

Case Report

1. Case Number :	0002-24
2. Advertiser :	Domino's Pizza Enterprises Limited
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	30-Jan-2024
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety
AANA Advertising to Childrens Code\2.1 Prevailing Community Standards

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a woman longboarding while eating a pizza product. The advertisement ends with the words "anything's pizzable".



THE COMPLAINT

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

The female riding a skateboard without helmet or safeguards. It's hard enough to get kids to ride with helmets and safeguards now without advertising people doing it.

Female riding skate board with no helmet encourages younger children not to wear safety gear

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

Domino's notes the Complaints have raised issues under the AANA Code of Ethics (namely section 2.6) and the AANA Advertising to Children Code (namely section 2.1) ("AANA Codes"), and to the extent the Ad Standards community panel ("Panel") may consider it relevant, section 2 of the AANA Code of Ethics, the AANA Food or Beverages Advertising Code, or the AANA Environmental Claims Code (if making an environmental claim).

Firstly, thank you for providing Domino's the opportunity to respond to the Complaints. Domino's takes its responsibility as an advertiser and its compliance with all AANA industry codes very seriously. We encourage any feedback from the community and Ad Standards to better understand and respond to any issues or concerns that may be raised in connection with any Domino's advertisements and/or promotional material.

Domino's has carefully considered the Complaints and considers that whilst the Complaints do raise concerns regarding safety, and particularly children's safety, for the reasons mentioned below we consider that the advertising:

- 1. does not promote unsafe behaviour,*
- 2. does not advertise longboarding to children,*
- 3. does not encourage children not to wear helmets or safeguards when skateboarding*
- 4. does not promote riders "not knowing where they are going", not paying attention to where the rider is going or to hazards.*

We note that in Complaint 0003-24 the complainant mentions that they know "safety equipment is not mandatory legally".

1. Domino's Meltzz Advertisement

Description of Advertisement

The advertisement opens with the view of a solo adult woman (31 years old) on a longboard wearing a singlet, long pants and flat shoes, slowly riding along a flat footpath in good condition located on coastal headland, in fine and well-lit conditions, holding a Domino's pizza Meltzz product in her right hand as she artfully rides. The longboarder appears relaxed, confident and skilled as she performs artistic dance moves, including crouching low and holding the longboard, as she slowly rides along the coastal path. There are no other people on the footpath or in the surrounding area, and no hazards, and is a quiet, isolated location. The longboarder is shown executing experienced dance moves as she rides and takes one bite of her pizza Meltzz. The advertisement is 29 seconds in duration ("the Advertisement").

Vision of the longboard itself is approximately 12 seconds in duration (41% of the Advertisement).

The performance was filmed in safe, controlled conditions and performed by a professional dance longboarder on an isolated footpath (with no road nearby). This is not an everyday skateboarder or a performance by an everyday person, it would be unrealistic to expect anyone other than a professional would ride a dance longboard in this manner. The action area was closed to the general public for the duration of the shoot. It is a fantastical scenario with no risk of injury to the performer or anyone else.

The longboarding dance performance is highly dramatized (with the combination of the isolated location, the “supersonic” music, the single Meltzz and the birds flying perfectly in unison overhead) and unlikely to be perceived as normal reality, or performed, by audiences.

The word “supersonic”, according to the Oxford Dictionary, means faster than the speed of sound, and for the purposes of this Advertisement we tie together the lyrics regarding supersonic love with our product Meltzz. The intent of the Advertisement is for consumers to love our new Meltzz range.

The licensed music overlaid is “Supersonic Luv” (credit to composers Jurstrom, Stannard, Koa-Hood, Henriques, Woudenberg) under rights with Sony Music Publishing (Australia) Pty Limited and music publishing licensing agreements.

The lyrics played convey a whimsy, responsible and fun summer that is full of magic, including lyrics like “Supersonic Luv mama, Heads in the Clouds, Eyes so Wide, I hear the sounds of Supersonic Luv, Got that Electricity”. The overall consumer impression is one that anything is possible, and Domino’s food is flexible to fit in with life on the move.

The imagery of the rider is accompanied throughout with the words “Pizza’s now portable”, “With the new Domino’s Meltzz”, “the ultimate on-the-move food”, “New Meltzz from \$7 Pick Up”, “Anything’s pizzable”.

Pizza Meltzz is a folded and baked pizza encasing cooked toppings, no larger in the hand than two slices of regular Domino’s pizza. Meltzz is a product designed for ultimate convenience, portable food and advertised to complement an active Australian summer. Combined with the artistic longboarding, the Supersonic Luv soundtrack, and the Meltzz, the advertising campaign is to give Australian a ‘supersonic solution’ that is more than just food.

The Location

The Advertisement was filmed on a designated walking track at the Minnamurra Headland, near Kiama in New South Wales. There are no cars permitted or able to gain access to this area. Both entry and exit to the walking track are blocked by a number of bollards, restricting access.

This section of the walking track forms part of the Kiama Coast Walk. It is surrounded by grassed tracks, ocean views, and walkway is a flat, unobstructed area in good condition and with no hazards.

The Talent

The artist in the Advertisement is Jikal Hassan, 31-year-old from Berlin, Germany.

Ms Hassan is a pro-longboarder and Instagram celebrity. Ms Hassan is also a lawyer, model and founder of the LongBoard Summer Academy in Germany. Ms Hassan is an experienced longboarder. The longboarding in the Advertisement is structured, controlled, responsible and an artistic dance performance by Ms Hassan.

Longboarding

The Complaints relate to skateboards. The Advertisement features a longboard. There are a number of differences between the kinds of boards.

Differences include that a longboard is longer, heavier, flatter, wider, more stable, has a lower centre of gravity for riders, has a longer wheel base and is typically ridden by adults (not children) and is considered either used primarily for commuting or is known as a 'dancing board' allowing for fancy footwork and dancing whilst rolling. Longboards are typically more expensive than skateboards. A range of dance longboards from a specialist online retailer will cost between \$400 and \$900. Whereas, skateboards can be purchased from an online retailer such as Kmart for \$9.

According to the website Skate Connection

(<https://www.skateconnection.com.au/pages/skateboard>), longboards provide the greatest stability, are "perfect for dads and mums to keep up with kids" and are a "cruising and carving" style of riding.

Across the category of longboarding (Pintal, Drop Thru, Drop Down, Down Hill, Free Style and Dance), there is a specific kind of longboard which is used in the Advertisement. It is the "Dance" longboard, which is an extra-long deck and designed specifically for longboard dance. Longboard dancing is a sport of its own that allows cruising whilst the rider can walk or dance up and down the deck. This sport has an international following and competitions world-wide.

A longboard, particularly a dance longboard, is a specialist piece of sport equipment, often pricey, that would likely be used by adults or those experienced in the craft of dance longboarding. It will otherwise be unlikely to appeal to the average consumer, or to children (as mentioned in the Complaints).

The Audience

The Advertisement appears in media online, social, digital, broadcast video on demand and free-to-air television, CTV (Finecast), STV (Foxtel) and SVOD

(Binge and Kayo).

All Domino's activity across all mediums is booked and purchased against the target demographic of people aged 18 to 54 years of age. The average age of the audience of all booked mediums for the Advertisement is well over 18 years (eg FTA average audience is late 40s to early 60s depending on the network). We note that two of the three Complaints related to free-to-air.

The audience is wide-ranging in demographic and intended adult, particularly given the Domino's Online Ordering Terms and Conditions of Use require a party purchasing Domino's to be over the age of 18 years of age. If customers are not over the age of 18 years, they cannot use the website, App or order online or via SMS. Over 75% of Domino's orders are made via online ordering or our App.

In our view, the risk of any negative consequences from the Advertisement is very low, if negligible. The Advertisement features elements that would not be considered realistic or achievable by the average rider, and do not encourage or condone unsafe behaviour. Our view is that the scenes including the dance longboard are not contrary to prevailing community standards on health and safety.

Domino's entirely refutes any suggestion in the Complaints or otherwise that the Advertisement constitutes a breach of the AANA Code of Ethics ("Code of Ethics") or the AANA Children's Advertising Code ("Children's Advertising Code"), and to the extent necessary, the AANA Food or Beverages Advertising Code or the AANA Environmental Claims Code.

We submit that the Complaints should be dismissed as the advertising does not constitute a breach of the Codes for the reasons provided below.

2. AANA Code of Ethics

Section 2.6 - Health and Safety/Unsafe Behaviour specifically

Section 2.6 of the Code of Ethics requires that advertising shall not depict material contrary to Prevailing Community Standards on health and safety. We understand that the Prevailing Community Standards are determined by the Ad Standards Community Panel as those prevailing at the relevant time in relation to the Advertisement.

We appreciate the opportunity to review and respond to the Complaints and take these matters seriously.

In respect of the Advertisement and the Complaints, we submit as follows:

1. The Advertisement depicts a respectable and clearly adult (31-year old) woman who is an experienced and skilful dance longboarder professional performing a routine on a specific professional dance longboard that the average person would consider highly fantastical and completely outside the realm of ordinary possibility;

- 2. The performance was highly dramatized with dance choreography, exaggerated with arm movements, and such scenes unlikely to be perceived as realistic by audiences;*
- 3. The professional longboarder performed highly-skilled routine on a specific dance longboard;*
- 4. The performance was safe at all times and the rider clearly knew where she was heading;*
- 5. A dance longboard is a visually-unique kind of board that is predominantly more expensive than ordinary skateboards, and due to the cost and the low speed, typically used as a 'cruiser' by adults;*
- 6. The skateboard community would be aware of the difference between an ordinary skateboard and a dance longboard (by type of board, cost, mechanism), and it is unlikely in our view that a professional performance on a dance longboard would impact any other ordinary person (particularly children) to be encouraged to ride without a helmet;*
- 7. The professional longboarder was only visible in frame with the longboard for approximately 40% (12 seconds) of the 29 second Advertisement;*
- 8. The Advertisement clearly promotes pizza, with approximately 75% (22 seconds) of the 29 second Advertisement heavily focused on the Meltzz product itself (not the riding of a longboard) as the primary hero in the shots;*
- 9. The Advertisement was filmed in highly-controlled conditions, in an isolated area, a well-lit area during day time, on a flat surface, on a designated footpath, without any other person, pedestrian, device or vehicles in the area, and with no hazards, clutter or debris on the footpath whatsoever;*
- 10. There was no risk of injury to any other person, and no obstruction of any other footpath user;*
- 11. The Advertisement shoot area was closed to the general public for the duration of the shoot;*
- 12. The longboard was ridden in accordance with the laws relating to how wheeled recreational devices are to be ridden in Australia;*
- 13. The Advertisement in no way targets, or is aimed at, children, or specifically encouraging children to ride skateboards without protection gear on. In our view it is unlikely it will attract the attention of children as they are not the primary audience and not the purchaser of Domino's products (noting our Online Ordering Terms and Conditions of Use require users to be over the age of 18 years to place orders); and*
- 14. The Advertisement is highly fantastical which we consider unlikely to be seen as realistic by the relevant audience, and is unlikely to be encouraging or condoning unsafe behaviour. The dance longboarder was not wearing a helmet or other protective gear, which we appreciate is the centre of the Complaints.*

The definition of "safe" (adjective) in the Oxford Dictionary means protected, without physical danger, not harmed, without risk. We consider that at all times, the performance was safe.

In all States and Territories in Australia, a longboard is considered a wheeled recreational device, propelled by human power or gravity and ordinarily used for

recreation or play. It is not a requirement under the Australian Road Rules as adopted by the majority of States and Territories to require a longboard rider to wear a helmet or protective gear when riding. We consider that prevailing community standards for dance longboarding in States and Territories would be for riders of such wheeled recreational devices to not wear helmets or protective gear.

We appreciate that in South Australia that the position is different for this State only, and requires a safety helmet.

We submit that at all times the longboard performance was safe, for the reasons mentioned herein. We also reiterate the performative, exaggerated and highly fantastical nature of the choreographed dance performance, coupled with specific “supersonic” language and music to create a euphoric impression that is so far-fetched and fanciful that an ordinary person (or child) would not be encouraged to ride a skateboard without a helmet or safety gear in South Australia, or at all.

We appreciate that the Complaints originate from New South Wales and Tasmania. We note there are no complaints received from persons in South Australia.

We do not consider the balance of the items in Section 2 of the AANA Code of Ethics have been breached for the following reasons:

- 2.1 – Discrimination of vilification. There is no suggestion in the Complaints regarding this issue. The Advertisement does not portray people or depict material in a which discriminates or vilifies a person or a section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief at all. We do not believe this Section of the Code of Ethics has been breached.*
- 2.2 – Exploitative or degrading. There is no suggestion in the Complaints regarding this issue. We do not believe this Section of the Code of Ethics has been breached. The Advertisement is in no way sexual or holds sexual appeal.*
- 2.3 – Violence. There is no suggestion in the Complaints regarding this issue. We do not believe this Section of the Code of Ethics has been breached. The Advertisement does not present or portray violence at all.*
- 2.4 – Sex, sexuality and nudity. There is no suggestion in the Complaints regarding this issue. We do not believe this Section of the Code of Ethics has been breached. The Advertisement is in no way dealing with sex, sexuality or nudity at all.*
- 2.5 – Language. There is no suggestion in the Complaints regarding this issue. We do not believe this Section of the Code of Ethics has been breached. The Advertisement uses language that is appropriate for the audience and the medium. All words used in the Advertisement are described above under “Description of the Advertisement”.*

• 2.7 – *Distinguishable as advertising.* There is no suggestion in the Complaints regarding this issue. We do not believe this Section of the Code of Ethics has been breached. The Advertisement is clearly distinguishable as such.

3. AANA Children's Advertising Code

2.1 Prevailing Community Standards/must not contravene prevailing community standards

We understand that Section 2.1 of the Children's Advertising Code requires that advertising to children must not contravene Prevailing Community Standards. In respect of the Section 2.1 Practice Note, advertising to children must not promote products unsuitable or hazardous to children or encouraging unsafe practices. In respect of the Advertisement:

- 1. Domino's does not target advertising to children;*
- 2. It does not target or call attention to, or encourage children (per the Code means persons under the age of 15) to participate in performative longboarding or ordering Domino's pizza;*
- 3. Domino's has an internal policy regarding no advertising targeting children;*
- 4. It does not meet the threshold as "Advertising to Children" for the reasons set out below.*

The Food & Beverages Code defines "target children" as:

"Target Children is determined by the context of the advertisement and following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Food & Beverages Code Practice Note helpfully provides that:

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position not provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears."

We do not consider that the Advertisement specifically advertised to children, and as such, has not breached the Children's Advertising Code.

In accordance with the Children's Advertising Code, the definition of "Advertising to Children" means (with our response in respect of each limb):

Advertising that targets Children [means a person under the age of 15] and which is determined by the context of the advertisement and the following three criteria:

Limb 1 - Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;

We consider that the Advertisement does not principally or significantly appeal to Children.

All Domino's activity across all mediums is booked against the target demographic of people aged 18 to 54 years of age. The average age of the audience of all booked mediums for the Advertisement is well over 18 years old (eg FTA average audience is late 40s to early 60s depending on the network). Domino's does not book programming that would be likely to attract a significant proportion of Children, and we will actively ensure we reallocated any spots where programming is potentially likely to attract Children (such as Saturday night movies foexample).

The nature and intended purpose of the product, being folded and baked pizza Meltzz, is principally significantly appealing to adults, onthe move and needing convenient and quick lunch or dinner. Over 75of the 29 second Advertisement is strongly highlighting the product ban adult. Domino's is a shared experience and an event purchase, chosen largely by families, sporting teams, corporate organisations and adult individuals. Children are not our target market and are unable to order our products.

The Meltzz is a complementary product to our primary pizza range, which we anticipate will hold strong in lunchtime sales by adults, or single-person households.

The majority of Domino's orders are now digital, and as such, Domino's Online Ordering Terms and Conditions requires users to beover the age of 18 in order to place an order for pizza, Meltzz and other products.

Domino's Meltzz and the Advertisement is not intended to principally osignificantly appeal to Children.

Limb 2 - Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;

The presentation of the advertisement is whimsical, far-fetched, creates a light and other-worldly impression, coupled with an fantastical adult choreographed dance routine on a specific dance longboard, in an isolated, perfect location without any persons (including children) as part of the Advertisement. No part of the presentation is principally direct to, or appealing to, Children.

There is nothing in respect of the theme, images, colours, wording, music or language that in any way is principally appealing to Children whatsoever.

Limb 3 - Expected average audience at the time or place the advertisement appears includes a significant proportion of Children;

The expected average audience at the time or the place of the advertisement does not include a significant proportion of Children.

The Advertisement appears in media online, social, digital, broadcast video on demand and free-to-air television, CTV (Finecast), STV (Foxtel) and SVOD (Binge and Kayo). As mentioned herein, the audience is wide-ranging however Domino's only buys media that targets the age bracket 18 – 54 years old. The average age of the audience of all booked mediums for the Advertisement is well over 18 years (eg FTA average audience is late 40s to early 60s depending on the network).

In respect of the CAD details, the TVC has been given a "F" placement code based on the AANA Food and Beverages Advertising Code. An "F" placement code is the equivalent of a [G/PG] classification and must not be placed in programs with an expected child audience of 25% or more (child is defined as under 15 years of age).

If in the event Ad Standards determines that the AANA Children's Advertising Code applies, Domino's does not consider it has breached the prevailing community standards as it has not promoted products that are unsuitable or hazardous to children, or encourages unsafe practices for the reasons mentioned in answer to Section 2.6 of the AANA Code of Ethics.

As requested by Ad Standards, we answer the following specific questions:

Where possible, details on the expected average audience of the advertisement.

The average age of the audience is 18 to 54 years of age.

Please note, this is not the target audience, but the audience who is expected to have seen the advertisement. In particular, whether the audience of the advertisement includes a substantial proportion of Children under the age of 15.

Persons in the age bracket 18 to 54 years.

Comments around whether the advertisement is targeting children under the age of 15.

See above. Domino's does not consider the Advertisement is targeting Children under the age of 15 years old.

Comments around whether the product being advertised is of significant appeal to children under the age of 15.

See above. Domino's does not consider the product being advertised is of significant appeal to Children under the age of 15 years.

As no other section of the AANA Children's Advertising Code was mentioned in the correspondence from Ad Standards, we do not address sections 2.2 – 2.7 inclusive. In any event, for the avoidance of doubt, we also do not consider Domino's has breached any part of the AANA Children's Advertising Code.

4. AANA Food or Beverages Advertising Code

The Complaints do not raise matters that we consider attract the provisions of the AANA Food or Beverages Advertising Code. We note that the Ad Standards correspondence invites a response in respect of this Code.

For the reasons mentioned in our response at Items 3 and 4, we do not consider that the Advertisement targets children.

We appreciate that in considering the third limb of the advertising to children criteria in the AANA Children's Advertising Code, measures to determine if Children are likely to be a significant proportion of the expected average audience may include one or a combination of the following where accurate program data is not available:

Where data exists, 25% or more of the predicted audience will be Children.

C&P Programmes

*Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g featuring personalities or characters popular with Children)
Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at schools*

All Domino's activity across all mediums is booked and purchased against the target demographic of people aged 18 to 54 years of age. The average age of the audience of all booked mediums for the Advertisement is well over 18 years (eg FTA average audience is late 40s to early 60s depending on the network).

In respect of the sections of the Food or Beverages Advertising Code, for the reasons mentioned above we address each of the Sections:

Section 2 Advertising for Food or Beverage Products

- 2.1 – Misleading and Deceptive. We do not consider the Advertising of food is not misleading or deceptive. We note that the Complaints do not raise this as an issue.*

Domino's does not consider there to be a breach of Section 2.1 of the AANA Food or Beverages Advertising Code.

- *2.2 – Advertising undermining health. We do not consider the Advertisement undermines the importance of healthy or active lifestyles or the promotion of healthy balanced diets. The Advertisement is of a sports activity, with a healthy adult having one bite of a Domino's Meltzz whilst exercising. The Meltzz fits in the palm of the talent's hand and is not excessive in size. We note that the Complaints do not raise this as an issue. Domino's does not consider there to be a breach of Section 2.2 of the AANA Food or Beverages Advertising Code.*

- *2.3 – Australian Food Standards Code. We do not consider that an average consumer would consider the Advertisement must be supported by appropriate scientific evidence meeting the requirements of the Australian Food Standards Code. We note that the Complaints do not raise this as an issue. Domino's does not consider there to be a breach of Section 2.3 of the AANA Food or Beverages Advertising Code.*

- *2.4 – Substitute meals. We do not consider that the pizza Meltzz is advertised as a meal substitute and we do not portray the food as such in the Advertisement. Domino's does not consider there to be a breach of Section 2.4 of the AANA Food or Beverages Advertising Code.*

Section 3 Advertising to Children

- *3.1 – Must not target children. We do not consider that Domino's has breached Section 3.1, advertising of Occasional Food or Beverage Products must not target Children.*

Please see above the reasons why Domino's and the Advertisement does not target Children. We have taken care to evaluate that the expected average audience composition for the Advertisement.

All Domino's activity across all mediums is booked and purchased against the target demographic of people aged 18 to 54 years of age. The average age of the audience of all booked mediums for the Advertisement is well over 18 years (eg FTA average audience is late 40s to early 60s depending on the network).

The Food & Beverages Code defines "target children" as:

"Target Children is determined by the context of the advertisement and following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Food & Beverages Code Practice Note helpfully provides that:

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position not provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears."

Limb 1 - Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;

The Advertisement neither by nature nor intent principally or significantly appeals to Children. Domino's submits that the product would be equally if not more appealing to adults over the age of 18 years old, than it would be to Children. The Meltzz is not significantly appealing to Children due to it being in relation to a product only (being a pizza Meltzz) and there being no toy or attraction for Children advertised with it.

All Domino's activity across all mediums is booked against the target demographic of people aged 18 to 54 years of age. The average age of the audience of all booked mediums for the Advertisement is well over 18 years old (eg FTA average audience is late 40s to early 60s depending on the network). Domino's does not book programming that would be likely to attract a significant proportion of Children, and we will actively ensure we reallocated any spots where programming is potentially likely to attract Children (such as Saturday night movies for example).

The nature and intended purpose of the product, being folded and baked pizza Meltzz is principally significantly appealing to adults, on the move and needing convenient and quick lunch or dinner. Over 75% of the 29 second Advertisement is strongly highlighting the product by an adult. Domino's is a shared experience and an event purchase, chosen largely by families, sporting teams, corporate organisations and adult individuals. Children are not our target market and are unable to order our products.

The Meltzz is a complementary product to our primary pizza range, which we anticipate will hold strong in lunchtime sales by adults, or single-person households.

The majority of Domino's orders are now digital, and as such, Domino's Online Ordering Terms and Conditions requires users to be over the age of 18 in order to place an order for pizza, Meltzz and other products.

Limb 2 - Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;

The presentation of the advertisement is whimsical, far-fetched, creates a light and other-worldly impression, coupled with a fantastical adult choreographed dance routine on a specific dance longboard, in an isolated, perfect location without any

persons (including children) as part of the Advertisement. No part of the presentation is principally direct to, or appealing to, Children.

There is nothing in respect of the theme, images, colours, wording, music or language that in any way is principally appealing to Children whatsoever.

It is not open on the facts to conclude that the Advertisement of product is principally appealing to Children, where it is more likely to be considered principally appealing to consumers over the age of 18 years old.

In light of Domino's reasons provided above, Domino's submits that when all elements of the Advertisement are considered together, the overall impression of the Advertisement, is that it is promoting Meltzz pizza to adults that will order online. The overall content of the Advertisement is not principally appealing to Children under the age of 15 years old.

Limb 3 - Expected average audience at the time or place the advertisement appears includes a significant proportion of Children;

The expected average audience at the time or the place of the advertisement does not include a significant proportion of Children. The Advertisement appears in media online, social, digital, broadcast video on demand and free-to-air television, CTV (Finecast), STV (Foxtel) and SVOD (Binge and Kayo).

As mentioned herein, the audience is wide-ranging however Domino's only buys media that targets the age bracket 18 – 54 years old. The average age of the audience of all booked mediums for the Advertisement is well over 18 years (eg FTA average audience is late 40s to early 60s depending on the network).

In respect of the CAD details, the TVC has been given a "F" placement code based on the AANA Food and Beverages Advertising Code. An "F" placement code is the equivalent of a [G/PG] classification and must not be placed in programs with an expected child audience of 25% or more (child is defined as under 15 years of age).

Domino's existing company policy is that its advertising, marketing and promotional materials are to be designed and distributed having regard to all the Codes and any requirements at law, and do not specifically or directly seek to target persons under the age of 18 years old.

In general and in the case of the Advertisement, the expected average audience does not include a significant proportion of Children, rather it can be more reasonably concluded that the expected average audience of Domino's advertising and marketing is persons over the age of 18 years. Domino's further enforces its position in this regard by ensuring clear terms and conditions are contained in all its advertising and marketing materials where

relevant, including in the Online Ordering Terms and Conditions. Domino's submits it has taken reasonable steps to ensure the Advertisement complies with the Food & Beverages Code.

5. AANA Environmental Claims Code

We understand that for the purposes of the AANA Environmental Claims Code, an "Environmental Claim" means:

"any express or implied representation that an aspect of a product or service as a whole, or a component or packaging of, or a quality relating to, a product or service, interacts with or influences (or has the capacity to interact with or influence) the Environment."

Domino's does not make an environmental claim in respect of the Meltzz product or the Advertisement and therefore considers that the AANA Environmental Claims Code does not apply. If in the event Ad Standards considers this Code to apply, we disagree with that position and welcome discussion on the point.

6. Conclusion

For the above reasons, we respectfully submit that the Advertisement does not breach any of the Codes mentioned herein and in particular Sections 2.6 of the AANA Code of Ethics or Section 2.1 of the AANA Children's Advertising Code. Domino's respects there is community sentiment regarding marketing and promotional activities that may involve children. Notwithstanding the Advertisement does not directly target Children, Domino's will ensure it continues to monitor its ongoing compliance with the Codes.

THE DECISION

The Ad Standards Community Panel (Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code).

The Panel noted the complainants' concerns that the advertisement depicts unsafe behaviour and sets a poor example for children.

The Panel viewed the advertisement and noted the advertiser's comprehensive response.

The Panel noted that for the provisions of the Children's Code to apply, the advertisement must be found to target children under 15 years of age.

Does the advertisement target children?

The Panel noted that the Children's Code defines "target children" as:

“Target Children is determined by the context of the advertisement and the following three criteria:

- 1. Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
- 2. Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
- 3. Expected average audience at the time or place the advertisement appears includes a significant proportion of Children.”*

The Panel noted that the Practice Note provides guidance on the interpretation of “target children”:

“All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

“In relation to the third criteria, measures to determine if Children are likely to be a ‘significant proportion’ of the expected average audience may include one or a combination of the following:

- Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children’s event or concert that is incidental to the ad placement, the audience of that incidental Children’s concert or event will not be captured.*
- C&P programmes.*
- Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision).”*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel considered that the advertised product is occasional food and considered that this was a product which would be significantly appealing to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel considered the advertisement featured a woman riding a longboard, however noted that most viewers would interpret it to be a skateboard. The Panel considered that ride-on vehicle such as bikes and scooters are likely to gain the attention of children, especially when a person is dancing or performing tricks on them.

However the Panel considered that the advertisement would be equally appealing to adults due to the scenery and music used.

Overall, the Panel considered that the content of the advertisement has broad appeal, and was not principally appealing to children.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted that the complainants were watching free-to-air TV at various times. The Panel also noted the advertiser's assertion that their media buying targets 18-54 year olds, and overall considered that the audience for the advertisement would not include a significant proportion of children.

Targeting children conclusion

The Panel considered that the product would have significant appeal to children, however the content of the advertisement was not principally appealing to children and the audience for the advertisement would not include a significant portion of children. The Panel determined that on the whole, the advertisement did not target children and therefore the provisions of the Children's Code did not apply.

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the Practice Note for the Code states:

"Images of unsafe driving, bike riding without helmets or not wearing a seatbelt while driving a motor vehicle are likely to be contrary to prevailing community standards relating to health and safety irrespective of whether such depictions are for the product/service being advertised or are incidental to the product."

The Panel noted that the woman is shown riding without a helmet on a solid surface which appears to be a pathway. The Panel noted that the woman is dancing on the board, and is eating.

The Panel noted that helmets have been proven to save lives and protect against injury in falls. The Panel noted that professional sportspeople wear helmets when competing, and the general community expects users of bicycles, scooters and skateboards and the like to wear helmets at all times, regardless of where the devices are being ridden and whether or not the law requires it.

The Panel determined that the advertisement did depict material contrary to Prevailing Community Standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did contain material contrary to Prevailing Community Standards on health and safety and determined that it did breach Section 2.6 of the Code.

Decision

Finding that the advertisement did breach Section 2.6 of the Code, the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DECISION

We appreciate the Community Panel's finding of no breach in respect of the AANA Children's Advertising Code.

In respect of our submission and the Complaints relating to Section 2.6 of the AANA Code of Ethics we are disappointed in the proposed findings.

We confirm that the Meltzz Advertisement that is the subject of the Complaints was discontinued effective 21 January 2024.