



CASE REPORT

1. Complaint reference number 73/08
2. Advertiser Hungry Jacks (Kids Club Meals - Golden Compass)
3. Product Restaurants
4. Type of advertisement TV
5. Nature of complaint Advertising to Children Code - Food & beverages – section 2.4
Advertising to Children Code – Premiums – section 2.4
Food and Beverage Code (Children) – premium
6. Date of determination Wednesday, 9 April 2008
7. DETERMINATION Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement promotes the Kids Club Meal in association with The Golden Compass movie. Throughout the advertisement, scenes from the movie provide the background while the voiceover explains "Hey kids, let the Golden Compass show you the way to Hungry Jacks, where you can meet the animal characters from the new Golden Compass movie. Buy a Kid's Club Meal and you'll get a hamburger, small fries and a small drink plus a Golden Compass animal character toy. There are four to collect. Roar into Hungry Jacks and get your Golden Compass Kids Club Meal today!

THE COMPLAINT

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

The advertisement urges children to hurry to Hungry Jacks "today" to meet the Golden Compass animal characters and buy a Golden Compass Kids Club Meal. The intended audience for the advertisement and the intended market for the Hungry Jacks Kids Club Meal and Golden Compass animal character toys, clearly includes children who would be too young to go to Hungry Jacks or buy the Kids Club meal independently. Therefore, clearly the advertisement implicitly appeals to children to urge parents to take them to Hungry Jacks and buy them a Kids Club Meal. The offer of the free animal character toy is designed to encourage children to desire the Kids Club Meal, and thus to pressure parents to purchase the meal for them, and use of the word "today" conveys a sense of urgency. Therefore, clearly the advertisement appeals to children to urge parents to buy a Hungry Jacks Kids Club meal for them, in breach of clause 3.5 of the Food and Beverages Code. The advertisement promotes the offer of the Golden Compass animal character toys, which are free with purchase of a Hungry Jacks Kids Club Meal. Therefore clearly the advertisement features a 'premium'. The AANA Code for Advertising to Children defines "premium" as "anything offered free or at a reduced price and which is conditional upon purchase of a regular product". The advertisement promotes the offer of the Golden Compass animal character toys, which are free with purchase of a Hungry Jacks Kids Club Meal. Therefore clearly the advertisement features a "premium". The AANA Food and Beverages Code Practice Note states that "(i)n testing whether an advertisement and/or marketing communication features ingredients or premiums that are not an integral part of the product or service, the Board will consider the ingredient or premium is given undue prominence by way of being made the dominant feature or otherwise occupies more than half of the advertisement". This interpretation suggests a different meaning of clause 3.7 than a literal reading of the clause, which provides that advertisements must not "feature" premiums that are not integral elements of products. This wording does not indicate that a premium must be the dominant feature of the advertisement, or must occupy more than half of the advertisement. Normally practice notes are intended to act merely as guides to interpretation or regulatory

instruments, and not to override or substantively change the meaning of provisions of main instruments. However, even if in this case the practice note is intended to change the literal meaning of clause 3.7, the advertisement nevertheless "features" a premium for the purpose of the clause. The main purpose of the advertisement is clearly to promote the offer of the Golden Compass animal character toys with the Kids Club Meal, and the majority of the advertisement is devoted to promotion of Golden Compass and the animal character toys. The first ten seconds of the advertisement, which is 30 seconds in total length, features scenes from the film while the narrator urges children to "let Golden Compass show you the way to Hungry Jacks where you can meet the animal characters from the new Golden Compass movie". Just four seconds of the advertisement are then devoted to showing each Golden Compass animal character toy and informing children that there are four to collect. The remainder of the advertisement features film scenes and the film title, aside from approximately one second in which the Hungry Jacks logo is shown. The Golden Compass animal character toys are not an integral element of the Hungry Jacks Kids Club meal for the purposes of clause 3.7. The AANA Food and Beverages Code Practice Note states that "(i)n determining whether something is an 'integral' element of a product, the Board will consider whether the element is necessary to the completeness of the product or service being offered". Clearly, an animal character toy is not necessary to the completeness of a child's meal, and Hungry Jacks is a fast food restaurant franchise, whose business is selling food not toys. Although Kids Club Meals regularly include premiums, the type of premium included varies. As such, Golden Compass animal character toys are not a regular component of the Kids Club Meal, and cannot be regarded as an integral element. Therefore, we think the advertisement also breaches clause 3.7 of the Food and Beverages Code. The Obesity Policy Coalition is very concerned about advertisements, like this Hungry Jacks Kids Club Meal advertisement, which use techniques such as premium offers and popular film tie-ins to influence children to consume unhealthy food products. Hungry Jacks Kids Club Meals contain a total of 2940 kilojoules if the chosen drink is Coke, or 2825 kilojoules if the chosen drink is orange juice. This is more than a third of an average adult's daily energy requirements. The Kids Club Meals also contain 26.2 grams of fat (including 11.9 grams of saturated fat), 686 mg of sodium, and 42.2 grams of sugar (approximately 10 teaspoons) if the chosen drink is Coke, or 32 grams of sugar (approximately 8 teaspoons) if the chosen drink is orange juice. In one meal, this represents 64% of a child's (10 year old boy) recommended daily amount of dietary fat; 86% - 172% of the recommended range for sodium; and 70% of the recommended daily amount of sugar (for the Coke meal). Consequently Kids Club Meals are an unhealthy option for children.

THE ADVERTISER'S RESPONSE

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

Hungry Jack's takes its corporate responsibilities very seriously, particularly when it comes to advertising to children. It has always been our intention to comply with all the relevant guidelines in regard to advertising to children and we believe the commercial in question has not breached any of these guidelines.

As you would be aware, the Kids Club Meal has been a standard menu item at our restaurants for some 20+ years. Whilst it has undergone some modifications over the years, the general contents are a burger, some fries, a drink and a toy. The toys themselves change over the year in order to introduce some variety through tie-ins to various movies and so forth, however, a toy is always an integral part of the Kids Club Meal. It is not an incidental item or a "premium". These toys are not available to be sold separately and therefore have no value in themselves.

When there is a tie-in to a movie, we sometimes make a commercial to promote the fact that the toy available during this promotional period with the kids club meal is a toy with some relationship to the movie.

When we do, we generally have to take some time in the commercial to explain who the characters, their role in the film so that they can be understood as toys in their own right. Naturally the promoters of the movie make available to us scenes from the movie in order to clarify who these character toys are.

However the Kids Club Meal is a standard menu item available all year around and always comes with some sort of toy, irrespective of any TV advertising. Through most times of the year, we have no TV support for our Kids Club Meals at all and they are only promoted on our menu boards.

In fact, during some 8 months of the past year, we had no TV promotion of our Kids Club Meal at all, which hardly qualifies as being promoters of “pester power”.

In fact, at no time during this commercial is there any direct appeal to parents to buy this Kids Club Meal. We simply state it is available.

As to the issues regarding the nutritional value of a Hungry Jack’s Kids Club Meal, we encourage all children to maintain a healthy balanced diet at all times. For a child who has a balanced diet, including fresh fruit and vegetables, an occasional Kids Club Meal would be considered part of that overall balance.

We believe that there are many issues at play today in regards to Childhood Obesity – exercise and active lifestyle being equally if not more important than diet alone.

We respectfully request that this complaint against our advertisement be dismissed on the above grounds.

THE DETERMINATION

The Advertising Standards Board (“Board”) 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 Hungry Jack’s Kids Club Meals “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 determined that noting the product, music, theme and visuals used in the advertisement, the advertisement was directed primarily towards 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 Jack’s Meal is a “good” targeted toward and having principal appeal to Children and accordingly is a Product.

The Board determined that the advertisement should be considered under the AANA Children’s Code but did not find it in breach of any Sections of the Children’s Code.

The Board then considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board considered the advertisement did not breach Section 3.1 of the Food code as it not

encourage excess consumption of the product.

The Board noted that of particular concern to the complainants was the use of the word 'roar' to encourage children to go to Hungry Jack's. The Board considered this under Section 3.5 of the Code which provides products *"directed towards Children for Food and/or beverage Products shall not include any appeal to Children to urge parents and/or adults responsible for a child's welfare to buy particular products for them"*

The Board determined that the tone used did not place strong emphasis on the word *roar* and that its use was consistent with the theme of the movie featured in the advertisement.

The Board then considered the advertisement under Section 3.6 of the Food Code which provides: *"Products shall not use popular personalities or celebrities to advertise or market products, premiums or services in a manner that obscures the distinction between commercial promotions and program or editorial content"*.

The Board determined that the amount of time given during the advertisement to promotion of the Golden Compass movie was not excessive and did not therefore breach Section 3.6.

The advertisement could not be considered under Section 3.7 of the Food Code because the toy contained in the Kids Club Meal did not constitute a premium as it is an integral part of the Kids Club Meal and cannot be purchased separately.

The Board considered that the advertisement did not breach the Food Code.

Finally, the Board considered whether the advertisement breached the AANA Code of Ethics (the Code). The Board considered that the advertisement did not breach any provisions of the Code.

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