



## CASE REPORT

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|-------------------------------|---|
| 1. Complaint reference number | 32/10   |
| 2. Advertiser                 | Hungry Jacks  |
| 3. Product                    | Food & Beverages                                    |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | QSR – Premium Offers<br>QSR – Nutrition Information |
| 6. Date of determination      | Wednesday, 10 February 2010                         |
| 7. DETERMINATION              | Upheld – discontinued or modified                   |

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement shows a family pushing red chairs around the floor of their living room. The voiceover says 'the fun starts when everyone gets together at Hungry Jacks. Buy a kids club meal and you will get three chicken nuggets and a Mt Franklin Spring Water plus a Simpsons plastic toy. Come celebrate the Simpson's 20th anniversary.' The advertisement concludes with an image of the toy and text stating 'four to collect'.

## THE COMPLAINT

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

### *Breaches of the Initiative*

#### *Clauses 4.1 of the Initiative – Advertising and Marketing Messaging*

*We believe the advertisement clearly breaches clause 4.1 of the Initiative, which states:*

*'Advertising or Marketing Communications to Children for food and/or beverages must:(a) Represent healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and/or(b) Represent a healthy lifestyle, designed to appeal to the intended audience through messaging that encourages:(i) healthier choices, as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and(ii) physical activity.'*

*The advertisement is an 'Advertising or Marketing Communications to Children for food and/or beverage products', and does not meet the 'Nutrition Criteria for assessing children's meals' outlined in Appendix 1 to the Initiative (Nutrition Criteria).*

*Clearly the advertisement is directed primarily to children under 14 years of age. It features children's themes (children's toys, programs and activities), visuals (cartoons and animated images) and language (tones that would attract children and words targeted at children). The product advertised is a Hungry Jacks Kids Club Meal, and the advertisement also promotes a plastic Simpsons couch toy, available with the Kids Club Meal. These products are clearly directed to children under 14. The advertisement features two young children, and the narrator speaks in an excited voice directly to children, urging them to buy a Kids Club Meal and get a Simpsons couch toy, and to celebrate the Simpsons 20th anniversary at Hungry Jacks.*

### *Nutrition Criteria for assessing children's meals (Appendix 1 to the Initiative)*

*On 9 December 2010, the ASB upheld a complaint we made about a Hungry Jacks advertisement for a Kids Club Meal on the basis that the meal failed to meet the Nutrition Criteria outlined in Appendix 1 to the Initiative. The Kids Club Meal does not appear to have changed since the ASB's decision.*

*For a meal to meet the Nutrition Criteria, clause 3 of Appendix 1 requires that the meal must not exceed maximum limits of saturated fat (0.4g per 100KJ), sugar (1.8g per 100KJ) and sodium (650mg*

per serve).

*The meal featured in this advertisement again comprises three chicken nuggets and a Mt Franklin Spring Water. According to the Hungry Jack's website, 3 chicken nuggets contain 3.2g of saturated fat and 571kJ. This equates to 0.56g per 100kJ. Therefore, the meal exceeds the maximum limit of saturated fat, and does not comply with the Nutritional Criteria.*

*In addition, the Nutritional Criteria in Appendix 1 state that a meal must be comprised of at least a main and a beverage, and should reflect general principles of healthy eating as defined by credible nutrition authorities. We think it is clear that three chicken nuggets do not constitute a 'main'. In fact, they are advertised as a 'side' dish on the Hungry Jack's website (see [http://www.hungryjacks.com.au/menu\\_nuggets\\_3\\_pack](http://www.hungryjacks.com.au/menu_nuggets_3_pack)). It is also clear that a meal of three chicken nuggets and a bottle of water does not reflect general principles of healthy eating. The meal does not include any fruit or vegetables and is high in saturated fat.*

*Therefore, clearly the advertisement breaches clause 4.1 of the Initiative. The advertisement is also contrary to Hungry Jack's own company action plan, which states that Hungry Jack's will ensure that any products or meal combinations specifically directed to children under 14 will meet the Initiative's nutritional guidelines.*

#### *Clause 4.2 of the Initiative – Popular Personalities and Licensed Characters*

*In our view, the Hungry Jack's advertisement also again breaches clause 4.2 of the Initiative, which states:*

*'Popular Personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products, unless such Advertising or Marketing Communications complies with the messaging options set out in Article 4.1 and the specific requirements of Section 22 (Promotions and Endorsements by Program Characters) of the Children's Television Standards 2005.'*

*'Popular personalities and licensed characters' are defined under the Initiative to mean "a personality or character from a C or P program, a popular program or movie character, a non-proprietary cartoon, animated or computer generated character'.*

*The Hungry Jack's advertisement features a full-screen image of the Simpsons couch toy, which is a plastic replica of all the Simpsons family members sitting on a couch. Clearly the members of the Simpsons family are popular children's licensed characters.*

*As discussed above, the advertisement constitutes an Advertising or Marketing Communication to Children and does not comply with the messaging options set out in Article 4.1. Therefore, we believe the advertisement breaches clause 4.2 of the Initiative.*

#### *Clause 4.6 of the Initiative – Premium Offers*

*We also believe Hungry Jack's advertisement breaches clause 4.6 of the Initiative, which states:*

*'Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and Section 20 (Disclaimers and Premium Offers) of the Children's Television Standards 2005'*

*Definition of 'premium' 'Premium' is defined under the Initiative to mean anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product.*

*We believe the Simpsons couch toy offered free with the Hungry Jack's Kids Club Meal is a premium according to this definition – it is offered free and is conditional upon the purchase of the three chicken nuggets and bottle of water.*

*In previous decisions, ASB has decided that a toy offered as part of a meal is an integral part of the product and consequently not a premium. However, we ask the ASB to reconsider this interpretation. We do not believe there is any logical policy rationale for distinguishing between a toy that is offered "as part of" a product and a toy that is offered free with a product. In both cases, the offer of a toy has exactly the same effect on children – it makes children want the fast food product so that they can collect the toy on offer, and encourages them to pester their parents to take them to the fast food restaurant. It is highly unlikely that children would recognise the distinction between a toy offered 'as*

*part of* a product and a toy offered free with a product.

*We also do not understand the basis for suggesting that a plastic toy is ‘part of’ a fast food meal. Clearly an inedible plastic toy is separate to a food and beverage product, irrespective of whether or not the toy is offered regularly with that product or just as a one-off. In this case, the toy is clearly not necessary to the completeness of three chicken nuggets and a bottle of water. Hungry Jack’s is a fast food restaurant franchise, whose business is selling food not toys. The inclusion of a free toy with the meal is intended to entice children to desire and request the advertised food and beverage products.*

*If the ASB does not consider the Simpsons couch toy to be a premium, we ask the ASB and/or AANA to provide a clear explanation of the policy rationale (rather than just the technical basis) for distinguishing between a toy offered free with a product and a toy offered “as part of” a product, particularly the manner in which the ASB and/or AANA believe that the effect on children of these two types of toy offer is likely to differ. We also ask the ASB to explain how a plastic children’s toy can be considered to be part of a food or beverage product.*

*If it is accepted that the Simpsons couch toy does meet the definition of a premium for the purpose of clause 4.6 of the Initiative, we believe the advertisement is being broadcast during a Medium directed primarily to children, and the reference to the toy in the advertisement is more than merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and CTS 33 of the Children’s Television Standards 2009 (Disclaimers and Premium Offers) (replacing CTS 20 of the Children’s Television Standards 2005).*

*Medium directed primarily to children*

*According to a tracking report we have received, the advertisement has been broadcast at least 304 times on commercial television stations since 29 December 2009, while children have been on school holidays. The advertisement has been shown at all times of day, but most frequently between 7am and 11am in the morning, and between 6pm and 11pm at night. Children’s peak viewing times are generally between 7am to 9am and 6pm to 9pm on weekdays and 8am to 10am and 7pm to 8pm on weekends. (We are happy to provide a copy of the tracking report on request.) The advertisement has been shown during programs aimed primarily at young children under 14. For example, it was broadcast during Toasted TV (a G rated program aimed at young children) on Network Ten on Saturday 16 January 2010 at 7.11am.*

*Premium more than incidental to food and beverage product The Simpsons couch toy is clearly the dominant feature of this advertisement and occupies more than half the advertisement.*

*According to CTS 33 of the Children’s Television Standards, the following matter are relevant in consideration of whether a premium offer is merely incidental:(a) the amount of time devoted to the premium offer compared to the amount of time devoted to the product or service being advertised;(b) the way in which pictures, text or moving images are used to promote the premium offer;(c) the way in which sound is used to promote the premium offer.*

*The whole theme of the advertisement is the Simpsons couch toy. More than half of the advertisement is devoted to showing the young children and their parents pushing the pieces of couch around and sitting on the couch (to mimic the Simpsons sitting on the couch toy), as well as the image of the couch toy. Only a minority of the advertisement is occupied by the images of the chicken nuggets and water. Consequently, children are likely to be confused about whether the main product advertised is the Simpsons couch toy or the food and beverage products, and they are likely to be far more attracted to the component of the advertisement promoting the toy than the component advertising the food and beverage products.*

*Therefore, we believe the advertisement breaches clause 4.6 of the Initiative.*

*Action requested by the ASB*

*For the reasons discussed above, we ask the ASB to request Hungry Jack’s to withdraw the advertisement on the basis that it breaches the Initiative.*

*As this is the second time Hungry Jack’s has contravened the Initiative in a matter of weeks, we also ask the ASB and/or AANA to seek an undertaking from Hungry Jack’s that it will refrain from advertising unhealthy products to children in breach of the Initiative in the future, and to outline what action will be taken to ensure ongoing compliance with the Initiative by quick service restaurant advertisers.*

**THE ADVERTISER’S RESPONSE**

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

*We were aware that the meal did not meet the criteria however an alternative was still not available. Our response to the complaint therefore is basically identical to that of Complaint 573/09 (below) with the significant difference being that the TVC was in fact modified considerably to reduce the amount of time and exposure dedicated to the toy, despite our continued assertion that the toys included in our Kids Club meals do not constitute 'premiums' as they are not sold separately, are not available at an individual price at any other location, and have been an integral part of these meals for 20+ years. Another example of self regulatory action.*

*We have in test new meal components that will meet the criteria and I assure you there will not be a recurrence of this in the future. The ad in question is no longer on air.*

*Response to 573/09:*

*Hungry Jack's takes its corporate responsibilities very seriously, particularly when it comes to advertising to children.*

*We cannot deny that the meal promoted in this TVC did not fully comply with the Nutrition guidelines as stated in the Initiative, however as the initiative came into effect during the production of this activity we did make last minute changes to the meal advertised to make it the most appropriate we could at the time. The complaint details the Saturated Fat level of the meal at .64g/100Kj whereas the guidelines set a level of .4g/100Kj. The calculation is actually .56g/100Kj which is still over the limit. We also believe that the overall nutritional details of this meal demonstrates that the meal is in fact more than appropriate in terms of standard Recommended Daily Intake calculations.*

	Energy	Protein	Fat	Saturated Fat	Carbohydrates	Sugar	Sodium
Measure	571Kj	8.8g	6.5g	3.2g	10.8g	.4g	357mg
Percentage RDI	6.60%	17.60%	9.30%	13.30%	3.50%	0.40%	17.50%

*We are presently finalizing a new Kids Meal combination to test early in the new year that will meet the criteria set in the initiative.*

*Regarding the posting of a Company Action Plan, this has been completed and was submitted to AANA for inclusion on the website on the 27th October 2009.*

*As you would be aware, the Kids Meals have been a standard menu item at our restaurants for over 25 years. Whilst it has undergone modifications over the years, the general content of the meal has not changed, that is a burger, fries, drink and a toy. The toys themselves change over the year to introduce some variety and this sometimes includes tie-ins to various movies or TV programmes, however, a toy has always been an integral part of the Kids Meal. It is not an incidental item or "premium". These toys are not available to be sold separately and therefore have no value in themselves.*

*The Kids Meals are a standard menu item available all year round and always come with some sort of toy, irrespective of any TV advertising. Through most times of the year, we have no TV advertising for our Kids Meals at all and they only appear on our menu boards in store. In fact in an average year we have only 8 weeks of Kids Meal promotion, which hardly qualifies Hungry Jack's as targeting children or being promoters of 'pester power'.*

*When there is a tie-in to a movie or television programme, we sometimes make a TV commercial to promote the fact that the toy available during this period with the Kids Meal is a toy with a relationship to the programme or movie. When we do, we generally have to take some time in the commercial to explain who the characters are and their role so they can be understood as toys in their own right, however the meal being offered is also clearly displayed.*

*We believe that there are many issues at play today in regards to obesity, exercise and active lifestyle being equally if not more important than diet alone, it is a matter of balance. If a parent allows a child one visit to Hungry Jack's on the four occasions a year that we advertise Kids Meals to children, we believe that would be considered a part of that overall balance.*

*We respectfully request that this complaint be dismissed on the above grounds. As you are also aware the Television Commercial in question has not been on air for the last 9 weeks.*

## **THE DETERMINATION**

The Advertising Standards Board ('the Board') considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSR Initiative).

The Board viewed the advertisement and noted the complainant's concerns that the advertisement does not meet the nutritional criteria for assessing children's meals and was in breach of sections 4.1, 4.2 and 4.6 of the QSR initiative.

The Board noted that the QSR Initiative is designed to ensure that when Quick Service Restaurants advertise to children, they must include food and beverages that represent healthier choices. The Board agreed that the advertisement is directed to children having regard to the broadcast times, the product and the themes and content of the advertisement. The Board considered that the QSR Initiative would apply to this advertisement.

The Board noted that the advertiser had acknowledged the complaint and had since withdrawn the advertisement. The advertiser has advised that it is developing new meal components that will meet the criteria under the QSR initiative.

The Board noted the complainant's concern that the advertisement breaches clause 4.1 of the QSR Initiative on the basis that the advertised product (the food which was depicted in the advertisement) does not meet the nutritional criteria set out in Appendix 1 of the QSR Initiative. The Board noted that the advertiser stated that it was aware that the product did not meet the criteria. In light of the response provided by the advertiser, the Board determined that the advertisement does not meet the nutrition criteria set out in Appendix 1 of the QSR Initiative and therefore, does not meet section 4.1 of the QSR Initiative.

The Board noted the complainant's concern that the advertisement breaches section 4.6 of the QSR Initiative which provides that: 'Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and Section 20 of the Children's Television Standards.'

The Board noted that premium is defined as 'anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product.' The Board noted that this definition is the same as the definition in the AANA Code for Advertising and Marketing to Children (the Children's Code). Consistent with previous decisions the Board considered that the toy in the Hungry Jack's Kids Meal is not a premium as a toy is an integral part of the product that is a Kids Meal. The Board noted the complainant's concern that if this approach is taken then section 4.6 of the QSR Initiative has no effect. The Board disagreed with this interpretation and noted that there are many promotions by companies where there is a product, toy or gift that is offered 'free or at a reduced price and which is conditional upon the purchase of a regular' food product. The Board considered that section 4.6 does have effect but that it does not apply to the Kids Meal advertisement.

The Board noted that the advertisement features licensed characters 'The Simpsons'. As the advertisement does not meet the requirements of Article 4.1 of the QSR Initiative, the Board determined that the advertisement also did not meet the requirements of Article 4.2 of the QSR Initiative which requires that licensed characters not be used in advertising to children unless the food or beverage product complies with the messaging options set out in Article 4.1 which includes the requirement that the product meet the defined Nutrition Criteria.

The Board considered that there were no other provisions of the QSR Initiative which were relevant to this advertisement.

Finding that the advertisement was in breach of section 4.1 and 4.2 of the QSR Initiative, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE**

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

*Thank you for your notice, the advertisement in question has been withdrawn and I can further assure you there will be no recurrence of the breach.*