



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0382/17</b>
<b>2</b>	<b>Advertiser</b>	<b>McDonald's Aust Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food / Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/09/2017</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

## ISSUES RAISED

2.1 - Discrimination or Vilification Race

## DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens with a young woman and a young man sitting at a table outdoors. They appear to be on a date, and the man is leaning towards the woman as if he is about to kiss her. They are immediately interrupted by two male buskers who are wearing straw hats, brightly coloured shawls and playing musical instruments. The man on the date gives them \$10 and they immediately stop playing their instruments and walk away. The next scene shows the two men at McDonald's with a \$10 note walking up to the front counter. The advertisement ends with footage of a 24 pack of Chicken McNuggets and details of the \$10 offer, and a final frame showing the McDonald's logo (the Golden Arches) with the words "a little goes a long way".

## THE COMPLAINT

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

*It's cultural appropriation and offensive to Mexican people and their culture.*

## 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 0382/17 (Complaint).*

*The Complaint refers to a 24 Chicken McNuggets for \$9.95 commercial (Advertisement). The Complaint is made under section 2.1 of the AANA Code of Ethics (Code). The Complaint asserts that the Advertisement portrays people in a way which is culturally appropriative and discriminates against Mexican people.*

*The Advertisement does not breach the Code and should be dismissed for the following reasons:*

*Reason 1: Even if the ASB were to accept the concept of cultural appropriation as a breach of the Code, the Advertisement is not an example of cultural appropriation.*

*If the ASB accepts the concept of cultural appropriation as 'racism', the Advertisement still does not breach the Code as it does not 'steal' Mexican culture. While the Advertisement is clearly designed to be humorous, Mexican culture is not the subject of the humour, and that culture is not disparaged nor criticised by the Advertisement.*

*The ASB has previously decided that the depiction [of a racial group] will be regarded as negative if a negative impression is created by the imagery and language used in the advertisement. Advertisements can suggest stereotypical aspects of an ethnic group or gender with humour provided the overall impression of the advertisement is not a negative impression of people of that ethnicity or gender' (Case: 0309/16). In this situation Mexican people are not depicted, nor is a negative impression created of Mexican people. The Advertisement does not make any comment or give any impression about Mexican people or culture at all.*

*The source of the humour in the Advertisement is two-fold, and neither element involves poking fun at Mexican culture.*

*The first element of humour is the disruption of the romantic moment between a man and woman on a date. The two appear to be about to kiss, and this romantic moment is suddenly interrupted by two young men. The sudden interruption and change from a tender, romantic moment, to a bizarre musical moment, is the first source of humour in the Advertisement.*

*The second source of humour is the willingness of the two young men to embarrass themselves for a small amount of money so they are able to purchase Chicken McNuggets. The fact that they do this by wearing straw hats, colourful outfits and playing instruments is not itself the source of humour. The two men could be wearing chicken costumes and playing the flute, and the Advertisement would have the same effect. The actors could be wearing almost any outfit, and playing almost any instrument, and the humour would remain the same. This is a fundamental matter for the ASB to consider as part of its decision, as it cannot be possible to find that an advertisement is appropriating a culture when the advertisement would be the same regardless of which culture was portrayed, or if any culture were portrayed at all.*

*Mexican culture is not the subject of the humour, in either situation set out above. Accordingly the Advertisement does not appropriate Mexican culture, nor does it depict Mexican people or their culture negatively. The ASB should dismiss the Complaint on this basis.*

*Reason 2: The racial appearance of the actors should not be relevant to the ASB*

*The Complaint makes the assumption that the two young men are “Anglo males” when there is no indication one way or the other of the cultural identity of the actors. The Complaint seems to suggest that if the actors were Hispanic, that the Advertisement would be acceptable. As a matter of principle, the ethnicity of the actors based on their appearance should not be excessively analysed. It is possible that the actors were Hispanic despite their appearances, and it is equally possible that they were not. For the racial and ethnic backgrounds of the actors to be collected and used as evidence in a submission to the ASB would be a concerning precedent, requiring ethnic and racial profiling of actors by advertisers in anticipation of potential complaints.*

*As was established in the well-known Federal Court case of Eatcock v Bolt [2011] FCA 1103, the claim that a person is not of a particular race or culture because of their appearance can itself be a breach of the Racial Discrimination Act 1975 (Cth). On this basis the ASB should disregard the ethnic appearance of the actors in making its decision.*

*For the reasons set out above, we submit that the Advertisement complies with the Code and the Complaint should be dismissed.*

*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.*

## **THE DETERMINATION**

The Advertising Standards Board (the “Board”) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the “Code”).

The Board noted the complainant’s concerns that the advertisement features two men dressed in Mexican outfits which is cultural appropriation and offensive to Mexican people.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted that this television advertisement features two male buskers interrupting a romantic moment between two diners who bribe them with money to leave them alone.

The Board noted it had previously dismissed a similar complaint about a Caucasian man dressed as a Chinese Master in case 0126/17 where:

“...the Board noted that it is not of itself discriminatory or vilifying to depict a person dressed in clothing specific to a particular culture or nationality and considered that the advertisement is clearly presenting a man dressing up and being silly. The Board noted that the

advertisement is intended to be light-hearted and humorous and the majority of the Board considered that the manner in which the Caucasian man plays the role of a Chinese Master is not negative or demeaning and in their view there was nothing in the advertisement to suggest that Chinese people and/or their culture are being mocked or ridiculed.”

The Board noted in the current advertisement that the two buskers are wearing multi-coloured ponchos and straw hats and considered that whilst the complainant has assumed they are portraying Mexican people in the Board’s view the advertisement does not make any claim regarding the actual or intended ethnicity or nationality of the two buskers. The Board noted the buskers are reminiscent of Mexican-style entertainment but considered that the manner in which they are portrayed means the focus is on the unwanted attention of the buskers and not on the ethnic or cultural reference.

The Board noted that the focus in the advertisement is on the two buskers trying to raise money to purchase a McDonald’s meal by purposely annoying people and considered that their behaviour was humorous and not intended to reflect any particular nationality in a negative or demeaning manner.

Overall the Board considered that the advertisement did not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

The Board determined that the advertisement did not breach Section 2.1 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.