



CASE REPORT

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| 1. Complaint reference number | 311/06 |
| 2. Advertiser | Hungry Jacks (Superman Returns) |
| 3. Product | Restaurants |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Advertising to Children Code – Other – section 2.4 |
| 6. Date of determination | Tuesday, 8 August 2006 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement begins with a scene from the movie “Superman Returns”, and a voiceover announces “Superman Returns tumblers are now landing at Hungry Jack’s. Purchase any Value Meal, and then for \$2.50 you’ll receive a Superman Returns collectible 3D tumbler. Collect all four and leap into Hungry Jacks now.” Superman logo appears on screen.

THE COMPLAINT

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

Advertising the premium not the product. Ad focussed on Superman 3D tumbler and gave only a few seconds to the food (a hamburger).

THE ADVERTISER’S RESPONSE

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

Hungry Jacks partnered with the release of the Superman Returns movie for both an adult and kids promotion. The kids promotion featured four magnet Superman premiums that fitted into a connectable box that formed the Superman “S” shield logo. This premium was promoted via in-store POS material of a Translite and counter stand only. There was no TV advertising at all for the kids’ premium.

The adult promotion featured a series of four extra large, themed tumblers that were available for purchase for \$2.50 with any Value Meal purchase.

The Superman brand...has broad appeal across both adults and children thus the decision to do both an adult and children’s premium.

The Superman Returns movie was rated M and was therefore not targeted to children under the age of 15.

THE DETERMINATION

The Advertising Standards Board (the Board) considered whether this advertisement breached 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 Jacks “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 noted the advertiser’s comment that the advertisement was not an advertisement to children. The Board had regard to the product, music, theme and visuals used and noted that the advertisement contained significant images of superman and on that basis would be attractive to children. The Board considered therefore that the advertisement is directed to 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 Jacks meal and superman product is a “good” targeted toward and having principal appeal to Children and accordingly is a Product. The Board noted that an alternative view is that the product is a product for adults and children alike and is therefore not within the Children’s Code on the basis that it is not a product with *principal* appeal to 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 considered that the superman cup does fall within the definition of a premium as it can be purchased for \$2.50 once some Hungry Jacks food has been purchased.

However the Board considered that the advertisement clearly distinguished between the product (the Hungry Jacks) and the premium (the Superman cup). In the Board’s view the advertisement did not create a false or misleading impression in the minds of children about the product, nor did it create a false or misleading impression that the product advertised is the cup rather than the food. The advertisement clearly explained the terms of the offer ie: that a Hungry Jack’s Meal must be purchased in order to be able to purchase the Superman cup.

On this basis the Board concluded that the advertisement did not breach clause 2.8 of the Children’s Code.

The Board also considered whether the advertisement breached clauses 2.1 or 2.10 of the Children's Code and determined that it did not.

In the event that the advertisement is not considered to be within the Children's Code on the basis that the advertisement or product is not of *principal* appeal to children the Board went on to consider whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the "Code").

The Board considered that the advertisement did not raise any issues under the Code and therefore finding that the advertisement did not breach the Code or the Children's Code on any grounds, the Board dismissed the complaint.