



Ad Standards Community Panel
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Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0378/18
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	12/09/2018
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards
Food and Beverage Code 2.2 - healthy lifestyle / excess consumption
Food and Beverage Code (Children) 3.5 pester power
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 Television advertisement features a voice over stating 'Introducing Macca's new breakfast burger' with visuals of a McDonald's Big Mac followed by a Cheeseburger, a Quarter Pounder, fries and Chicken McNuggets with sauce. Writing subsequently appears above the All Day Favourites items that says "Now available all day, all night."

THE COMPLAINT

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

It is directly telling impressionable children that it is effectively ok to eat any maccas burgers for breakfast. We have an obesity epidemic and now kids will nag their parents for extremely fatty burgers for breakfast.



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 0378/18 (Complaint).

The Complaint refers to a television commercial as part of the 2018 McDonald's All Day Favourites promotion (Advertisement). The Complaint is made under sections 2.1, 2.2 and 3.5 of the AANA Food & Beverages: Advertising & Marketing Communications Code (Food Code), section 2.2 Advertiser Code of Ethics (AANA 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 advertising to children, primarily, promoting excessive consumption and undermining the importance of healthy lifestyle to children.

The Advertisement does not breach the Codes for the reasons stated below:

The content of the Advertisement is not directed to children

The overall purpose of the Advertisement is to promote select products at McDonald's restaurants now being available all day. The language, visuals and themes of the Advertisement do well to communicate this message to consumers. The way this is communicated through the Advertisement has no primary appeal to children, rather has broad appeal. The visuals used are images of the products relevant to the promotion and the language used communicates the message of the promotion.

The placement of the Advertisement is not directed to children

The QSRI considers an advertisement to be advertising to children when the advertisement is placed in a medium where children represent at least 35% of the audience. Consistent with our strict measures to comply with this area of the QSRI, the Advertisement was not placed in a medium where children represented 35% or more of the audience. Attached is a spot list from our media buying agency to substantiate this point.

For the above reasons, the QSRI does not comply.

The Advertisement does not promote excessive consumption

The Advertisement shows the select products relevant to the promotion. There is nothing which suggests that the products should be frequently consumed. In addition,



pursuant to the prior decision of 282/11, the promotion of items which may have a particular nutritional composition is not, per se, undermining the importance of a “healthy or active lifestyle”. Accordingly, the Advertisement does not encourage excessive consumption, nor could the proportions shown be considered excessive. An example of promoting excessive consumption in the context of this Advertisement would be encouraging consumers to consume the advertised products for breakfast lunch and dinner every day. Obviously, the Advertisement does not do anything of the like.

Furthermore, 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. We appreciate the complainant’s concerns and understand that not everyone will appreciate the humour of the Advertisement. We ask that the Ad Standards board apply a common sense approach and dismiss the Complaint.

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 an unhealthy lifestyle.

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 advertisement contained pictures of food products and the theme of the advertisement was that you could now order some items from the menu during breakfast time primarily products of appeal to older people such as a Big Mac.

The Panel considered that the voice over to the advertisement was an adult male and the language he used was not childlike.

The Panel considered that collectively, the overall impact of the advertisement is one of general appeal and is not directed primarily to children under 14.

The Panel noted that the advertisement appeared on television, and noted the advertisement had been given a ‘W’ rating by CAD. The Panel noted that advertisements with a W rating may be broadcast at any time except during P and C programs or adjacent to P or C periods. Exercise care when placing in programs principally directed to children.

The Panel was provided with a copy of the spot list for this advertisement. The Panel noted that the advertisement had been played twice during the program ‘Cybershack’ and once during the movie ‘Short Circuit’. The Panel considered that ‘Cybershack’ is a PG rated program that features technology reviews and while this may be of some appeal to children it would be primarily of appeal to older children and adults.



The Panel considered the movie 'Short Circuit' is a PG rated movie from 1986 which features a friendly robot. The Panel considered that this movie would be primarily of appeal to families and a general audience, rather than to children under 14.

The Panel considered that advertising was placed during programming that did not have audience of more than 35% children and was not placed in programs directed primarily to children. 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 QSRI 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 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 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 noted that while there is a number food items shown in the advertisement they are there to represent the menu items that are now available all day, and there is no suggestion that they are to be consumed by a single person.

The Panel considered that the statement ‘now available all day, all night’ refers to the new availability of the items and is not a suggestion that people should eat these items at different times on the same day, or every day. Rather the overall impression of the advertisement is that if you are at McDonalds for breakfast you now have a greater choice of menu options.

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.

