



Case Report

1	Case Number	0346/16
2	Advertiser	Grill'd
3	Product	Food / Beverages
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	24/08/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.07 Parental Authority
Advertising to Children Code 2.14 Food and beverages

DESCRIPTION OF THE ADVERTISEMENT

This Facebook advertisement features two children jumping in the air. The girl is holding chips in one hand, and the boy is holding an AFL football in his right hand, and a trophy in the left hand. The background features a cartoon image of a stadium and clouds with the words 'SCRATCH TO WIN! WITH Grill'd Junior Footy Comp.' The text above the image reads, "Your kids could score prizes by wearing Aussie Rules Footy gear into Grill'd!"

THE COMPLAINT

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

*The advertisement is for a promotion whereby children who wear Australian Rules football (AFL) clothing to a Grill'd store and buy specified Grill'd products can instantly win Grill'd chips, drinks and burgers, and can go into a draw to win a grand prize (the Competition). We are of the view that the advertisement breaches sections 2.7 and 2.14 of the Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children (Children's Code). Overview of Advertisement The advertisement is headed 'Score With Grill'd – Junior Footy Comp' and features a picture of a young girl and boy (aged approximately 10 and 7 respectively) wearing AFL jerseys. The boy and girl are jumping for joy, with their arms in the air. The girl holds a container of chips, the boy holds a trophy and they are jointly holding an AFL ball. The text of the advertisement states:
KIDS WEAR YOUR AUSSIE RULES GEAR & BUY A BURGER AT GRILL'D FOR A*

CHANCE TO WIN

We love seeing our favourite footy players score a goal, and we'd love to see you score a prize. So kids, head into any Grill'd restaurant in VIC or WA until 31 August for a chance to win.

HOW TO ENTER

If you're aged 14 or under and live in VIC or WA, it's easy to win:

- Wear your Aussie Rules Footy gear into any Grill'd restaurant in VIC or WA*
- Buy or be bought a Burger, pair of Sliders, Steak Sandwich, Salad or Mini Me Pack*

- Scratch your Game Card to reveal if you've won an Instant Prize*
- Enter below to win the Ultimate Grand Final Party*
- Remember, you need permission from your parent or guardian to enter*
- Competition ends 31 August 2016**

WIN INSTANT PRIZES

We're giving away 1000's of instant prizes, including:

- Sherrin Mini Footys*
- Grill'd Snack Chips, Drinks, Mini Me Packs or pair of Sliders*

MAJOR PRIZE – WIN THE ULTIMATE GRAND FINAL PARTY

Enter to win 1 of 2 Ultimate Grand Final Parties, and watch the Toyota AFL Grand Final in your own private HOYTS LUX Cinema with your friends and family! Prize includes:

- HOYTS LUX Grand Final Party*
- Seating and catering for 40 party guests*
- Pre-game canapes and beverages in LUX Lounge*
- Lunch & dessert (during half time break)*
- Premium drinks throughout the match (alcoholic and non-alcoholic drinks)*
- Complimentary popcorn*
- We're giving away 1 party in Melbourne and 1 party in Perth*

AFL is not involved with and does not endorse this promotion.

**T&C's apply. Must be a VIC or WA resident 14 or under to enter. Competition ends 11:59pm AEST on 31 August 2016. Keep scratch cards as proof of purchase. AFL is not involved with and does not endorse this promotion.*

The Competition's Terms and Conditions (enclosed) state that in order to be eligible to enter, the entrant must purchase at least one Grill'd Burger, pair of Sliders, Steak Sandwich, Salad or Mini Me Pack while wearing AFL gear (with this issue to be determined by the restaurant manager) in one transaction. The Terms and Conditions also state that the instant prizes to be won include 7,885 Snack Famous Grill'd Chips (Chips), 5,801 non-alcoholic drinks, 1,855 Mini Me Pack or Super Sliders, 1,115 Sherrin Football and Chips packs, 740 Sherrin Football and non-alcoholic drink packs and 20 Sheerin Football and Mini Me Pack/Super

Sliders.

We note that the types of non-alcoholic drinks available as Competition prizes are not specified, however Grill'd stores offer several types of sugary non-alcoholic drinks including colas and other soft drinks, sugary fruit juices and sports drinks.

Our surveys of Grill'd stores in Western Australia found that non-alcoholic drinks sold include 600mL bottles of Pepsi, 600mL of Schweppes soft drinks (such as lemonade, red cream soda and lime flavour), 600mL bottles of Gatorade and 375mL bottles of Bundaberg ginger beer and lemon lime and bitters.

Breaches of the Children's Code

We submit that this advertisement breaches section 2.7 and 2.14 of the AANA Children's Code.

In our view, this advertisement falls within the jurisdiction of the Children's Code in that it is featured on an internet website, the Grill'd website, and as a post by the Grill'd Australia Facebook page, and therefore falls within the Children's Code definition of the term 'Medium'.

1. Advertising or Marketing Communications to Children

The Children's Code defines the term 'Advertising or Marketing Communications to Children' as those which, having regard to the theme, visuals and language used are directed primarily to Children. The term 'Child' refers to a person 14 years old or younger. We submit that this advertisement is clearly communication directed primarily or 'in the first instance' to children under the age of 14 years. This conclusion has been drawn with reference to the terms of the Competition, which specify that only those 14 and under can enter, and with reference to the following factors:

Age of actors – As noted above, the advertisement features a boy and a girl aged approximately 7 and 10 years-old respectively.

Storyline/theme - The advertisement's theme draws upon 'scoring' during a football match ('We love seeing our favourite footy players score a goal, and we'd love to see you score a prize') and relates this to winning food and other prizes as part of the Competition. The concept is simple enough to be well understood by children.

Visuals – As noted above, the advertisement features two children wearing football jerseys. The jerseys are brightly coloured, as are the chips, football and the trophy.

Language and child's perspective – The advertisement is written using clear and simple language, and promotes the Competition from the perspective of the child entrant, with instructions concerning buying or being 'bought' a burger in order to enter.

2. Breach of section 2.7

Section 2.7 (b) of the Children's Code stipulates that advertising to children must not contain an appeal to Children to urge their parents, carers or another person to buy a product for them.

We submit that the advertisement breaches 2.7(b) as the Competition is open only to children under 14, and the states that children should 'buy or be bought a burger' in order to enter. Children under the age of 14 years (and particularly those under the age of 10, as depicted in the advertisement's image) are unlikely to enter a Grill'd store without the supervision of parents, or with adequate funds to purchase the Competition menu items themselves.

3. Breach of section 2.14 - Health and Nutrition

As you are aware, section 2.14 of the Children's Code states that:

Advertising and Marketing Communications to Children for food and/or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.

The advertisement requires children to purchase (or be bought) one of a number of Grill'd products in order to enter the competition, many of which represent unhealthy food options for children under the age of 14, as detailed in the tables below.

The advertisement goes further than to merely encourage children to buy unhealthy food products, in that it provides an inducement for doing so, with the Competition providing opportunities to win AFL related prizes that appeal to children. The Competition also promotes unhealthy eating or drinking habits through the provision of unhealthy foods and drinks as prizes.

In this respect, we submit that the advertisement promotes consumption of products that represent unhealthy eating and drinking habits for children under the age of 14 years.

a. Competition Menu Items

The Grill'd website provides the following energy and macronutrient estimates for menu items that can be purchased and/or are prizes for the Competition:

Product	Energy	Fat (Sat Fat)
Burger – Wild Wild West	3,260kJ	
Super Slider - Vintage (x2)		
Steak Sandwich – Front Bar	2,740kJ	10.5g
Salad – Chicken Caesar	2,480kJ	34.1g (9.6g)
Mini Me – Beef		1,730kJ
Snack chips		
Pepsi 600mL	1,050kJ	0g
Schweppes Lemonade 600mL	1,152kJ	0g
Gatorade 600mL		
	36g	306mg

The Australian National Health and Medical Research Council provides the following energy and nutrient needs recommendations for children[i]:

Child	Est. energy	Fat	Saturated fat	needs
Sodium	Sodium	Added sugar		

	(20-35% (Upper Intake)	(10% of fat) (WHO – 10% (lightly active) Limit)	(Adequate of intake) of energy as Upper Limit)	
7 year old girl	6,500kJ 600mg	38g – 66g	35g – 61g 1400mg	6.1g 40g7 year old boy
7,000kJ 600mg	1400mg	49g – 87g	8.7g	6.66g 44g14 year old girl 9,200kJ 920mg
– 100g	2300mg 66g	10g	58g14 year old boy 920mg	10,600kJ 2300mg 57g

Using the above data, a Wild Wild West burger, when consumed alone, represents 50% of the energy needs, 107% of the sodium upper limit and 214% of the maximum saturated fat intake for a lightly active 7 year old girl. The Wild Wild West burger also constitutes 131% of the maximum saturated fat intake for a lightly active 14 year old boy.

We note that Grill'd burgers are often consumed in conjunction with chips and soft drinks, further increasing the energy, fat, sugar, saturated fat and sodium content of the meal. Where consumed with a snack chips and a 600mL drink, a Wild Wild West burger meal represents 82% of the daily energy needs and 165% of the upper added sugar limit for a 7 year old girl.

b. Unhealthy foods as prizes

We submit that the Competition further promotes unhealthy eating and/or drinking habits among children by providing Competition prizes that are largely comprised of unhealthy food and drink items including Chips, Mini Me Meals, two sliders and sugary drinks.

We note that WHO added sugar guidelines state that added sugar should not exceed 10 per cent of a person's daily energy/nutrient intake.[ii] In this respect, a 600mL Pepsi therefore represents 165%, 150%, 113% and 100% of the added sugar upper limit for 7 year old girls, 7 year old boys, 14 year old girls and 14 year old boys respectively.

Determination

We submit that this advertisement breaches the Children's Code, and request that the Board require the advertiser to remove it from the Grill'd website and cease promotion using the Grill'd Australia Facebook page immediately. An urgent determination in relation to this advertisement is needed, given that the Competition is likely to be a non-permanent promotion, and a finding made following cessation of the promotion will be futile.

THE ADVERTISER'S RESPONSE

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

The Score with Grill'd Junior Footy Comp (Promotion) commenced on 6 July 2016 and is intended to conclude on 31 August 2016. The Promotion is open to all Victorian and Western Australian residents aged 14 years and under. To enter, entrants are required to purchase any of the following: (Grill'd Burger, a pair of Sliders, Steak Sandwich, Salad or Mini-Me Pack) (Products) while wearing Aussie Rules Football gear. Entrants are awarded with a scratch card at the time of the purchase and are required to scratch the card to reveal whether or not they have won a prize. The instant win prizes include various food items, non-alcoholic drinks and Mini Footys. In order to enter into the major prize draw, entrants must complete the online entry form at grilld.com.au/footycomp.

Response:

We refer to your letter and thank the Advertising Standards Board (ASB) for allowing us to provide a Response to complaint number 0347 of 2016 (Complaint). We have considered the matters raised in the Complaint and do not believe that the online advertisement (the Advertisement) is in breach of the AANA Food & Beverages Advertising & Marketing Communications Code (Food and Beverages Code) or the AANA Code for Advertising & Marketing Communications to Children (Children's Code), collectively, "Codes". For consistency, we have adopted a similar structure to the Complaint. Grill'd takes its obligations for the health and safety of its customers very seriously. This extends to AANA regulation, including the Codes.

1. Section 2.7 of the Children's Code

We reject the Complainant's assertion that the Advertisement is in breach of section 2.7 of the Children's Code. The Complainant contends that the Advertisement breaches section 2.7(b) on the basis that it includes reference to "buy or be bought a burger". Section 2.7(b) specifically relates to advertisements that include a direct reference to urging a parent or guardian to purchase a product. We submit that the reference to "buy or be bought" in the Advertisement is an acknowledgement that it is up to the parents or guardian to purchase the Products for their children; there is no specific reference in the Advertisement requesting that Children urge their parents to purchase the Products. Further, this reference is merely a description of the way in which a prospective entrant may participate. The terms clearly state that the prospective entrant requires parents or guardian permission in order to enter the competition. This is intended to recognise the importance of parental authority (as required by section 2.7).

Therefore, we submit that there is no explicit or implicit requirement or request that prospective participants urge their parent or guardian to purchase a Product. We submit that a depiction of a product (or in this instance, terms of entry, the imagery used, or the prospect of winning a Mini Footy) that is likely to appeal to children does not amount to a depiction which would be considered to encourage "pester power."

In order for pester power to be raised as a concern under the Codes, there is a requirement that the Advertisement has an express appeal or encouragement to Children to ask their parents. The Advertisement makes no mention of this, and in comparison to other Cases considered by the board "buy or be bought a burger" in the terms of entry can be distinguished from a promotion incorporating the words "ask your mummy to buy you one." There is a distinct difference between these statements, and therefore we contend that there is no express appeal inciting children to urge their parents to purchase the Products. Further,

in reference to the Practice Note, we contend that a "reasonable child of the target audience" would not interpret terms of entry stating "buy or be bought a burger" to mean "you should urge your parent to buy a burger".

2. Section 2.14 of the Children's Code

We further submit that the Complainant's description of the Advertisement complies with Section 3 of the Food and Beverages Code.

We reject the Complainant's assertion that the Advertisement is in breach of section 2.14 of the Children's Code. The Complainant contends that the incorporation of the Products in the Promotion encourages unhealthy eating or drinking habits. No specific Products are promoted in the Advertisement, and there is significant discretion conferred upon the purchaser to choose between different Grill'd Products in order to enter. We submit that the mere advertisement of products that may have a particular nutritional consumption does not, per se, undermine the importance of a healthy or active lifestyle.

A habit is typically: a settled or regular tendency or practice, especially one that is hard to give up. We contend that the forming of a habit requires a continual pattern of behaviour, which the Advertisement in no way encourages. Similarly, the Advertisement or terms of entry do not require numerous purchases to be made in order to enter.

a. Competition Menu Items

A report by Food & Nutrition Australia (FNA) showed that, on average, Grill'd burgers represented a healthier option (on the basis of caloric, saturated fat and essential minerals and vitamins) than other burgers on the market. As an example, the FNA found that The Simply Grill'd burger contains 61% less saturated fat than a McDonalds McOz; 69% less saturated fat than a Hungry Jack's Aussie Burger; and 61% less saturated fat than a Hungry Jacks Whopper. Grill'd prides itself on providing a healthier alternative for those who wish to eat similar products to the ones that we provide. Further, the ability for individuals to choose from other options including salads and vegetarian burgers, as well as low caloric drinks, provides individuals with the ability to continue living a healthy lifestyle. On this basis, and given the choice of menu items available, we reject the assertion that the Advertisement is promoting unhealthy drinking or eating habits.

b. "Unhealthy" foods as prizes

The potential prizes include smaller (additional menu items) Products, Mini Footys and a variety of other non-food Products as major prizes (movie tickets etc.). Therefore, we submit that the Advertisement does not promote unhealthy drinking or eating habits.

The other additional requirement for entry is that prospective entrants be wearing Aussie Rules Football gear. The Advertisement depicts the fun nature of AFL by the placement of a football in the hand of the boy. We submit that the addition of non-Product prizes including Mini Footys (half of the instant win prizes) encourages prospective entrants to be active or to take interest in active lifestyles.

3. Conclusion

With respect to the Complainant, we do not agree that the Advertisement breaches the Codes or any other AANA regulation. We submit that we are not in breach of sections 2.7 and 2.14 of the Children's Code as set out above. This is on the basis that there is no express appeal to children to urge their parents to purchase the Products, nor does the Advertisement encourage the development of unhealthy drinking or eating habits, as per the above definition of "habit". We thank the ASB for their time in consideration of our Response.

THE DETERMINATION

The Advertising Standards Board ("the Board") considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the "Children's Code") and the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code").

The Board noted the complainant's concerns that the advertisement encourages children to ask their parent/carer to buy them a burger in order to enter a competition and that it promotes unhealthy food to children.

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

The Board noted that the advertiser is not a signatory to the AFGC QSR initiative and therefore the initiative does not apply.

The Board considered whether the Children's Code applied.

The Board considered the definition of advertising or marketing communication to children. Under the Children's 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 and are for Product." The Board noted that Children are defined as "...persons 14 years old or younger" and Product is defined as "...goods, services and/or facilities which are targeted toward and have principal appeal to Children."

The Board considered whether this Facebook post is an advertising or marketing communication directed primarily to children under 14 years of age. The Board noted that the dictionary definition of "primarily" is "in the first place" and that to be within the Children's Code the Board must find that the advertisement is aimed in the first instance at children. The Board noted the marketing communication is a Facebook post. The Board noted that Facebook requires the account holder to be over 13 years of age and considered that Facebook is not a medium directed primarily to children.

The Board then considered the content of the advertisement itself. The Board noted the theme of the advertisement, a competition to win prizes which include food, footy themed goods and Grand Finals parties. The Board noted that in order to participate in the competition entrants have to wear Aussie Rules Football gear into participating Grill'd restaurants and considered that although this competition is aimed at children the advertisement itself is on a medium directed at older children and adults and the theme of competition is a theme which would be of appeal to both children and adults.

The Board noted that the advertisement features an image of two children against a chalkboard drawing and considered that featuring children in an advertisement does not necessarily mean that the advertisement is directed primarily to children.

The Board noted the language used in the advertisement and considered that the phrase, “Your kids could score prizes...” is clearly directed toward parents or guardians and not toward children.

Overall the Board considered that the advertisement does not feature themes, visuals or language which are directed primarily to children.

Having determined that the marketing communication is not directed primarily to children the Board determined that the provisions of the Children’s Code did not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board noted in particular 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 Board noted the complainant’s concern that advertising unhealthy foods to children is not consistent with prevailing community standards.

The Board noted that the two children featured in the advertisement are pictured jumping in the air. The Board noted that the children are wearing AFL footy tops and considered that this depiction in conjunction with a sport-related competition does not undermine the importance of an active lifestyle.

The Board noted that no food products are mentioned in the advertisement and considered that although one of the children has a chalk drawing of a small tub of chips in her hand there is no call to action to purchase this particular food product.

The Board considered that, consistent with previous decisions (Peters 0463/14, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Board noted the Practice Note to Section 2.2 of the Food Code which provides: ‘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 Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board noted that food products such as those available to purchase at Grill’d are legally allowed to be advertised and considered that a drawing of a tub of chips is not suggestive of excessive consumption. The Board noted that the text says there are thousands of instant food

and footy prizes available to win but considered that there was no clarification of the type of food or whether more than one food product could be won by an entrant, or should be consumed by an entrant or any other person. The Board considered that the advertisement did not suggest that any person should eat at Grill'd every day.

Overall the Board considered that the advertisement did not encourage excess consumption and did not breach prevailing community standards on the consumption of food or beverage products.

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

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