



CASE REPORT

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| 1. Complaint reference number | 572/09 |
| 2. Advertiser | McDonald's |
| 3. Product | Food & Beverage |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Advertising to Children Code - Factual presentation – section 2.4
Advertising to Children Code – Premiums – section 2.4
Food and Beverage Code (Children) – premium
QSR – Advertising and Marketing Message
QSR – Premium Offers |
| 6. Date of determination | Wednesday, 9 December 2009 |
| 7. DETERMINATION | Upheld – discontinued or modified |

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement depicts an animated monkey lifting up items with his tail and then looking in the mirror. He is depicted in the forefront with items of food (a wrap, a Happy Meal Box, apple slices and a drink) towards the far back. The voiceover says "*Did you know that a monkey can pick up stuff with his tail but not recognise his own reflection or that inside your happy meal is a mix n match cartoon container featuring one of your favourite characters*". The monkey leaves the scene and two toys come from out of the Happy Meal box and into the foreground of the screen.

THE COMPLAINT

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

Advertisements in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children. We are concerned about rising rates of overweight and obesity in Australia, particularly in children.

We are writing to complain about two McDonald's advertisements that we consider to be in breach of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (Initiative).

The relevant advertisements, all broadcast on television in September 2009, are identified as follows:

1. McDonald's Happy Meal (Stuff To Know - Cartoon Network- 572/09).

We are of the view that:

1. Each of these advertisements breach clause 4.1 of the Initiative.

1 Overview of advertisements

1.1 McDonald's Happy Meal (Stuff to know - Cartoon Network).

This advertisement promotes the availability of Cartoon Network Toys at McDonald's. It depicts an animated monkey jumping around in front of a mirror with a voice over stating, "Did you know that a monkey can hold stuff with his tail but he can't recognise his own reflection or that inside your Happy Meal is a mix and match Cartoon Network Container featuring one of your favourite

characters (the two toys are then depicted).

Throughout the advertisement the food and beverage products depicted in the background are a chicken wrap, a fruit bag and a drink (the type of drink is unclear but it may be a Fruit Fizz?).

...

2 Breaches of the Initiative

2.1 Clauses 4.1 of the Initiative- Advertising and Marketing Messaging

In our view, each of the above advertisements breach clause 4.1 of the Initiative. As you know, clause 4.1 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.

We believe that each of the above advertisements breach clause 4.1 as they are 'Advertising or Marketing Communications to Children for food and/or beverage products', yet they do not meet the 'Nutrition Criteria for assessing children's meals' outlined in Appendix I to the Initiative (Nutrition Criteria).

Advertising or Marketing Communications to Children

'Advertising or Marketing Communications to Children' is defined in clause 7 of the Initiative to mean such communications which, 'having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products'. Children are defined as meaning persons under 14 years of age.

In our view, each of these advertisements are clearly Advertising or Marketing Communications to Children within the meaning of the Initiative as they feature 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). In particular:

- McDonald's Happy Meal (Stuff To Know - Cartoon Network)*

This animated advertisement promotes fun toys to collect that are based upon characters from the dedicated children's channel, Cartoon Network. It also features a fun monkey that would primarily attract the attention of children. It features a voice over that speaks to children by asking whether they know certain facts about monkeys ("Did you know ... ") and referring to the Happy Meal as their meal (" .. inside your Happy meal. .. your favorite characters"). The colours used in the advertisement are fun bright colours that would attract children, fun colorful lettering is also used in the word "Happy Meal".

Nutrition Criteria for assessing children's meals (Appendix I to the Initiative)

The Nutrition Criteria for assessing children's meals is outlined in Appendix I to the Initiative. Only meals that meet this Nutrition Criteria may be featured in Advertising or Marketing Communications to Children.

Relevantly, for a meal to meet the Nutrition Criteria, clause 3 of Appendix I requires that the meal must not exceed maximum limits of saturated fat (0.4mg per IOOKJ), sugar (1.8g per IOOKJ) and sodium (650mg per serve).

The McDonald's Company Action Plan (which outlines how McDonalds will meet the requirements of the Initiative) states that [or a meal to be considered a healthier choice according to Appendix

1, the meal:

- *Should reflect general principles of healthy eating as defined by credible nutrition authorities; and*
- *Must comply with defined criteria for energy (kilojoules), saturated fat, sugar and sodium.*

We believe that each of the meals depicted in the relevant advertisements fail to meet the Nutrition Criteria for the following reasons.

- *McDonald's Happy Meal advertisements.*

The McDonald's Happy Meal advertisements (Stuff to Know... Cartoon Network and Box of Fun) clearly feature children's meals however the specific food and/or beverages comprising the meals in these advertisements are not clearly depicted.

Under Clause 4.1 of the Initiative, advertising to children for food and/or beverages is only permitted if the meal depicted meets the Nutrition Criteria for assessing children's meals (Appendix 1). In other words, if it cannot be determined that the food and/or beverages depicted meet the Nutrition Criteria, the advertisement cannot be determined to meet the requirements of clause 4.1.

In particular:

o McDonald's Happy Meal (Stuff to Know... Cartoon Network)

While a Happy Meal is clearly featured in this advertisement, the contents of the meal featured are difficult to identify. A chicken snack wrap and a fruit bag are clearly depicted, however the drink depicted is unclear (although it may be a Fruit Fizz?).

Given it cannot be determined that the meals depicted in these advertisements meet the Nutrition Criteria in Appendix I, it cannot be found that they meet the requirements of clause 4.1(a) or (b).

Furthermore, with respect to the McDonald's (Stuff to Know - Cartoon Network) advertisement, if the beverage depicted is a Fruit Fizz, the maximum allowable level of sugar under the Nutrition Criteria is further exceeded in this advertisement. Our calculations indicate that a Fruit Fizz contains 5.56g of sugar per 100kJ.

For all of the reasons given above, we are of the view that each of these advertisements constitute Advertising or Marketing Communications to Children, for food and/or beverages that fail to meet the Nutrition Criteria, in breach of clause 4.1 of the Initiative.

2.2 Clause 4.2 of the Initiative - Popular Personalities and Licensed Characters

2.3 Clause 4.6 of the Initiative - Premium Offers

In our view, the McDonald's Happy Meal (Stuff to Know - Cartoon Network) advertisement breach clause 4.6 of the Initiative, As you know, clause 4.6 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'

'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 recognise that this definition reflects the definition of a premium under the AANA Food and Beverages Code and the AANA Code for Advertising and Marketing Communications to Children, We are aware that the ASB has found that the definition of a 'premium' under these AANA Codes does not include toys in fast food meals such as McDonald's Happy Meals. We understand that this is based upon on the ASB's view that these toys comprise a usual part or 'integral element' of such meals as the content of these meals always includes the meal and a toy." The ASB has found that the toy is merely varied to introduce variety and provide for tie-ins to movies, In Case Report

103/05 it was also considered relevant by the ASB that the toys were not available to be sold separately and had no value in themselves.

We would, however, urge the ASB to reconsider the meaning of a premium in the context of this Initiative. If, in this Initiative, the definition of premium does not include toys in children's meals such as Happy Meals clause 4,6 would appear to have no application and be superfluous. By including clause 4,6 in the Initiative, it must be presumed that it is intended to have some application and effect.

In our view, while a toy may typically be included in children's meals the toy does vary (i.e, it is not the same product) and it is not necessary to the completeness of the meal. McDonald's are fast food restaurant franchises, whose businesses are selling food not toys, There is no reason why non-food or beverage products should be considered to be integral to, or necessary to the completeness of, a children's food and/or beverage product. These toys are clearly aimed at increasing 'pester power' and encouraging repeat purchasing. It is highly likely that children are influenced to pester their parents to purchase the meal due to their desire to obtain the premium rather than the product itself.

We would also note that it is our understanding that the toys available in Happy Meals are now ordinarily sold separately upon request. These products do have their own value, They may be purchased independently of a Happy Meal OR obtained for free on condition of a meal purchase.

For all of these reasons, there is no reason to exempt toys in fast food meals such as Happy Meals from the meaning of a 'premium' simply because the meals may always include a toy of some variety.

If it is accepted that the toys in McDonald's Happy Meals meet the definition of a premium for the purpose of clause 4.6 of the Initiative, the advertisement will only constitute a breach of clause 4.6 if the advertisement for the premium offer is in a medium directed primarily to children, and the reference to the premium is more than merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and CTS 20 (Disclaimers and Premium Offers).

In our view, the advertisements for the premiums are contained in mediums directed primarily to children. There can be no doubt that they are contained in a medium as the definition of 'medium' in the initiative includes television.

Both of these advertisements were broadcast during peak children's viewing times throughout September 7. The McDonalds Happy Meal (Stuff to Know - Cartoon Network) advertisement was broadcast regularly during the popular children's viewing time of Saturday morning and during programs directed primarily to children, including Sea Princesses (C), Totally Australia (G), Horse Sense (G), Dork Hunters from Outer Space (G), iCarly (G), The Fox and the Hound (G) and Roll Bots (G). OzTam data demonstrates that 8am to 11am is one of the peak viewing times for children (aged 0 to 14 years), with average numbers of child viewers ranging from 185,000 to 192,000.

We also consider it relevant that, as discussed above, these advertisements featuring the premiums are directed primarily to children.

The ASB should note that the McDonald's Company Action Plan states that 'McDonalds will not advertise any Premium offers in any marketing communications to children unless the reference to the Premium is merely incidental to the food and/or beverage being advertised. Accordingly, McDonalds has not made any commitment to restrict the advertising of premium offers in mediums directed primarily to children.

We also believe that the premiums in both of these advertisements were featured in a manner more than incidental to the food and beverage product being advertised, in accordance with the AANA Codes and CTS 20 (now CTS 33 under the revised Code). The CTS only restricts the advertising of premium offers if the advertising stimulates unreasonable expectations of the product, that is when the promotion of the premium offer causes a child to be confused about what is the main product advertised and what is the premium. Under the AANA Food and Beverages Code Practice Note, only advertisements that give undue prominence to a premium, by way of making the premium the dominant feature or otherwise occupying half the advertisement, are prohibited.

We are of the view that the advertisements are featured in a manner more than incidental to the

food and beverage products being advertised for the following reasons:

- *McDonald's Happy Meal (Stuff to Know - Cartoon Network)*

In this advertisement, the promotion of the available toys occupies just over half of the advertisement and therefore should be regarded as the dominant feature. The food and beverage products are displayed only in the background and are unlikely to be perceived by children as the main product advertised. As above, children are likely to be significantly more attracted to the component of the advertisement promoting the toys than the component advertising the food and beverage products.

Given these advertisements advertise a 'premium' offer, in a medium directed primarily to children, and in a manner that is more than merely incidental to the food and beverage products being advertised, we believe that these advertisements breach of clause 4.6 of the Initiative.

3 Action requested by the ASB

For all of the reasons identified above, we request that the ASB consider whether:

- 1. Each the advertisements identified above breach clause 4.1 of the Initiative; and*
- 2. The McDonald's Happy Meal (Stuff to Know - Cartoon Network) advertisement breach clause 4.6 of the Initiative.*

THE ADVERTISER'S RESPONSE

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

McDonald's does not consider that these television commercials are in breach of the Australian Association of National Advertisers Code or the Australian Quick Service Industry Initiative for Responsible Advertising and Marketing to Children ("the QSR Code"), and we thank you for the opportunity to make submissions to the Board in support of this view.

Given the length and detail of the submission made, in order to ensure we address the relevant points raised we have summarised below what we believe are the points that the Complainant is seeking to rely on:

...2. That the "Stuff to Know – Cartoon Network" commercial breaches clause 4.1 of the QSR Code because the food and beverage depicted does not meet the nutritional criteria specified in the QSR Code, on the basis that the complainant finds the beverage depicted to be "unclear (although it may be Fruit Fizz)".

Again, the complainant's argument is that if you cannot tell what the items are then, by default, they do not meet nutrition criteria. The complainant submits that if the drink is Fruit Fizz, then the meal contains greater than the allowable amount of sugar to meet the QSR Code nutritional standards.

3. That both commercials breach clause 4.6 of the QSR Code on the basis that McDonald's Happy Meal toys should be considered a "Premium" within the meaning in the Code. The complainant is asking the Board to reverse its previous finding on this issue in Case Report 103/05 in this regard.

4. If the Happy Meal toys are considered to be a "Premium" within the meaning set out in the AANA Codes, then both advertisements are in breach of Section 20 of the CTS and section 3.6 of the AANA Food & Beverages Code.

We submit that there are essentially only two issues of relevance in the complainants submission, the first being the issue of whether the commercials offend the nutrition criteria in the QSR Code and the second being the issue of whether or not the toy contained in a McDonald's Happy Meal can be considered a "Premium" within the definitions specified in the relevant Codes. McDonald's accepts that these commercials can be considered as being "advertising or marketing communications to children" within the meaning in the AANA Codes and the QSR Code. This is not in dispute.

Accordingly, we address the two main issues below.

QSR CODE – NUTRITIONAL CRITERIA

We have provided the Board with copies of the relevant television commercials. In addition to all Australian voluntary codes and legislative regulations, McDonald’s advertising is also governed by our own internal global policies and standards. These standards provide that we must be truthful in our marketing and advertising. Accordingly, any product shown in an advertisement is always a depiction of how that product looks in ‘real life’, or where necessary, labelled for greater clarity (as per the beverage cup example below). Furthermore, as part of our commitment to improving the way we communicate with children, McDonald’s uses an internal guideline for children’s advertising where we aim to limit the amount of time food and toys are shown in any Happy Meal commercial, and instead we aim to focus on a message which supports the QSR Code objectives. As such, most of our latest Happy Meal marketing limits the amount of air time given to food, and particularly toys.

In the 15 second “Stuff to Know”, the monkey is the main feature (the food is in the background) and the toys appear for only 3 seconds.

There is nothing in the code which specifies that food products need to be shown for a set amount of time or in any particular detail, and we believe that such a requirement would offend the QSR Code as clearly it aims to put the focus on encouraging healthier choices and active lifestyles. We submit that the mere fact that the complainant could not identify the food products does not automatically mean that we are breaching nutritional guidelines. Indeed, we believe the products are identifiable – particularly because we have used footage of real products in their actual packaging.

...In any event, at the time the commercial was aired the meal depicted (consisting of a seared chicken Snack Wrap, Fruit Bag and milk with a chocolate flavoured Sipaah drinking straw) complied with the Nutritional Criteria of the QSR Code. Below please see nutritional information, compiled by an independent consultant to McDonald’s, the Food Group:

Seared Chicken Wrap, Apple Bag & Choc Sipahh

Nutrient	Per Serve	%RDI kids	%DI adults	Per 100g
Energy (kJ)	1498	20.8	17.2	430
(Cal)	359			103
Protein (g)	20.3	84.6	40.6	5.8
Fat, total (g)	11.2	19.3	16.0	3.2
-Saturated	4.1	21.6	17.1	1.2
Carbohydrates, total (g)	41.9	18.0	13.5	12.0
-Sugars (g)	20.1	26.8	22.3	5.8
Dietary Fibre (g)	1.8			0.5
Sodium (mg)	398	23.1	17.3	114

Earlier this month, milk with Sipaah drinking straw was deleted from the menu as we phased in a new milk beverage, Calci-Yum chocolate flavoured milk (although at the time this commercial aired, the milk with Sipaah straw was still available).

Both commercials comply with the QSR Code, as the meals depicted “represent healthier choices” in that, out of the range of Happy Meal combinations available, the products shown are healthier options as determined by the defined set of Nutrition Criteria in the QSR Code.

Therefore, with regard to numbered points 1 and 2 above, we respectfully request that the Board dismiss this complaint.

We now turn to numbered point 3 above - whether the commercials breach Clause 4.6 of the QSR Code.

Clause 4.6 of the Code provides:

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 Childrens Television Standards 2005.

“ Premium ” means “ anything offered for free or at a reduced price which is conditional upon the purchase of a regular Children’s Food or Beverage Product ”.

We note that the Board considered a similar issue in case number 103 of 2005, and that the complainant is essentially asking the Board to reverse that prior decision in this instance. The complainant’s argument is that the toy in a McDonald’s Happy Meal is a “Premium” as defined by the QSR Code.

In case number 103 of 2005 (which dealt with a television commercial promoting a dog toy in a Happy Meal) “...the Board noted and agreed with the advertiser’s comments that the “toy” component of a Happy Meal is not a Premium as defined in the Code as it forms part of the Product. The Board was of the view that the advertisement was clearly for the Product and it made clear that the toy component was only a part of that Product”.

We maintain our position on this issue, that the toy in a McDonald’s Happy Meal is part of the Product and not a Premium because:

- 1. It is not offered for free or at a reduced price. It is a part of the meal paid for by the consumer, it comprises a part of the Happy Meal product; and*
- 2. It is not conditional upon the purchase of a food or beverage product. It can be purchased separately if so desired, without any food or beverage required to be bought.*

The complainant’s submission that toys can be purchased separately supports our position, at no time is a toy advertised as being a free gift or discounted offer with purchase nor is the purchase of the toy conditional upon buying food or beverages. It is a part of the traditional McDonald’s Happy Meal, but if you do not want the meal but still would like the toy it can be purchased without the purchase of any other product from any McDonald’s restaurant at any time. We do not force people to buy the food in order to obtain the toy, so it cannot be properly characterised as Premium.

With respect, we believe that the complainant’s comments as to whether or not the toy contributes to the completeness of the meal are not relevant. The toy has always been a part of the Happy Meal product and is not a Premium within the meaning ascribed by the QSR Code.

If the Board does find that the toy is a “Premium” pursuant to the QSR Code, in the alternative we submit that McDonald’s is not in breach of Section 20 of the CTS and section 3.6 of the AANA Food & Beverages Code, as in both commercials the toy is shown as merely being incidental to the food and beverage being advertised.

In the “Stuff to Know” commercial, the meal is displayed in the background for the entire commercial, with the toys only appearing for approximately 2.5 seconds at the end of the 15 second commercial. We reject the submissions in the last paragraph of the Complainant’s complaint – as the Board can verify, the toys in the “Stuff to Know” commercial are on screen for no longer than 3 seconds and not for “over half of the advertisement” as alleged by the Complainant. As noted above, McDonald’s has adopted an internal policy in line with our commitment to our Company Action Plan to reduce the amount of air time given to toys in our Happy Meal commercials and these two commercials reflect that initiative.

We therefore respectfully submit to the Board that neither of these television commercials breach clause 4.6 of the QSR Code, section 20 of the CTS or section 3.6 of the AANA Food & Beverages Code, first because they do not feature a Premium, and in the alternative because the Premium is only incidental to the food and beverage being advertised.

McDonald’s was a key participant in the formation and implementation of the QSR Code, and we are committed to compliance with the QSR Code and to continuous improvement in the way we communicate with our customers. As an organisation we are committed to advocating a balanced, active lifestyle for everyone, and where appropriate reflecting this in our marketing and advertising.

We thank the Board for the opportunity to respond to the complaint, and await the Board’s

decision in this matter.

THE DETERMINATION

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

The Board noted that the QSR Initiative is designed to ensure that Quick Service Restaurants only advertise healthier food choices to children. The Board agreed that the advertisement is an advertisement directed to children, based on the broadcast times, the product and the themes and content of the advertisement. The Board therefore determined that the QSR Initiative applies.

The Board noted the complainant's concern that the advertisement is unclear as to what products it is advertising and therefore breaches article 4.1 of the QSR Initiative. The Board viewed the advertisement and considered the particular foods in the advertisement - a wrap, apple slices and a drink. The Board noted that McDonalds has advised that the drink is a milk with a sippah straw. The Board noted that the QSR initiative requires that the products advertised meet the relevant nutrition criteria. The Board noted that the Independent Arbiter, Dr Bruce Neal has advised the Board that 'the response from McDonald's which specifies the products depicted in the adverts do not breach the nutritional criteria defined in the Code.'

The Board determined that the advertisement does represent healthier choices and complies with section 4.1(a) 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 a Happy Meal is not a premium as a toy is an integral part of the product that is a Happy 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 in this instance the McDonald's Happy Meal advertisement was within the parameters of the Initiative.

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

The Board then considered whether the advertisement complied with the AANA 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 other than via internet, direct mail, point of sale, packaging or direct distribution to individuals, 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 McDonald's Happy Meals "in a manner calculated to promote...that product". Having concluded that the material is an "advertisement" 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”.

“Children” are defined in the Children’s Code as being 14 years old or younger. The Board determined that the Happy Meal toy is a “good” targeted toward and having principal appeal to Children and accordingly is a Product.

The Board then considered 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”.

The Board noted that having regard to the product, music, theme and visuals used, the advertisement was directed primarily towards children.

The Board considered whether the advertisement complied with section 2.12 of the Children’s Code. Section 2.12 of the Children’s Code provides that:

“Advertisements or Marketing Communications to Children which include or refer to or involve an offer of 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;

(c) must make the terms of the offer clear as well as any conditions or limitations; and

(d) must not use the premiums in a way that promotes irresponsible use or excessive consumption of the product.’

As noted above '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 determined that the toys which come with the Happy Meal do not fall within the Children’s Code definition of ‘Premium’ as they are part of the Happy Meal – not a product that is additional to the regular product.

The Board then considered whether the advertisement breached clause 2.2 of the Children’s Code. Clause 2.2 requires that:

Advertisements to children:

a) Must not mislead or deceive children

b) Must not be ambiguous; and

c) Must fairly represent, in a manner that is clearly understood by children;

i) The advertised product

ii) Any features which are described or depicted in the advertising or marketing communication;

iii) The need for any accessory parts; and

iv) that the Advertising and Marketing Communication is in fact a commercial communication rather than program content, editorial content or other non-commercial communication.

The Board considered whether the advertisement clearly represented the advertised product, noting that section 2.2(c) requires that the advertisement must represent the product 'in a manner that is

clearly understood by children'.

The Board considered that in the advertisement the components of the Happy Meal were arranged in the background of the advertisement and are a 'passive' component of the advertisement. The Board considered that for children, particularly younger children, the actions of the monkey are the primary focus of the advertisement. Once the monkey departs the scene, the focus of the advertisement is the voiceover talking about toys and the appearance of the toys. The Board considered that despite the presence of the Happy Meal components in the advertisement at all time, the advertisement would not represent 'in a manner that is clearly understood by children' - particularly young children, the advertised product. The Board determined that the advertisement breached section 2.2(c)(i) of the Children's Code.

The Board considered that the advertisement was not misleading and did not otherwise contravene community standards.

The Board then considered whether this advertisement breaches section 2 of the Advertiser Code of Ethics (the "Code"). The Board considered that there were no issues under any of the sections of the Code that raised issues of concerns in relation to this advertisement.

Finding that the advertisement breached section 2.2(c) of the Children's Code, the Board upheld the complaint.

ADVERTISER RESPONSE TO DETERMINATION

Following receipt of the Board's determination the Advertiser responded as follows:

I confirm that the television commercial "Stuff To Know - Cartoon Network" was no longer being shown at the time the complaint was dealt with, and we have no plans to air it again as that particular promotion has ended.