



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0383/13</b>
<b>2</b>	<b>Advertiser</b>	<b>Yum Restaurants International</b>
<b>3</b>	<b>Product</b>	<b>Food / Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>App</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/11/2013</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards  
QSR - 4.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a mobile phone application for an interactive game called “KFC Snack in the Face” which is available to download at the Apple Play Store and Google Play Store. The Advertisement forms part of KFC’s campaign for its snack menu range and will be available for download until 2 December 2013.

The premise of the game is to help save the Popcorn Chicken characters that have been stolen from KFC by the villainous character, Professor Snackbot, and lead them to their saviour, the Colonel character. The Advertisement requires players to propel the Popcorn Chicken characters through three lairs, into the safety of the Colonel’s mouth while avoiding obstacles, such as buzz-saws and lasers, along the way. The Advertisement contains eighteen levels across the three lair environments and provides players with various achievement rewards to be won as they progress through the levels. Free KFC snack menu items and discount coupons are available to win also.

### THE COMPLAINT

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

*Summary of complaint – breach of the Quick Service Restaurant Initiative ('QSRI')*

*We submit the app is an interactive game, which is directed primarily to children within the meaning of Article 3.5 of the QSRI. We further submit the app is a marketing communication that breaches Article 3.1 of the QSRI, which provides that advertising and Marketing Communications to Children for food and/or beverages must:*

*1. Represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing Children's meals (see Appendix 1); and*

*2. Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:*

*1. Good dietary habits, consistent with established scientific or government criteria; and*

*2. Physical activity.*

*An interactive game featuring KFC products*

*The app is clearly an interactive game, using the touch technology on smart phones and tablets. It features KFC products, depicted in cartoon form, including popcorn chicken pieces and a snack wrap character, which features to introduce new levels.*

*A game directed primarily to children*

*In support of our submission the app is directed primarily to children, we draw the board's attention to the following salient features:*

*1. The visuals used are cartoons depicting adventure scenarios that are strongly reminiscent of children's cartoons. These include a "secret lab" which is represented by an animated space-ship-like structure with light bulbs and a blimp, and the "volcano lava lair" featuring a rickety rope ladder, dungeon-style windows and flowing, steaming red lava.*

*2. The style of the cartoons is not of a style used when targeting older audiences, being very similar to Disney-style animations. We submit that currently airing cartoons for younger children, which use similar animation styles, include Phineas and Ferb (Saturday Disney), Almost Naked Animals (ABC 3), Best Ed (ABC 3) and Tracey McBean (ABC 3).*

*3. The simplicity of app is striking. It is very easy to use and requires an action like the hugely popular app "angry birds" to fire popcorn chicken into the Colonel's mouth.*

*4. The themes used are adventure, questing, and a simplistic struggle between good and evil. These themes are seen most commonly in children's stories, and are likely to be of the greatest appeal to primary-school aged children. The portrayal of these themes at a simple level of complexity is comparable to many current TV shows for younger children that can be perused on the ABC 3 (kids) website. Selected examples of such depicted themes in currently airing children's programs include: Chop Socky Chooks ("a crack team of Kung Fu Chickens work undercover to combat their arch-enemy Dr Wasabi and his monstrous schemes for world domination"), Phineas and Ferb (featuring secret agent "Perry the Platypus" and "the evil Dr Heinz Doofenschmirtz), Iron Man: Armored Adventures ("Tony Stark is geared for high-speed flight, high-tech battles and high-octane adventure! He is Iron Man" and Dex Hamilton: Alien Entomologist ("follows Dex in the year 3000 as he races across the universe capturing incredible alien insects!"))*

*(see [http://www.abc.net.au/abc3/shows/tv\\_shows\\_a-z.html](http://www.abc.net.au/abc3/shows/tv_shows_a-z.html).) Clearly the themes and animation style are not aimed at an older audience of 16-24 year olds as asserted by the advertiser.*

*5. The timing and placement of the offer allowing players to redeem their "vouchers" for snack products only between 2-5pm, coincide directly with after-school hours and are convenient for school-age children. This time slot is much less likely to capture an audience of 'young adults' who are engaged in work or study during business hours.*

*6. The language used is not of a style that would appeal to 16-24 year olds. Rather, expressions such as "lair", "evil Professor Snackbot" and "BFF" are of a type used by school-age children in upper primary school and high school.*

*7. The music that accompanies the app is childish, catchy and like music used in console*

*games of the kind played by young children.*

*Relevance of the advertiser's comments on the intended audience*

*We note the advertiser's creative team has asserted the key target group for the app is young males from 16-24 (<http://www.campaignbrief.com/2013/10/kfc-australia-launches-its-fir.html>). This commentary is not probative of the issue of whether the advertisement is directed primarily to children. The board must consider the combined impact of the elements of the app and may draw on its own experience with both children and advertising to assess whether the themes, language and visuals used in the app are directed to children, as in decision 0247/13.*

*The presence of a statement on the launching website which reads "you must be 14 or over to download it" is also irrelevant to the issue of whether the advertisement is, by virtue of its themes, visuals and language, directed primarily to children. There is no such warning or control when the app is downloaded onto a device, and there's no reason why anyone accessing the app through the website would read the fine print. Any controls on age that may be imposed by KFC staff at the time a player seeks to redeem a snack voucher are not relevant, as the relevant marketing communication has already transpired prior to that time. We anticipate the advertiser may argue that the fact of the app being downloaded on tablets and smart phones suggests it is not directed to children. We submit this is not decisive of the issue, with many apps and games for children available on tablets and smart phones. The ACMA found in 2008 that boys and girls spent an average of one hour and 17 minutes online each day, ranging from an average of 30 minutes for 8-11 year olds, to two hours and 24 minutes for 15-17 year olds (Australian Communications and Media Authority (2007) Media and Communications in Australian Families. Canberra, ACT: Commonwealth of Australia.). More recently, the 2013 New Generations study of 1800 children and parents commissioned by cable TV station Cartoon Network found that the use of apps by children aged between four and 14 had doubled to 69% in the preceding 18 months, with children using an average of seven apps in the month leading up to the study (<http://www.theaustralian.com.au/media/children-jump-into-apps-era/story-e6frg996-1226617569555>). The study found that on average, children are accessing 7.1 apps per month (<http://www.smh.com.au/digital-life/digital-life-news/kids-spend-too-much-time-screen-focused-20130411-2hmon.html>.)*

*With regard to the Facebook "sharing" of snacks, we ask the Board to consider that Facebook has been taken up by huge numbers of Australian children, including those aged under 13, despite Facebook's requirement that users be aged 13 or older. In March 2013 it was reported that a survey conducted by tech company McAfee found that a quarter of Australian children aged between eight and 12 use Facebook, despite the minimum age for a user being 13 (McAfee survey of 500 children aged 8-12, 2013, released as part of National Cyber Security Assessment Week as reported by ABC news, May 2013:*

*<http://www.abc.net.au/news/2013-05-21/a-quarter-of-tweens-are-underage-facebook-users/4703510>, and as reported in the Australian,*

*<http://www.theaustralian.com.au/australian-it/childrens-net-use-obsessive/story-e6frgakx-1226647941355>). It was also found children were spending up to 1.5 hours on internet-enabled devices each day.*

*We therefore submit the medium of delivery of the game: through an app on smart phones and tablets, is entirely consistent with the modern reality of Australian children's frequent and sustained use of these devices.*

*The app does not promote good dietary habits or physical activity*

*Article 3.1 of the QSRI requires that advertising and Marketing Communications to Children for food and/or beverages must:*

- a. Represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing Children's meals (see Appendix 1); and
- b. Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:
  - a. Good dietary habits, consistent with established scientific or government criteria; and
  - b. Physical activity.

The Nutrition Criteria for assessing children's meals is outlined in Appendix 1 to the Initiative. Relevantly, s.1 of the Nutrition Criteria requires that:

- a. The meal must be comprised of at least a main and a beverage.
- b. The meal should reflect general principles of healthy eating as defined by credible nutrition authorities.

The items promoted in this marketing communication are not meals containing a main and a beverage, but are snack items, including "nuggets snack box", "bacon rollers" and "wicked wings". The failure to promote a main with a beverage in a communication to children amounts to breach of Article 3.1 of the QSRI.

Further, s.3 of Appendix 1 to the QSRI, relating to nutrients of public health concern requires that the meal must not exceed maximum limits as follows:

- i. Saturated fat - 0.4g per 100kJ;
- ii. Sugar - 1.8g per 100kJ; and
- iii. Sodium - 650mg per serve.

According to the KFC nutrition information table for the snack menu (<http://www.kfc.com.au/Nutrition/>), a snack box of nuggets contains 743 mg of sodium per serve, a roller BBQ bacon contains 936mg of sodium per serve. The advertisement of these products in the app is therefore a clear breach of s.3(a) of the QSRI.

We also submit that the app breaches s.3.1(b) of the QSRI as it does not promote good dietary habits consistent with established scientific or government standards, and does not promote physical activity. The Australian Dietary Guidelines (2013) recommend that Australians limit their intake of foods containing saturated fat, added salt and added sugars, such as fried foods and savoury snacks. Studies suggest that frequency of consuming takeaway food increases with age and is associated with higher intakes of energy, total fat and sodium, which are associated with overweight, obesity and other negative health outcomes.

The promotion of snacks high in these concerning ingredients, (snacks being commonly understood to be consumed between meals and in addition to dietary intake of energy from main meals), is not consistent with the Australian Dietary Guidelines. The app promotes "daily" giveaways, which is inconsistent with the Dietary Guidelines for Children and Adolescents in Australia (2013) which recommend only occasional consumption of very small amounts of such "discretionary" foods.

The Board has previously noted that merely omitting any references to unhealthy eating choices is not sufficient to discharge the equivalent obligation to represent healthy dietary choices and physical activity contained in the RCMI (see decision 0454/11). It is quite clear that the advertiser is required to positively encourage good dietary habits and physical activity, which KFC has failed to do in this advertisement.

In relation to the promotion of physical activity, the Board has previously found that mere suggestion of "adventure" in advertising does "not amount to an implication or encouragement of physical activity" (decision 0454/11). Consistent with that precedent, it is submitted that although the advertisement shows adventure scenarios, it does not meet the test of positively promoting physical activity.

The advertisement breaches the AANA Food and Beverage Code.

Further, and in the alternative, the OPC submits that the advertisement is in breach of clause

*2.1 of the AANA Food and Beverages Code, which provides that Advertising or Marketing Communications for Food or Beverage Products shall not contravene “prevailing community standards”.*

*In particular, we submit that the peer-to-peer marketing facility in the app is contrary to prevailing community standards. We consider that inviting children to “share” snacks with friends on Facebook, exploiting children to promote these unhealthy products to their friends is a cynical circumvention of existing laws, in breach of community standards for protecting vulnerable consumers. Specifically, we submit that this direct, peer to peer marketing practice is closely analogous to emailed peer-to-peer marketing of fast food items, which has been found by the Australian Communications and Media Authority to be in breach of the Spam Act. The ACMA’s finding that the McDonald’s happy meal website facility, which invited children “send to a friend” promotional material, amounted to the sending of unsolicited commercial messages, and required McDonalds to cease the practice (<http://www.acma.gov.au/theACMA/mr-992012-acma-warns-mcdonalds-for-send-to-friends-marketing>).*

*Although the Spam Act has not yet been invoked to prevent unsolicited messages on social media in Australia, the very same ethical considerations around encouraging vulnerable children to promote products to their friends are applicable. We consider KFC’s practice of getting children to forward advertising material for unhealthy snacks to their friends on FaceBook represents a cynical use of a developing technology to circumvent of the existing regulations, contrary to its commitment through the QSRI to inspire “confidence in responsible marketing practices” consistent with “the form, spirit and context” of the self-regulatory code. The practice is particular concerning at time when one quarter of Australian children are overweight or obese.*

*We ask the Board to consider the ACMA’s position on sending unsolicited messages to children when assessing “prevailing community standards”. We submit there can be no better reference for ascertain community standards than to look to decisions of the primary consumer protection regulator for communications in Australia, and the existing regulations that have recently been enforced to protect children from harmful corporate influence and unsolicited marketing.*

*We further submit the advertisement contravenes prevailing community standards by promoting unhealthy food and beverages to children using animation, themes of adventure, fantasy, good and evil and recognisable characters. We submit that the child-oriented themes, music and visuals of this ad reveal a calculated attempt to profit from this vulnerability. The advertiser has not communicated in a “manner appropriate to the level of understanding of the target audience” and this contravenes prevailing community standards.*

*Conclusion*

*Accordingly, we submit the app breaches the above provisions of the QSRI and the AANA Code, and we respectfully request the Board require the advertiser to:*

- 1. withdraw the app so that it is not available for new downloads; and*
- 2. discontinue the promotion whereby snacks may be “won” and redeemed through the app.*

*We believe the app breaches the Quick Service Restaurant Initiative (QSRI) and the AANA Code for Advertising and Marketing Communications to Children and the AANA Food and Beverages Advertising and Marketing Communications Code because it is a communication directed primarily to children of KFC snacks which do not represent a healthy dietary choice consistent with established scientific standards and it does not promote healthy dietary habits or physical activity.*

*The game is rated for people aged over 12 years even though KFC have signed the QSRI and*

*said they will not advertise to children under 14 years. There are no age barriers to downloading and playing the game. The early levels of the game are very easy to play- even a small child could achieve success and qualify for discounted snack food. The fine print says that children have to be over 14 years to collect the prize but it does not limit their exposure to the branding and product placement in the game.*

*The app uses simply drawn cartoon characters with prominent expressive eyes, drawn in a manner likely to appeal to children. The app features pictures and coupons of food that is not a healthy dietary choice and does not qualify to be advertised to children under the QSRI. As well, the game offers free unhealthy food as well as discounts for unhealthy food which would be consisted as a premium offer under the codes.*

*This game app contravenes prevailing community standards by promoting unhealthy food and beverages to children. It engages children in an activity which is primarily aimed at marketing unhealthy product to them in the guise of a fun activity. Children would not recognise this form of marketing because of its sophisticated technique but they could potentially be highly exposed to it due to its activity-based format.*

## **THE ADVERTISER'S RESPONSE**

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

### *The Complaints*

*The First Complainant and the Second Complainant have expressed concern that the Advertisement is directed primarily to children and subsequently does not represent healthier dietary choices or promote good dietary habits or physical activity.*

### *Relevant Codes & Initiatives*

*Australian Association of National Advertisers Code of Ethics ("Code of Ethics")*

*Section 2 of the Code has been cited as relevant.*

*Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children ("QSRI")*

*There is a suggestion that the Advertisement breaches the QSRI in that it is directed primarily to children.*

*Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children ("Children's Code")*

*There is a suggestion that the Advertisement breaches the Children's Code in that it is directed primarily to children.*

*Australian Association of National Advertisers Food and Beverages Marketing and Communications Code ("F&B Code")*

*There is a suggestion that the Advertisement breaches the F&B Code in that it is directed*

*primarily to children.*

*Has the Code of Ethics, QSRI, Children's Code or F&B Code been breached?*

*KFC considers that the Advertisement does not breach the Code of Ethics, QSRI, Children's Code or F&B Code. The Advertisement is not, having regard to the age restrictions, theme, visuals and language used, directed primarily to children being persons under 14 years of age.*

*Age Restrictions*

*Firstly, the Advertisement is a game restricted to participants aged 14 years and over. KFC clearly communicates this age requirement to mobile device users via the following game terms and conditions published within media channels:*

*(a) The abbreviated terms and conditions of the Advertisement, which can be accessed and read within the game, state "Game and prizes only available to eligible Australian residents aged 14+" (refer to Exhibit A).*

*(b) Clause 2 of the full terms and conditions states "Entry is only open to Australian residents aged 14 years or over. Entrants under 18 years old must have parental/guardian approval to enter and further, the parent/guardian of the entrant must read and consent to these Terms and Conditions. Parents/guardians may be required by the Promoter to enter into a further agreement as evidence of consent to the minor entering this promotion" (refer to Exhibit B).*

*(c) the Apple App Store states "RATING: you must be 14+ to download the game" and "Ts & Cs apply. Must be 14+" (refer to Exhibit C).*

*(d) the Google Play Store states "RATING: you must be 14+ to download the game" (refer to Exhibit D).*

*(e) the KFC Australia Facebook page states: "Ts & Cs Apply. Must be 14+" (refer to Exhibit E).*

*(f) the official trailer of the Advertisement on YouTube states "RATING: you must be 14+ to download the game" (refer to Exhibit F).*

*We note that an "age gate" of 14 years and over has been incorporated into the latest version of the Advertisement available for download via Google Play and that it states "This game is only available to Australian residents aged 14+. Please confirm you're eligible by clicking on the 'yes' button below" (refer to Exhibit G). An age gate ensures mobile device users confirm that they are in fact 14 years or over prior to playing the game and acts as a further barrier to prevent children under the age of 14 years from participating. If a user does not confirm that they are eligible and clicks the "no" button on the "age gate" then the user is automatically prevented from starting the game.*

*We also note that Apple requires mobile device users to be 13 years or over to hold an iTunes*

*account and thereby download mobile applications, such as the Advertisement, via the Apple App Store (refer to Exhibit H).*

*Furthermore, we have implemented processes in KFC stores, including customer age verification where appropriate, to ensure that our restaurant staff do not allow children under 14 years of age to redeem KFC Snack in the Face prizes in store.*

#### *Objective & Complexity of Advertisement*

*Secondly, the primary objective of the Advertisement is to capture the attention of young male adults, KFC's core target audience, in order to increase consumer awareness of KFC's snack menu range and drive sales across KFC stores in Australia. To achieve this objective, the Advertisement combines three key elements of appeal to KFC's core target audience; mobile phone usage, gaming participation and KFC snack menu rewards.*

*We note that each of the eighteen levels contained in the Advertisement increases with complexity as the player progresses to ensure a sufficient amount of game stimulation for adults is maintained. The player is required to understand how to complete each level by exercising problem solving skills and judgment of speed, power, trajectory and timing to avoid obstacles such as fire balls, hot vents, lasers, tractor beams, trampolines and buzz-saws. Furthermore, the player is required to determine how to collect all of the stars and complete twenty five other difficult tasks, which count as achievements, to unlock more prizes and achieve high scores. The multi-layered levels of complexity of the Advertisement and its sophistication are intentionally designed to appeal to a young male adult audience (refer to Exhibit I).*

#### *Settings & Characters used in Advertisement*

*Thirdly, the landscapes and backgrounds used in the Advertisement include the lairs of a secret laboratory, arctic ice and volcano which are akin to villainous settings used in various mainstream spy based films aimed at an adult audience.*

*The characters used in the Advertisement were created to predominately entertain and humour young male adults. The characters which feature in the Advertisement are based on KFC food items, such as Popcorn Chicken, BBQ Bacon Roller and chips, to showcase the range of KFC snack menu items available to consumers. The characters are not dissimilar to those portrayed in well-known western animations or cartoons that are intended for an adult audience, such as "South Park" and "Family Guy".*

*In addition, the lead protagonists, Professor Snackbot and the Colonel, are parodies of an evil doctor villain and the founding father of KFC, Colonel Sanders, respectively, both of which are familiar characters in popular culture. The player interacts with the sinister character and behaviour of Professor Snackbot throughout the Advertisement and this is emphasised with sound effects of cackles, threats and manic laughter by Professor Snackbot. Once the game is completed, the Colonel character is depicted as a type of saviour in the closing sequence. The closing sequence shows the Colonel with a manly, muscular bare chest standing on the head of the defeated Professor Snackbot while his Popcorn Chicken character disciples look up at the Colonel as he is bathed in sunlight (refer to Exhibit J). The characters adopted in the Advertisement represent quintessential tongue in cheek humour which resonates with KFC's young male adult target audience.*



### *Themes, Language & Music used in Advertisement*

*Fourthly, the Advertisement incorporates some adult themes. For example, the Popcorn Children characters may be destroyed by the player by being electrocuted so that only the Popcorn Chicken character's eye balls remain when fried by a laser or by being cut into small pieces when fired into a buzz-saw. The player can also force the Popcorn Chicken characters to self-explode, and by doing so, the player is rewarded with a prize (refer to Exhibit K).*

*Throughout the Advertisement various messages with satirical adult themes are displayed on the screen to engage the player, such as "Things are getting steamy. Remember, hot air rises and sometimes falls!" and "Hitting switches is such a turn off" (refer to Exhibit L). These messages are aimed at a mature audience who understand puns and are able to contextualise the satire being used.*

*We note that the Advertisement is accompanied by music which was specifically composed for the unique game and to appeal to KFC's core target audience. As such, the sound of the music is deliberately ominous. The music utilises a variety of dark instrumental effects, such as robotic thuds and whistles, to give the Advertisement a more adult feel. The music changes throughout the Advertisement to correspond with each of the levels.*

### *Prize Redemption*

*Lastly, we note that the Second Complainant has asserted that "The timing and placement of the offer allowing players to redeem their "vouchers" for snack products only between 2-5pm, coincide directly with after-school hours and are convenient for school-age children. This time slot is much less likely to capture an audience of 'young adults' who are engaged in work or study during business hours". Contrary to the Second Complainant's assertion, the Advertisement provides the opportunity for players to win prizes in the form of free KFC snack menu items and discount coupons between 2.00pm and 5.00pm each day during the campaign (refer to Exhibit M). However, the prizes do not have to be redeemed between 2.00pm and 5.00pm each day but can be redeemed at a participating KFC store at any time during operating hours. The period of time between 2.00pm and 5.00pm allocated to players to win prizes was selected as part of KFC's marketing strategy on the basis that this is the peak time period for snacking product sales, as the majority of consumers seek a convenient snack between lunch and dinner time.*

*Notwithstanding the above, KFC is a signatory to the QSRI, and as such, is committed to setting a high standard for responsible marketing to children. A central tenet to this commitment is KFC's policy not to advertise directly to children.*

*KFC is committed to supporting responsible dietary choices for people of all ages and focuses on supporting parental responsibility with respect to children's nutritional intake. In this regard, KFC has taken a number of steps to improving the nutritional quality of its food, part of which has involved reducing salt content in KFC products and using canola oil to cook KFC products in store. Customers can access nutritional information about KFC's products, including snack menu items, in-store and on KFC's website at [www.kfc.com.au](http://www.kfc.com.au).*

*Contrary to the Complainants' views, the Advertisement is not directed primarily to children*

*and therefore does not breach the above-mentioned Codes or the QSRI. We trust this addresses the Complainants' concerns.*

## **THE DETERMINATION**

The Advertising Standards Board ('the Board') considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the 'QSR Initiative'), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food and Beverages Code'), and the AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code').

The Board noted the complainant's concern that the advertisement is promoting unhealthy food to children.

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

The Board noted that the QSR Initiative is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

The Board considered the definition of advertising or marketing communications to children within the QSR Initiative. 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 Board first considered whether the game 'snack in the face' is an advertising or marketing communication. The Board considered its decision in 0187/12 (Stuart Alexander – Chupa Chups Game) and noted that in relation to that interactive game available as an App the Board had stated:

...'The Board considered that the creation of the App has incurred resources for the marketer and resources in making the App available through iTunes and that it is also within the definition of "advertising or marketing communication". The Board noted the significant branding within the Chupa Chups App and agreed that the Chupa Chups App could be considered to draw the attention of a segment of the public to a product in a manner calculated to promote or oppose directly or indirectly that product...'

In a similar vein, the Board considered that the KFC Snack in the Face game is clearly branded with KFC material and can be considered to be a marketing communication both for KFC the organisation, and also for particular food products – most particularly the primary component of the game, popcorn chicken. The Board noted that the App provides discount vouchers for various food products as part of the trophies that can be collected as part of the Game.

The Board noted that Yum Restaurants are a signatory to the Quick Service Restaurant Initiative for Responsible Advertising and Marketing for Children (QSRI) and determined that the provisions of the QSRI apply to this marketing communication.

The Board noted that, if it determines that the game is a marketing communication that is directed primarily to children, it must consider principle 3.5 of the QSRI which provides: ‘Signatories must ensure that any interactive game directed primarily to children which incorporates the signatories food and/or beverage products is consistent with Article 3.1’ The Board noted that the QSRI Initiative captures Advertising and Marketing Communications to Children where:

1. The communication is directed primarily to Children (regardless of its placement); or
2. The Medium is directed primarily to Children (in relation to television this includes all C and P programs and G rated programs that are directed primarily to Children); or
3. The Medium attracts an audience share of greater than 50% of Children.

With regard to points 2 and 3, the Board considered that an App available for download from iTunes (or similar internet based services) is not available in a medium that is directed primarily to Children or would attract an audience of greater than 50% of children. The Board acknowledged that Apps require an account holder to be over 13 and that the age gating on the game requires that the game is downloaded to only people 14 and over. The Board considered that this medium is not directed primarily to children. The Board also considered that the medium of an interactive game or app is not a medium that is directed primarily to Children as there are many apps and games available in the modern Australian community for a wide range of age groups.

On this basis the Board determined that the advertisement did not meet point 2 or 3 of the QSRI in that it was not broadcast in programmes where the audience is predominantly children or in a medium that is directed primarily to children.

The Board noted however that, with regards to Point 1, the Board must consider whether the communication activity is directed primarily to children – regardless of its placement. The Board considered that it must therefore consider the content of the game in the form in which it is finally downloaded and available for access by any person.

The Board considered whether the game was directed primarily to children.

The Board noted the marketing communication is an interactive game, in app format, involving the rescue of Popcorn Chicken. The game incorporates a range of prize vouchers which can be redeemed for food at KFC once reaching certain achievements in the game. The Board noted the dictionary definition of “primarily” is “in the first place” and that to be within the QSRI the Board must find that the advertisement is clearly aimed in the first instance at children under 14 and that it must have regard to the ‘them, visuals and language

use' in determining this issue.

The Board noted the theme of the advertisement (an interactive cartoon-style game) which requires the saving of popcorn chicken by Colonel Sanders, along the way making certain achievements which result in 2 for 1 food vouchers or add ons to meals for reduced prices. The Board noted that the skill level of the game is very simple at the first stages, becoming more complex as the various stages are completed.

The Board considered that the theme of saving the popcorn chicken would not be clear to younger children who would simply look at achieving the stars for each level and getting the popcorn chicken into the Colonel's mouth.

The Board noted that the overall impact of the game is very similar in its style and theme to that of the popular 'Angry Birds'. The Board noted information from the creators of Angry Birds that more than 75% of downloads of the game are people over the age of 18 – with only 17% downloaded by people in the 13-17 age group <http://www.rovio.com/en/advertise>. The Board acknowledged that children under the age of 13 will be able to access and play the game using other people's (often older siblings and parents) devices.

The Board also considered the rewards in the game – discount vouchers for KFC. The Board considered that this is a reward which is appealing to people who pay for food, and would be incentivised to play the game and use the vouchers when visiting the advertiser's restaurants. The Board considered that this aspect of the game is more appealing to older teenagers and adults.

The Board then noted the visuals of the game. The Board noted that the game features cartoon characters and fantasy settings.

The Board noted its discussion in the recent case (0247/13 Mondelez). In that case the Board:

'...considered a range of advertisements referred to by the complainant and the advertiser. The Board noted that it had considered that a number of advertisements containing cartoon or fantasy characters were directed primarily to children. Specifically the Board noted scenes in advertisements for Kellogg LCMs (0179/13 and 0180/13) (which predominantly featured real life images of children at school but also included images of cartoon snails and dinosaurs) and for Kellogg's Coco Pops (0144/13)(which predominantly featured the image of a cartoon bowl of coco pops playing a well-known pool game). All three advertisements included cartoon images and fantasy scenes but also included child voice overs and references to or implications reminiscent of a number of children's games or television programs directed to

young children. The Board considered that these advertisements were directed primarily to children because the overall impact of the advertisement, in the Board's view, was an advertisement that had children under 12 as its primary target audience. The Board recognises that children of this age are unable to make purchasing decisions on their own but considered that this is not relevant to whether or not the content of the advertisement is directed primarily to children.

By contrast, a number of other advertisements containing cartoon images or licensed characters (Kraft Chips Ahoy (0229/11, featured cartoon images of biscuits driving a car, with an adult voice over, music that was popular with a generation of people who would now be parents) and Smiths Chips 0190/13 (with a popular child's toy as the main character) were likely to be attractive to children because of the cartoon or character image. However the Board considered that these advertisements were not directed primarily to children because the cartoon or licensed character images were presented in a context that was more clearly a reference to adults and/or the advertisement also included nutritional or compositional information about the product in a manner that was likely to be of more interest to adults.

Following its review of previous cases the Board reiterated that including a licensed character or cartoon or fantasy images will not of itself mean that an advertisement is directed primarily to children. It is essential for the Board to consider all elements of the advertisement and to 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 Board considered that the visuals in this game – the popcorn chicken in particular – would be attractive to children under 14. However the Board considered that there is no particular context or images that give the cartoon characters particular direction to children. The Board considered that children under 14 are unlikely to be particularly aware that the man in the game is Colonel Sanders or of his relationship with KFC given the changed marketing for KFC in the last 20 years - compared to the advertising from 1970s – 1990s where the product Kentucky Fried Chicken was inherently linked to the Colonel. The Board considered that in particular this aspect of the game is more appealing and understandable by adults. The Board also noted the popularity of 'retro' references to young adults and considered that the Colonel Sanders role in the game is in this vein.

Overall the Board considered that the visuals in the game would be attractive to children, but considered that the visuals in the game are not of primary attraction to children.

The Board also considered the language and music of the game. The Board considered that the music is repetitive and unlikely to be of particular appeal to any identifiable audience. The Board noted that there is limited language in the game and that the most obvious language is the instructions on how various elements of the game work eg: a sarcastic reference to the buzz saws being akin to a “sensual massage”. The Board considered that the language was not likely to be understood by young children and the humorous references unlikely to be understood by older children.

Overall the Board considered that the language in the game is of a nature that is not attractive to children.

Considering the various elements of the game, and the overall look and feel, impact and goals of the game, the Board considered that, while certainly attractive to children under 14, the game is not directed primarily at children.

Based on the requirements outlined in the initiative, the Board 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 greater than 50%, the QSR does not apply.

The Board 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 and Beverages 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.”

For the reasons mentioned above, the Board considered that the advertisement is not directed primarily to children, The Board considered the range of products advertised in the game, and considered that KFC itself, popcorn chicken and the other products mentioned in the Game are not products that are targeted toward and of principal appeal to children under 14.

The Board determined that as the Game is not primarily directed to children and is not for a children’s food or beverage product that the Children’s Code and Part 3 of the Food Code do not apply.

The Board also considered that the product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code do apply.

The Board noted section 2.2 of the Food Code 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 Board noted the marketing communication is an interactive game, in app format, involving the rescue of Popcorn Chicken. The Board noted that the skill level of the game is very simple at the first stages, becoming more complex as the various stages are completed.

The Board considered that the style of game is common among many interactive games that involve the collection of quantities of a certain thing or token in order to progress or to achieve certain goals. The Board considered that the concept of saving popcorn chicken along the way in order to make certain achievements was a common theme across games and was not a significant relationship to accessing excessive amounts of popcorn chicken or multiple 2 for 1 food vouchers or add ons to meals for reduced prices.

The Board determined that the advertisement did not depict or encourage excess consumption but was rather the collection of a token item to achieve a goal. The Board noted that there is no obligation to redeem the vouchers and that they have a short period of availability before expiration. The Board considered that there was nothing in this advertisement that would amount to undermining of a balanced diet or healthy lifestyle.

The Board considered that the promotion of a KFC game is not in breach of community standards generally and that promotion of meal deals or vouchers is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles.

The Board 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 Board dismissed the complaint.