



Case Report

1	Case Number	0339/12
2	Advertiser	McDonald's Aust Ltd
3	Product	Food and Beverages - QSR
4	Type of Advertisement / media	TV
5	Date of Determination	22/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Premium Offers QSR - 4.6 - Premium Offers
Food and Beverage Code (Children) pester power
Food and Beverage Code (Children) premium
Advertising to Children Code 2.7 Parental Authority

DESCRIPTION OF THE ADVERTISEMENT

We open on Happy and the Ice Age Characters building a snowman. After Happy stomps on the floor the snowman's head falls off and lands on Scrat. Scrat's acorn pops up in the air and Happy Catches it. Happy and Sid put Scrat back on top of the snowman and laugh. A voice over says "Be the hero of the herd with your McDonald's Happy Meal. Get a delicious seared chicken snackwrap, crisp apple slices and Calciyum milk" and we see these products on the screen.

THE COMPLAINT

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

The voice over states "Be the hero of the hood with your McDonald's Happy Meal. Get a delicious mini chicken snack wrap crisp apple slices and a Calci-yum milk. You'll even get to take home a super cool character from the awesome new movie Ice Age 4 – Continental Drift". Characters from the movie make happy laughing type noises throughout the advertisement.

We believe the ad breaches clauses 3.6 and 3.5 of the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code) and clause 2.7(b) of the AANA Code for Advertising and Marketing Communications to Children (Children's Code).

1.1 Clause 3.6 of the Food Code

We believe the advertisement breaches clause 3.6 of the AANA Food Code which states: "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."

We understand that pursuant to the Food Code Practice Note when determining whether an ad features a premium that is not an integral part of the product the Board will consider whether the premium is given undue prominence by way of being made the dominant feature or otherwise occupying more than half of the advertisement.

Premium

'Premium' is defined under the Food Code to mean anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product.

We believe the Ice Age 4 toys are premiums according to this definition as they are offered free conditional upon the purchase of a Happy Meal.

In previous decisions the 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 recent decision by the Australian Communications and Media Authority (ACMA) 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 CTS 2005.

The definition of a premium in the CTS is similar to the definition under the QSRII 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 recent 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 is 'part of' a fast food meal. Clearly an inedible plastic toy is separate to a food and beverage product irrespective of whether or not the toy is offered regularly with that product or just as a one-off. In this case the toy 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 with the meal is intended to entice children to desire and request food and beverage products from McDonalds.

Advertising or Marketing Communication to Children

The advertisement having regard to the theme visuals and language is clearly directed primarily to children younger than 14 years of age and is for a children's food product (Happy Meal). It therefore constitutes an "Advertising or Marketing Communication to Children".

The advertisement features fun characters and toys from a children's movie. The language and style of the dialogue between the characters would primarily appeal to children. The

voice over also speaks to children using children's themes i.e. "be the hero of the hood". The toys promoted would appeal primarily to children.

We note that the advertisement has been broadcast on television during a range of children's programs including Stitch Phineas and Ferb Jake and the Never Land Pirates. We are also aware that the ad has been broadcast in cinemas at the commencement of Ice Age 4 a movie directed primarily to children.

Premium given "undue prominence".

The Ice Age 4 toys are clearly featured in a manner that gives them undue prominence. The toy promotion and associated movie is the dominant feature of this advertisement and occupies more than half the advertisement.

The whole theme of the advertisement is the Ice Age 4 toy promotion. More than half of the advertisement is devoted to the availability of the free toys and the associated movie characters. The first frames feature the Ice Age characters and movie imagery as the dominant feature together with the voices of the characters. These frames run for approximately 15 seconds of the 30 second ad. The remaining 15 seconds promotes the Happy Meal however the toys remain a dominant feature with the voice over continuing to promote Ice Age 4 and the toys on offer. Only a minority of the advertisement is occupied by images of the food advertised. Consequently children are likely to be confused about whether the main product advertised is the Ice Age 4 toys or the food and they are likely to be far more attracted to the component of the advertisement promoting the toys than the component advertising the food products.

Therefore we believe the advertisement breaches clause 3.6 of the Food Code.

2 Pester power

We also believe the advertisement breaches clauses 3.5 of the Food Code and 2.7(b) of the Children's Code on the basis that it is designed to create and has the effect of creating pester power and contains an implicit appeal to children to buy a Happy Meal for them. Clause 3.5 of the Food Code states:

"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."

Similarly clause 2.7(b) of the Children's Code states:

"Advertising or Marketing Communications to Children...must not contain an appeal to Children to urge their parents or carers to buy a Product for them..."

As discussed above the whole focus of the advertisement is the promotion of the free toys associated with the Ice Age 4 movie. The intended audience for the advertisement and the intended market segment for the Happy Meal and Ice Age 4 promotion is clearly children who would be too young to go to McDonalds or buy the Happy Meal independently. The advertisement therefore implicitly appeals to children to urge their parents to take them to McDonalds and buy them a Happy Meal. The offer of the free toy is designed to encourage children to desire the Happy Meal and thus to pressure their parents to purchase the meal for them. By advertising that different toys are available children will urge their parents to take them to McDonalds regularly within a short time so that they may purchase each toy.

3 Action requested by the ASB

For the reasons discussed above we ask the ASB to request McDonald's to withdraw the advertisement on the basis that it breaches the AANA Food Code.

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 letter dated 31 July 2012 and thank the Advertising Standards Board (ASB) for allowing us to provide submissions in response to complaint number 0339 of 2012 (Complaint).

We have considered the matters raised in the Complaint and do not believe that the television commercial (TVC) the subject of the Complaint is in breach of the AANA Food & Beverages Advertising & Marketing Communications Code, the AANA Code for Advertising & Marketing Communications to Children or the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (together the Codes). For ease of reference, we have used the same subject headings from the Complaint in our response as set out below.

Premium

We refer to previous decisions of the ASB (see for example Case Reports 103/05 and 572/09) where it has been held by the ASB that:

- the toy in a Happy Meal is not a premium as the toy is an integral part of the product being advertised which is the Happy Meal; and*
- toys which come with a Happy Meal do not fall within the Codes as they are only 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 purpose of the Codes.

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 claims in the Complaint that the TVC is “designed to create, and has the effect of creating, pester power, and contains an implicit appeal to children to buy a Happy Meal...” It is our view that there is no express appeal to children to urge their parent and carers 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.

On the basis of our submissions above and consistent with previous decisions of the ASB we request that the Complaint be dismissed.

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'), the 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 viewed the advertisement and noted the advertiser's response.

The Board noted the complainant's concern that the advertisement features a premium in breach of the Food Code and encourages pester power.

The Board noted that the advertiser is a signatory of the QSR Initiative and that this 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.' Under this initiative children means "persons under the age of 14 years of age."

The Board first considered whether the advertisement was directed primarily to children.

The Board noted that the advertisement features animated characters from the Ice Age 4 movie and considered that the theme, visuals and language used in the advertisement are directed primarily to children.

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

The Board noted that the advertisement is for a Happy Meal consisting of a wrap, apples and drink and considered that the advertisement is for a food and beverage product. Finding that the advertisement is directed primarily to children and is for product, the Board considered that in this instance the provisions of the QSR Initiative apply.

The Board considered Section 4.1 of the QSRI which states, "Advertising or Marketing Communications to Children for food and/or beverages must: Represent healthier choices, as determined by a defined set of Nutritional Criteria for assessing children's meals and/or Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages: Healthier choices, as determined by a defined set of Nutritional Criteria for assessing children's meals, and Physical activity".

The Board noted that the Happy Meal described and depicted in the advertisement is the healthy choice Happy Meal which an independent arbiter has previously determined meets the criteria of the healthy choice as determined by a defined set of Nutritional Criteria for assessing children's meals (see case reference 0224/10).

Based on the previous assessment of the advertised product by the independent arbiter, the Board determined that the advertisement meets the requirements of part (a) of Section 4.1 of the QSRI.

The Board considered Section 4.6 of the QSRI which states, “Participants must not advertise Premium offers in any medium unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and Section 20 (Disclaimers and Premium Offers) of the Children’s Television Standards 2005.”

The Board considered that consistent with its previous determinations (case reference 572/09) a Happy Meal toy does not qualify as a premium as it is an integral part of the regular product.

The Board considered that the advertisement did not breach Section 4.6 of the QSRI.

The Board then considered whether the advertisement complied with the requirements of Part 3 of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food and Beverages Code) which covers Advertising to Children. The Board noted that to fall under the provisions of this Section of the Code, the advertisement must “having regard to the theme, visuals and language used [...] be directed primarily to children and for product.”

For the reasons mentioned above, the Board considered that the advertisement was directed primarily to children and for product and that the provisions of Section 3 of the Food Code would therefore apply to this advertisement.

The Board noted Section 3.5 of the Food Code which states, “Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child’s welfare to buy particular Children’s Food or Beverage Products for them.”

The Board noted that the advertisement does not contain any appeals to children to urge their parent or carer to buy the product for them and considered that the depiction of a product which would appeal to children does not of itself amount to a depiction which would be considered to encourage pester power under the provisions of this Code.

The Board determined that the advertisement did not encourage pester power and did not breach Section 3.5 of the Food Code.

The Board then considered Section 3.6 of the Food Code which states, “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.”

As already noted above, the Board considered that consistent with its previous determinations (case reference 572/09) a Happy Meal toy does not qualify as a premium as it is an integral part of the regular product.

Based on the above the Board considered that the advertisement did not breach Section 3.6 of the Food Code.

The Board then considered Section 3.3 of the Food Code which states, “Advertising or Marketing Communications to Children shall not state nor imply that possession or use of a particular Children’s Food or Beverage Product will afford physical, social or psychological

advantage over other Children, or that non-possession of the Children's Food or Beverage Product would have the opposite effect.”

The Board noted that the advertisement opens with a voiceover saying, “Be the hero of the Hood with your McDonald's Happy Meal.” The Board considered that this language is consistent with the Ice Age 4 movie being promoted alongside the McDonald's Happy Meal and that the statement regarding being a hero is in the context of the movie characters and does not imply that a child would gain physical, social or psychological advantage if he or she were to have the product purchased for them.

Based on the above the Board considered that the advertisement did not breach Section 3.3 of the Food Code.

The Board considered that the advertisement did not breach any of the sections of the AANA Code for Advertising or Marketing Communications to Children or the AANA 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.