



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0350-19</b>
<b>2. Advertiser :</b>	<b>Yum Restaurants International</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>13-Nov-2019</b>
<b>6. DETERMINATION :</b>	<b>Upheld – Modified or Discontinued</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

The advertisement is set in the evening and depicts three women waiting at the front of a queue to get into a venue. They are refused entry and a smaller group of people behind them are let in instead. The women start complaining to the venue's bouncer. Suddenly, one of the women spots a large billboard depicting a KFC \$4.95 Fill Up deal, which includes the wording "until 4pm". The woman who spots the billboard then exclaims "shut up and take my money!". The scene cuts to the three women in a car, driving slowly past the venue whilst enjoying KFC. The bouncer and those in the queue look at them as they pass by. The words "\$4.95 Fill up until 4pm" are superimposed over the image.

### THE COMPLAINT

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

*Considering the context of the ad (late evening) I believe this is deceptive advertising as it is promoting a product that is unavailable at the time. People go to KFC in the late evening, often in a vulnerable state due to alcohol consumption (as the ad depicts) and may be forced to purchase an equivalent product at a more expensive price.*

*The ad is misleading, indicating that it's available at night time*



## 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 of 17 October 2019 setting out two complaints (Complainants). As the Marketing Manager responsible for the relevant advertisement in this instance, I respond to the complaints as follows:*

### *Description of Advertisement*

*The Advertisement to which the Complainants refer is a television commercial for the KFC brand and a \$4.95 Fill Up deal (Advertisement). The Advertisement is targeted towards adults and will be advertised until 28 October 2019.*

*The advertisement is set in the evening and depicts three women waiting at the front of a queue to get into a venue. They are refused entry and a smaller group of people behind them are let in instead.*

*The women start complaining to the venue's bouncer. Suddenly, one of the women spots a large billboard depicting a KFC \$4.95 Fill Up deal which states it is available 'until 4pm'. This is shown on screen for two seconds.*

*The woman who spots the billboard then exclaims "shut up and take my money!". We then cut to the three women in a car, driving slowly past the venue whilst enjoying KFC with abandon.*

*The bouncer and those in the queue look at them longingly as they pass by. The super on the end frame (shown for two seconds) reiterates that the deal is available 'until 4pm'.*

### *The Complaints and Relevant Codes*

*The Complainants have expressed concern regarding deceptive advertising citing an alleged breach of Section 2.4 of the AANA Food and Beverages Advertising and Marketing Communication Code.*

### *KFC's Marketing Strategy*

*KFC strive to depict relatable situations that encourage people to release their free inner spirit and be their true selves. In this Advertisement, we see a group of three women denied entry to a venue and a smaller group behind them allowed into the venue instead. They communicate their frustration to the bouncer but then forget about their misfortune when they spot the KFC billboard.*

*No deceptive advertising or alcohol consumption.*



*Although this Advertisement depicts a night setting, it clearly states twice that the Fill Up deal is 'until 4pm'. We have shown this within the main narrative of the Advertisement (on the billboard) as well as at the end of the Advertisement via supers. No individual or group of people are shown consuming KFC products within the Advertisement.*

*With respect to Section 2 of the AANA Code of Ethics, I note that the Advertisement:*

- *does not discriminate or vilify any person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, disability, mental illness or political belief (section 2.1);*
- *does not employ sexual appeal in a way that is exploitative or degrading of any individual or group of people (section 2.2);*
- *does not present or portray violence in any way (section 2.3);*
- *does not depict or treat sex, sexuality and nudity in any way nor without sensitivity to the relevant audience (section 2.4);*
- *does not use language which is inappropriate in the circumstances (section 2.5);*
- *does not depict any material contrary to Prevailing Community Standards on health and safety (section 2.6); and*
- *the Advertisement is clearly distinguishable as an advert and uses KFC branding to that effect (section 2.7).*

*KFC firmly believes that the Advertisement complies with section 2.4 of the AANA Food and Beverages Code and section 2 of the AANA Code of Ethics.*

*We trust this addresses the Complainants' concerns.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainants' concern that the advertisement is deceptive as it promotes a product that is unavailable at the time the advertisement is set.

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

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel considered section 2.1 of the Food Code which provides:

'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate



to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

“The Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product...’.”

The Panel considered the advertiser’s response that the advertisement clearly states twice that the fill up deal is until 4pm, through its depiction on the billboard and the super at the end of the advertisement.

The Panel also noted the advertiser’s response that no individual or group of people is seen consuming KFC products within the advertisement.

The Panel disagreed with the advertiser’s response and noted that at the end of the advertisement two of the women are seen holding \$4.95 Fill Up boxes and they are both seen to be eating the chicken legs.

The Panel noted the target audience for this advertisement would most likely be adults who would relate to the characters in the advertisement.

A minority of the Panel considered that the timeframe the meal is available was clearly depicted on the billboard in the advertisement and that the advertisement depicting the product being available at night was not an indication that this exact deal would be available at this time.

The majority of the Panel considered that the advertisement depicted a night-time setting and that the women were clearly shown holding and consuming the advertised product. The majority of the Panel considered that the target audience for the advertisement would understand the overall impression of the advertisement to be that this deal was something which you could purchase on a night out. The majority of the Panel considered that the two instances of ‘until 4pm’ depicted in the advertisement were not enough to counteract this overall impression that the product would be available to purchase on a night out.



The Panel considered that the advertisement did make a claim about the availability of the product which was misleading and did breach Section 2.1 of the Food Code.

Finding that the advertisement did breach Sections 2.1 of the AANA Food Code the Panel upheld the complaints.

#### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

We will discontinue use of the advertisement and do not need an independent review.