



CASE REPORT

1. Complaint reference number	197/06
2. Advertiser	McDonalds Australia Ltd (Happy meals - kitty & spy gear)
3. Product	Restaurants
4. Type of advertisement	TV
5. Nature of complaint	Advertising to Children Code – Premiums – section 2.4
6. Date of determination	Thursday, 13 July 2006
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement opens on a little girl looking under a table and calling “Here Kitty, Kitty Kitty”, then looking in a children’s play tube still calling “Here Kitty”. The girl looks glum as she sits next to two friends who are eating Happy Meals and playing with “Hello Kitty” toys. As she opens her own meal box she finds the toy and excitedly cries “Hello Kitty!” A female voiceover announces “Discover the Hello Kitty Happy Meal at McDonald’s”.

The advertisement continues with a similar opening shot features a young boy under a table wearing Spygear glasses, a black beanie and black t-shirt, then crawling along the floor commando-style. He checks his Spygear watch and warns “Target is close”. He “spies” his family eating at McDonald’s and continues “Target in sight”. He sneaks up and steals one of his brother’s chips. A male voiceover advises “Sneak over to McDonald’s and discover Spygear Happy Meals. Boy concludes to camera “Target is tasty”.

THE COMPLAINT

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

This advertisement clearly promotes the premium as the primary item for sale, with the food (product) being incidental.

THE ADVERTISER’S RESPONSE

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

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.

THE DETERMINATION

The Advertising Standards Board (‘the Board’) considered whether this advertisement breaches the AANA Code of Advertising to Children (the Children’s Code).

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

“matter which is published or broadcast other than via internet, direct mail, point of sale, packaging or direct distribution to individuals, 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, organisation 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 broadcast in all of Australia or a substantial section of Australia for 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 McDonald’s Happy Meals “in a manner calculated to promote...that product”. Having concluded that the material is an “advertisement” as defined by the Children’s Code, the Board then had to determine whether the advertisement is for a “Product”. “Product” is defined in the Children’s Code as meaning;

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

“Children” are defined in the Children’s Code as being 14 years old or younger. The Board determined that the Happy Meal toy is a “good” targeted toward and having principal appeal to Children and accordingly is a Product.

The Board then needed to determine whether the advertisement is an “Advertisement to Children”, which is defined in the Children’s Code as meaning:

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

The Board noted that having regard to the product, music, theme and visuals used, the advertisement was directed primarily towards children.

The Board noted the complainant’s view that the advertisement breached clause 2.8 of the Children’s Code. Clause 2.8 of the Children’s Code provides that:

“Advertisements to Children which include or refer to 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; and

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

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 noted the advertiser’s response that the toys advertised do not fall within the Children’s Code definition of ‘Premium’ as they are part of the Happy Meal – not a product that is additional to the regular product.

The Board reluctantly agreed with the legal advice provided by the Advertiser and agreed that the toy provided with the Happy Meal is an integral part of the Happy Meal – not an additional item offered free or at a reduced price conditional upon the purchase of the Happy Meal. On this basis the Board concluded that the advertisement did not breach clause 2.8 of the Children’s Code.

The Board then considered whether the advertisement breached clause 2.1 of the Children’s Code. Clause 2.1 requires that:

Advertisements to children:

a) Must not mislead or deceive children

b) Must not be ambiguous; and

c) Must fairly represent, in a manner that is clearly understood by children;

i) The advertised product

ii) Any features which are described or depicted in the advertisement; and

iii) The need for any accessory parts.

The Board agreed that the advertised toys were part of the product sold as a Happy Meal. The Board considered that the advertisement was not misleading to children nor ambiguous as, in this particular McDonald's advertisement, the food components of the meal were obvious.

On a similar basis the Board considered that the advertisement did not unfairly represent the Happy Meal, despite some emphasis on the toy component of the product.

The Board noted the complainant's view that the advertisement inappropriately emphasised the toy rather than the food component of the product. The Board considered that it was certainly possible for an advertisement to do this, and that where such emphasis is unfair or misleading to children, the Board would find there to be a breach of the Children's Code. On this basis of this particular advertisement however the Board considered that the emphasis on the toy was not unfair as it was balanced with not insignificant shots of the food component of the meal and the setting in the restaurant. The Board therefore decided that there was not a breach of section 2.1 of the Children's Code or of any other provision of the Children's Code.

The Board was of the view that the advertisement did not breach the Code but asked that the case report indicate the Board's view that the advertiser had found a way that is not in accord with the spirit 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 could apply to this advertisement. The Board considered that the advertisement did not depict material contrary to prevailing community standards on health and safety simply by advertising food that is considered by some sectors of the community to be 'unhealthy'. The Board acknowledged that most foods can be part of a healthy balanced diet.

The Board did not consider that the advertisement breached any of the provisions of the Code. Finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.