



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0428/10</b>
<b>2</b>	<b>Advertiser</b>	<b>Hungry Jacks</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Print</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/10/2010</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Food and Beverage Code (Children) consumption of excess  
Food and Beverage Code (Children) misleading/deceptive  
Food and Beverage Code (Children) premium  
Advertising Message QSR - 4.1 - Advertising and Marketing Message  
2.6 - Health and Safety within prevailing Community Standards

### DESCRIPTION OF THE ADVERTISEMENT

Advertisement featuring the Hungry Jack's logo next to the words, "Iron Man 2 Action Man Toys".

On the left of the advertisement is a large image of a red Iron Man plastic toy with his arm outstretched, and circling his hand are 5 smaller plastic Iron Man toys.

The text at the bottom of the advertisement reads, "Get one toy with every kids club meal" followed by promotional information.

### THE COMPLAINT

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

*Re: Hungry Jack's 'Iron Man 2' Advertisements – breaches of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children and the AANA Code for Advertising and Marketing Communications to Children*

*We write to complain about three print advertisements for Hungry Jack's Kids Club Meals as published in the children's magazine K-zone:*

- *K-zone May 2010 page 31 (Iron Man 2)*

*The Iron Man 2 advertisement shows toys from Iron Man 2 movie. Text at the bottom states "Get one toy with every kid's club meal... Hurry it won't be long till they all fly out the door". These advertisements are clearly directed to children as they are in a magazine with a target audience aged 8-11 years. Three of the four Hungry Jack's Kids Club meals which are referred to in the advertisement breach Clause 4.1 (a) of the Australian Quick Service Restaurant Industry Initiative For Responsible Advertising And Marketing To Children as they do not "represent healthier choices as determined by the defined nutrient criteria".*

#### *4.1 Advertising and Marketing Messaging*

*Advertising or 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*

*A comparison of the nutrient criteria and the nutritional value of the three breaching Kids Club Meals can be provided but it shows that energy saturated fat and sodium are all above the nutrient criteria.*

*This advertisement is also in breach of clause 2.15 (a) of the AANA Code for Advertising & Marketing Communications to Children.*

#### *2.15 Food and Beverages*

*(a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits. The advertisement for the Kids Club Meals does not differentiate between the 'Smart Pick' healthier meal option and the three Kids Club Meal options that do not meet the criteria. In addition the advertisement encourages children to "Hurry it won't be long till they all fly out the door" prompting them to consume more than what would be considered healthy especially if they are choosing the meals that breach the nutrition criteria.*

*Furthermore the advertisement breaches clause 2.2 (c) and 2.12 (a) and (b) of the AANA Code for Advertising & Marketing Communications to Children.*

*2.2 (c) must fairly represent in a manner that is clearly understood by children*

*(i) the advertised product*

#### *2.12 Premiums*

*Advertising or Marketing Communications to Children which include or refer to or involve an offer of a Premium:*

*(a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;*

*(b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;*

*This advertisement primarily features toys and not the actual meal so it is difficult for children to understand that it is in fact an advertisement for the meals and not for the toys. We request the Advertising Standards Bureau consider whether the Hungry Jack's Iron Man 2 advertisements breach clause 4.1 of the Australian Quick Service Restaurant Industry Initiative For Responsible Advertising And Marketing To Children and clauses 2.12(a) and (b) 2.15(a) and 2.2(c) of the AANA Code for Advertising & Marketing Communications to Children.*

## **THE ADVERTISER'S RESPONSE**

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

*I am in receipt of your letters of 12th October 2010 regarding two complaints concerning press insertions by Hungry Jack's. Since the two complaints have been submitted by the same person and both complaints are directed at the same press insertions, please accept this as our response to both complaints.*

*Attached please find copies of the press insertions in question and a copy of our instore merchandising materials for our Kids Club Meals, which I believe has relevance.*

*Hungry Jack's Australia is committed to the AANA Advertiser Code of Ethics and in particular our obligations under the QSR Industry Advertising to Children Code. Hungry Jack's has made significant changes in meal offerings as well as advertising content and quantity to children in the recent past and will continue to ensure the standards are met.*

*We refute the claim that the advertising has breached Clause 4.1 (a) because 'three of the four Hungry Jack's Kids Club meals do not comply with the nutrition guidelines'. While this might be so, there is clear communication within the restaurant, where the purchase decision is made, as to which Kids Meal constitutes the 'Smart Pick' which does fully comply with the QSR Initiative. The advertising material does not make any suggestion which meal the consumer should purchase, this is a matter of the consumers personal choice. It should be noted that the TV commercials for the same promotions did in fact highlight ONLY the 'Smart Pick' meal.*

*We refute the claim that the advertising has breached Clause 2.15 (a) in that it 'encourages and promotes an inactive lifestyle or unhealthy eating or drinking habits'. There is no reference to either of these issues and again in store merchandising clearly promotes the 'Smart Pick' meal option. The advertising material does not make any suggestion which meal the consumer should purchase, this is a matter of the consumers personal choice. Nor do we believe the use of copy 'Hurry it won't be long till they fly out the door' is promoting the over consumption of any Kids Club Meal, but communicating that these items are only available for a short time.*

*By not including visuals of a Kids Club Meal it could be construed that the advertising is promoting the toy more than the meal, however the materials do say get one with every Kids Club Meal and as toys have been included as an integral part of Kids Club Meals for in excess of 25 years, it is unlikely this would be misleading, particularly to the parent who will be making the ultimate decision to visit the restaurant.*

*We would request that the board dismiss these complaints.*

## **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), Section 2 of the AANA Advertiser Code of Ethics (the "Code") and the AANA Code for Advertising and Marketing Communications to Children.

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

The Board noted the complainant's concern that the advertisement is directed to children and does not represent a healthier choice as determined by the defined nutrient criteria, and encourages excess consumption.

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 noted that the QSR Initiative applies to 'advertising or marketing communications to children' which means '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.'

The Board noted that the advertisement appeared in K Zone magazine. The Board noted that the target audience for this magazine, as stated on their website, is 8 to 11 year olds, and that the advertisement featured images of toys which could be collected when buying a Kids Club meal. The Board considered that this advertisement is clearly directed primarily to children.

The Board then considered whether the advertisement is for food and/or beverage products. The Board noted that the advertisement contains the Hungry Jack's logo and specific references to the 'kids meal' available in stores. The Board noted that although there is a reference to 'kids meals' there are no images of the content of kids' meals or references to the content of the kids meals. The Board considered that the inclusion of a reference in the advertisement to 'kids meals' has the effect of making this advertisement an advertisement for a food or beverage product – specifically, kids meals at Hungry Jack's.

The Board then considered whether the advertised product – the Hungry Jack's Kids Meals - meet the criteria within the QSR Initiative of 'representing healthier choices' or 'representing a healthy lifestyle that encourages healthier choices and ...physical activity.'

The Board noted the complainant's concern that the advertisement breaches article 4.1 of the QSR Initiative on the basis that the advertised product (Kids Club meals) does not meet the nutritional criteria set out in Appendix 1 of the QSR Initiative. The Board noted the advertiser's response that whilst three out of the four Kids Club meals do not comply with the nutritional guidelines for healthier choices, the fourth Kids Club meal does meet these guidelines. The Board noted that the advertisement makes reference to 'every Kids Club meal' and whilst the Board acknowledged that the advertiser's in-store communications indicate which Kids Club meal is a healthy choice (Smart Pick), the Board can only consider the information displayed within the advertisement itself.

The Board considered that the phrase 'every Kids Club meal' refers to all the Kids Club meals and noted that Hungry Jack's Individual Company Action Plan for the QSR Initiative states: "Any products or meal combinations specifically advertised to children under 14 will meet the initiative's nutritional guidelines."

The Board considered that the advertisement for Hungry Jack's kids club meal did not meet Article 4.1(a) of the QSR Initiative in that the advertised product (all Kids Meals) does not represent healthier choices.

The Board then considered whether the advertisement met Article 4.1(b) which requires that the advertisement ‘represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages: (i) healthier choices....and (ii) physical activity.’ The Board considered that there was not sufficient information or representations in the advertisement to amount to a message to children to make healthier choices options and engage in physical activity and that the advertisement does not meet the requirement of Article 4.1(b).

The Board determined that the advertisement breached Article 4.1 of the QSR Initiative.

The Board then considered whether the advertisement breaches Article 4.2 of the QSR Initiative. Article 4.2 provides that, “Popular Personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications complies with the messaging options set in Article 4.1..”

The Board noted that as the advertisement does not include messaging options set out in article 4.1, then the use of Licensed characters in this advertisement is a breach of article 4.2.

The Board then considered if the advertisement breaches section 4.6 of the QSR Initiative which provides that: 'Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes..'

The Board noted that premium is defined as 'anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product.' The Board noted that this definition is the same as the definition in the AANA Code for Advertising and Marketing to Children (the Children's Code). Consistent with previous decisions the Board considered that the toy in the Hungry Jack's Kids Meal is not a premium as a toy is an integral part of the product that is a Kids Meal. The Board considered that the advertisement does not breach article 4.6 of the QSR Initiative.

The Board then considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The Board noted the complainant’s view that the advertisement breached clause 2.12 of the Children’s Code. Clause 2.12 of the Children’s Code provides that:

“Advertisements or Marketing Communications to Children which include or refer to or involve a premium

(a) should not create a false or misleading impression in the minds of children about the nature or content of the Product;

(b) should not create a false or misleading impression in the minds of children that the product advertised is the Premium rather than the Product;

(c) must make the terms of the offer clear as well as any conditions or limitations; and

(d) must not use premiums in a way that promotes irresponsible use or excessive consumption of the product.”

'Premium' is defined in section 1 of the Children's Code as: “anything offered free or at a reduced price and which is conditional upon the purchase of a regular product.”

The Board determined that the toys which come with the Hungry Jack's Kids Meal do not fall within the Children's Code definition of 'Premium' as they are part of the product –not something that is additional to the regular product.

The Board considered that the advertisement met all of the other requirements of the Children's Code.

The Board then considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the “Code”). The Board considered that there were no issues under any of the sections of the Code that raised issues of concerns in relation to this advertisement.

Finding that the advertisement breaches Articles 4.1 and 4.2 of the QSR Initiative the Board upheld the complaint.

## **ADVERTISER RESPONSE TO DETERMINATION**

Hungry Jack's accepts the ruling of the ASB and in the spirit of self regulation, will ensure any similar advertising placements in the future only includes reference to the 'Smart Picks' meal combination, which fully complies with the QSR Initiative. In the case of these particular materials they were only ever designed to be a single placement and therefore have been withdrawn and will not appear again.