



CASE REPORT

1. Complaint reference number	103/05
2. Advertiser	McDonalds Aust Ltd (toy dogs)
3. Product	Restaurants
4. Type of advertisement	TV
5. Nature of complaint	Advertising to Children Code – Premiums – section 2.4
6. Date of determination	Tuesday, 10 May 2005
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The first scene in this television advertisement shows Ronald McDonald twisting a balloon into the shape of a dog – which magically becomes a real-life dog. The remaining scenes in the advertisement show small children in a field playing with dogs and the new range of Happy Meal toy dogs. The voiceover states: “Get your paws on the “dog” Happy Meal at McDonald’s and you can pick up your new best friend...”

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

“Then, almost as a subliminal message, we see a Happy Meal appear and disappear. McDonald’s are again using the give-away toys as the focus of the advert - the actual required purchase taking a back seat, playing on the kids to demand their parents buy the food for the toys.”

THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

“We believe the complainant is focusing on section 2.8 relating to Premiums and in particular section 2.8(b) regarding impressions that the product advertised is the premium rather than the product.”

“Under the Advertising to Children Code, the definition of “premium” is “anything offered for free or at a reduced price and which is conditional upon the purchase of a regular product.”

“The Happy Meal toy is not a “premium” as defined by the Code. The toy is part of the product known as the Happy Meal. The Happy Meal consists of a cheeseburger, or McNuggets, fries, a toy and a drink.”

“Accordingly, the provisions of section 2.8 do not apply to this ad.”

THE DETERMINATION

The Advertising Standards Board (“Board”) was required to determine whether the material before it was in breach of the AANA Code for Advertising to Children (the “Code”).

To come within the Code, the material being considered must be an “advertisement”. The Code defines an “advertisement” as follows:

“...matter which is published or broadcast... in all of Australia or in a substantial section of Australia for payment or other valuable consideration and which draws the attention of the public

or a segment of it to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly the product, service, person, organisation or line of conduct.”

The Board decided that the material in question was published in all of Australia or a substantial section of Australia for payment or valuable consideration given that it was being broadcast on television in Australia .

The Board determined that the material draws the attention of the public or a segment of it to a “product” being a McDonald’s Happy Meal “in a manner calculated to promote... that product”. Having concluded that the material was an “advertisement” as defined by the Code, the Board then needed to determine whether that advertisement was for a “Product”. Product is defined in the Code as meaning:

“goods, services and facilities which are targeted toward and have principal appeal to Children.”

“Children” are defined in the Code as meaning:

“14 years old or younger.”

Having regard to the fact that the advertisement featured toy dogs, the Board determined that the McDonald’s Happy Meal is a “good” targeted towards and having principal appeal to children. The Board then needed to determine whether the advertisement was an “Advertisement to Children”. “Advertisements to Children” are defined in the Code to mean:

“...advertisements which, having regard to the theme, visuals and language used, are directed primarily towards Children and are for Product.”

The Board determined that the theme and language used in the advertisement was clearly directed to children. The Board also considered that the visuals of the advertisement which included toy dogs had principal appeal to Children. Such factors confirmed the Board’s decision that the advertisement is an Advertisement to Children and therefore one to which the Code applies.

The Board then analysed specific sections of the Code and their application to the advertisement. The Board considered that clauses 2.8.1(a), 2.8.1(b), 2.8.1(c) and 2.11.1 were relevant in the circumstances.

In order to avoid a breach of clause 2.8.1(a), Advertisements to Children that refer to a “Premium” should:

“not create a false or misleading impression in the minds of Children about the nature or content of the Product”.

A “Premium” is defined in the Code to mean:

“anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product”.

The Board noted and agreed with the advertiser’s comments that the “toy” component of a Happy Meal is not a Premium as defined in the Code as it forms part of the Product. The Board took into consideration the fact that attention is drawn to the toy component of the Product to inform viewers that it has changed. The toy component is a component of the Product that changes regularly. The Board was of the view that the advertisement was clearly for the Product and it made clear that the toy component was only a part of that Product.

The Board then needed to determine whether the advertisement breaches clause 2.8.1(b). In order to avoid a breach of clause 2.8.1(b), Advertisements to Children which include or refer to a Premium must:

“not create a false or misleading impression in the minds of Children that the product advertised is the Premium rather than the Product.”

Similar to its finding on clause 2.8.1(a), the Board noted that the toy component of the Product was not a Premium as defined in the Code and that as a result, the advertisement did not breach clause

2.8.1(b).

The Board then considered whether the advertisement breaches clause 2.8.1(c). To avoid a breach of clause 2.8.1(c), Advertisements to Children which include or refer to a Premium must:

“make the terms of the offer clear as well as any conditions or limitations.”

Similar to its findings on clauses 2.8.1(a) and 2.8.1(b), the Board noted that the toy component of the Product was not a Premium as defined in the Code and that as a result, the advertisement did not breach clause 2.8.1(c).

The Board then considered whether the advertisement breaches clause 2.11.1 of the Code. In order for clause 2.11.1 to be complied with, the advertisement must:

“comply with the AANA Advertiser Code of Ethics.”

The Board therefore considered whether this advertisement breaches the AANA Advertiser Code of Ethics.

The Board found that in the context of prevailing community standards the advertisement did not breach any of the provisions of the AANA Advertiser Code of Ethics.

On the above basis, the Board held that the material before it did not constitute an advertisement in breach of the Code or the AANA Advertiser Code of Ethics.

Accordingly, the complaint was dismissed.