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**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	<b>Case Number</b>	<b>0545/18</b>
2	<b>Advertiser</b>	<b>McDonald's Aust Ltd</b>
3	<b>Product</b>	<b>Food / Beverages</b>
4	<b>Type of Advertisement / media</b>	<b>App</b>
5	<b>Date of Determination</b>	<b>06/02/2019</b>
6	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

## ISSUES RAISED

Food and Beverage Code (Children) 3.5 pester power  
Advertising to Children Code 2.07 Parental Authority  
QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply  
QSR - 1.3 - Products in Interactive Games Products in Interactive Games

## DESCRIPTION OF THE ADVERTISEMENT

This advertisement is a game application called Happy Studio App for McDonalds. It is available for downloading to a mobile device.

## THE COMPLAINT

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

*The Obesity Policy Coalition (OPC) submits that this advertisement breaches the Quick Service Restaurant Initiative for Responsible Advertising and Marketing to Children (QSRI). As a signatory to the QSRI, McDonald's has committed not to advertise its*





*products to children under 14 years in media unless those products represent healthier dietary choices, as determined by the QSRI's Nutrition Criteria.*

*In our submission the advertisement breaches clause 1.1 and s1.3 of the QSRI because:*

*-*

- 1. It is an advertising and marketing communication directed primarily to children and an interactive game;*
- 2. All McDonald's Happy Meals do not represent a healthier dietary choice consistent with the QSRI's Nutrition Criteria; and*
- 3. It does not sufficiently encourage good dietary habits or physical activity.*

*The advertisement is a marketing communication directed primarily to Children*

*Advertising and marketing communication*

*The QSRI applies to material that is published or broadcast on television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites. This advertisement has been published on the app Happy Studio and is an interactive game.*

*The Happy Studio app is clearly an advertising or marketing communication within the meaning of the QSRI, as it is material published by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation.*

*Happy Studio is clearly designed to promote McDonald's Happy Meals to children. The app is called 'Happy Studio' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The app includes a call to action for children to 'Scan your toy', presumably referring to the toy provided with the Happy Meal – this is encouraging children to buy (or pester their parents to buy) Happy Meals to unlock extra content. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app. The Happy Studio app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular.*

*Directed primarily to children*

*Based on its themes and visuals, the app is clearly directed primarily to children. The*



*app uses child focused, simple animation and messaging to present a range of children's games and activities.*

*The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app is '...created around play that has purpose for children' and that it is developed with input from child development experts. McDonald's talks about the app enabling children to 'think like an artist, a musician, an inventor', 'paint a picture, create a song or build a flying machine'. The app includes the message 'Hey kids, this is advertising' and includes a function to 'Scan your toy', presumably referring to the toys provided with McDonald's children's Happy Meals. The nature of the games and activities would not be appealing to older teenagers or to adults.*

*There is no doubt that the app is directed primarily to children.*

*McDonald's Happy Meals do not represent a healthier dietary choice*

*S1.1 of the QSRI provides that any food or beverage advertised to children must represent healthier dietary choices, as determined by the Nutrition Criteria.*

*The Nutrition Criteria for assessing children's meals is outlined in Appendix 1 to the QSRI. Relevantly, s2.1 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 Nutrition Criteria require that the children's meals have:*

- For children 4-8 years, a maximum of 2080 kJ per meal*
- For children 9-13 years, a maximum of 2771 kJ per meal*
- Maximum 0.4g saturated fat per 100kJ*
- Maximum 1.8g sugar per 100kJ, and*
- Maximum 650mg sodium per serve*

*A typical Happy Meal, including a cheeseburger, small fries and a small coke, has the following nutritional profile:*

- 2548 kJ*
- 6.68g saturated fat*
- 30.6g sugars*
- 923mg sodium*

*This meal exceeds the nutrition criteria for total kilojoules (for 4-8 year olds) and sodium. For this reason, Happy Meals do not represent a healthier dietary choice under the QSRI.*



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

*Even in the case of a product that represents a healthier dietary choice, the QSRI provides that McDonald's may only advertise the product to children if the advertising and/or marketing communication activities reference, or are in the context of, a healthy lifestyle, designed to appeal to children through messaging that encourages:*

- 1. Good dietary habits, consistent with established scientific or government standards; and*
- 2. Physical activity.*

*This advertisement does not sufficiently promote good dietary habits or physical activity. The app uses milk, fruit and vegetables as part of its design, for example showing an apple or a carrot while a game is loading, having the Happy Meal box character wear bananas as shoes, or having those foods displayed as part of the 'digital masks' activity. This doesn't, however, demonstrate to children that it is important that they eat those healthy foods, or that McDonald's Happy Meals are often not a healthy choice. The character is not shown eating healthy food, rather the food is part of the visual entertainment. There is no messaging encouraging children to eat a healthy diet. In our view, this is not sufficient to meet the requirements of the QSRI.*

*The app includes the message 'Balance your play with physical activity every day' on some screens. It also includes one activity where the Happy Meal box character kicks a tomato or a ball when a command is pressed. Otherwise, the character does not engage in physical activity in the games and activities provided and children are not actively encouraged themselves to engage in physical activity. In our view, a small message displayed in the corner of some screens is not sufficient to meet the requirements of the QSRI. The message is only displayed briefly as children toggle through the opening screen of the chosen activity, as well as intermittently on the home screen. This message could easily be missed by young children, especially in contrast to the large text and engaging visuals of the games and activities.*

*For these reasons, we do not think that the advertisement meets the QSRI requirement to encourage good dietary habits and physical activity.*

*Request for action*

*For the above reasons, the OPC asks Ad Standards to request that McDonald's withdraws its Happy Studio app.*

- 2. The advertisement breaches the Code for Advertising & Marketing Communications to Children*

*The OPC submits that this advertisement breaches clause 2.7(b) of the Code for*



*Advertising & Marketing Communications to Children (Children's Code) because:*

- 1. It is an advertising or marketing communication to children, and*
- 2. It contains an appeal to Children to urge their parents, carers or another person to buy a product for them.*

*The advertisement is an advertising or marketing communication to children*

*The Children's Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on an app, Happy Studio, which can be characterised as new and emerging technology.*

*The material must be undertaken by, or on behalf of, an advertiser or marketer:*

- Over which the advertiser or marketer has a reasonable degree of control, and*
- That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

*The Happy Studio app is clearly an advertising or marketing communication within the meaning of the Children's Code, as it is material undertaken by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation.*

*Happy Studio is clearly designed to promote McDonald's Happy Meals to children. The app is called 'Happy Studio' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The app includes a call to action for children to 'Scan your toy', presumably referring to the toy provided with the Happy Meal – this is encouraging children to buy (or pester their parents to buy) Happy Meals to unlock extra content. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app. The Happy Studio app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular.*

*The Children's Code clearly applies.*

*Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Children's Code. The app uses child focused, simple animation and messaging to present a range of*



*children's games and activities.*

*The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app is '...created around play that has purpose for children' and that it is developed with input from child development experts. McDonald's talks about the app enabling children to 'think like an artist, a musician, an inventor', 'paint a picture, create a song or build a flying machine'. The app includes the message 'Hey kids, this is advertising' and includes a function to 'Scan your toy', presumably referring to the toys provided with McDonald's children's Happy Meals. The nature of the games and activities would not be appealing to older teenagers or to adults. There is no doubt that the app is directed primarily to children.*

*The advertisement is also for a good, the McDonald's Happy Meal, that is targeted towards, and has principal appeal to, children. McDonald's Happy Meal include small sized products and a children's toy. It is clear they are designed for and appeal principally to children.*

*The advertisement appeals to children to urge their parents to buy a product for them*

*The advertisement includes a call to action to children to 'scan your toy', allowing children to unlock additional content by scanning the toys that are provided with McDonald's Happy Meals. This is an implied appeal to children to urge their parents, carers or another person to buy a Happy Meal for them, as children will be motivated by the additional content and are unable to buy a Happy Meal without an adult who can pay for it.*

*Request for action*

*For the above reasons, the OPC asks Ad Standards to request that McDonald's withdraws its Happy Studio app.*

*3. The advertisement breaches the Food & Beverages Advertising & Marketing Communications Code*

*The OPC submits that this advertisement breaches clause 3.5 of the Food & Beverages Advertising & Marketing Communications Code (Food & Beverages Code) because:*

- 1. It is an advertising or marketing communication for a food and beverage product, and*
- 2. It includes an appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular children's food or beverage products for them.*

*It is clear that the advertisement is an advertising or marketing communication for a*



*food and beverage product.*

*The Food & Beverages Code applies to material that is published or broadcast on any medium whatsoever, including without limitation the internet, telecommunications and new and emerging technologies (among others). This advertisement was published on an app, Happy Studio, which can be characterised as new and emerging technology.*

*The material must be undertaken by, or on behalf of, an advertiser or marketer:*

- *Over which the advertiser or marketer has a reasonable degree of control, and*
- *That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.*

*The Happy Studio app is clearly an advertising or marketing communication within the meaning of the Food & Beverages Code, as it is material undertaken by, or on behalf of, McDonald's, over which it has a reasonable degree of control and that draws the attention of the public in a manner calculated to promote its product or the organisation.*

*Happy Studio is clearly designed to promote McDonald's Happy Meals to children. The app is called 'Happy Studio' and the logo features the McDonald's 'M' logo and the same font used for the Happy Meal. This logo appears clearly to children when the app is launched and is displayed prominently on the home screen as children toggle through menu options. The main character of the app is clearly an animated version of the Happy Meal box, a bright red box with yellow looped handles replicating the McDonald's 'M' logo. This character is used repeatedly throughout the app and represents the child player and his or her engagement with the games and activities. The app includes a call to action for children to 'Scan your toy', referring to the toy provided with the Happy Meal – this is encouraging children to buy (or pester their parents to buy) Happy Meals to unlock extra content. McDonald's acknowledges that the app is advertising, displaying the message 'Hey kids, this is advertising' on the screen while the child is using the app. The Happy Studio app is clearly designed to draw public attention to promote McDonald's and its products, the Happy Meal in particular.*

*The Food & Beverages Code clearly applies.*

*Based on its themes, visuals and language the advertisement is an advertising or marketing communication to children, within the meaning of the Food & Beverages Code. The app uses child focused, simple animation and messaging to present a range of children's games and activities.*

*The information provided by McDonald's in the 'About' section of the app that is targeted to parents shows that the app is directed primarily to children. It says the app*



*is ‘...created around play that has purpose for children’ and that it is developed with input from child development experts. McDonald’s talks about the app enabling children to ‘think like an artist, a musician, an inventor’, ‘paint a picture, create a song or build a flying machine’. The app includes the message ‘Hey kids, this is advertising’ and includes a function to ‘Scan your toy’, presumably referring to the toys provided with McDonald’s children’s Happy Meals. The nature of the games and activities would not be appealing to older teenagers or to adults. There is no doubt that the app is directed primarily to children.*

*The advertisement is also for a good, the McDonald’s Happy Meal, that is targeted towards, and has principal appeal to, children. McDonald’s Happy Meals include small sized products and a children’s toy. It is clear they are designed for and appeal principally to children.*

*The advertisement appeals to children to urge their parents to buy a product for them*

*The advertisement includes a call to action to children to ‘Scan your toy’ in order to unlock additional content, referring to the toys that are provided with McDonald’s Happy Meals. This is an implied appeal to children to urge their parents or other adult responsible for their welfare to buy a Happy Meal for them, as children will be motivated by the additional content and are unable to buy a Happy Meal without an adult who can pay for it.*

*Request for action*

*For the above reasons, the OPC asks Ad Standards to request that McDonald’s withdraws its Happy Studio app.*

## **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 0545/18 (Complaint).*

*The subject of the Complaint is the Happy Studio App (App). The Complaint is made under sections 2.07 of the AANA Code for Advertising and Marketing Communications to Children (Children’s Code), 3.5 of the AANA Code for Food and Beverages Advertising and Marketing Communications Code (Food Code) and 1.1 of the Quick Service Restaurant Initiative (QSRI) (together the Codes).*





*The App is a free, online platform designed to help enable families' moments of closeness by allowing children and their parents to play together creatively. Produced and developed with input from child development experts at Fundamentally Children, and a leading game design studio based in the United Kingdom, the App has been created around play that has a purpose for children. The game frameworks (Be an Artist, Be an Inventor, Be a Musician, Be an Entertainer and Be a Hero) were designed with reference to six development pillars: physical, memory/attention, creativity, logic/problem-solving, social/economical skills and communication.*

*McDonald's takes marketing to children seriously and took great care to design the App as a free, online platform designed to help enable families' moments of closeness by allowing children and their parents to play together creatively. Produced and developed with input from child development experts at Fundamentally Children, and a leading game design studio based in the United Kingdom, the App has been created around play that has a purpose for children. The game frameworks (Be an Artist, Be an Inventor, Be a Musician, Be an Entertainer and Be a Hero) were designed with reference to six development pillars: physical, memory/attention, creativity, logic/problem-solving, social/economical skills and communication. Additionally, the App includes a children's well-being message throughout its screens – "balance your play with physical activity every day."*

*It is important to note that the concerns raised in the Complaint are generalist comments which do not reflect the intention nor the actual content of the App. We encourage the Ad Standards Board to download the App in order to make a fair decision on whether the App breaches the Codes.*

*We submit that the App does not breach the Codes for the reasons stated below:*

*Reason 1: The App only promotes the healthier options of the Happy Meal*

*The App does not feature any food other than balanced side options offered at McDonald's and other fruit and vegetables that kids can interact with in a fun way. The branding in the App includes McDonald's Happy character and licensed characters during certain promotions. The role of the Happy brand in all McDonald's communications to children is to encourage children to make balanced choices and promote the importance of engaging in physical activity and positive wellbeing. Happy is also the brand ambassador for the Happy Meal books program worldwide helping promote reading with a character kids are familiar with. The purpose of Happy in this App is to have a children-loved character a part of the child's fun and learning through the App. Similarly, when possible, the App will feature Licensed Characters during certain promotions that are also used to interact with fruit and vegetables to help draw an interest in kids in those food items. For example, The Happy character is seen to be playing with fruits (such as tomatoes, apples) which are a part of the Happy*



*Meal selection offerings. There are also digital masks with interactive fruit faces – a fun experience that hopes to help raise greater awareness of nutrition and drive kids to pick a balanced food choice with their Happy Meal. By using these characters, McDonald's is leveraging their recognition to help encourage the balanced options McDonald's offers and balanced food groups generally.*

*In the event the Board decides otherwise, we acknowledge that in case 0166/14, the Board noted that the depiction of the Happy Meal without products is a reference to all options and is not limited to the QSRI compliant range (Hungry Jacks 0427/10, McDonald's 0523/10). However, the Board took into consideration the purpose of the game (which was the subject of the complaint) and in its context decided that each image of the Happy Meal Box is not required to be accompanied by a picture of a QSRI compliant meal. We encourage the Board to apply the same reasoning to this Complaint. Furthermore, it is important to note that the Happy Meal combination referred to in the Complaint does not reflect the standard Happy Meal offering. The standard Happy Meal offering is the Grilled Chicken Snack Wrap, Apple Slices water Pop Top or CalciYum. Soft drinks are not part of the standard Happy Meal that we advertise to children and are not featured on our restaurant's menu boards.*

*The Complaint does not allege that McDonald's is unable to market to kids, only that McDonald's cannot advertise certain food to kids. As demonstrated above, any of the food shown or promoted in the App meets with in the criteria of what can be advertised. The messaging "hey kids - this is advertising" is included to ensure that kids are aware they are in a branded app. McDonald's takes marketing to kids very seriously and wants to ensure it is made clear when kids are in a branded space.*

*Reason 2: Children will not urge their parents to purchase a Happy Meal because of the App*

*Children do not require the purchase of the Happy Meal in order to participate in the App to its fullest potential. The home screen of the App encourages the child to "scan with Happy Studio". Accordingly, a child is able to scan whatever is in front of them in order to unlock more levels in the App. There is no language in the App that pressures children to purchase a Happy Meal or that their App experience would be better if they had a Happy Meal. Regardless, there are still a multitude of games that the child can access that do not require them to scan anything, and so the parent will remain the decision maker about whether or not to purchase their child a Happy Meal. Consistent with case 0146-15, the overall need to unlock games through purchase of a product does not exist for children to urge parents to buy a Happy Meal and so does not breach section 2.7 of the Children's Code.*

*Reason 3: The App does not undermine parental authority*

*The App does not undermine parental authority as parental authority is a critical part*



*of the accessibility of the App. The child will be accessing the App under the supervision of an adult as it is the parent who is required to download and configure the App. The App contains a section for parents which is accessible by holding down the icon in the top right corner for 3 seconds. This section details the background of the App and gives the parent access settings to tailor the functionality of the App (such as the use of the camera). There are no in-app purchases. The App is proactive in seeking parental intervention at the appropriate times. For example, when a section of the App is to be updated, there is a direct call to action for the child to ask their parents. Similarly, when there is a physical activity which requires adult supervision, the App says “make sure you have a grown-up with you” (Attachment A). Ultimately, the App is designed as an interactive aid to parents to help with the six developmental pillars the App was designed to incorporate based on input from child development experts (physical, memory/attention, creativity, logic/problem-solving, social/economical skills and communication) and to enable families moments of closeness. In each activity, it also notifies the supervising parent the skills their child will be working towards through their participation. For the reasons above, the App does not undermine parent authority and so does not breach section 3.5 of the Food Code.*

#### *Reason 4: The App does promote a healthy lifestyle*

*The only food shown in the App is from recommended food groups such as fruits and vegetables. For example, the home screen features Happy with fruit and vegetables in a multitude of interactive ways. Children may encounter Happy playing with a tomato while dressed up in fruit themed props, while his background features fruit or vegetable themed buildings or rivers. Some of the activities in the App revolve around fruit also, such as Berry Building which is a game where children are encouraged to ‘unleash [their] inner-architect with this construction challenge – and eat [their] creation afterwards!’.*

*The App features the messaging on the bottom right corner, ‘balance your play with physical activity every day’. This is complimented by the Happy character frequently shown to be out and about. Happy is shown farming, dancing and just enjoying being outside in the greenery (Attachment B). Children are also encouraged to participate in those same activities, for example, an activity as part of the App is to make an eco-friendly recycled greenhouse for the child to grow their own cress (Attachment C).*

*We note that section 1.1(a) of the QSRI requires that food advertised to children meet the nutritional criteria of the QSRI. It is our view that this component is satisfied as in the absence of a meal being advertised to children through this App, the consumption of fruits and vegetables are being promoted instead. This, coupled with the encouragement to participate in physical activity and general positive wellbeing activities do not render a breach under section 1.1 of the QSRI.*

*Accordingly, the Advertisement complies with the Children’s Code, the Food Code and QSRI and so 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 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 noted the complainant's concern that the advertisement is targeted towards children, is for a product that does not represent a healthier dietary choice and does not sufficiently encourage good dietary habits or physical activity.

The Panel viewed the advertisement and noted the advertiser's response.

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 first considered whether the game 'Happy Studio' is an advertising or marketing communication. The Panel 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 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 the current case, the Panel considered that the McDonald's Happy Studio came is clearly branded with McDonald's material and can be considered to be a marketing communication for McDonald's.



The Panel then considered whether the advertisement was for a food or beverage product, as the QSRI Code, Food Code and applicable sections of the Children's Code specify that the advertisement must be for a product.

The minority of the Panel considered that the advertisement was corporate advertising material for McDonalds the brand, rather than an advertisement for a specific food product such as Happy Meals.

The majority of the Panel however considered that there is no imagery for McDonalds other than a Happy Meal box. The majority noted that the depiction of the box does not have a Happy Meal logo or any other imagery on it, but considered that it is such a well-known product that it is clearly identifiable as a Happy Meal. The majority also noted that the main character's eyebrows are the golden McDonald's M. The majority of the Panel considered that this is directly advertising a food product, being Happy Meals.

The Panel considered that the McDonalds's Happy Studio app is directly promoting a food product.

The Panel noted that McDonald's 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 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 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 advertiser's response that the App had been created to allow



children and their parents to play together creatively and had been designed with input from child development experts to create play that has a purpose for children. The Panel noted the theme (games and activities for children), visuals (bright colours and characters) and language (simple directions on how to play the game) and considered that the communication is directed primarily to children.

Finding that the advertisement did fall under the provisions of the QSRI the Panel considered the complaint under Schedule 1.3 of the Code which provides:

“Signatories must ensure that any interactive game directed primarily to Children which includes the Signatory's food and/or beverage products is consistent with S1.1.”

The Panel noted that Schedule 1.1 of the Code provides:

“Advertising or Marketing Communications to Children for food and/or beverages must:

(a) Represent healthier dietary choices, as determined by the Nutrition Criteria; and  
(b) Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:

- i. Good dietary habits, consistent with established scientific or government standards; and
- ii. Physical activity.”

With regards to the first requirement (a), the Panel considered what is being promoted in the game.

The Panel considered that the product promoted in the game (primarily through the Happy character) is the McDonalds Happy Meal. The Panel noted in most depictions of the happy meal box character in the game, the meal itself is not shown.

The Panel noted that it had previously considered a similar complaint in case 0166/14, in which:

“The Board considered that the product promoted in the game (primarily through the option to scan particular products) is the McDonalds Happy Meal which contains the chicken snack wrap, apple slices fruit bag and a CalciYum flavoured milk. The Board noted that the Independent Arbiter has previously considered the content of the chicken wrap meal (case reference 0224/13) and has advised the Board that the meal as depicted meets the nutrition criteria set out in Appendix 1 of the QSR initiative. On this basis the Board determined that the product advertised represents a healthier dietary choice as determined by the nutrition criteria in the QSRI. The Board noted that there are instances in the game where the Happy Meal box is depicted and there are no food items depicted. The Board noted that it had previously determined that the depiction or mention of a Happy Meal or kid's meal without products is a



reference to all kids meal options and is not limited to the healthier choice range (Hungry Jack's 0427/10, McDonald's 0523/10). In this instance however the Board considered that in the overall context of the game there are food products depicted and referenced and those products are only the healthier choice products. The Board determined that there is not a requirement in this context for each image of the Happy Meal Box to be accompanied by a picture of the healthier choice meal."

The Panel noted that in this case there is a depiction of a Happy Meal which appears when a game is loading, next to the statement "Balance your play with physical activity everyday". The Panel reiterated that an interactive game does not necessarily have to show the healthier choice option on every occasion that a Happy Meal box is shown, however considered that this image only features a Happy Meal box, a CalciYum flavoured milk and apple slices and does not feature the main meal. This image therefore does not necessarily depict the healthier choice, as the main meal can change the nutrition criteria.

Additionally, the Panel noted that the image is very small and difficult to see without focussing on it specifically. The Panel considered that that the advertised product does not meet the requirements of the QSR Initiative by only advertising those products that meet the nutrition criteria, as the advertisement is an advertisement for all Happy Meals, some of which do not meet the nutrition criteria.

The Panel considered part (i) of the second requirement (b) of Schedule 1.1.

The Panel noted that the advertisement depicts food items at various points of the game, such as when a screen is loading a carrot, apple or glass of milk is shown as the loading bar. The Panel also noted that some aspects of the game include food items as part of the game. An example of this is a game where players can dress up the main character in costumes, one of which includes bananas as shoes. Another example is a game where players can have the main character kick a ball shaped item in the air, with one option being a tomato.

The Panel considered that the only food items depicted in the advertisement would be considered by most members of the community to be good dietary choices.

The Panel considered part (ii) of the second requirement (b) of Schedule 1.1.

The Panel considered that at various points of the game, most notably when a new game is loading, there is a message on the screen stating "Balance your play with physical activity everyday". The Panel noted that the main home screen of the game features the main character in an outdoor setting. The Panel noted that some games feature the main character in physical activity, for example when a player makes the character kick a ball in the air.



The Panel considered that the advertisement does feature physical activity and encourages children to have physical activity every day, and that this meets the requirement of part (ii) of the second requirement (b) of Schedule 1.1.

Finding that the advertisement did not meet part (a) of Schedule 1.1 the Panel determined that the advertisement did breach Schedule 1.3 of the QSR Initiative.

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 directed primarily to Children.

The Panel considered Section 2.7(b) of the Children's Code which provides: "Advertising or Marketing Communications to Children must not contain an appeal to children to urge their parents, carers of another person to buy a Product for them."

The Panel specifically considered the complainant's concern that the advertisement includes call to action for children to "Scan Your Toy" and that this presumably refers to a Happy Meal toy, and that therefore this encourages children to pester their parents to buy Happy Meals.

The Panel noted that Although the text states "Scan Your Toy", users are able to scan any item, not only McDonald's products. The Panel viewed the game and did not see any call to action for children to purchase additional features or to purchase products to unlock additional features.

In the Panel's view the advertisement did not contain an appeal to children to urge parents to buy a product and did not breach section 2.7(b) of the Code.

For the reasons outlined above, the Panel considered that the advertisement did not breach Section 3.5 of the Food Code, which states "Advertising or Marketing Communications to Children shall not include any appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular Children's Food or Beverage Products for them".





Finding that the advertisement did breach the QSR Initiative, the Panel upheld the complaint.

#### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

As a founding member of the Quick Service Restaurant Initiative (QSRI) for Responsible Advertising and Marketing to Children we take our responsibility as an advertiser very seriously. We were disappointed with the outcome of the complaint, however, we will respect the final decision from Ad Standards. McDonald's continues to remain committed to ensuring compliance with the QSRI and accordingly have removed the Happy Studio application from Google Play/App Store. The application will be modified to comply with the QSRI and made available again mid-march 2019.

#### **INDEPENDENT REVIEWER'S RECOMMENDATION**

#### **THE DETERMINATION ON REVIEW**

#### **ADVERTISER'S RESPONSE TO IR DETERMINATION**