



CASE REPORT

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| 1. Complaint reference number | 427/09 |
| 2. Advertiser | McDonald's |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Advertising to Children Code - Factual presentation – section 2.4
Food and Beverage Code – untruthful/dishonest |
| 6. Date of determination | Wednesday, 9 September 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This television commercial depicts a family of four visiting McDonald's after viewing the movie Ice Age 3. The family is eating at McDonald's and the parent has a Fanta Blue Freeze and promotes a complimentary cup for children with every purchase of Goulbourn Valley Fruit Fizz.

THE COMPLAINT

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

It is fairly evident that this blue slushy drink is aimed at Children and to suggest that it is for the adults is misleading.

THE ADVERTISER'S RESPONSE

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

We have reviewed the television commercial in light of Section 2 of the AANA Advertiser Code of Ethics and also the Section 3.1 of the Food and Beverage Code (being the sections highlighted in your email). We are of the view that no breach of these sections has been committed.

We note in particular that the section of the Food and Beverage Code specified by the Complainant refers to misleading and deceptive conduct in respect of nutritional/health claims, depicting urgency or price minimisation, however the Complainant has indicated that their reason for concern is that "it is fairly evident that this blue slushy drink is aimed at children and to suggest that it is for adults is misleading". This cause of concern in our view is not covered by Section 3.1 as it does not relate to nutrition, urgency or pricing.

Nonetheless, in response to the complaint, we provide the following comments for your consideration:

1. The aim of this advertising campaign was to draw on the fact that Ice Age 3 is a PG-rated film that families would typically see together as a family group, as it is well known that this genre of animated comedy tends to be popular with adults and children alike, and that it is uncommon for children to attend the cinema without an adult. It was our intention to provide a promotional offering for adults and a promotional offering for children to tie in with the fact that this film appeals to both. As adults are typically not interested in toys or games, a frozen soft beverage was introduced as an offering to be enjoyed by adults who wanted to participate in the Ice Age 3 promotion.

2. The Fanta® Blue Freeze beverage was included with the medium and large Quarter Pounder® McValue Meal® offerings in store in order to provide a promotion which adults could participate in as part of the in-store Ice Age 3 promotion. Of course we recognise that we cannot prevent adults from purchasing this meal for their children, but our intention and the message in the advertising was that this meal combination was for adults. It is well known that McDonald's® combination offering for children is the Happy Meal®. The Fanta® Blue Freeze beverage is not an advertised beverage option for Happy Meals, whereas Fruit Fizz™ is. Note that customers can request Fanta® Blue Freeze be added to a Happy Meal as the beverage, but this incurs an additional cost as it is not part of the "set" Happy Meal menu displayed on menu boards in store (and is therefore not an advertised option that children would generally be aware of).

3. The promotion included two aspects for children – first, the Ice Age 3 Happy Meal included an Ice Age 3 character toy, secondly, with any purchase of a Fruit Fizz product (being a beverage made from fruit juice and sparkling water, with no added sugar or colouring), customers received a free colour reveal tumbler. There were four tumblers in all, each featuring a different Ice Age 3 character design. The colour reveal tumbler was not available with the Fanta® Blue Freeze beverage.

4. In the television commercial, we see a family of four visiting McDonald's after seeing Ice Age 3 at the cinema together. The father character in the scenario is enjoying a medium Quarter Pounder meal with a Fanta® Blue Freeze beverage. The child in the scenario is seen playing with a Happy Meal toy but is not seen to be eating or drinking at all, however he does have a Fruit Fizz cup in front of him on the table. The voiceover says: "There's the new Fanta Blue Freeze with your Quarter Pounder meal, for the grown-ups, and a free tumbler with any Goulburn Valley Fruit Fizz purchase for the kids".

5. Given that the visual shows only an adult drinking the Fanta® Blue Freeze beverage and the voice over describes the beverage as being for "the grown-ups", with the child in the commercial not shown touching, drinking or even looking at the Fanta® Blue Freeze beverage at all, we cannot see how it is "fairly evident" that this television commercial "aims" the beverage at children.

6. In addition, this television commercial was placed on air during family time slots as opposed to the time slots which are traditionally regarded as children's time slots (i.e. Saturday mornings or the after school weekday time slot).

7. To summarise, we are not of the view that this television commercial misleads or deceives consumers into believing the beverage is for adults when really it is aimed at children as the Complainant has alleged. The beverage is not aimed at children, and the commercial in no way suggests that it is.

In any event, this promotion is now at an end and I am instructed that there are no plans to screen this commercial again.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainant's concern that the advertisement was misleading because the advertisement was indirectly advertising the ice drink to children.

The Board reviewed the advertisement and considered whether the advertisement was in breach of section 3.1 of the AANA Food and Beverages Advertising and Marketing Communications Code. Section 3.1 of the Code states:

"Advertising and/or Marketing Communications directed towards Children for Food and/or Beverage Products shall be particularly designed and delivered in a manner to be understood by those Children, and shall not be misleading or deceptive or seek to mislead or deceive in relation to any nutritional or health claims, nor employ ambiguity or a misleading or deceptive sense of urgency, nor feature practices such as price minimisation inappropriate to the age of the intended audience."

The Board noted the advertiser's response and empathised with the complainant's concern that

viewers might confuse that the ice drink was intended for adults. However, the Board felt that the advertisement expressly states that the ice drink was for adults and that the free tumbler was available for children. On this basis, the Board agreed that the advertisement was not misleading or deceptive and did not breach section 3.1 of the Food and Beverages Code.

The Board then 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 McDonalds'.

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 McDonald's is not only for children and the theme and visuals used in the advertisement, were aimed at families and not primarily directed towards children and was therefore not within the scope of the Children's Code.

Finding that the advertisement did not breach the Code on any other grounds, the Board dismissed the complaint.