



## CASE REPORT

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| 1. Complaint reference number | 184/09  |
| 2. Advertiser                 | McDonald's Australia Ltd  |
| 3. Product                    | Food & Beverage   |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Advertising to Children Code - Food & beverages – section 2.4<br>Food and Beverage Code – false meal substitute |
| 6. Date of determination      | Thursday, 14 May 2009   |
| 7. DETERMINATION              | Upheld – discontinued or modified   |

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for McDonalds promotes the toys associated with the new Dreamworks movie “Monsters vs Aliens” that are available in McDonalds Happy Meals. The vision shows children playing with the toys in a McDonalds setting with the voice over promoting the toys. The vision shows a monster female character ordering a meal through the drive-in order window who says “excuse me, can I get a salad?”. The images then switch to a picture of a Happy Meal with the contents and toys on display, the male voice over says “You can get find one in your McDonalds Happy Meal”.

## THE COMPLAINT

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

*The wording of the above misleads. It implies the prospective customer (in this case a child) will find a salad included as part of the Happy Meal. It is more likely that the advertising is targeting the potential customer because of the toy that is part of the movie promotion which is included in the Happy Meal for this promotion. Both the child, and the parent who pays for the meal, may be under the impression they are receiving a salad as part of the transaction. It implies that there is a nutritious salad included within the meal which has never been the actual circumstance with this product.*

## THE ADVERTISER’S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following: *I refer to your email regarding the complaint received by the Advertising Standards Bureau in relation to the McDonald's Monsters vs Aliens Happy Meal television commercial. The commercial features imagery and a voiceover reminiscent of classic monster films of the 1950's and 1960's, using a 'Hollywood blockbuster' style deep, male voiceover to tell viewers that "The heroic characters... from the new Dreamworks movie Monsters vs Aliens are out to save the world'. The voiceover then pauses long enough to show a giant female character from the movie named Ginormica, peeping through the drive thru window and amidst the chaos, humorously ordering a salad. The deep male voiceover then continues from where he left off by declaring that "You can find one in your McDonald's Happy Meal" i.e. the heroic characters from the new Dreamworks movie Monsters vs Aliens to which he had just referred. The deep, male voice clearly in narrative style, is easily distinguishable and completely separate from the line spoken by Ginormica. In addition the words "You can find one in your McDonald's Happy Meal" are accompanied by a visual showing the various Happy Meal product choices, which do not feature a salad. The complaint describes the commercial only from the point where the line "Can I order a salad?" is spoken and does not properly represent the monster's question in the context of the ad.*

*The TVC does not contravene either the truthful and honest advertising requirement in section 2.1 of the Food & Beverages Code or prevailing community standards under section 2.1 of the Code for Advertising & Marketing Communications to Children. The McDonald's Monsters vs Aliens Happy Meal TVC and the associated promotion both ended on 29 April 2009.* **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”) and the AANA Food and Beverages Advertising and Marketing Communications Code (the “F&B Code”).

The Board noted the complainant’s concerns that particular wording used in the advertisement could be misleading for parents and children alike, by suggesting that a salad will be included as part of a “Happy Meal”.

The Board considered the application of Section 2.8 of the Code (which requires advertising and marketing communications for food and beverage products to comply with the F&B Code) and Sections 2.1 and 3.1 of the F&B Code.

The Board noted that Section 2.1 of the F&B Code requires that:

“Advertising and/or Marketing Communications for Food and/or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising and/or Marketing Communication with an accurate presentation of all information including any references to nutritional values and/or health benefits.”

The Board viewed the advertisement and considered that the timing and placement of the question asked by the animated character and the final voiceover could very easily create the impression that a salad could be found in the McDonald’s Happy Meal. The Board noted the advertiser’s response that the narrative styles of the voiceover and animated character were easily distinguishable and quite separate and that the final voiceover was accompanied by images of the toy included with the Happy Meal, reinforcing the view that the voiceover related to the toy and not the salad. The Board noted that the advertisement’s only depiction of people eating features a salad on the table (the other food and drink are in covered containers). The Board considered that the way that the dialogue was presented could mislead parents and/or children viewing the advertisement or was otherwise an ambiguous presentation of the information in the advertisement. The Board therefore determined the advertisement was in contravention of section 2.1 of the F&B Code.

The Board then considered section 3.1 of the F&B Code which requires that:

“Advertising and/or Marketing Communications directed towards Children for Food and/or Beverage Products shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity ...”

The Board considered that this advertisement is directed towards children, noting that the primary content of the advertisement is the toys which are the current feature of the Happy Meals and that the product Happy Meals have primary appeal to children. Having found that the advertisement breached section 2.1 of the F&B Code, the Board considered that the advertisement was likely to mislead children into believing that it is possible to have a salad as part of a Happy Meal. Accordingly the Board determined that the advertisement breached section 3.1 of the F&B Code.

The Board then considered section 3.5 of the Food Code which provides:

*'Advertising and/or marketing communications directed towards children for food and/or beverage products shall not include any appeal to children to urge parents and/or other adults responsible for a child's welfare to buy particular [products] for them.'*

The Board also noted the provisions of the Explanatory Notes to the Food Code in relation to Section 3.5:

*'In considering whether an advertisement contains an appeal or encouragement to children to urge parents or other adults to buy particular products for them, the Board will form its own view of*

what a reasonable child of the target audience would understand from the communication and, in addition, will form a view inclusive of the following pointers:

- although children may be expected to exercise some preference over the foods and beverages they consumer, advertisements...must be prepared with a due sense of responsibility and should not directly encourage children to urge the purchase of particular products for them.

- advertising must not give children cause to pester or otherwise make a nuisance of themselves in relation to the promoted products. [As an example, in a supermarket setting, a child should not be portrayed asking for a particular product or putting it into a shopping trolley without asking, while voice or text message must not include such urging as 'Ask Mummy to buy you one']'

The Board noted that it is its role to interpret and apply the provisions of the Food Code as they are. The Board considered that the correct interpretation of Section 3.5 is to prohibit advertisements directly asking or encouraging children to urge parents to buy the product, or including depictions of children asking for the product or placing it into the trolley.

The Board noted that movie characters both animated and real have been used to promote all sorts of products for many years. The Board considered that the mere inclusion of a cartoon character in the advertisement or an offer of a toy did not of itself breach this provision of the Code. The Board noted that this advertisement does not contain any direct appeal to a child to ask a parent to buy the product, and that the invitation to collect the toys did not amount to 'an appeal to children to urge parents to buy particular products for them'.

The Board considered that the correct interpretation of the Food Code is that the use of a cartoon character or a promotional toy in an advertisement directed to children does not of itself amount to a breach of Section 3.5 of the Food Code.

The Board then considered section 3.6 of the F&B Code which states:

*"Advertising or marketing communications to Children shall not feature ingredients or Premiums unless they are an integral element of the Children's Food or Beverage Product being advertised."*

The Board noted that the toys that are part of a Happy Meal change regularly and that the current promotion for the toys is linked with a recent movie release *Monsters v Aliens*. The Board considered that in this advertisement the primary feature of this advertisement is the toys that are part of the Happy Meal, and that there is very little screen time devoted to the food and beverage components of the Happy Meal. The Board noted that as toys are an integral element of a Happy Meal it is not in contravention of section 3.6 of the F&B Code for the toys to be a feature of the advertisement.

The Board considered that the advertisement breached section 3.1 of the F&B Code.

The Board also considered whether the advertisement breached the AANA Advertising to Children Code (the Children's Code).

The Board firstly considered section 2.1.1(b) of the Children's Code which states that:

*'Advertising or marketing communications to children:(b) must not be ambiguous...'*

The Board considered that the advertisement was ambiguous in relation to whether or not the Happy Meal contains a salad. While consumers familiar with the Happy Meal product may think it unlikely that the product contains a salad, it is likely that some consumers, perhaps those who are unfamiliar with the product, or those who know that the advertiser is quite frequently undating its menu, would think that it is now possible to obtain a salad with the product. The Board considered that the advertisement is ambiguous in this respect and is in breach of section 2.2.(b) of the Children's Code.

The Board then considered section 2.2.(c) of the Children's Code which provides:

*Advertising or marketing communications to children: (c) must fairly represent, in a manner that is clearly understood by children (i) the advertised product...*

The Board noted the extensive images of the toys and movie characters, the ambiguity in relation to whether or not the product contains a salad, and the very brief images of the food and beverages that actually are part of the Happy Meals product. The Board considered that as a whole the advertisement

did not represent the Happy Meals product in a manner likely to be clearly understood by children. On this basis the Board determined that the advertisement breached section 2.2(c) of the Children's Code.

The Board considered that the advertisement did not breach section 2.7 of the Children's Code for the reasons discussed in relation to section 3.5 of the Food Code.

The Board noted that the advertisement did not breach section 2.12 of the Children's Code for the reasons discussed in relation to section 3.6 of the F&B Code.

The Board determined that the advertisement breached sections 2.2(b) and (c) of the Children's Code.

Finding that the advertisement breached the F&B Code, the Children's Code and, as a consequence, sections 2.4 and 2.8 of the Code.

**ADVERTISER'S RESPONSE TO THE DETERMINATION**Comments which the advertiser made in response to the determination regarding this advertisement included the following:

*McDonald's Australia confirmed that this television commercial was discontinued on 29 April 2009.*