



Ad Standards Community Panel
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Case Report

1. Case Number :	0403-19
2. Advertiser :	Hungry Jacks
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	Outdoor
5. Date of Determination	11-Dec-2019
6. DETERMINATION :	Dismissed

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 Food and Beverages Code\4.2 Must comply with QSRI
AANA Advertising to Childrens Code\2.14 Food and beverages

DESCRIPTION OF ADVERTISEMENT

This transport advertisement features an image of two slushie style drinks with beads, and the text "Bursties Frozen Flavour".

THE COMPLAINT

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

This advertisement on the side of a bus would primarily appeal to children due to the colourful visuals, the price point (only \$2 for a large cup) and the fun aspect conveyed. This is evidenced by most people I see around the streets sucking on these drinks are school students, and I'm yet to see a bunch of business suits walking the streets with slushies in their hands.

With obesity a major issue in Australia and the statistics showing that 40% of a child's energy intake comes from junk food and drink - advertisements like this are contributing to these dreadful statistics. This advertisement is NOT a healthy choice,



therefore should not be marketing to vulnerable children. One serve of this very cheap brightly coloured drink equals approximately 14 teaspoons of sugar and 1000kj!! Completely unacceptable and Hungry Jacks should stop marketing these horrific sugary drinks to children (and adults alike!).

THE ADVERTISER'S RESPONSE

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

As a proud Australian brand, Hungry Jack's has dedicated itself to improving foods standards across the board covering a wide range of initiatives from 100% Aussie (locally sourced) beef that is hormone free, fresh cage free eggs, 100% Arabica coffee, vegan and vegetarian menu offers.

With regards to this particular OOH piece, the communication involves showing our range of frozen beverage flavours with our new popping pearls filled with fruit-flavoured liquid called "Bursties", clearly stating the Large size and the \$2 price point. The frozen beverage is comparable to our QSR/P&C competitors who also offer Large Frozen beverages at a \$1 price point (McDonald's, KFC & 7-Eleven). The popping pearls are toppings similar to those sold in iced beverages/desserts from Frozen Yoghurt outlets (Yoghurtland / Yogurberry) and Bubble Tea outlets such as ChaTime, Easyway, Sharetea and GongCha. These "Bursties" Frozen Flavours are a value offer to consumers allowing them access to a refreshing beverage at a fair price.

To ensure our guests have a range of options, Hungry Jack's provides a variety of beverage choices on its menu, including natural or sparkling water, orange/apple juice and low or non-sugar carbonated soft drinks.

In terms of addressing the complaint based on the below advertising codes:

- 2.1 There is no discrimination towards or vilification of anyone in this communication*
- 2.2 There is nothing visually or verbally that is exploitative or degrading*
- 2.3 There is no violence*
- 2.4 There is no sex, sexuality or nudity present*
- 2.5 There is no use of inappropriate language*
- 2.6 There is no risk to health or safety as no talent or scenarios are featured in this ad.*
- 2.7 The advertising is clearly distinguishable as advertising*

No health, nutrition or ingredient claims or statements were made in the advertisement. We can confirm that we are not advertising directly to children. In this instance, the Bursties campaign has been placed on Public Transport vehicles, not dedicated School buses. This campaign was targeted and bought against those aged between 18-39. Outdoor is a broad reaching medium, and unfortunately is an unavoidable medium, there is no way of guaranteeing who does and doesn't see our transit ad.



The visuals are to depict the actual product and appeal to the target QSR consumer – not children. As per the language, it is a clean retail message with the “NEW” “Bursties Frozen Flavours” (Product name) and \$2 Large (Price and Size of offer). It is not intended to appeal to children, it’s primary target is all QSR consumers 18-35 years as per our media plan. See attached the Transit portion of the media plan.

With regards to the creative itself, the colourful visuals are a representation of the colour of the actual product. The background is on a plain white brick wall and stainless steel surface, and the "BURSTIES" Logo is shaped like a "splash" to convey the liquid that "bursts" from the popping pearls. This product is multi-sensorial in its nature but it is not intended to primarily appeal to children.

In regards to whether children represent 35% or more of the audience:

JCDecaux used a Geo-Spatial mapping tool called Orbit, to help determine audiences across states. What it does, is take the SA1 data of exposed audiences and ringfence them against all transit (bus) formats based from each depot. From there you can create a ‘footprint’ of the audience that has a potential to be exposed to these assets. It’s not the most exact we can provide, however it is a way for us to understand a potentially exposed audience against Census data, especially as the standard MOVE reporting does not allow us to determine exposed audiences under 14. Please see attached for an image of the footprints against depots and formats in Sydney (attachment 1). From the image, in all the purple areas, we can see the population make up of these potentially exposed audiences, based on the 2016 Census data. I have included the actual report extract that indicates the proportion of these audiences in different Census age bands (attachment 2). In it we can see that the makeup of the under 18 aged audience is 22.8% of the total. Sources: All measured JCDecaux transit depots using MOVE exposure data at SA1 level (reach over population), then ABS 2016 Census data within these outlined areas via Orbit (RDA research)

We believe this will help to demonstrate that there is not a placement breach when using bus advertising given children do not make up more than 35% of the audience.

We can refer to the ABS data which suggests that in the 20 years between 1996 and 2016, the proportion of children (aged 0–14 years) decreased from 21.4% to 18.8% of the total population.

[https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6DAF7F7C4A59465DCA25808900122564/\\$File/31010_jun%202016.pdf](https://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/6DAF7F7C4A59465DCA25808900122564/$File/31010_jun%202016.pdf)



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 Hungry Jacks 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 noted the information provided by the advertiser regarding the audience that would view a transport advertisement in the Sydney metro region, and based on that data the Panel considered that the audience of this advertisement would not be comprised of more than 35% children.



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 two slushy style drinks with beads and the text “BURSTIES FROZEN FLAVOURS” and “\$2 BURSTIES LARGE FROZEN”. There are three versions of the advertisement, and the drink combinations are yellow and pink, yellow and brown, and pink and yellow. The Panel noted that the colours are bright and consistent with Hungry Jacks 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 “\$2 BURSTIES LARGE FROZEN” 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 QRSI 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 there is nothing in the advertisement in addition to the image which is relating to the frequency of consumption or other references that would be considered to the undermining of a health 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.