

Case Report

1. Case Number :	0256-24
2. Advertiser :	McDonald's Australia Limited
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	23-Oct-2024
6. Decision:	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\3.1 Must not target children

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a man and child in a loungeroom with a McDonalds food bag on the table. They are playing Mario kart game on the TV. A voice over says "Get ready to race into Macca's, because Mario Kart has arrived in a new happy meal. Collect all 10 races, available for a limited time. The new Mario Kart happy meal, only at Macca's".



THE COMPLAINT

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

McDonald's is currently advertising a new Mario Kart Happy Meal pack on television and social media. Featuring Mario music and toys, this advertisement is clearly appealing to children to encourage the sales of Happy Meals. This type of exposure to the marketing of unhealthy foods is widely acknowledged as a key risk factor for childhood obesity and the development of noncommunicable diseases. Childhood overweight and obesity is on the rise across Australia, rendering it a public health crisis. In 2022–23, 26.4% of Australian children aged 2 to 17 years were living with overweight or obesity – 18.3% with overweight and 8.1% with obesity. Childhood

overweight and obesity leads to a myriad of physical, psychological and social health issues such as an increased risk of anxiety, depression, diabetes, cardiovascular disease, increased morbidity and premature death. Fast food advertising and insufficient laws protecting children from these harmful advertisement are only perpetuating this significant problem.

This advertisement was seen on free to air television ant ~7pm and it is also spread across various social media platforms including Facebook.

This ad is clearly target at children with the addition of a premium toy, Mario music and bright colours. Exposure to this type of marketing of unhealthy foods is widely acknowledged as a key risk factor for childhood obesity and the development of noncommunicable diseases. To protect our youngest Australians, advertising of fast food must not appeal to children.

THE ADVERTISER'S RESPONSE

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

Description of advertisement

This 15 second TV advertisement is promoting McDonald's Mario Kart Happy Meal. The advertisement begins with a father and daughter sitting in front of a TV playing Mario Kart on their gaming console. The voice over says, "get ready to race into Macca's because Mario Kart has arrived in a new Happy Meal. Collect all 10 Racers for a limited time. The new Mario Kart Happy Meal, only at Macca's". The advertisement concludes with an end frame showing the different toys alongside a Happy Meal with a grilled chicken snack wrap, tomatoes and an apple juice bundle.

Whether the audience of the program is predominantly children

No, the audience of the advertisement is not predominantly children, with the expected child audience of the placement of the ads not above 25% or more children. We have confirmed that the buying audience for TV is P18-54 and is projected to have less than 15% of the audience under the age of 15. These figures are well under the AANA code stipulation.

Advertiser's response to complaint

Thank you for requesting a response to complaint number 0256-24 (Complaint).

We note that the Complaint has raised issues under the following codes of practice:

- *AANA Food and Beverages Code – section 3.1 Must not target children\advertising for OFBP must not target children.*

McDonald's takes its obligations seriously in respect of adherence to all the codes of practice administered by Ad Standards. McDonald's entirely refutes any suggestion in the complaint or otherwise that the Advertisement breaches the Codes. Please see details below.

AANA Food and Beverages Advertising Code:

Section 3.1 provides the following:

"Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children".

In the current case, the complainant claims McDonald's is advertising unhealthy foods to children. We submit that our advertisement does not breach section 3.1 on the following basis:

- The Advertisement does not display nor promote any occasional food or beverage products. The food and beverage that is prominent and featured in the advertisement is a wholemeal grilled chicken snack wrap, tomatoes and apple juice Happy Meal bundle. This bundle complies with the Food Standards Australia Nutrient Profile Scoring Criterion as published by Food Standards Australia New Zealand as the McDonald's Quality Assurance team has confirmed that each food item in the bundle meets the NPSC score of <4 and the beverage is <1, and therefore is not considered an Occasional Food and Beverage Product (as defined in the code) and can be used in advertising that would appeal to children.*
- For the avoidance of doubt, whilst there is one frame of the advertisement where packaging is shown on a table incidental to the action of the scene, this shot does not emphasise nor promote occasional food or beverage products to children, nor show the consumption of occasional food or beverage products. Having a compliant food bundle shown with each and every Happy Meal box was considered in Case 0166-14, whereby the Board viewed the advertisement as a whole, and "determined that there is not a requirement in this context [an app game] for each image of the Happy Meal Box to be accompanied by a picture of the healthier choice meal" as throughout the advertisement "there are food products depicted and referenced and those products are only healthier choice products". If applying the same logic of case 0166-14 in viewing the advertisement as a whole, it is the NPSC compliant Happy Meal bundle that is emphasised and featured on the end frame that is being promoted in the advertisement, rather than the packaging that is shown incidental to the action in the earlier scene. Therefore, showing the packaging in the one frame does not mean the overall advertisement is advertising occasional food or beverage products to children.*

Given the above, the Advertisement does not advertise occasional food or beverage products to children.

AANA Advertising to Children Code

Whilst we understand the complaint raises concerns under the Food and Beverages Advertising Code, for the avoidance of doubt, McDonald's also does not believe it is in breach of any section of the AANA Advertising to Children Code on the following basis.

- *2.1 – community standards;*
 - *The advertisement does not promote products or services that are unsuitable or hazardous to a child or encourage any unsafe practices.*
- *2.2 – misleading or deceptive;*
 - *The advertisement accurately represents the Happy Meal product and the choice of toy that is available in the meal. The visuals display different Mario Kart toys available alongside the text “collect all 10 racers” and “New Mario Kart Happy Meal®”. The voice over also clearly highlights the availability of the product in saying “available for a limited time” in the “new Mario Kart Happy Meal, only at Macca’s”, which is reiterated in the disclaimer “available 10:30am to midnight for a limited time at participating restaurants”.*
 - *The pricing is also clearly displayed to children in the roundel as “From \$5.75”, which is the price of a standard Happy Meal, including the grilled chicken snack wrap, tomatoes, apple juice bundle. The use of ‘From’ in the roundel also makes it clear the price is the base price of a standard Happy Meal (including the toy), which is also further highlighted clearly in the disclaimer that ‘extra charges apply for 6 Chicken McNuggets® Happy Meal and other variations’. The price is also not minimised by words such as ‘only’ or ‘just’.*
 - *The advertisement is also clearly commercial in nature rather than program content, as the use of McDonald’s branding such as the McDonald’s smile, the McDonald’s Golden Arches and “i’m lovin’ it®” slogan, the voice over, and editing style clearly distinguishes itself from program content.*
- *2.3 – sexualisation;*
 - *The advertisement does not have any sexual appeal or use sexual imagery.*
- *2.4 – frightening or distressing;*
 - *The advertisement does not portray any frightening or distressing scenes.*
- *2.5 – parental authority;*

- *The advertisement does not undermine the authority, responsibility or judgement of parents or carers. It does not have any explicit call to action for children to urge their parents, carers or another person to buy the advertised product for them. It does not state or imply that the product makes children who own or enjoy it superior to their peers, nor does it state or imply that the person who buys the product is more generous than those who do not.*
- *2.6 – premium; and*
 - *The advertisement does not encourage the purchase of an excessive quantity or promote irresponsible consumption, nor are there any explicit call to actions for children or parents to buy an excessive quantity of food. The use of “collect all 10 racers” does not imply nor encourage children or parents to buy or consume an excessive quantity in one sitting.*
- *2.7 – popular personalities.*
 - *Whilst the advertisement is promoting a Mario Kart collaboration Happy Meal, the advertisement does not use the Mario Kart characters to endorse, recommend, promote, advertise or market the Happy Meal product in way that would confuse or mislead children into thinking this is a non-commercial communication or program content. As mentioned above, the use of McDonald’s branding, voice over and editing style clearly displays the advertisement as a commercial communication.*

AANA Code of Ethics

McDonald’s does not believe the Advertisement is in breach of the following parts of section 2 of the Code of Ethics:

- *2.1 – Discrimination or vilification;*
- *2.2 – Exploitative and degrading;*
- *2.3 – Violence;*
- *2.4 – Sex, sexuality and nudity;*
- *2.5 – Language;*
- *2.6 – Health and Safety; and*
- *2.7 – Distinguishable as advertising*

AANA Food and Beverages Advertising Code

McDonald’s does not believe the Advertisement is in breach of any of the parts of the Food and Beverages Advertising Code. Please see response above.

Conclusion

McDonald's concludes that the Advertisement does not breach any of the codes, and in particular does not advertise occasional food and beverage products to children. Therefore, McDonald's respectfully disagrees with the complaint and request that the Panel dismiss the complaint on this basis.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising Code (the Food Code).

The Panel noted the complainants' concerns that the advertisement was promoting unhealthy food to children.

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

Food Code Section 3.1 Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children.

Is the advertisement for an Occasional Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: *"food or beverages products which do not meet the Food Standards Australia Nutrient Profile Scoring Criterion as published from time to time by Food Standards Australia New Zealand"*.

The Panel noted the advertisement is promoting a Happy Meal featuring a chicken wrap, tomatoes and an apple juice. The Panel noted that the advertiser had stated that the product does meet the FSANZ criteria and is not an occasional food product.

The Panel noted that there is packaging shown in one scene of the advertisement, prior to the meal being shown. The Panel also noted that there is what looks like a single chicken nugget shown on the table. The Panel noted that the chicken nugget is not part of the meal depicted at the end of the advertisement, however considered that the depiction of the product is not clear. The Panel considered that the advertisement does not clearly depict an occasional food product. The Panel considered that the meal depicted at the end of the advertisement was not an occasional food product.

Does the advertisement target children?

The Panel noted that the Food 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 Happy Meals is a product which is significantly appealing to children.

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

The Panel noted that to be within Section 3 of the Food Code the Panel must find that the advertisement is aimed in the first instance at children under 15.

Is the theme of the advertisement principally appealing to children?

The Panel noted that the theme of the advertisement is collecting toys based on a popular video game. The Panel noted that the game Mario Kart was first released in 1992, and the game would have nostalgic appeal for adults. However, the Panel considered that the game is also popular with children and the theme of collecting toys based on this game would be principally appealing to children.

Are the visuals of the advertisement principally appealing to children?

The Panel noted that the first part of the advertisement features a child and an adult playing a video game and considered that this would be equally appealing to children and adults.

The Panel noted that the second part of the advertisement features footage of gameplay and considered that this would also be appealing to both children and adults.

The Panel noted the final part of the advertisement was a depiction of the toys and the Happy Meal, and considered that this would be principally appealing to children.

Overall, the Panel considered that the visuals would be principally appealing to children under 15.

Is the language/wording/music of the advertisement principally appealing to children?

The Panel considered that the language in the advertisement a factual description of the product availability and considered this would be equally appealing to children under 15 and adults/principally appealing to adults.

Is the content of the advertisement overall principally appealing to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is principally appealing to children.

The Panel considered that the overall impression of the advertisement is a promotion of toys available with a Happy Meal and considered that the advertisement would attract the attention and interest of children under 15 ahead of any other audience.

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

The Panel noted the advertiser's response that the expected average audience of the advertisement did not include a significant proportion of children.

Does the advertisement target children?

The Panel noted that in order to determine whether an advertisement targets children it is required to weigh each of the three criteria above.

The Panel considered that:

- the product would have significant appeal to children
- the content of the advertisement was principally appealing to children
- audiences for the advertisement would not include a significant proportion of children.

The Panel found that the advertisement did target children under 15.

Section 3.1 conclusion

The Panel noted that this advertisement was not for an Occasional Food or Beverage Product and therefore the Panel determined that the advertisement did not breach Section 3.1 of the Food Code.

Conclusion

Finding that the advertisement did not breach any other section of the Food Code the Panel dismissed the complaints.