



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 256/07  |
| 2. Advertiser                 | McDonald's Australia Ltd (Shrek - internet)                   |
| 3. Product                    | Restaurants   |
| 4. Type of advertisement      | Internet  |
| 5. Nature of complaint        | Advertising to Children Code - Food & beverages – section 2.4 |
| 6. Date of determination      | Tuesday, 14 August 2007                                       |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This McDonald's website features images from Shrek The Third and promotes the six different talking Shrek toys currently offered with Shrek Happy Meals. It also promotes the Shrek competition which gives children the chance to win a "family ogre-wheeling Shrek adventure" with Warner Bros. Movie World and other prizes. Entry forms for the competition are available on Happy Meal boxes.

## **THE COMPLAINT**

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

*We write to complain about examples of the current widespread use of the children's film "Shrek The Third" and the animated Shrek character, in advertising and promotion of unhealthy foods directed to children, and on packaging of unhealthy food products directed to children. We believe the use of Shrek in these promotions and product packaging is designed to encourage "pester power" in children, that is, to encourage children to ask their parents to buy the products promoted...Directly or implicitly asking or encouraging children to pester their parents is not a technique marketers commonly use to engage pester power. Rather, they use techniques, such as offering premiums, using popular children's personalities and characters, or using promotional "tie-ins" with popular children's films, to make children desire products, so they will pester parents to buy them.*

*The McDonald's website features images from Shrek The Third and promotes the six different talking Shrek toys.*

*We believe the website breaches clause 3.5 of the (Food & Beverages) code because it is clearly intended to encourage, and would have the effect of encouraging, children to urge parents to buy the various Shrek-branded products promoted so they can enter the Shrek competition, obtain the Shrek premiums, play the Shrek Games, consume the shrek-branded products and participate in the Shrek fun and excitement.*

*We think the advertisement encourages children to urge their parents or other adults responsible for their welfare to buy the advertised products for them, and therefore breach clause 3.5 of the (Food & Beverages) Code.*

## **THE ADVERTISER'S RESPONSE**

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

*McDonald's Australia has been a long-standing proponent of, and participant in, the self regulation system administered by the Board. It is our view, and that of the AANA from the*

*materials, that the Code is to be interpreted by the ASB in accordance with its original intent as expressed in the Practice Note, as currently issued.*

*On the basis of our previous submissions regarding the interpretation of the Code, we agree with the PJ that in the absence of any direct encouragement to children to urge a purchase or a message to a child to pester or make a nuisance in asking for a product, then we are of the view that section 3.5 does not apply in the complaints as outlined against McDonald's given the responsible way in which the food has been selected and in which the promotion has been marketed.*

*By way of contrast to the issues raised by the Parents Jury, McDonald's Global "Shrek the Third" promotion represented a focus on wholesome, quality family entertainment with a purpose ie reinforcing the well-being of children.*

*Whilst we cannot comment on the motivation of Dreamworks in licensing the movie, McDonald's spent significant time and resource to deliver a fun, wholesome children's food offer based on our Pasta Zoo Happy Meal which was developed in consultation with dieticians, school teachers and, of course, parents.*

*The food was developed for children and what is focussed on is the Far Far Away Pasta Happy Meal. This is a nutritious meal combination with:*

- Pasta filled with natural cheese and roasted vegetables.*
- 180ml of reduced fat milk with a Sipahh milk flavouring straw. The straw has no artificial colours, flavours or preservatives and only 1/2 teaspoon of added sugar per serve.*
- The meal is high in protein and carbohydrates and a good source of calcium.*

*This complaint refers to the Company's website and material displayed on the site. Given the definition of "Advertising and/or Marketing Communication" in the Code we submit the material placed on the Company's website does not meet all the criteria outlined in the definition as it was not done for payment or other valuable consideration.*

*In any event, if it was to be determined that the website was Advertising and /or Marketing Communication our submission is that would be that it displayed an advertisement for food that did not breach section 3.5 as there were no appeal to Children to urge parents and/or other adults responsible for a child's welfare to buy particular products for them.*

*On any reading of the Practice Note, the website, if it determined to be within the scope of the Code, as depicted does not breach section 3.5.*

*The website staging site links attached contain shots of the food and toys being offered as part of the promotion together with relevant nutritional information to assist parents.*

*As submitted above, McDonald's submits that none of the complaints can be upheld given the current content of the Code and the interpretation of the intent of the Code by the Practice Note.*

*Even if there was to be an expansion of interpretation to implicit appeals to children which resulted in an urge to parents to buy particular products for them we submit no such implication exists based on the material attached.*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") considered whether this advertisement breaches the AANA Food and Beverages Communications and Marketing Code (the Food Code).

The Board noted that the material complained of is on the McDonald's corporate website. The Board noted that this material is considered to be within the definition of advertising and/or marketing communications within the scope of the Food Code as it is material that is published, that the company has incurred cost in publishing the material and that it is material that draws the attention of the public or a segment of it to a particular product in a manner calculated to promote that product. On this basis the Board proceeded to consider whether the material breached the Food Code.

The Board noted the complainant's concern that the advertisement breaches section 3.5 of the Food Code. Section 3.5 of the Food Code 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 as it is currently drafted 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 or competition entry 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 or enter the competition did not amount to 'an appeal to children to urge parents to buy particular products for them'.

The Board noted that there is community debate about advertising particular food types to children but 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 considered other provisions of the Food Code and determined that the advertisement did not breach the Food Code.

The Board also considered whether the advertisement breached the AANA Advertising to Children Code (the Children's Code). The Board noted similar provisions in the Children's code relating to fair representation of the advertised product (2.1.1(c)). The Board determined that the advertisement did not breach the Children's Code.

The Board also considered whether the advertisement breached section 2 of the Advertiser Code of Ethics (the "Code"). The Board considered that the advertisement did not breach the Code.

Finding that the advertisement did not breach the AANA Codes on any grounds, the Board dismissed the complaint.