



## **CASE REPORT**

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|-------------------------------|---|
| 1. Complaint reference number | 78/05   |
| 2. Advertiser                 | McDonalds Aust Ltd (Happy Meals)                      |
| 3. Product                    | Restaurants   |
| 4. Type of advertisement      | TV  |
| 5. Nature of complaint        | Advertising to Children Code – Premiums – section 2.4 |
| 6. Date of determination      | Tuesday, 12 April 2005                                |
| 7. DETERMINATION              | Dismissed   |

## **DESCRIPTION OF THE ADVERTISEMENT**

This television advertisement opens with the scene of a car park outside a McDonald's store. Various "Hot Wheels" cars and "My Scene" dolls (available as part of the purchase of a McDonald's Happy Meal) feature in the advertisement. The voiceover states that McDonald's has "Set the scene for the hottest Happy Meal ever".

## **THE COMPLAINT**

Comments which the complainant/s made regarding this advertisement included the following:

*"The entire ad is about the toys you can get with the meal and as an after thought the last 4 seconds mention the actual food that you are getting. It was my understanding that the focus of a child's food advert could not be about the gift you are getting with the purchase. This is a blatant attempt by McD to get the kids on their parents' backs for the toys."*

## **THE ADVERTISER'S RESPONSE**

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

*"We believe that the complainant is focusing on section 2.8 [of the AANA Code of Advertising to Children] and in particular section 2.8(b) regarding impressions that the product advertised is the Premium rather than the product."*

*"The happy meal toy is not a Premium as defined by the Code. The toy is part of the product known as the Happy Meal. The Happy Meal consists of a cheeseburger, or McNuggets TM, fries, a toy and a drink."*

*"The ad depicts children with their Happy Meals including food. There is more focus on the toy since that is the component of the Happy Meal which changes regularly, so needs to be highlighted each time there is a change."*

## **THE DETERMINATION**

The Advertising Standards Board ("Board") was required to determine whether the material before it was in breach of the AANA Code for Advertising to Children (the "Code").

To come within the Code, the material being considered must be an "advertisement". The 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, organization 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 published in all of Australia or a substantial section of Australia for payment or 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 a McDonald’s Happy Meal “in a manner calculated to promote... that product”. Having concluded that the material was an “advertisement” as defined by the Code, the Board then needed to determine whether that advertisement was for a “Product”. Product is defined in the Code as meaning:

*“goods, services and facilities which are targeted toward and have principal appeal to Children.”*

“Children” are defined in the Code as meaning:

*“14 years old or younger.”*

Having regard to the fact that the advertisement featured toy cars and dolls, the Board determined that the McDonald’s Happy Meal is a “good” targeted towards and having principal appeal to Children. The Board then needed to determine whether the advertisement was an “Advertisement to Children”. “Advertisements to Children” are defined in the Code to mean:

*“...advertisements which, having regard to the theme, visuals and language used, are directed primarily towards Children and are for Product.”*

The Board determined that the theme and language used in the advertisement was clearly directed to children. The Board also considered that the visuals of the advertisement which included toy cars (together with dolls) had principal appeal to Children. Such factors confirmed the Board’s decision that the advertisement is an Advertisement to Children and therefore one to which the Code applies.

The Board then analysed specific sections of the Code and their application to the advertisement. The Board considered that clauses 2.8.1(a), 2.8.1(b), 2.8.1(c) and 2.11.1 were relevant in the circumstances.

In order to avoid a breach of clause 2.8.1(a), Advertisements to Children that refer to a “Premium” should:

*“not create a false or misleading impression in the minds of Children about the nature or content of the Product”.*

A “Premium” is defined in the Code to mean:

*“anything offered free or at a reduced price and which is conditional upon the purchase of a regular Product”.*

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 and that attention is drawn to the toy component of the Product to inform viewers that it has changed. The toy component is a component of the Product that changes regularly. The Board also noted that the Product advertised was the McDonald’s Happy Meal as opposed to the toy component which is made clear by the tagline in the advertisement that: *“McDonald’s has set the scene for the hottest Happy Meal ever”*. The Board also noted that this statement is made at the very beginning of the advertisement. 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.

The Board then needed to determine whether the advertisement breaches clause 2.8.1(b). In order to avoid a breach of clause 2.8.1(b), Advertisements to Children which include or refer to a Premium must:

*“not create a false or misleading impression in the minds of Children that the product advertised is the Premium rather than the Product.”*

Similar to its finding on clause 2.8.1(a), the Board noted that the toy component of the Product was not a Premium as defined in the Code and that as a result, the advertisement did not breach clause 2.8.1 (b).

The Board then considered whether the advertisement breaches clause 2.8.1(c). To avoid a breach of clause 2.8.1(c), Advertisements to Children which include or refer to a Premium must:

*“make the terms of the offer clear as well as any conditions or limitations.”*

Similar to its findings on clauses 2.8.1(a) and 2.8.1(b), the Board noted that the toy component of the Product was not a Premium as defined in the Code and that as a result, the advertisement did not breach clause 2.8.1(c).

The Board then considered whether the advertisement breaches clause 2.11.1 of the Code. In order for clause 2.11.1 to be complied with, the advertisement must:

*“comply with the AANA Advertiser Code of Ethics.”*

The Board therefore considered whether this advertisement breaches the AANA Advertiser Code of Ethics.

The Board found that in the context of prevailing community standards the advertisement did not breach any of the provisions of the AANA Advertiser Code of Ethics.

On the above basis, the Board held that the material before it did not constitute an advertisement in breach of the Code or the AANA Advertiser Code of Ethics.

Accordingly, the complaint was dismissed.