannot be reasonably drawn. We agree with the previous determinations of the ASB which have noted that by interpreting any advertisement which is appealing to children as being an advertisement which amounts to “pester power, without any direct or obvious appeal to children, would have the effect of banning all advertising to children.

We refer to the ASB’s decision in 0146/15 where the ASB considered specifically the need for a special code to unlock games on a website where the codes were provided on the product packaging. In that decision, the ASB noted that in most cases a child would be accessing the website under the supervision of an adult and that the purchase of a product for the purpose of obtaining a code is a decision that can be made by the adult present. The ASB considered that the locked status of those games would mean that children may urge their parents to buy products so that they continue playing however the ASB considered that accessing the website on a computer or electronic device meant that there would be access to other games that did not require such a code and therefore the parent or carer would remain the decision maker about whether or not to buy the product. It was the view of the ASB that overall the need for a code to unlock games on a website was not a specific appeal to children to urge parents to buy the product and did not breach section 2.7(b) of the Children’s Code.

We submit that the Application should be considered by the ASB in light of the ASB’s decision in 0146/15. Once downloaded, the Application contains three books that do not require a code to unlock and read. Each book (including the three books that do not require a code) on the Application is interactive allowing the user to read, listen and create their own stories by recording their voices and sound effects. Therefore, a user can use the Application without the purchase of a product. We further submit that children accessing the Application

would be assisted by a parent or a guardian and that any decision to purchase a Happy Meal to receive a code would be made by that adult present. Further, the Application has two screens so that the user can view the books that have been unlocked on one screen, and the user is required to “Tap for More Books” before being taken to the second screen. The second screen features further information regarding the books available on the Application and allows parents or guardians to enter the unique code to unlock one of the books.

Integral Element

As stated previously, we submit that the Application is not a Premium and thus did not breach section 3.6 of the Food Code.

Contravenes Community Standards

We submit that the Application does not undermine the importance of healthy or active lifestyles nor the promotion of healthy balance diets. Further, we submit that the Application does not portray any setting contrary to Prevailing Community Standards. In support of this submission, we note that a physical activity message is featured in the Application and that books available in the Application are for a wide range of children’s interests and reading levels. It was never intended that an individual child would be interested in all of the books provided in the Application library. Finally, only the Happy Meal that meets the Nutrition Criteria under the QSR Initiative is shown. There is no representation of products or portion sizes that are inappropriate or disproportionate to what is considered Prevailing Community Standards.

Children’s Code

Premiums

We refer to our submissions above in respect of the Children’s Code, specifically that the Application is not a Premium as defined by the Codes and therefore there is no in breach of section 2.11 of the Children’s Code.

Parental Authority

We submit that the Application does not breach section 2.7 of the Children’s Code and refer to our submissions set out under “Pester Power” above in support.

Prevailing Community Standards

We refer to our submissions above in support of our view that the Application does not breach section 2.1 of the Children’s Code.

Comply with Food Code

As outlined above, it is our submission that the Application does not breach the Food Code, nor does it encourage or promote an inactive lifestyle or unhealthy eating or drinking habits. Therefore, we submit that the Application does not breach section 2.14 of the Children’s Code.

QSR Initiative

We submit that the Application is not in breach of any of the Core Principles of the QSR Initiative.

The Application represents only healthier dietary choices, as determined by the Nutrition Criteria. The Application features the Happy Meal consisting of Chicken McNuggets 3pk, 10 grams of Ketchup, Apple Slices and Water. Previous decisions of the ASB have confirmed that this Happy Meal meets the Nutrition Criteria.

By representing only the healthier dietary option, the Application also encourages good dietary habits. In addition, the Application includes messaging encouraging physical activity in the following ways:

(a) Imagery of Happy skipping;

(b) Copy next to images of Happy stating “Get active with your friends today”; and

(c) Copy on the other tile stating “Touch. Read. Discover. Play.”

Finally, S1.3 of the QSR Initiative states that signatories must ensure that any interactive game directed primarily to Children which includes the Signatory’s food and/or beverages products is consistent with S1.1. As outlined above, we submit that the Application meets both S1.1 and S1.3.

Conclusion

We submit that the Application is not in breach of the Codes and the Complaint should be dismissed.

We thank the ASB for providing us the opportunity to respond to the Complaint and look forward to learning the outcome. McDonald’s takes its responsibilities under the Codes very seriously and is committed to ensuring ongoing compliance.

THE DETERMINATION

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

The Board noted the complainant’s concern that the ‘in-app bookstore and the Happy Meal Box clearly display the titles that the child has yet to collect. To collect all ten books and 16 digital readers, children would need to consumer 23 Happy Meals in an 8 week period.’ The complainant considered that this is a breach of section 2.11 of the Children’s Code as it uses a Premium in a way that promotes excessive consumption of the product. The complainant also considered that the marketing breaches section 3 of the Children’s Code by amounting to an

appeal to children to urge parents to buy a Happy Meal for them.

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

The Board first considered the nature of the Happy Meal Box and the In-App bookstore. In the Board's view the material included on the Happy Meal Box is part of the labelling and packaging of the product – the Happy Meal – and is an excluded advertising or marketing communication under the Children's Code, the Food and Beverages Code and the QSRI.

The Board then considered the In-App bookstore. This is an interactive reading game App which contains visual and written references to Happy Meal products. The Board considered that this App is a marketing communication as defined under the Children's Code and that the content of the App can therefore be considered under the Children's Code (and other AANA Codes).

The Board noted that it is not within the advertiser's control which products a parent purchases once they are in the store and considered that the issue of an adult's purchasing habits does not fall under the Board's jurisdiction.

The Board considered whether the content of the App complied with the requirements of the Children's Code and Part 3 of the Food and Beverages Code.

In order for these Codes to apply the advertisement must be '... having regard to the theme, visuals and language used, directed primarily to Children and for Product'.

The Board noted the definition of Children in the Children's Code: "Children means persons 14 years old or younger" and the definition of Product is: "...goods, services and/or facilities which are targeted toward and have principal appeal to Children".

The Board noted the App, its focus on providing young children with books and its inclusion as part of the Happy Meal. The Board considered that the App is directed primarily to Children.

The Board noted the advertised product is a Happy Meal and considered that this is a Product targeted toward and of principal appeal to Children.

The Board therefore determined that the Children's Code and Part 3 of the Food Code apply to the App.

The Board noted Section 2.1 of the Children's Code which provides that: "advertising or marketing communications to Children must not contravene Prevailing Community standards."

The Board noted that prevailing community standards means: "the community standards determined by the Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications to Children. Prevailing Community Standards apply to Section 2 below..."

The Board noted that some members of the community would prefer that McDonald's not advertise any of their products to children.

Consistent with previous decisions, (ABC Sales and Marketing 0162/12, Muffin Break 233/12 and ABC Sales and Marketing 0144/15), the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising a McDonald's Happy Meal on an App is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.

The Board determined that the advertisement did not breach Section 2.1 of the Children's Code.

The Board noted the complainant's concerns that the number of books available to download would encourage a child to ask for more Happy Meals. The Board also noted the complainant's concerns that the advertisement encourages pester power.

The Board considered Section 2.7 of the Children's Code which provides that: "Advertising or Marketing Communications to Children:

- (a) Must not undermine the authority, responsibility or judgement of parents or carers;
- (b) Must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them;
- (c) Must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and
- (d) Must not state or imply that persons who buy the Product are more generous than those who do not."

The Board noted that section 3.5 of the Food and Beverages Code contains the same restriction as s2.7(b) but is limited to food and beverage products, and considered that this also applies to the App.

The Board noted that the App provides three interactive digital books that are accessible and downloadable without a unique code and that there are a further thirteen books that can be downloaded separately with a unique code. The Board noted that in order to download the extra books a Happy Meal needs to be purchased to get the unique code.

The Board noted that given the nature of the App and the likely target audience of the books within the App, the App would likely be used by young children who would be supervised by a parent or carer. The Board noted that the App opens on a screen which contains one downloaded book. There is then a note at the bottom of the page to 'tap here for more books'. The next screen lists the available books by name and accompanying book cover image. The two remaining complimentary books are listed among other books. The 'Download' button takes users to a screen with a Pop Up stating 'Enter your Happy Readers Code. To unlock your digital book, enter the unique code provided with your Happy Meal'.

The Board considered whether this amounted to 'an appeal to children to urge their parents, carers or another person to buy a Product for them'

The Board noted that Section 2.7 of the Food and Beverages Code is for all practical purposes the same as section 3.5 of the Children's Code. The Board therefore considered the Food and Beverages Code Practice which specifically addresses how clause 2.7 (and thereby section 3.5) should be interpreted. The Practice Note states:

In considering whether an advertising and/or marketing communications contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

- although children may be expected to exercise some preference over the foods and beverages they consume, advertisements and/or marketing communications must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.

- advertising and/or marketing communications must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products [As an example, in a supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text messages must not include such urging as 'Ask mummy to buy you one'.]

The Board considered the likely message a young child would take from the App. The Board considered that the App does not have any wording directed to a child of that age that would amount to direct encouragement of a child to purchase a Happy Meal. In the Board's view the Code requires specific direction. For example, the Board upheld complaints in 0522/14 that a voiceover 'add the toy to your letter to Santa.com.au' did amount to a direct encouragement to a child of the target audience to urge the purchase of a particular product. In its determination:

'The Board considered that the call to action by the voiceover at the end of the advertisement was a call to children to urge their parents to either help them to access the website in order to direct a letter to Santa requesting this toy or from a child's perspective is an appeal to children to urge Santa to provide a present. The Board noted the terms of the Code, "parent, carer or other person" and considering that the Code must be considered from the perspective of a child, the Board considered that this amounts to an appeal to children to urge someone to obtain the toy for them.

The Board considered the term "buy" a product and considered that in the context of a reference to Santa "buy" should be interpreted broadly and would include the suggestion to ask Santa to provide the toy. The Board considered that the suggestion to "add the toy to your letter to santa.com" was an appeal to children to urge someone to obtain the product for them and this was urging parents to purchase this toy and that in doing so did breach section 2.7(b) of the Children's Code.'

In the current matter, the Board considered that the App did not contain a direct appeal to children to urge the purchase of a Happy Meal.

The Board considered the second element of the Practice Note which prohibits giving

children cause to pester or otherwise make a nuisance of themselves in relation to the promoted product. The Board considered that the intention of the Code, as articulated in the Practice Note, is to prevent advertisements containing blatant encouragements for children to ask for a product to be purchased. In the Board's view, to interpret any marketing which is attractive to a child as amounting to 'pester power', without any direct or obvious appeal to children to ask their parents for the product, would have the effect of banning all advertising to children. The Board recognised that this outcome would be considered desirable by some members of the community, but noted that in its view this is not the clear intent of the Code, nor is it yet a community standard.

With regards to the need for an access code from purchase, the Board also noted it had previously considered a similar issue in case 0146/15 where there was a mix of unlocked games and games which required a code from purchase. In that case:

“It was the view of the Board that overall the need for a code to unlock games on a website was not a specific appeal to children to urge parents to buy the product and did not breach section 2.7(b) of the Code.”

The Board returned to the main screen of the App and noted that it depicts one book and an invitation to ‘tap here for more books’. The picture book screen then lists the other books and there are, at least initially, two books available to ‘download’ immediately. The Board noted that there is no content on the App which suggests or implies or encourages children to collect all of the books or comics. However the Board did discuss the list of books and whether or not mingling the free books with the books requiring a code would encourage pestering. Overall the Board considered that there was no material in the App - other than the list of books that require the Code - that would give a young child cause to pester for a new code ie: a Happy Meal. With regards to the list of books available, overall the Board considered that the list did not give cause to children to pester and that the App overall did not contain an appeal to children to urge their parents to buy them a Happy Meal.

The Board determined that the advertisement did not encourage pester power and did not breach section 2.7 of the Children’s Code or section 3.5 of the Food Code.

The Board then considered the complainant’s concern that the books in the App are a premium and that they promote excessive consumption of Happy Meals.

The Board considered whether the digital books provided in the App are a premium.

The Board noted 'Premium' is defined in section 1 of the Children’s Code as: “anything offered free or at a reduced price and which is conditional upon the purchase of a regular product.”

The Board noted that it had consistently determined that toys which come from the Happy Meal do not fall within the Food and Beverage Code or Children’s Code definitions of Premium as they are part of the Happy Meal and not a product that is additional to the regular product (103/05, 572/09, 0339/12). In short, the books provided through the App are provided in place of a toy and a Happy Meal is a product which always includes a toy. The Board considered in this instance that the Code which permits the download of a book is not a premium, rather it is that month’s version of the Toy component of a Happy Meal.

The Board noted that the ACMA in Investigation Report No 2364, 2372, 2389, 2390 and 2391 regarding a McDonald's Happy Meal advertisement determined that the toy component of a Happy Meal could be considered a premium. The Board noted that the definition of premium in the Children's Television Standards 2005 is quite different to that in the Children's Code and the Food and Beverages Code.

For the sake of completeness, the Board considered whether, if the books available through the App were a premium, would the marketing comply with Section 2.11 of the Children's Code which provides that: "Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium: (f) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product"

The Board noted again that a number of books are available for free and considered that although the codes for the books are only available for a limited time, there is no suggestion to children in the App to collect all of the books, or to do so within a particular time. The Board noted the advertiser's response that the 'books available in the Application are for a wide range of children's interests and reading levels. It was never intended that an individual child would be interested in all of the books provided...'

In the Board's view, the books available through the App, if considered a Premium, did not promote irresponsible use or excessive consumption of Happy Meals.

The Board determined that the advertisement did not breach Section 2.11 of the Children's Code.

The Board noted Section 3.6 of the Food Code: "Advertising or Marketing Communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product/s being offered".

The Board noted that the definition of Premium is the same as that in the Children's Code. For the reasons outlined above, the Board considered that the App is not a Premium nor is it an ingredient and considered that section 3.6 of the Food Code did not apply.

The Board then noted Section 2.14 of the Children's Code:

- (a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits;
- (b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

The Board noted that the provisions of the Children's Code prohibit promotions of an inactive lifestyle or unhealthy eating or drinking habits.

The Board noted that the App contains language encouraging children to be active: "get active with your friends today" and "touch, read, discover, play", along with the image of the Happy logo skipping. The Board also noted that the food and beverage depicted included a meal which meets the healthy choice criteria as outlined in the QSRI. The Board noted that there was no language in the App to encourage excess consumption of the advertised food product and considered that overall the content of the App did not promote unhealthy eating

and did not discourage physical activity.

The Board determined that the advertisement did not breach Section 2.14 of the Children's Code.

The Board also considered the App's compliance with the Quick Service Restaurant Initiative (QSRI).

The Board noted that McDonald's is a signatory of the QSRI which 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 QSR Initiative. 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 first considered whether the App is an Advertising or Marketing communication. The Board considered that the McDonald's 'Happy Reader' App currently under review is clearly branded with Happy Meals material and can be considered to be a marketing communication – specifically a marketing communication for Happy Meals.

The Board then considered whether the App is directed primarily to children.

The Board noted that the QSRI Initiative 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 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 considered that it must therefore consider the content of the App in the form in which it is finally downloaded and available for access by any person.

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 advertiser's response that 'McDonald's took the view that providing a reading program as part of our Happy Meal Product would be appropriate to encourage children to read and enjoy books. We submit that the educational nature of this month's

Happy Meal Product appeals more directly to parents than children...'. The Board noted that the nature of the Happy Meal product and its appeal might be relevant in an advertisement for the App but that in this case the Board is considering the content of the APP itself.

The Board noted the theme of the App and considered that the Australian Book Week is celebrated by school children across Australia and the App is encouraging children to participate in this event by reading books available through the App and through the purchase of the advertiser's products.

The Board then noted the visuals of the advertisement and considered that the simple cartoon style of the App and the use of the Happy Meal logo means that the advertisement would be attractive to children.

Finally the Board noted the language used and considered that the language is very simple and clear, and the phrases "get active with your friends today" and "touch, read, discover, play" along with the type of books listed (Dora in Wonderland, ABC of Animals and other stuff, Elmer) amounts to language clearly directed at younger children.

The Board considered that the look and feel of the App clearly indicates that the App is directed primarily for use by young children. Finding that the theme, language and visuals of the App were directed primarily to children, the Board considered that the QSRI applies. .

The Board then considered Schedule 1.1 of the QSR which states:

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; and
 - ii. Physical activity.

The Board noted first noted point a. above, that the advertiser is required by the QSRI to only show food and beverages that represent healthier choices to children. The Board noted that on some screens within the App a Happy Meal consisting of Chicken McNuggets 3pk, 10 grams of ketchup, Apple slices and water is depicted.

The Board noted it had previously received confirmation from the Independent Arbiter that the Chicken McNuggets Happy Meal, as displayed in current advertisement, does meet the defined Nutrition Criteria for energy (kilojoules), saturated fat, sugar and sodium (0281/15):

"Based on this analysis, the nutritional composition of the Happy Meal is consistent with the nutrition criteria outlined in McDonalds Company Action Plan... the Happy Meal consisting of 3 chicken nuggets, ketchup, apple slices and water that is advertised on the McDonalds Happy Meal website (www.happymeal.com.au) is not inconsistent with accepted government or scientific standards..."

Based on this previous assessment of the advertised product by the Independent Arbiter, the Board determined that the current advertisement meets the requirements of part (a) of Section 1.1 of the QSRI.

The Board then considered point (b) outlined above, and noted that no other food is depicted in the advertisement.

The Board noted its previous decision in 166/14 where it considered the depiction of a Happy Meal in an App. In that case the Board stated:

‘...in this game there are depictions of only three food products: the chicken wrap, apple slices and the milk drink. The Board considered that the meal items depicted (milk drink, fruit, chicken wrap) do form a meal that would be consistent with the Australian Dietary Guidelines for children; together they provide foods from each of the primary food group (cereals, vegetables, fruit, dairy and meat) and do not include foods that would be classified as extras or treats. The Board’s view was that the depiction of a complete meal including all recommended food groups is an example of modelling good dietary habits.’

The current Happy Meal was also considered in 0281/15 where the Board determined the Happy Meal depicted represented a variety of food (water, apple slices and chicken nuggets) and that this does meet requirement of s1.1(b)(i). For the same reason the Board considered that the App did encourage good dietary habits.

The Board noted the language used in the advertisement (“get active with your friends today” and “touch, read, discover, play”) along with the image of the Happy logo skipping and considered whether this amounted to messaging that encourages physical activity.

The Board noted in case 0281/15 it had determined that:

“...the advertiser’s response that the microsite contains various features designed to remind children to engage in activity other than computer play including a playtime clock, activities teaching different sporting techniques and other interactive features... the advertiser has taken considerable measures to increase and include messaging that encourages good dietary habits and physical activity”

Consistent with its previous determination, the Board considered in this instance that the advertiser had taken some measures to include messaging that encourages physical activity.

The Board considered that overall the advertisement did encourage physical activity and comply with s1.1(b)(ii).

The Board determined that the advertisement did not breach S1.1 of the QSRI.

The Board also considered s1.3 – Use of products in interactive games. This clause provides that ‘any interactive game directed primarily to children which includes the signatory’s food and/or beverage products is consistent with s1.1.’ The Board considered that the interactive aspects of this App enable children to add items to the stories and that this introduces a game like element to the App. The Board noted that the content of the App however is consistent with s1.1 and that the App meets the requirements of s1.3.

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