



## **CASE REPORT**

1. Complaint reference number	72/09
2. Advertiser	Souvlaki Hut
3. Product	Restaurants
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 11 March 2009
7. DETERMINATION	Dismissed

### **DESCRIPTION OF THE ADVERTISEMENT**

*This television advertisement from Souvlaki Hut promotes its "Kids eat free" policy. Scenes of children eating and shots of the food on offer are shown throughout the advertisement. Food shown includes souvlaki, pita breads, dips, fresh salads, calamari rings and chips. A voiceover also tells viewers about the menu options and three children are shown several times during the advertisement saying: "And kids eat free". The advertisement ends with a man saying: "Yes, that's right kids eat free" beside words that provide address and contact details of the company.*

### **THE COMPLAINT**

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

*None of the dishes in the advert could be described as healthy, with the possible exception of a salad, however even this appears to contain large amounts of feta cheese and salad dressing. As the advert is clearly aimed at feeding Souvlaki Hut meals to children, I think the health-related claim is irresponsible and misleading to parents.*

### **THE ADVERTISER'S RESPONSE**

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

#### **THE COMPLAINT**

*The Complaint states "after showing dishes including souvlakis, deep fried calamari and chips, the commentator promotes the food as being healthy".*

*The Complaint also states that "none of the dishes in the advert could be described as healthy, with the possible exception of a salad, however even this appears to contain large amounts of feta cheese and salad dressing. As the Advert is clearly aimed at feeding Souvlaki hut meals to children, I think the health related claim is irresponsible and misleading to parents."*

### **RELEVANT CODES**

*Section 2 of the AANA Code of Ethics ("The Code") has been cited as relevant. In particular Section 2.6 provides that advertising shall not depict material contrary to Prevailing Community standards on health and safety.*

*Section 2.6 of the AANA Food and Beverages Advertising & Marketing Communications Code ("Food and Beverages Code") which provides, inter alia, that advertising claims relating to nutrition and health benefits shall be specific to the promoted products and accurate, has also been cited as relevant.*

AANA Code for Advertising & Marketing Communications to Children ("Children's Code") has also been submitted as possibly being relevant.

### *THE ADVERTISEMENT*

The advertisement in question is 30 seconds in duration and is set in a Souvlakihut restaurant. It contains a mixture of images of children eating Souvlakihut menu items and images of individual Souvlakihut dishes and contains a voice over outlining the terms of the promotion.

The terms of the promotion are also displayed three times for a total of 10 seconds during the advertisement.

The voice over uses the word "healthy" once in the following context: "it's tasty, it's healthy and authentic Greek cuisine". This line occurs 9 seconds into the commercial and the associated visual shows children laughing but not eating any particular Souvlakihut dish. The inference is that Souvlakihut meals are generally more healthy than other take away or fast food options.

The advertisement shows at least ten different Souvlakihut menu dishes including:

- An assorted platter of salads and souvlaki meats and fruit juice
- An assorted platter of salads, meats, pita, dips and lemon
- A child eating a regular size souvlaki containing salad
- Pita breads and various dips including hommous and tatziki (traditional Greek dips)
- Grilled haloumi (a traditional Greek style cheese) with salad
- A traditional Greek salad
- Meatballs and chips
- Deep fried calamari and chips.

Souvlakihut accepts that the meatball and calamari dishes would not be considered healthy by current community standards.

However Souvlakihut is confident that the general public would interpret the single reference to "healthy" in the advertisement as being an inference that Souvlakihut food is generally more healthy than the food sold by its direct competitors rather than a specific or detailed claim about the nutritional value of any particular Souvlakihut menu item.

### *GENERAL COMMENTS IN RESPONSE TO THE COMPLAINT*

Souvlakihut competes in the Quick Service Restaurant ("QSR") segment of the take away food market. Souvlakihut has built a reputation in this market segment as being a more healthy option relative to its main competitors. Souvlakihut regularly conducts market research and speaks to consumers and the overwhelming majority of responses regard Souvlakihut as being a more healthy fast food option than other competitors in the QSR market. Souvlakihut is confident that the general public would interpret the single reference to "healthy" in the advertisement as being an inference that Souvlakihut food is generally more healthy than the food sold by its direct competitors.

In relation to the claim in the Complaint that the advertisement is aimed at feeding Souvlakihut meals to children, Souvlakihut submits that the advertisement is aimed at parents, not children and attempts to encourage parents to eat at Souvlakihut restaurants by promoting a family friendly environment and offering the average family the opportunity to have a quality, relatively healthy fast food meal together as an occasional treat that represents great value for money. This submission is supported by the conditions of the promotion that require an adult to be present and for the family to eat in the restaurant as opposed to "take away".

### *HAS THE ADVERTISEMENT BREACHED THE CODES?*

Souvlakihut takes it responsibility as a corporate citizen very seriously and believes it is important to provide sufficient information to its consumers to allow them to make informed choices about its products.

#### *1. Sections to which the Complaint Applies*

*Souvlakihut treats any complaint with the greatest of respect and always endeavours to fully understand the basis for any concern.*

*Souvlakihut submits that in relation to:*

*(a) Section 2.6 of the Code*

*the advertisement does not depict material contrary to Prevailing Community Standards on health and safety.*

*Souvlakihut has invested considerable resources to ensure that its products exceed community expectations on health and safety including continuing efforts to reduce the amount of saturated fat and sodium in their products in accordance with the Australian Dietary Guidelines as prepared by the National Health and Medical Research Council.*

*Souvlakihut also conducts regular reviews of the Australia New Zealand Food Standards Code and the Australian Dietary Guidelines to ensure that they continually produce exceptional quality products that are as safe and healthy as possible.*

*(b) Section 2.6 of the Food and Beverages Code*

*After detailed consideration Souvlakihut submits that the single reference to the word "healthy", viewed in the overall context of the advertisement carries the clear implication that Souvlakihut menu items are simply generally more healthy than their competitors and is not an attempt to make a detailed or specific nutritional benefit claim in relation to any single item. In that context, Souvlakihut submits that claim made in the advertisement is accurate. Evidence to support this claim is referred to in the section of these submissions headed "General Comments in Response to the Complaint".*

*Souvlakihut provides detailed and concise nutritional information in relation to all menu items in each store and also in the menu section of its website, in an easy to read, clear and concise format, so as to allow consumers to make accurate and informed decisions about the nutritional values of its food.*

*Souvlakihut also features a promotion in store and on the web site listing seven souvlakis that contain less than 7 grams of fat in a further effort to provide healthy alternatives to consumers.*

*We have also been instructed that, in an attempt to respond to this Complaint Souvlakihut has already taken the following action:*

*The Voice over in the advertisement has been altered to remove the single use of the word "healthy".*

*The promotion will be expanded to include the option of a Greek salad or garden salad as one of the free children's meals.*

*Souvlakihut also intends to place independent evidence on its website and to make available in stores information on the health benefits of eating Greek food generally and the importance of exercise and eating a balanced diet.*

## *2. Other Sections of the Codes Which May Apply*

*(a) Section 2.4 of the Code, Section 2.9 of the Food and Beverages Code and the Children's Code*

*It is submitted that that the Children's Code does not apply to this particular advertisement as the advertisement is targeted at parents and not children. The depiction of children eating in the advertisement serves to highlight the benefit to parents of taking part in the promotion, that is, a low cost family outing where children eat for free. Further, Souvlakihut restaurants have a reputation for being very family friendly places.*

*It is a condition of the promotion that an adult must spend \$15.00 in order to take part in the promotion. It is submitted that the promotion could not be said to be principally aimed children if the participation of an adult is a necessary precondition.*

*Lastly, children are unlikely to visit a Souvlakihut restaurant without being in the company of a responsible adult or parent.*

*We note that Section 2.4 of the Code provides that if the Children's Code applies then Section 2.6 of the Code, which is one of the sections of the Code cited by the Board as being relevant to the advertisement, does not apply.*

*However, in the event that the Board determines that the Children's Code does apply then Souvlakihut submits that in relation to:*

*(i) Section 2.3 of the Children's Code*

*the advertisement does not contravene Prevailing Community Standards for the reasons set out in section 1(a) above of these submissions, Souvlakihut submits that the advertisement actually reinforces family values and positive family time, such as sharing a meal, and that the general public regards families spending quality time together as a good thing*

*(ii) Section 2.2 of the Children's Code*

*the advertisement does not mislead or deceive Children for the reasons set out in section 1(b) above of these submissions.*

*(iii) Section 2.7 of the Children's Code*

*the advertisement does not undermine the authority, responsibility or judgement of parents or carers, nor contain an appeal to Children to urge their parents or carers to buy the Souvlakihut products for them.*

*the advertisement is aimed at parents and states the terms and conditions of the promotion clearly. This contention is supported by the conditions of the Campaign that require an adult to be present to qualify for the promotion. The conditions of the promotion are displayed as text on screen three times during the advertisement for a total of one-third of the total advertisement duration.*

*There is no statement in the advertisement urging children to appeal to their parents or carers to take them to a Souvlakihut restaurant.*

*(iv) Section 2.15(a) of the Children's Code*

*the advertisement does not encourage nor promote inactive or unhealthy eating or drinking habits. There is nothing in the advertisement that suggests Souvlakihut menu items should not be consumed in moderation or in place of a balanced diet or any other inference that could be said to undermine the importance of healthy or active lifestyles.*

*In relation to section 2.15(b) of the Children's Code, we have addressed compliance with the Code and the Food and Beverages Code elsewhere in these submissions.*

*(b) Section 2.8 of the Code, Section 2.15(b) of the Children's Code (if applicable) and the Food and Beverages Code Souvlakihut submits that in relation to:*

*(i) Section 2.1 of the Food and Beverages Code*

*the advertisement is truthful and honest, is not and has not been designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, has been communicated in a manner appropriate to the level of understanding of the target audience of the advertisement with an accurate presentation of all information including any references to nutritional values and/or health benefits. The basis for these submissions are as set out in section of these submissions headed "General Comments in Response to the Claim" and sections 1(a) and 1(b) above of these submissions.*

*(ii) Section 2.2 of the Food and Beverages Code*

*the advertisement does not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of products or portion sizes disproportionate to the*

*settings portrayed or by means otherwise regarded as Prevailing Community Standards. The basis for these submissions are set out in sections 1(a) and 2(a)(iv) above of these submissions.*

*(iii) Section 2.3 of the Food and Beverages Code*

*if the Board determines that the use of the word "healthy" in the advertisement constitutes what an Average Consumer, acting reasonably, might interpret as a health or nutrition claim, then Souvlakihut has resolved the issue by removing the word "healthy" from the advertisement.*

*(iv) Section 2.4 of the Food and Beverages Code*

*if the Board determines that the use of the word "healthy" in the advertisement constitutes nutritional or health-related comparisons, then this is done in a non-misleading and non-deceptive manner clearly understandable by an Average Consumer. This basis for this submission is as set out in the section of these submissions headed "General Comments in Response to the Claim" and section I (b) above of these submissions*

*(v) Section 3 of the Food and Beverages Code*

*this Section of the Food and Beverages Code does not apply as the advertisement is not directed towards Children. The basis for this submission is as set out in section of these submissions headed "General Comments in Response to the Claim" and section 2(a) above of these submissions.*

*However, in the event that the Board determines that Section 3 of the Food and Beverages Code does apply then Souvlakihut submits that in relation to:*

*(A) Section 3.1 of the Food and Beverages Code*

*the advertisement has been designed and is delivered in a manner to be understood by Children and is not misleading or deceiving or seeking to mislead or deceive in relation to any nutritional or health claims. The basis for these submissions are as set out in the section of these submissions headed "General Comments in Response to the Claim" and section 1(b) above of these submissions.*

*(B) Section 3.2 of the Food and Beverages Code*

*the advertisement does not improperly exploit Children's imaginations in ways which might reasonably be regarded as being based upon an intent to encourage those Children to consume what would be considered, acting reasonably, as excessive quantities of the products. The basis for these submissions are as set out in section 2(a)(iv) above of these submissions.*

*(C) Section 3.4 of the Food and Beverages Code*

*the advertisement does not aim to undermine parents and/or other adults responsible for a child's welfare in their role of guiding diet and lifestyle choices. The basis for this submission is as set out in section 2(a)(iii) above of these submissions.*

*(D) Section 3.5 of the Food and Beverages Code*

*the advertisement does not appeal to Children to urge their parents and/or other adults responsible for a child's welfare to buy particular products for them. The basis for this submission is as set out in section 2(a)(iii) above of these submissions.*

*Souvlakihut further submits the Campaign reinforces positive family values by offering the average family the opportunity to have a quality, relatively healthy fast food meal together as an occasional treat that represents great value for money. This submission is supported by the conditions of the promotion that require an adult to be present and for the family to eat in the restaurant as opposed to "take away".*

*In light of the above, we respectfully request that the Complaint be dismissed*

**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 claimed that the products at the store are 'healthy' while depicting images of deep fried food.

The Board noted the advertiser's response, in particular that they are removing the reference to 'healthy' from the advertisement, and that a reasonable consumer would not consider the reference to 'healthy' as a claim about the nutritional content of any particular food.

The Board noted that the only relevant issue under the Code is whether the advertisement depicts material that contravenes prevailing community standards on health and safety. The Board considered that the depiction of various food products in conjunction with a short reference to 'healthy' did not contravene any prevailing community standards on health as the advertisement depicted a range of foods or varying nutritional profiles and ingredients and made no suggestion about inappropriate consumption of those foods. The Board determined therefore that the advertisement did not breach section 2.6 of the Code.

The Board considered that the advertisement is not directed at children, but rather is directed at an adult market encouraging families to eat at the restaurant as children eat free. On the basis that the advertisement is not directed to children the Board determined that the AANA Code for Advertising to Children does not apply to this advertisement.

The Board then considered whether the advertisement complied with the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code). The Board considered that the only issue of relevance is the use of the word 'healthy'. The Board noted that the word was used only once in the advertisement, that the advertisement depicted a range of foods with varied nutritional profiles and that the word 'healthy' was not used in conjunction with any particular food.

The Board considered that although the use of the word 'healthy' is not necessarily desirable, the use of the word in this advertisement was not used in relation to any particular food, was not dishonest and would not mislead or deceive reasonable consumers as to the nutritional profile or health benefits of any particular food. The Board noted that it is possible to have a healthy diet with, for example, the occasional, moderate serve of calamari and chips. The Board considered that the use of the word 'healthy' in this particular advertisement did not breach prevailing community standards and did not breach section 2.1 of the Food Code.

The Board also considered that the use of the term 'healthy' in this particular advertisement would not be interpreted by an average consumer, acting reasonably, as a health or nutrition claim and that section 2.3 of the Food Code did not apply. The Board determined that the advertisement did not technically breach the Food Code, but commended the advertiser for voluntarily removing the word "healthy" from current and future advertising.

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