



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0338-20</b>
<b>2. Advertiser :</b>	<b>McDonald's Australia Limited</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>25-Nov-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.7 Distinguishable advertising  
AANA Advertising to Childrens Code\2.2 Factual presentation  
AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption  
AANA Food and Beverages Code\4.2 Must comply with QSRI  
AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message  
AFGC - Quick Service Restaurant Initiative\QSRI 1.2 Product Placement

### DESCRIPTION OF ADVERTISEMENT

This television advertisement features well-known personalities from the Block television series.

The advertisement begins with several scenes from the Block, and then shows two contestants (Sarah and George) walking on the street eating McDonalds. They are stopped by a tradesman asking where everyone is, and reply that they are all at McDonalds trying the new chicken menu. They offer him food. He accepts, and asks if the people are coming back. Sarah and George shrug.

### THE COMPLAINT

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

*It's bad enough to have McDonald's products placed within the Block - but to have an actual ad that is made to look like part of the program is poor form. Kids (or indeed*



adults) wouldn't realise this is actually shameless advertising. Chicken range is not healthy and shouldn't be sneakily promoted in a popular family viewing program.

## **THE ADVERTISER'S RESPONSE**

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

*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 Advertisement breaches the Codes. Please see details below.*

### *AANA Code of Ethics*

*Section 2.7 provides the following:*

*"2.7 Advertising or Marketing Communication must be clearly distinguishable as such to the relevant audience".*

*In the current case, the complaint claims that the Advertisement has been made to look as part of The Block, and kids and adults would not realise this is actually advertising.*

*Pursuant to the Practice Code relating to the Code of Ethics there is no requirement for the advertising to be labelled if it is clear to the relevant audience that it is commercial in nature based on the content, theme, visuals, language, the use of brand or logos, and so forth. We submit that the use of our branded products, as well as the stark contrast between the theme of the program (i.e. a renovation show) and the advertising content (i.e. food items) are sufficient to distinguish the Advertisement as advertisement or marketing communications.*

*We also submit that we do not camouflage the fact that the Advertisement is commercial in nature given that throughout the program the viewers are informed that McDonald's is a proud sponsor of The Block. Please find attached two video examples of this.*

*Based on the above table showing the audience split, the audience of the program is predominantly adults aged between 35 and 54. We further submit that given the age and experience of this target audience they would recognise the commercial nature of the Advertisement.*

### *AANA Food and Beverages Code*

*Section 2.2 provides the following:*

*"2.2 Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of*



*healthy balanced diets, or encourage what would reasonably be considered as 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”*

*Throughout the Advertisement we see an adult female consuming a medium sized chicken burger and two adult males each consuming one chicken McPieces. The adult female and one of the adult males are also seen walking in the Advertisement. Therefore, we submit that the Advertisement does not breach section 2.7 as it does not disparage of healthy foods or physical exercise. In addition, the amount of food items consumed during the Advertisement are not considered excessive as the portions sizes are relatively small for three adults.*

*Section 2.7 provides the following:*

*“2.7 Advertising or Marketing Communications for Food or Beverage Products appearing within segments of media devoted to general and sports news and/or current affairs, shall not use associated sporting, news or current affairs personalities, live or animated, as part of such Advertising and/or Marketing Communications without clearly distinguishing between commercial promotion and editorial or other program content.”*

*We submit that this section does not apply as the program does not fall within the definition of “general and sports news” or “current affairs”. The Practice Note relating to Food and Beverage Code also notes that “this section does not apply to ‘product placement’ within films or programs.”*

*Section 4.2 provides the following:*

*“4.2 Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable.” Please see our submissions below.*

*AANA Advertising to Children Code*

*We note that this Code is applicable if the Advertisement is considered as Advertising or Marketing Communications to Children. The definition is set out under section 1 of the Code which provides that “having regard to the theme, visuals and language used, are directly primarily to Children and are for Product.”*

*We submit that this Code is not applicable to the Advertisement considering the age of the characters in the Advertisement, the language used by the characters and the visuals and theme of the Advertisement have a primary appeal to adults than children aged 14 years or younger. This is also supported by the above table showing the audience split of the program.*

*AFGC- Quick Service Restaurant Initiative*

*Whether the audience of the program is predominantly children?*



*No. For details please see table below for the audience split for The Block per age group in 2020:*

P0-17	78,920	9%
P18-24	36,209	4%
P25-34	117,355	13%
P35-54	353,467	38%
P55-64	173,263	19%
P65+	159,732	17%

*The QSRI is applicable if the Advertisement is considered as Advertising or Marketing Communications to Children or the program is directly primarily to children. In this respect, we submit that the Advertisement is not in breach of the QSRI based on our submissions above.*

#### *Other Parts of Section 2 of the AANA Code of Ethics*

*McDonald's does not believe the Advertisement 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 (see details above).*

#### *Conclusion*

*McDonald's concludes that the Advertisement for food items is clearly distinguishable as advertising in a renovations program The Block, this is particularly so considering the age of the target audience of the program. The products shown in the Advertisement do not undermine the importance of a healthy lifestyle or promote excessive consumption. Therefore McDonald's respectfully disagrees with the complaint and requests that the Panel dismiss the complaint on this basis.*

#### **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) 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), the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSRI) and the AANA Code of Ethics (the Code).



The Panel noted the complainant's concern that the children and adults would not realise that this is an advertisement, and that the range being promoted isn't healthy and shouldn't be promoted during a family program.

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

### **Is the advertisement for a Food or Beverage Product?**

The Panel noted that the definition of Food or Beverage Product in the Food Code is: "any food or beverage products other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code".

The Panel noted the advertisement refers to the McDonald's chicken range and considered that this is an advertisement for food products.

### **Is this advertisement directed primarily to Children?**

The Panel noted that the Food Code defines Advertising or Marketing Communications to Children as 'Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product.'

The Panel noted that Children's Food or Beverage Product is defined as 'any food or beverage product (other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code) which is targeted toward and has principal appeal to Children.'

The Panel noted that Children is defined as 'persons 14 years old or younger'.

The Panel noted the advertiser's response that the age of the people in the advertisement, the language used by the people and the visuals and themes of the advertisement have a primary appeal to adults.

### **Is the theme of the advertisement directed primarily to children?**

The Panel considered that both children and adults would be attracted to an advertisement featuring people from a program they chose to watch.

The Panel considered that the theme of the advertisement would be attractive to both adults and children, and was not directed primarily to children under 14.



Is the language of the advertisement directed primarily to children?

The Panel noted that the advertisement featured a conversation between adults and that the language was not child-like or directed towards children. The Panel considered that overall the language used in the advertisement was targeted to adults and was not directed primarily to children under 14.

Are the visuals of the advertisement directed primarily to children?

The Panel noted that the advertisement featured well-known people from the block interacting as though they were on-site during the show. The Panel considered that this would be equally attractive to both adults and children and were not directed primarily to children under 14.

Is the content of the advertisement overall directed primarily to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and 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 directed primarily to children.

The Panel considered that the overall advertisement had some elements which would be attractive to children, such as the use of the people from the show, however overall the advertisement was equally attractive to teenagers and adults.

The Panel considered that the advertisement, through themes, visuals and language, was attractive to both adults and children but not directed primarily to children under 14.

Is the advertisement for a product of principal appeal to Children?

The Panel noted that the advertisement is for the McDonald's chicken range. The Panel considered that these products would be equally attractive to adults and children and were not of principal appeal to children under 14.

Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are not directed primarily to Children and are not for a Children's Food or Beverage Product, the Panel determined that the advertisement was not directed primarily to children.



## **AANA Code for Advertising and Marketing Communications to Children (the Children's Code)**

Advertising or Marketing Communication to Children:

(c) must accurately represent, in a manner that is clearly understood by Children:  
(iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non commercial communication.

As discussed above, The Panel noted that the advertisement was not a marketing communication directed primarily to children or for a product of principal appeal to children. As such the provisions of the Children's Code do not apply.

## **AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).**

Section 2.2 Advertising or Marketing Communication for Food or Beverage Products shall not shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as 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 Panel noted the complainant's concern that the advertisement was promoting unhealthy food.

The Panel noted the advertiser's response that the amount of food shown in the advertisement was not excessive.

The Panel considered that there was nothing in the advertisement which suggested that the advertised product should be eaten in excess. The Panel considered that advertising a food of lower nutritional value was not of itself undermining the importance of healthy balanced diets.

Overall, the Panel considered that the advertisement did not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets or encourage what would reasonably be considered as excess consumption and did not breach Section 2.2 of the Food Code.

Section 4.2 - Advertising or Marketing Communication for Food or Beverage Products by a Quick Service Restaurant must comply with Schedule 1 of the QSRI, where applicable

The Panel noted that this was an advertisement for food and beverages and therefore must comply with Schedule 1 of the QSRI.



## **Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSRI)**

The Panel first considered the provisions of the QSRI.

The Panel considered the definition of advertising or marketing communications to children within the QSRI. The definition states that ‘Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.’ Under this initiative children means “persons under the age of 14.”

The Panel noted the QSRI provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication is, having regard to the theme, visuals and language used, are directed primarily to children (and are for food and/or beverage products) or
2. The placement of the advertisement or marketing communication is in a medium that is directed primarily to children, ie:
  - a. in relation to television, all C and P rated programs and other rated programs that are directed primarily to children through their themes, visuals and language; and/or
  - b. where children represent 35 percent or more of the audience of the Medium.

With regard to point 1, the Panel considered the theme, content and visuals of the advertisement. The Panel noted the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Panel must find that the advertisement is aimed in the first instance at children under 14.

### Point 1: Is the content of the advertisement directed primarily to children?

As discussed above, the Panel did not consider that the themes, visuals and language of the advertisement were directed primarily to children under 14.

### Point 2: Is the advertisement in a medium that is directed primarily to children?

The Panel noted that the television advertisement was shown during the block. The Panel considered that the Block is a show that would be attractive to both adults and children, and was not a show which was directed to children under 14 years through themes, visuals and language.



The Panel noted the advertiser had provided average viewer numbers for the block and children under 17 make up only 9% of the audience.

### **AANA Code of Ethics (the Code)**

Section 2.7 Advertising or Marketing Communication shall be clearly distinguishable as such to the relevant audience.

The Panel noted that the advertisement was played during ad breaks for the block. The Panel considered that the relevant audience would be people who watch the Block.

The Panel considered that people unfamiliar with the program the Block may not distinguish between the content of the advertisement and program content.

However, the Panel considered that regular viewers or viewers of more of an episode of the Block than the advertisement complained of would understand that McDonald's was a major sponsor of the show and would recognise the placement of McDonald's products in the show to be advertising. The Panel considered that this particular advertisement was played repeatedly, and that viewers who watch the show would clearly recognise this as an advertisement.

### **Section 2.7 Conclusion**

The Panel considered that the advertisement was clearly distinguishable as such to the relevant audience of viewers of the Block.

### **QSRI Conclusion**

Finding that the advertisement did not meet points 1 or 2 of the Initiative the Panel considered that the Core Principles of the QSRI did not apply to this advertisement.

### **Food Code Conclusion**

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

As the QSRI does not apply to this advertisement, the Panel determined that the advertisement did not breach Section 4.2 of the Food Code.

### **Children's Code Conclusion**

Finding that the advertisement was not an advertisement for children the Panel determined that the provisions of the Children's Code did not apply.



## **Conclusion**

Finding that the advertisement did not breach the AFGC RCMI or the Food Code the Panel dismissed the complaint.