



Case Report

1	Case Number	0338/12
2	Advertiser	McDonald's Aust Ltd
3	Product	Food and Beverages - QSR
4	Type of Advertisement / media	Internet
5	Date of Determination	22/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising Message QSR - 4.1 - Advertising and Marketing Message

DESCRIPTION OF THE ADVERTISEMENT

Mac Pack Website - www.macpack.com.au - which features three sportsmen (the Mac Pack) promoting sport and healthy lifestyles to children. There are details on competitions, tips on healthy lifestyles, bios of the sportsmen and images of children on a sports field.

THE COMPLAINT

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

The website features McDonald's branding and the famous golden arches provides online fitness and nutrition tips to junior footballers features images of Ronald McDonald training with children and receiving football tips promotes competitions to children and features a Mac Pack magazine for children (promoted as a "Free Mag for Kids"). The Magazine is also covered in McDonald's branding and features children wearing McDonald's branded clothing.

We believe the Mac Pack website breaches clauses 4.1 of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Initiative).

Clause 4.1 of the Initiative states:

*'Advertising or Marketing Communications to Children for food and/or beverages must:
(a) Represent healthier choices as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and/or*

(b) Represent a healthy lifestyle designed to appeal to the intended audience through messaging that encourages:

(i) healthier choices as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and

(ii) physical activity.'

We believe the ad breaches clause 4.1 of the QSR Initiative as it is an Advertising or Marketing Communication to Children for food and beverages that do not represent healthier choices.

Firstly it is well established that websites (including company owned websites) fall within the definition of an advertising or marketing communication as defined in clause 7 of the QSR Initiative.

Secondly it is clear that the themes visuals and language of the website are directed primarily to children. The website promotes opportunities for junior footballers to meet Mac Pack ambassadors features children coaching and receiving training tips promotes competitions for children and provides a magazine that is published primarily for children featuring children. The language on the website is directed primarily to children for example "The Mac Pack hopes to help with your own footy this year by giving you some training and nutrition tips from the players' own routines. But most of all the Mac Pack want to help you to be the best you can be on and off the field".

Secondly it is clear that the website is intended to promote and has the overall effect of promoting McDonald's food and beverage products. By promoting the McDonald's brand and the well-known golden arches the website is promoting all McDonald's food and beverage products.

We refer to a recent Investigation Report by the Australian Communications and Media Authority (ACMA) regarding McDonald's advertising during the television program It's a Knockout [Investigation Report No. 2782]. In its Investigation Report ACMA found that promotion of the McDonald's brand (including the McDonald's name colours golden arches and slogan "I'm loving it") in the program constituted a promotion of McDonald's products and services (despite no food being depicted). It found that brand promotions increase brand awareness recall and recognition and link the brand to the products sold under the brand name. It found this to particularly be the case in relation to McDonald's given the wide recognition of its brand logos and characters. We forwarded a copy of ACMA's Investigation Report to the ASB on 24 July 2012.

We also refer to the ASB's recent determination regarding the McDonald's "Happy Meal Website" (Case Number 0221/12). In this determination the Board held that the promotion of the Happy Meal brand in general terms (through the brand name and images of the Happy Meal box) is the promotion of all Happy Meals covering the range of options available as part of the meal not just the healthier options. It must similarly be considered that the promotion of the McDonald's brand name and well known golden arches promotes all McDonald's food and beverage products not just the options that meet the nutrition criteria for children's meals under the QSR Initiative.

The majority of products sold at McDonald's are high in energy fat sugar and/or salt. Such products may contribute to weight gain obesity and other health problems. Therefore the ad does not represent healthier choices as required by clause 4.1 of the QSR Initiative.

We believe it is irresponsible for McDonald's to advertise its brand and in turn its food and beverage products directly to children particularly when nearly one quarter of Australian children are overweight or obese. The association between children's sport and McDonalds also sends mixed messages to children about healthy living and undermines health messages from schools parents and the wider community.

We regard this as a serious breach of the QSR Initiative. Accordingly we ask that the ASB request that McDonalds withdraw the website and urge McDonalds to stop marketing its brand to children.

THE ADVERTISER'S RESPONSE

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

We refer to your correspondence dated 31 July 2012 in respect of the above complaint relating to the website www.macpack.com.au (Website).

Background

The Website, launched earlier this year, features 3 AFL players: Buddy Franklin, Marc Murphy and Scott Pendlebury (the Mac Pack) who promote a healthy and active lifestyle to children. The Website aims to:

- develop grassroots sporting talent; and*
- encourage healthy diet and exercise for children by providing nutrition and fitness tips from the Mac Pack.*

Response

We do not consider that the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Code), the AANA Code for Advertising & Marketing Communications to Children (AANA Children's Code) or the AANA Food & Beverages Advertising & Marketing Communications Code (AANA Food and Beverages Code) apply to the Website and further submit that if the ASB were to find that the QSR Code, the AANA Children's Code or the AANA Food and Beverages Code (together, the Codes) did apply to the Website, that the Website would not be in breach of the Codes.

We consider that the Codes do not apply to the Website as the Website itself cannot be characterised as an "advertising or marketing communication" as defined in section 7 of the QSR Code and section 1 of the AANA Children's Code and the AANA Food and Beverages Code. We note that the only references to McDonald's on the Website are to its golden arches, the images of Ronald McDonald® and the brand name itself, and that such references are used only to show McDonald's support of the Mac Pack initiative for the promotion of nutrition and fitness to children.

It is generally accepted among the community that corporations will partner with sporting or other identities in order to promote initiatives for the benefit of sectors of the community. This is often seen in sponsorships and affiliations for such endeavours. Such partnerships are necessary as there are often significant costs associated with such initiatives and it is the corporate partner who provides the funding while the sporting or other identities offer their well-known and respected image to generate interest in the initiative.

We accordingly consider that the Website is merely associated with the McDonald's brand and neither "draws the attention of the public or a segment of it" to the McDonald's organisation or its products or services nor does it function "in a manner calculated to promote" the McDonald's organisation or its products or services. Rather, the Website draws the attention of children to the Mac Pack initiative in a manner calculated to promote a healthy and active lifestyle. We therefore submit that the Website does not meet the threshold criteria of "advertising or marketing communication".

If the Website promoting the Mac Pack initiative was found to be an “advertising or marketing communication”, then it would follow that any time a brand identity is associated with a cause, a non-for-profit organisation or other initiative, a mere brand presence would be seen to be an “advertising or marketing communication”, which is inconsistent with the prevailing community view regarding sponsorship and endorsement.

If the ASB were to form a view that the Website could be characterised as an “advertising or marketing communication”, we consider that the Website does not constitute “advertising or marketing communications to children” as defined in section 7 of the QSR Code and section 1 of the AANA Children’s Code and the AANA Food and Beverages Code. While we acknowledge that the Website is created for the benefit of children, it is clear that the Website is simply not for the promotion of McDonald’s food and/or beverages products.

The Website does not feature, refer to or otherwise promote any McDonald’s food or beverages; rather it promotes the consumption of healthy foods and beverages to children generally in addition to training and fitness. Further, the mere existence of the McDonald’s brand and its golden arches on the Website cannot be said to promote its food and beverages in light of the express references to generic food and beverage products on the Website, including beans, lettuce, broccoli, cereal, fruit, milk and water. We accordingly submit that the Website does not directly or indirectly promote McDonald’s food and/or beverages products and therefore falls outside of the definition of “advertising or marketing communications to children”.

However, if the ASB were to find that the Website constitutes “advertising or marketing communications to children”, we submit that the Website is in any event compliant with the Codes. Specifically, the Website manifestly represents healthier choices and a healthier lifestyle in compliance with QSR Code 4.1. The Website fundamentally aims to promote a healthy and active lifestyle to children, as evidenced by the nutrition and training tips of the Mac Pack, the Mac Pack profiles and the key messaging and images in the Website.

In summary, we submit that the Codes do not apply to the Website and accordingly the complaint should be dismissed. However, if the ASB were to determine that the Codes did apply to the Website, we submit that the Website is compliant with the Codes and therefore that the complaint should be dismissed.

Based on the above, we respectfully submit that the Website complies with the AANA Advertiser Code of Ethics.

We appreciate the opportunity to respond to the complaint and acknowledge McDonald’s commitment to the self-regulation of advertising in Australia. We sincerely hope that the Board reviews the Website positively having regard to the points raised above.

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’), AANA Code for Advertising and Marketing Communications to Children (the ‘Children’s Code’) and the AANA Code of Ethics for Advertising (the Code).

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

The Board noted the complainant's concern that the advertisement is directed to children and does not represent a healthier choice according to the QSR Initiative nutrition criteria.

The Board noted that the QSR Initiative 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.'

The Board first considered whether the advertisement was for a food and/or beverage product.

The Board noted that there are no images or references to any McDonald's food or beverage product at all on the website and that the only references to McDonald's are the use of the logo and an image featuring Ronald McDonald. The Board considered that the Macpack website www.macpack.com.au was not of itself a promotion of a food or beverage.

The Board noted the advertiser's response that the website is directed to children however the Board determined that as the advertisement does not meet the definition of 'product', the initiative does not apply and that the advertisement did not breach the QSR initiative.

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, or Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code), the advertisement must be "having regard to the theme, visuals and language used [...] be directed primarily to children and are for product."

For the reasons mentioned above, the Board considered that a website sponsored by McDonald's and featuring the McDonald's corporate logo but no images or references to McDonald's food or beverage products is not of itself a promotion of a food and/or beverage and therefore the Children's Code and the Food Code do not apply.

The Board considered that the advertisement did not breach any of the sections within the Code of Ethics.

Finding that the advertisement did not breach the QSR, the Food Code, the Children's Code, or the Code of Ethics, the Board dismissed the complaint.

