



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0387-19</b>
<b>2. Advertiser :</b>	<b>Yum Restaurants International</b>
<b>3. Product :</b>	<b>Food/Bev Venue</b>
<b>4. Type of Advertisement/Media :</b>	<b>Transport</b>
<b>5. Date of Determination</b>	<b>27-Nov-2019</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message

AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption

AANA Advertising to Childrens Code\2.14 Food and beverages

AANA Food and Beverages Code\4.2 Must comply with QSRI

### DESCRIPTION OF ADVERTISEMENT

This transport advertisement has a red background and features three slushies in a bucket and the text "\$1 FREEZE".

### THE COMPLAINT

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

*One in four NSW school children are overweight or obese. This advertisement for sugary slushy drinks seen on a designated SCHOOL BUS is contributing to the obesogenic environment that our children live in and does not encourage healthy eating habits.*

*The bright colours of the ad and the pictures of the popular branded slushy products would appeal to children. Also the price point would greatly appeal to children (\$1 very cheap).*



*The portion size is excessive (almost half a kg) with an average of 895kJ and over 13 teaspoons of sugar (the Mountain Dew and Pepsi slushies have added caffeine). Sugary drinks form part of the discretionary group within the Australian Dietary Guidelines (ADG) and do not fit within the Five Food Groups. These slushy products not only are regarded as discretionary items, but contains more than one serve of a discretionary item according to the ADG. Sugary drinks should not be promoted on buses, let alone the school buses taking our impressionable kids to and from school.*

## **THE ADVERTISER'S RESPONSE**

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

*I refer to your letter of 12 November 2019 setting out a complaint made by a party wishing to remain anonymous (Complainant). As the Marketing Manager responsible for the relevant advertisement in this instance, I respond to the complaint as follows:*

### *Description of Advertisement*

*The Advertisement to which the Complainant refers to is a bus out of home poster for the KFC brand and its frozen beverage products: Schweppes Raspberry Freeze, Pepsi Freeze and Mountain Dew Freeze (Advertisement). The Advertisement is targeted at adults and will be advertised until March 2020.*

*The Advertisement depicts three frozen beverage products, one of which is a new flavour (Schweppes Raspberry Freeze). There are no health, nutritional or ingredient claims or statements made in the Advertisement. The only message communicated is the price of each frozen beverage, which is \$1.*

### *The complaints and relevant codes*

*The Complainant has expressed concern that the Advertisement promotes sugary and caffeinated drinks to children.*

*The following concerns are cited in the complaints:*

*AFGC - Quick Service Restaurant Initiative\QSRI 1.1 Advertising and Marketing Message\*a) represent healthier dietary choices;

*2. AANA Food and Beverages Code\2.2 Healthy lifestyle/ excess consumption\encourage excess consumption;*

*3. AANA Advertising to Children's Code\2.14 Food and beverages\Must comply with*



*AANA Food and Beverages Code; and*

*4. AANA Food and Beverages Code\4.2 Must comply with QSRI\Must comply with Schedule 1 of QSRI.*

*No targeted advertising to children representing unhealthy dietary choices*

*The bus identified was a public bus available for use by the general public. This is not a dedicated school bus or school route. The route this bus services is either 755 Mount Druitt to Shalvey & Plumpton or 755 Shalvey & Plumpton to Mount Druitt. As with all public buses, there is the possibility children will catch them however, KFC never advertises on private school buses. We are not provided with the exact bus routes our advertisements will be displayed on, however, KFC does not strategically buy media on buses travelling on school routes. Our audience for the bus campaign is P18+.*

*No encouragement of excessive consumption*

*As mentioned, the Advertisement is targeted at adults and there are no health, nutritional or ingredient claims or statements made in the Advertisement. Additionally, there is no messaging that would encourage excess consumption of these products.*

*The complainant alleges that the “bright colours of the ad...would appeal to children.” The only colours displayed in the Advertisement are those of the actual frozen beverages. No additional colouring or design elements have been used to make it more appealing to children.*

*As to the \$1 price point, this is a standard price point for frozen beverages in the QSR industry and not strategically implemented to appeal to a younger audience, but rather to ensure KFC remains competitive in this category.*

*Australian Association of National Advertisers Code of Ethics (“Code of Ethics”)*

*With respect to section 2 of the Code of Ethics, I note that the Advertisement:*

*does not discriminate or vilify any person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, disability, mental illness or political belief (section 2.1);*

*does not employ sexual appeal in a way that is exploitative or degrading of any individual or group of people (section 2.2);*

*does not present or portray violence in any way (section 2.3);*

*does not depict or treat sex, sexuality and nudity in any way nor without sensitivity to the relevant audience (section 2.4);*

*does not use language which is inappropriate in the circumstances (section 2.5);*

*does not depict any material contrary to Prevailing Community Standards on health and safety (section 2.6); and*



*the Advertisement is clearly distinguishable as an advert and uses KFC branding to that effect (section 2.7).*

*Therefore, for the reasons outlined above, KFC believes that the Advertisement complies with the AFGC - Quick Service Restaurant Initiative Code, the AANA Food and Beverages Code and the Code of Ethics.*

*We trust this addresses the Complainants' concerns.*

## **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 reviewed the advertisement and noted the advertiser's response.

The Panel noted that KFC 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 considered the definition of Medium in advertising or marketing communications to children within the QSRI which includes “television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.” The Panel considered that transport is covered by this definition.

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 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 the complainant’s concern that the advertisement uses bright colours, a popular product and low price point which would be attractive to children.

The Panel noted the advertiser’s response that the advertisement was on the side of a public bus and targeted at adults, and that the colour in the advertisement is the actual colour of the product.

The Panel then noted the visuals of the advertisement which shows three frozen drinks in a red and white bucket in front of a red background, with white text stating ‘\$1 FREEZE’. The Panel noted that the colours are bright and consistent with KFC branding. The Panel considered that the language used was not child-like or targeted specifically to children and there was no call to action. The Panel considered that the theme of frozen drink flavours would be attractive to children but would be equally attractive to adults. The Panel noted the words ‘\$1 Freeze’ was a description of the price and the product name and would not be considered to be directed primarily to children.

In this instance the Panel considered that the theme, visuals and language of the advertisement were advertising a beverage, and the message was equally attractive to adults and children and was not directed primarily to Children under 14.

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".

For the reasons outlined above, the Panel considered that the advertisement is not directed primarily to Children.

The Panel determined that as this transport advertisement is not directed primarily to Children, the Children's Code and Parts 3 and 4 of the Food Code do not apply.

The Panel then considered whether the advertisement complied with all relevant provisions of the Food Code.

The Panel then 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 noted that the advertised product is a frozen soft drink. The Panel considered that, consistent with previous decisions (Hungry Jacks 0176-18, 0132-17), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Panel noted that the advertisement has no messaging around frequency of consumption, and cannot be reasonably interpreted to be encouraging the purchase of more than one beverage or promoting 'buy them all'. The Panel determined that the advertisement is not encouraging excess consumption of the product.

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.