



CASE REPORT

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| 1. Complaint reference number | 297/08 |
| 2. Advertiser | Hungry Jacks |
| 3. Product | Restaurant |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Advertising to Children Code - Food & beverages – section 2.4
Food and Beverage Code (Children) – premium |
| 6. Date of determination | Wednesday, 13 August 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for Hungry Jacks promotes the new Batman movie "The Dark Knight". As scenes from the movie are shown, a male voice over announces "Look out kids - the Dark Knight has descended on Hungry Jacks, and he's brought cool new toys from the new Batman movie. Buy a Kids' Club meal and you'll get a hamburger, small fries and a small drink - plus a toy featuring the Dark Knight (images of products are shown as described). There are four to collect (each toy model is shown). So fly into Hungry Jacks for your Dark Knight Kids' Club meal today." The scene ends with the movie logo and the announcer stating "The burgers are better at Hungry Jacks."

THE COMPLAINT

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

The advert is selling to kids a meal, which is closely tied to the promotion of the "Dark Knight" movie which is clearly rated "M". Surely this puts undue pressure on parents to expose their kids through a 'happy meal' to this particular Batman, which is quite a 'dark' and scary movie.

Children who have this meal purchased for them will receive a toy relating to this movie. I disagree with this due to the Batman movie being rated M? MA? if the movie was G or PG I would not feel concerned over this matter but I feel it is irresponsible to sell a product or by-product of a movie that is not classified for children.

It is enticing children to eat unhealthy food on a regular basis (collect them all over the limited offer time), using toys for a movie that is rated M and has therefore been deemed unsuitable for children by the Film Censorship Board.

(Acknowledge it is not rated MA therefore not enforceable, but have noted recent media publicity reminding parents of the rating following feedback that their children were disturbed by the film, clearly supporting the censorship classification!)

Given the recent focus on Australia's poor status in obesity and emerging knowledge of the associated poor health outcomes, this marketing campaign is irresponsible on several levels. In reading the Food & Beverage Standards, it seems there is grounds for review of this marketing campaign.

THE ADVERTISER'S RESPONSE

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

As a responsible corporate citizen, with a long history in Australia, Hungry Jack's takes its

responsibilities very seriously, particularly when it comes to advertising to children.

It has always been our intention to comply with all the relevant guidelines in regard to advertising to children and we believe the commercial in question has not breached any of these guidelines.

The central thrust of the complaint seems to be that the advertisement in question is designed to “entice children to eat unhealthy food on a regular basis”.

We would like to refute that allegation and any allegation that the commercial is urging children to “collect all the toys over a limited offer time”.

Firstly, the commercial makes no claim or encouragement in either voice-over or visuals with regard to any frequency or regularity of eating at all. It does not use the word “hurry” or give any urging whatsoever for children to rush in because the toys are only available for a limited time.

On the contrary the commercial simply states that the toys are available, they have a tie-in to the Batman character from the movie and that there are four of them to collect.

If you refer to the copy of the advertisement and the script attached, you will note that we make no statement in regard to toys such as “collect them all”. In fact the script simply states of the toys, that “there are four to collect”. This is done in order not to mislead children as to how many toys are available in the collection. It is our obligation to inform them that there are simply four toys on offer.

In regard to the “limited time offer”, this is not mentioned in the voice-over at all and simply appears as a small super, again to fulfil our legal obligations to properly inform consumers that these toys will only be in store for a limited time and that they are subject to availability. A small super, appearing for a brief time only, could hardly be considered as “enticing” children to do anything.

With regard to the issue of the rating level of the movie that these toys are associated with, we thank the Standards Board for clarifying that in fact the movie is rated MA, not M as claimed in the complaint. Apart from the fact that the MA rating is not enforceable as noted, we think it is important to note that the central character of the movie, Batman, is a character with timeless appeal to people of all ages. In fact Batman as a character has been depicted for decades in comic books, cartoon series, television shows and feature films, making him one of the world’s most popular super heroes with appeal ranging from the young boy who reads the comics and wants to be Batman to the avid collector of Batman merchandise who grew up reading the original DC comics.

What is important to note is that these toys simply represent the Batman character and have no direct tie-in or relationship to any plot or story element in the Dark Knight movie. So children do not have to see the movie to understand or desire the play patterns of the toys. Two of the toys, actually have no play association at all, one being a swing tag and the other a bag dangler, neither of which convey any “disturbing” nature whatsoever. The other two toys advertised were a “stamper” and “pointer” both which again have no direct relationship to the Dark Knight movie story, plot or characters, but simply relate to the Batman character himself.

As a result of this, our advertisement does not in any way encourage children to see the movie but is simply designed to advertise our Kids Club Meal.

As you may be aware, the Kids Club Meal has been a standard menu item at our restaurants for some 20+ years. Whilst it has undergone some modifications over the years, the general contents are a burger, some fries, a drink and a toy. The toys themselves change over the year in order to introduce some variety through tie-ins to various movies and so forth, however, a toy is always an integral part of the Kids Club Meal. It is not an incidental item or a “premium”. These toys are not available to be sold separately and therefore have no value in themselves.

When there is a tie-in to a movie, we sometimes, but not always, make a commercial to promote the fact that the toy available during this promotional period with the kid’s club meal is a toy with some relationship to the movie.

However the Kids Club Meal is a standard menu item available all year around and always comes with some sort of toy, irrespective of any TV advertising. Through most times of the year, we have

no TV support for our Kids Club Meals at all and they are only promoted on our menu boards.

As to the issues regarding the nutritional value of a Hungry Jack's Kids Club Meal, we encourage all children to maintain a healthy balanced diet at all times. For a child who has a balanced diet, including fresh fruit and vegetables, an occasional Kids Club Meal would be considered part of that overall balance.

We believe that there are many issues at play today in regards to Childhood Obesity – exercise and active lifestyle being equally if not more important than diet alone.

We respectfully request that this complaint against our advertisement be dismissed on the on the above grounds.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Advertising to Children Code (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 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 Hungry Jack's Kids Club Meals “in a manner calculated to promote...that 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”.

“Children” are defined in the Children’s Code as being 14 years old or younger. The Board determined that noting the product, music, theme and visuals used in the advertisement, the advertisement was directed primarily towards children and was therefore within the scope of the Children’s Code.

Having concluded that the material is an “advertisement to Children” 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”.

The Board determined that the Hungry Jack's Meal is a “product” targeted toward and having principal appeal to Children.

The Board determined that the advertisement should be considered under the AANA Children's Code but did not find it in breach of any Sections of the Children's Code.

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

The Board considered the advertisement did not breach Section 3.1 of the Food code as it does not encourage excess consumption of the product.

The Board then considered that the advertisement did not breach Section 3.5 of the Code as it does not contain an appeal to Children to urge parents and/or adults to buy particular products for them.

The Board then considered the advertisement under Section 3.6 of the Food Code which provides:

"Products shall not use popular personalities or celebrities to advertise or market products, premiums or services in a manner that obscures the distinction between commercial promotions and program or editorial content".

The Board determined that the amount of time given during the advertisement to promotion of the Dark Knight movie was not excessive and did not therefore breach Section 3.6.

The advertisement could not be considered under Section 3.7 of the Food Code because the toy contained in the Kids Club Meal did not constitute a premium as it is an integral part of the Kids Club Meal and cannot be purchased separately.

The Board considered that the advertisement did not breach the Food Code.

Finally, the Board considered whether the advertisement breached the AANA Code of Ethics (the Code). The Board considered that the advertisement did not breach any provisions of the Code. Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.