



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0356-20</b>
<b>2. Advertiser :</b>	<b>Retail Food Group</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet</b>
<b>5. Date of Determination</b>	<b>16-Dec-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption  
AANA Food and Beverages Code\3.2 Encourage excess consumption  
AANA Food and Beverages Code\3.5 Pester Power  
AANA Food and Beverages Code\4.2 Must comply with QSRI  
AANA Advertising to Childrens Code\2.7 Parental Authority  
AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message

### DESCRIPTION OF ADVERTISEMENT

This advertisement is a webpage with a video advertising a new range of donuts.

The webpage has a pink background and features the heading 'meet the sweet team! With images of the character donuts 'Norman the narwhal', 'Charlie the llama' and 'Starry the unicorn', with a description of each of the donuts.

Underneath the descriptions is an embedded video.

The video begins with the text "introducing Starry the unicorn donut" and an image of the donut. Up-beat music plays during the video. Two young children are shown, and one of them states, "in the sky in a unicorn castle". Other children are shown who say, "fart cupcakes" and the words 'fart' and 'cupcakes' appear in speech bubbles on the screen.

The text "introducing Charlie the Llama donut" then appears with an image of the donut. A child says 'they have magical spit' and another child is shown clicking her tongue with animated spit lines appearing around her mouth.



Three children are shown holding donuts with the middle child also imitating spitting.

The text "introducing Norman the narwhal donut" appears with an image of the donut.

The question "what sound does Norman make?" appears at the bottom of the screen and various children attempt to make narwhal noises.

The question "where does Norman live?" appears at the bottom of the screen. One child says, "maybe in the artic" and another says, "Alaska, under the sea". Two children are shown eating donuts and one says, 'so delicious'.

Images of the three donuts are shown, with the text, "The sweet team. Now available".

#### **THE COMPLAINT**

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

*The website, including the video is marketing directed to children. Small children feature in the video talking about the animals that are the themes for the donuts. The video is aimed at children because it features- colourful images, child friendly background music, special "magical" visual effects, the children speaking including saying "so delicious" and imagining where the characters live/come from. This is clearly aimed at getting children to pester their parents for junk food. In the Australian Dietary Guidelines donuts are discretionary foods and not to be consumed regularly and certainly then shouldn't be advertised to children. It is absurd to think that this would be an ad directed to anyone other than children.*

*If this marketing isn't primarily targeting children, I don't know what is. A 'fun' little video with children talking about the range of '#NewKidsRange' donuts, 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 refer to your correspondence of 17 November 2020 and thank you for allowing us the opportunity to respond to the complaint on the agreed extended timeframe.*



*We note that the complaint refers to a video published on the Donut King website ([www.donutking.com.au/the-sweet-team/](http://www.donutking.com.au/the-sweet-team/)) (the Website) advertising three new donuts, launched as part of a range, collectively known as “The Sweet Team” range (the Video).*

*The complaint alleges that the Website, including the Video is “aimed at getting children to pester their parents for junk food” 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 Health lifestyle*
  - b. Clause 3.2 Encourages excess consumption*
  - c. Clause 3.5 Pester Power*
  - d. Clause 4.2 Must comply with QSRI*

- 2. The AANA Code for Advertising & Marketing Communications to Children (the “Children’s Code”):*
  - a. Clause 2.1 Community Standards*
  - b. Clause 2.7 Parental Authority*

- 3. AFGC – Quick Service Restaurant Initiative (the “QSR Initiative”):*
  - a. 1.1 Advertising and Marketing Message (the ‘Codes’)*

*It is the position of RFGA Management Pty Ltd, the system manager of the Donut King brand (the Advertiser), that the Website, including the Video does not breach 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 QSR 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 Website or the Video to be subject to the provisions of the Codes, the Website, including the Video must be held to be aimed in the first instance at children. It is the Advertiser’s submission that the Website, including the Video, is not directed primarily to children.*

#### *The Website*

*The Advertiser submits that the Website is a corporate online platform for the ‘Donut King’ brand and performs a variety of functions, some of which include but are not limited to:*

- a. “Menu” – Details regarding food and beverage products, together with their kilojoule content, available for purchase from Donut King outlets;*



b. "What's new" – providing information of current marketing campaigns and product offerings, including, amongst other campaigns, "The Sweet Team" range;

c. "Store Locator" – A facility which identifies nearby Donut King outlets based on the post code submitted by the user.

d. "own a franchise" – a user can submit an enquiry to purchase a Donut King franchise business.

e. DK Rewards program" – provides the platform to customers to download the App and register their reward card.

To view its function holistically it is clear the Website itself is to promote 'Donut King' as a whole, is aimed at a more mature audience and not directed primarily to children. While advertising and promotions of its current and new product ranges, including 'The Sweet Team' range, appears as a feature of the website, it is not predominately designed for such purpose. In this instance the Video is clearly a launch promotion initiative of the Donut King brand

Further, the Advertiser submits that many of the sections within the Website, including those noted above, would be considered 'boring' and unappealing to children, and for this reason, it is highly unlikely that children will be the audience for this medium.

The Website therefore cannot be reasonably categorised as intended or directed primarily to children.

#### *The Video*

As noted above, the Video can be accessed via the Donut King Website at [www.donutking.com.au/the-sweet-team/](http://www.donutking.com.au/the-sweet-team/). The script are the words written within the Video itself. The verbal responses are unscripted.

To access and view the Video on the Website, and on the basis the viewer did not have the above file path (which is unlikely, noting it is not advertised on any other medium), the viewer would need to take all of the following steps:

1. Access the Donut King Website at [www.donutking.com.au](http://www.donutking.com.au);
2. Navigate the viewer's way to the 'What's New' heading;
3. Scroll down to 'The Sweet Team' option (which is currently one or four promotional items listed under the 'What's New' heading); and
4. Watch the Video.

At no stage, prior to taking Step 1 is the Video referred to or advertised in any other section of the Website.

It is submitted that:

1. The Website, including the Video is not directed primarily to children;



2. A child would have no purpose or incentive to visit the Website noting its overall adult content;
3. As far as the Advertiser is concerned, children are unlikely viewers of the Website or the Video (specifically noting the medium);
4. If the Website was accessed by a child (which is not the intended audience) it is highly unlikely that the child would then be motivated to undertake the above steps on the off chance it would come across the Video (or any video). It is also unlikely that such steps could or would be actioned without parental control, assistance or supervision;
5. The Video makes no appeal (explicit or implicit) to a child to take any action after viewing the Video. Accordingly, it is rejected that the Video 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.

As for the content of the Video, 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. Further the visual aspects of the Video and Website is more intended to stimulate childhood memories of adults (specifically noting the medium it is on) as well as present a product range that may appeal to their children as a treat.

As such, based on the requirements outlined in the QSRI the advertisement is not directed primarily at children, does not appear in a medium directed primarily at children and does not appear in a medium which attracts (or intended to attract) children as its audience.

Further, at all times parents, and caregivers remain the decision maker about whether or not to purchase their child a doughnut. As such, the pester power section of the Food Code and Children's Code also do not apply.

#### *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 Website nor the depiction of 'The Sweet Team' range doughnuts on the Video undermines the importance of a healthy balanced lifestyle;
2. The products are not advertised to replace a healthy balanced diet nor does the Video encourage or engage in excessive consumption;
3. The Video does not appear on prime time television, near kindergartens, schools or on school buses; and



4. there is nothing on the Website or the Video that disparages healthy food, good lifestyle decisions or exercise.

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) donuts; and
2. text stating that the range is available for purchase as Advertising or Marketing communication which encourages excess 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 Website, including the Video is 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 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 complainants' 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 the new donut range and considered that this is an advertisement for food products.



### **Is this advertisement directed primarily to Children?**

The Panel noted that the Food Code defines Advertising or Marketing Communications to Children as ‘Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children’s Food or Beverage Product.’

The Panel noted that Children’s Food or Beverage Product is defined as ‘any food or beverage product (other than alcoholic beverages as defined in and subject to regulation by the Alcohol Beverages Advertising Code) which is targeted toward and has principal appeal to Children.’

The Panel noted that Children is defined as ‘persons 14 years old or younger’.

### **Is the theme of the advertisement directed primarily to children?**

The Panel considered that the theme of the overall webpage is to highlight the new ‘sweet treat’ product range available in their stores. The Panel considered that this would be a theme which was attractive to children, however would be equally attractive to parents and to franchise owners.

Overall, the Panel considered that 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 the complainants’ concern that the advertisement features child friendly background music, the children speaking including saying “so delicious” and imagining where the characters live/come from.

The Panel first considered the language in the webpage itself. The Panel considered the opening line under the heading is “We’ve launched our new ‘Sweet Team’ Range, especially created for our younger donut enthusiasts!”. The Panel considered that using words like ‘launched’ and ‘enthusiasts’ would be more attractive to parents and franchise owners than it would be attractive to children.

The Panel then considered that the next line was ‘Meet the Sweet Team – they are waiting to meet you at a Donut King store near you!’ was a phrase which seemed to be directly speaking to people who would be interested in consuming the product – and that this would primarily be children.

The Panel then considered the descriptions of the donuts. The Panel noted that the descriptions included some fantastical elements such as “This Llama don’t want no drama” and “Starry will be your lucky charm, sure to be a hit with unicorn fans and known for her beauty and magic in the wild.” The Panel considered these elements



would be attractive to young children through the imaginative description. However, the Panel noted that the remaining language under the descriptions of donuts was informative and related to the ingredients and flavours of the donuts, and considered that this information would be more attractive to parents and franchise owners.

The Panel then considered the language in the video. The Panel noted that the video included instrumental, cheerful music and young children talking. The Panel considered that the music and language in the advertisement would be attractive to very young children, however most children over five would find the descriptions too simplistic. The Panel considered that the video would also be attractive to parents of young children, who would be able to get ideas about the kinds of questions their child could be asked about the treats to stimulate their imagination.

#### Are the visuals of the advertisement directed primarily to children?

The Panel noted the complainants' concern that the advertisement features colourful images, and special "magical" visual effects.

The Panel noted that the webpage had a pink background and included images of stars, donuts and rainbows. The Panel considered that the pink colour was consistent with the brand identity and would not of itself be attractive to children. The Panel considered that the images of the donut characters would be attractive to children, however would be equally attractive to parents of young children looking for a treat and franchise owners looking for information on the new range.

The Panel then considered the visuals in the video. The Panel noted that the video included animated cartoon images of the three donut characters and imagery of the young children holding the donuts and talking about them. The Panel considered that the visuals in the advertisement would be attractive to very young children, however most children over five would find the visuals too simplistic and would not be interested in advertising showing children younger than them. The Panel considered that the video would also be attractive to parents of young children.

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

The Panel reiterated 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 noted the advertiser response that the theme, visual display and layout, while they may be appealing to a child, are not directed primarily to a child. The Panel further noted the advertiser's response that the visual aspects of the advertisement is more intended to stimulate childhood memories of adults (specifically noting the



medium it is on) as well as present a product range that may appeal to their children as a treat.

The Panel considered that there were some elements of the advertisement, particularly the visuals, which would be attractive to children, however other elements such as the themes and language would be equally attractive to both children, parents and franchise owners.

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.

Is the advertisement for a product of principal appeal to Children?

The Panel noted that the advertisement is for the new character donut range at donut king and references the product as a treat for children. The Panel considered that these products would be of principal appeal to children under 14.

Conclusion: is the advertisement directed primarily to children?

Finding that the theme, visuals and language used in the advertisement are not directed primarily to Children, although they are for a Children's Food or Beverage Product, the Panel determined that the advertisement was not directed primarily to children.

### **AANA Code for Advertising and Marketing Communications to Children (the Children's Code)**

Section 2.7 Advertising or Marketing Communication to Children:

(a) must not undermine the authority, responsibility or judgment of parents or carers;

(b) must not contain an appeal to Children to urge their parents, carers or another person to buy a Product for them;

(c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers; and

(d) must not state or imply that persons who buy the Product are more generous than those who do not.

As discussed above, the Panel noted that the advertisement was not a marketing communication directed primarily to children. As such the provisions of the Children's Code do not apply.

### **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 complainants' 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. The Panel considered that the heading of the advertisement directly refers to the products as treats. The Panel considered that advertising a food of lower nutritional value was not of 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 3.2 Advertising or Marketing Communication to Children shall not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the Children's Food or Beverage Product/s.

As discussed above, the Panel noted that the advertisement was not a marketing communication directed primarily to children. As such the provisions of Section Three of the Food Code do not apply.

3.5 Advertising or Marketing Communication 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.

As discussed above, the Panel noted that the advertisement was not a marketing communication directed primarily to children. As such the provisions of Section Three of the Food Code do not apply.

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.



## **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, are 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?

As discussed above, the Panel did not consider that the themes, visuals and language of the advertisement were directed primarily to children under 14.

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

The Panel noted that the advertisement is a page on the Donut King website. The Panel considered that the website mainly features product information and information for franchise owners.



The Panel noted that there are no promotions or games on the website which would attract a child audience.

Overall, the Panel considered that the website medium was not directed primarily to children through themes visuals and language and would be highly unlikely to have an over 35% child audience.

### **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.

### **Food Code Conclusion**

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

Finding that the advertisement was not an advertisement for children the Panel determined that the provisions of Section Three of the Food Code did not apply.

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.

### **Children's Code Conclusion**

Finding that the advertisement was not an advertisement for children the Panel determined that the provisions of the Children's Code did not apply.

### **Conclusion**

Finding that the advertisement did not breach the AFGC QSRI, the Children's Code or the Food Code the Panel dismissed the complaints.