



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

1. Case Number :	0355-20
2. Advertiser :	Retail Food Group
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Internet - Social - Facebook
5. Date of Determination	16-Dec-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\4.2 Must comply with QSRI
AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing
Message
AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption

DESCRIPTION OF ADVERTISEMENT

This Facebook advertisement features an animated image with a purple background and the words 'After school treats just got more exciting!' and three decorated donuts - a llama, narwhal and unicorn. The three donuts wiggle.

The caption to the post states, "Treat the kids to an after school donut, and treat yourself to a DK coffee ;-) #donutKing #NewKidsRange".

<https://fb.watch/2g17S-s5Es/>

THE COMPLAINT

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

If this marketing isn't primarily targeting children, I don't know what is. The imagery, the cute names and the child-like donut range such as 'Starry the Unicorn' would primarily appeal to children and is clearly directed at children. Donuts are not part of the healthy plate as per the Australian Guide to Health Eating and should not be marketed to children. Especially when we are in the middle of an obesity epidemic.



THE ADVERTISER'S RESPONSE

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

`We note that the complaint is in relation to a post published to the Donut King Facebook page on 21 October 2020 which shows an image of doughnuts subject of "The Sweet Team" range, with the headline "after school treats just got more exciting". The post was also published with the caption "treat the kids to an after school donut, and treat yourself to a DK coffee #DonutKing #NewKidsRange" (the Post).

The complaint also references a video advertisement which introduced "The Sweet Team" range to the market. The advertisement ran as a paid advertisement on Facebook during the promotional period of 19 October 2020 – 22 November 2020. A digital copy of the 'Starry – the Unicorn' Advertisement is enclosed with this response. (the Facebook Advertisement).

The complaint alleges that the Post and Facebook Advertisement are "primarily targeting children" and has identified the following sections which are alleged to have been breached: -

1. The AANA Food & Beverage Advertising & Marketing Communications Code (the "Food Code"):

- a. Clause 2.2*
- b. Clause 4.2*

2. The AANA Code for Advertising & Marketing Communications to Children (the "Children's Code"):

- a. Clause 2.1*

3. AFGC – Quick Service Restaurant Initiative (the "QSR Initiative"): a. 1.1 (a)

(the Codes)

It is the position of RFGA Management Pty Ltd, the system manager of the Donut King brand (the Advertiser), that neither the Post or the Facebook Advertisement breaches the identified sections of the Codes, for the reasons outlined below.

Under the Codes, Advertising or Marketing Communication to Children is defined as '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.'

The initiative defines a child to be "persons under the age of 14 years of age."



The Board has cited in numerous case reports, that the dictionary definition of “primarily” is applied when determining whether an Advertising or Marketing Communication is directed primarily to children. “Primarily” means “in the first place”. Accordingly, for the Post and/or Facebook Advertisement to be subject to the provisions the Codes, the Post and the Facebook Advertisement must be held to be aimed in the first instance at children.

The Advertiser submits that neither the Post or nor the Facebook Advertisement are Advertising or Marketing Communication which is directed primarily to children. This is specifically noting:

1. The text under the Post is clearly aimed at adults with use of the words ‘treat the kids to an after school donut, and treat yourself to a DK coffee’. This language is specifically talking to an adult or guardian and by no means is directed or aimed at drawing the attention of a child;

2. the text used in the image of the Post refers to a “donut” and “DK Coffee”, being general menu items of the Donut King branding. We respectfully note that the Board has already held that Donut King is a popular restaurant chain selling doughnuts, hotdogs, soft serve, and beverages and considered that while it does sell novelty doughnuts aimed at children, the majority of its products are aimed at adults and in the Board’s view doughnuts in general are a product enjoyed by all ages and not targeted to children.; (Case Number 0256/17)

3. The text is read and visible before the viewer clicks into the Facebook Advertisement;

4. The Post and Facebook Advertisement were published in an Advertising or Marketing Communications Medium, Facebook, where:

a. All users of Facebook require a log in and password;

b. The terms and conditions of the Facebook website refers to ‘users’; as persons over the age of thirteen (13), being more of a mature audience;

c. Children are unlikely to represent 35% of the Facebook audience. In this respect, we refer to the Board’s decision in Case Number 0216/08 where it was held Facebook was unlikely to be considered a medium that was directed primarily to children or a medium that was likely to have a child audience of over 35%; and

For the reasons noted above, it is unlikely most members of the community would consider such a medium to be directed primarily to children.

Further, the Post or the Facebook Advertisement makes no appeal (explicit or implicit) to a child to take any action after viewing the Post or the Facebook Advertisement. Accordingly, it is rejected that neither the Post or the Facebook Advertisement encourages a child viewer to urge parents and/or other adults responsible for a child’s welfare to buy a doughnut from the advertised range. At all times parents and guardians remain the decision maker about whether or not to purchase their child a doughnut.



Further, as for the content of the Facebook Advertisement, it is the Advertiser's submission that the content holds a broader appeal for both adult and child, as is the case for Donut King products generally. The theme, visual display and layout, while may be appealing to a child, is not directed primarily to a child, specifically noting its appearance on the Facebook platform.

Health lifestyle & Encouraging Excess Consumption

As the panel has determined in a number of prior decisions (Including Case Numbers 0345/17, 282/11, 0550/17, 0356/19, 0042/20, 0043/20) the '...promotion of a product which may have a particular nutritional composition is not, per se, undermine the importance of a healthy balanced lifestyle.' (Case number 0042/20, 0043/20)

It is submitted that:

- 1. neither the Post or the Facebook Advertisement undermines the importance of a healthy balanced lifestyle;*
- 2. The products are not advertised to replace a healthy balanced diet nor does the Post or the Facebook Advertisement encourage or engage in excess consumption;*
- 3. The Post or the Facebook Advertisement does not appear on prime time television, or advertising near kindergartens, schools or on school buses; and*
- 4. there is nothing on the Post or the Facebook Advertisement that disparages healthy food, good lifestyle decisions or exercise. On the contrary, we note that the Post and/or Facebook Advertisement market "afterschool treats" and therefore it identifies that the pictured product (and the greater donut range of Donut King) are in fact:-*

treats; and

something to be consumed outside (and therefore not in substitution of) the traditional meals of breakfast, lunch or dinner;

As such the healthy lifestyle and encouraging excess consumption sections of the Food Code and the Children's Code do not apply. Further, and in consideration of the Practice Note to Section 2.2 of the Food Code, the Advertiser does not consider: -

- 1. the use of an image of three (3) doughnuts in the Post; and*
- 2. text calling upon parents and/or guardians to "treat" their children to an "afterschool" treat and themselves to a 'DK Coffee' in the Post; and*
- 3. as use of a donut from 'The Sweet Team' range during the Facebook Advertisement in the non-dominate placement (in the hand of the child being interviewed, often out of view);*

as Advertising or Marketing communication which encourages excesses consumption.

Conclusion



Donut King takes a responsible approach to informing its customer base and has taken every care, together with its agency, PHYD Studios, to ensure compliance with the Codes. For the reasons outlined above, the Advertiser views that the Post and the Facebook Advertisement to be compliant with the Codes and therefore the Complaint should be dismissed.

We otherwise affirm the Advertiser's desire to work co-operatively with the Ad Standards Board to resolve any concerns which it may or may not hold in respect of the Complaint or the Video generally. We trust the above offers adequate additional detail to enable due consideration and thank you for the opportunity to do so.

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) 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 targeting unhealthy food to children which is not appropriate during an obesity epidemic.

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 shows a new donut range and considered that this is an advertisement for food products.

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 years of age."

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, 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 regards 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?

Is the theme of the advertisement directed primarily to children?

The Panel considered that the call to action in the advertisement is to parents to bring their children in to try the new range of products. The Panel considered that although the products themselves would be attractive to young children, overall the theme of the advertisement would be equally attractive to both adults and children.

Is the language of the advertisement directed primarily to children?

The Panel noted that the language in the advertisement was directly targeting parents and suggesting as well as treating the children they should treat themselves. The Panel considered that children may be attracted to the wording ‘after school treats’, however this was just as likely to be attractive to parents or caregivers wanting to treat their children. Overall, the Panel considered the language of the advertisement would be primarily attractive to adults.

Are the visuals of the advertisement directed primarily to children?

The Panel noted that the advertisement included vision of three donuts which moved side to side on a bright purple background. The Panel considered that the bright background was consistent with the colouring of the brand and was not in itself primarily attractive to children. The Panel considered that the products shown are products which would be of principal appeal to children and as such the visuals in the



advertisement would be attractive to children. Overall, the Panel considered the visuals of the advertisement would be primarily attractive to young children.

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

The Panel noted 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 clearly directed primarily to children.

The Panel considered that the overall impression of the advertisement was that it was targeting parents and caregivers by suggesting they purchase the product for their children as a treat.

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

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

The Panel noted that the advertisement appeared on Facebook which is included under the medium of internet sites. The Panel noted that Facebook is a website which is restricted to people over 13, and also considered that this was a medium which was not directed primarily to children or a medium that was likely to have a child audience of more than 35%, and therefore was not captured by point 2.

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.

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 considered that there was nothing in the advertisement which suggested that the advertised product should be eaten in excess and the wording of the advertisement directly refers to this product as a treat. The Panel considered that advertising a food of lower nutritional value was not by 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.

As discussed above, 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.

Conclusion

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