



Ad Standards Community Panel
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Advertising Standards Bureau Limited
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Case Report

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| 1 | Case Number | 0339/18 |
| 2 | Advertiser | McDonald's Aust Ltd |
| 3 | Product | Food / Beverages |
| 4 | Type of Advertisement / media | Internet |
| 5 | Date of Determination | 08/08/2018 |
| 6 | DETERMINATION | Dismissed |

ISSUES RAISED

Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
Food and Beverage Code (Children) 3.2 encourage excess consumption
Advertising to Children Code 2.14 Food and beverages
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

DESCRIPTION OF THE ADVERTISEMENT

The Internet advertisement features a lawn mower tied to a clothes pole going around in a circle, mowing the grass. A teenager sitting in a chair crosses off "mow lawn" on his chores list. The teenager and his friend are then seen in a McDonald's restaurant with a share pack of 24 Chicken McNuggets.

THE COMPLAINT

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

The ad targets young impressionable children and persuades them to use their chore money to purchase unhealthy options - i.e. deepfried chicken McNuggets. Not only is McNuggets regarded a discretionary food, the ad promotes the consumption of 24



nuggets. This is excessive. Even if the boy shared with a mate, this is still 12 nuggets each which still equates to over 2000kJ, 61g of fat and a whopping 1740mg of sodium! Stop targeting impressionable young children into not only consuming, but excessively consuming unhealthy foods.

THE ADVERTISER'S RESPONSE

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

Thank you for requesting a response to complaint number 0339/18 (Complaint).

The Complaint refers to a television commercial as part of the 2018 McDonald's Loose Change Menu campaign (Advertisement). The Complaint is made under section 2.2 and 3.2 of the AANA Food and Beverages Advertising and Marketing Communications Code (Food Code), section 2.14 of the AANA Code for Marketing and Advertising Communications to Children (Children's Code) and section 1.1 of the Quick Service Restaurant Initiative (QSRI) (all together, the Codes). The Complaint alleges that the Advertisement is encouraging excessive consumption and an unhealthy lifestyle to children.

The key issue in this Complaint is whether the Advertisement is targeted at children. Our submissions below outline why the Advertisement is clearly of broad appeal and not targeted primary at children. The Advertisement does not breach the Children's Code or the QSRI for the reasons stated below:

The content of the Advertisement is not directed to children

The Advertisement is not directed to children as the content of the Advertisement is not of primary appeal to children. The key theme of this Advertisement is value, a concept which is not appreciated by children. The language of the Advertisement asks the consumer if they "got loose change?" For an adult, loose change is a small amount of money that is almost insignificant. However, for a child, three or four dollars is a far more significant sum of money. The accompanying music is, "I Need a Dollar" by Aloe Black. This song is about a person on their way to homelessness and alcoholism because they "need a dollar" i.e. they are going broke. This song would not be fully appreciated and of primary appeal to children under 14 years.

We suspect that what prompted this Complaint was the complainant's assumption that the actor in the advertisement is a child. The actor is 16 years old and so does not fall into the category of a child under the QSRI and Children's Code. The suite of advertisements a part of this campaign uses the humour of the creative entrepreneurship skills of adolescents to promote consumers to get smart about the way they earn their money and accordingly spend it.



The placement of the Advertisement is not directed to children

Under the QSRI, an advertisement can be ‘directed primarily to children’ if it is placed in a medium that is directed at children. The QSRI requires that children are 35% or more of the audience of the medium for an advertisement to be placed in a medium directed at children. In this case, the medium is YouTube. YouTube’s terms and conditions clearly state that no one under the age of 13 is allowed to use the website (clause 12). While we acknowledge that some children still access the YouTube website, this is generally done with parent supervision, and children do not constitute 35% or more of YouTube’s audience. The ASB has also established in previous decisions that “YouTube is not of itself a medium that is directed primarily to children (case 0172/17).

Accordingly, since the content and placement of the Advertisement are not directed to children and do not constitute advertising to children under the QSRI, the Children’s Code does not apply.

McDonald’s is not targeting children to excessively consume unhealthy foods

McDonald’s is not persuading children to use their chore money to purchase McDonald’s products. More effort goes into persuading consumers than just to rely on an actor to cross off an item on his chore list. Furthermore, since this Advertisement does not fall into the category of advertising to children, this comment of the Complaint has no valid basis.

The Advertisement makes no comment, one way or the other, about healthy or active lifestyles or the promotion of healthy balanced diets. The Advertisement also makes no comment on whether active lifestyles are good or bad. The Complaint’s claim that the Advertisement is disparaging of healthy lifestyles has no basis in fact and accordingly should be dismissed.

McDonald’s uses its advertising to promote healthy food options to children, and only depicts ‘treat foods’ in commercials targeted at adults or with broad appeal. In fact, our partnership with the Alliance for a Healthier Generation (Clinton Global Initiative) commits us to promoting the benefits of an active lifestyle and nutritious food in all our communications to children – in advertisements and on our Happy Meal boxes. The Quick Service Restaurant Initiative also encourages kids to live healthy and active lifestyles, to which McDonald’s is a signatory to.

The Complaint’s implications that this is deliberate and part of a strategy by McDonald’s to target children is false. McDonald’s devotes significant resources to stopping that as we are aware of the community’s concern in this space.



Promoting 24 Chicken McNuggets for \$9.95 is not a breach of the Codes.

The Complaint is claiming that the mere advertisement of a product with a particular nutritional composition is a breach of the AANA Code. As with previous Ad Standards decisions (0101/14, 0262/15, 0593/16, 0072/17), the promotion of a product which may have a particular nutritional composition does not automatically undermine the importance of a healthy or active lifestyle, nor is it contrary to prevailing community standards. For an advertisement to disparage healthy lifestyles, either explicitly or implicitly, there must be some signal, indication, body language or commentary that makes fun of, or criticises people who are healthy or active. Even in cases where there are subtle suggestions that it's more fun to eat chocolate than exercise (Nestle, 0262/15), the Ad Standards board has dismissed complaints as they do not disparage healthy lifestyles. In this situation there is not even the slightest suggestion of a comment about healthy or active lifestyles, so it is surprising that the question has even been raised in the Complaint at all. Furthermore, the complainant's assessment of the nutritional value of the 24 Chicken McNuggets is incorrect. If the meal is shared between two people, as is done visually and promoted verbally in the Advertisement, each person is consuming 2215kJ of energy, 30.5g of fat and 870mg of sugar. Each of these figures comply with the daily recommended intake being, 8700kJ of energy, 2300mg of sugar and 70g of fat.

For the reasons set out above, the QSRI and Children's Code do not apply to the Advertisement, and the Advertisement otherwise complies with the AANA codes. Accordingly, the Complaint should be dismissed. We have considered other matters under section 2 of the AANA Code of Ethics and submit that the Advertisement does not breach any of the other matters covered by that section or by any of the other applicable codes.

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") and the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the "QSRI").

The Panel noted the complainant's concern that the advertisement is targeted towards children and promotes excess consumption.

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

The Panel noted that McDonald's is a signatory to the QSRI and determined that the provisions of the QSRI apply to this marketing communication.



The Panel noted that the QSRI is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

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 years of age.”

The Panel noted that the QSRI 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 Panel noted that with regards to point 1 the Panel must consider whether the communication activity is directed primarily to Children – regardless of its placement.

The Panel noted that 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 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 Panel noted that the boy in the advertisement may gain the attention of younger children, however considered that the image of a teenager doing jobs for pocket money is not of itself directed to children under 14. The Panel considered that the depiction of a teenage boy is not of itself of primary appeal to children.

The Panel noted the advertiser’s response that the key theme of the advertisement is value, which would not be appreciated by children. The Panel noted that the advertisement uses the phrase “Got loose change?” The Panel considered that this language may attract the attention of both adults and children, however is a phrase that is unlikely to make sense to children under 14.

The Panel considered that the song used in the advertisement is “I Need A Dollar” by Aloe Blacc. The Panel noted that the music is upbeat, and considered that the music



would be equally attractive to adults and children.

The Panel noted that there is no animation in the advertisement, and considered that the product being advertised was McDonalds nuggets, not the kid's meal, and that this was a product that is attractive to both adults and children

The Panel considered that the theme, visuals and language of the advertisement were promoting a deal of 24 nuggets for \$9.50 and that collectively, the overall impact of the advertisement is one of general appeal which may include children, but is not directed primarily to children under 14.

The Panel considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes "television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites." The Panel considered that YouTube is covered by this definition.

The Panel noted that the references to avoiding C and P rated programs and other rated programs as outlined in the QSRI apply only to television and that for You Tube can only consider the medium itself, and whether the particular publication of the advertisement is likely to have a greater than 35% audience of people under the age of 14.

The Panel noted the YouTube Terms of Service – Community guidelines which state that:

"12. Ability to Accept Terms of Service You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you."

Unlike previous cases that include tied in offers (0166/14), the current advertisement does not appear to be tied in with an accompanying campaign to direct children to this YouTube site in particular and the Panel considered it is therefore unlikely to have a greater than 35% child audience.

With regards to points 2 and 3, the Panel considered that YouTube is not of itself a Medium that is directed primarily to Children and that the context of this particular advertisement would be unlikely to attract an audience of greater than 35 per cent of children and noted that there is no additional material that ties the advertisement in



with another offer or in house purchase etc.

On this basis the Panel determined that the advertisement did not meet points 2 or 3 of the QSRI in that it was not broadcast in a Medium that is directed primarily to Children or where Children represent 35 percent or more of the audience of the Medium.

Based on the requirements outlined in the QSRI the Panel considered that as the advertisement was not directed primarily to Children, did not appear in a medium directed primarily to Children and did not appear in a medium which attracts an audience share of more than 35% of Children, the QRSI does not apply in this instance.

The Panel 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 Code), "Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children [14 years and younger] and are for Product".

The Panel noted that for the Food Code and Children's Code, the definition of children is those aged 14 years and younger, which is different to the QSRI Code which defines children as under 14 years of age.

For the reasons outlined above, the Panel considered that the advertisement is not directed primarily to Children. The Panel determined that as this television advertisement is not directed primarily to Children, the Children's Code and Part 3 of the Food Code do not apply.

The Panel then considered whether the advertisement complied with the requirements of Part 2 of the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code")

The Panel considered section 2.2 which states: "the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered 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 considered that, consistent with previous decisions (Ferrero 0345/17,



Hungry Jacks 282/11, and Mondelez 0550/17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy balanced diet.

The Panel noted that the advertisement features a teenage boy sitting in a lounge chair while a lawnmower tied to a clothesline goes in shrinking circles. The implication is that the boy has found a way to move the lawnmower without having to exert himself. The Panel considered however that the boy is shown ticking off the 5th item on his list, and that there is no indication he did not complete the other tasks manually. The Panel considered that a depiction of the teenage boy not doing the job on this occasion is not undermining the importance of a healthy or active lifestyle.

The Panel noted the AANA Food and Beverages Advertising and Marketing Communications Code – Practice Note which provides that: ‘In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Panel will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Panel considered that the advertisement depicts the product being consumed by two people. The Panel noted the advertiser’s response that the nutritional value of the meal when shared by two people complies with the daily recommended nutritional intake and is not a depiction of excess consumption.

The Panel considered that there is no suggestion of frequency of consumption in the advertisement and there is no one person seen consuming the entire product. The Panel considered that the advertisement did not encourage excess consumption.

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

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

