



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0285/11</b>
<b>2</b>	<b>Advertiser</b>	<b>Hog's Breath Cafe (Australia) Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>Internet</b>
<b>5</b>	<b>Date of Determination</b>	<b>27/07/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

2.8 - Food and Beverage Code	undermines healthy lifestyle
2.8 - Food and Beverage Code	untruthful/dishonest

### DESCRIPTION OF THE ADVERTISEMENT

Hog's Breath Cafe Internet site featuring mascot 'Hogster' menu items, locations and the like.

### THE COMPLAINT

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

*We believe the Hog's Breath Café website breaches clause 2.2 and 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code (Food Code).*

*Food Code*

*Breach of clause 2.2:*

*Clause 2.2 of the Food Code states:*

*Advertising or Marketing Communications for Food or Beverage Products shall 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 product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards. We believe the website is an Advertising or Marketing Communication to Children and undermines the importance of healthy lifestyles and the promotion of healthy balanced diets as it promotes Hog's Breath Café's unhealthy food and beverages to children.*

*Clause 1.1 of the Food Code defines "Advertising or Marketing Communications to Children" as:*

(a) matter which is published or broadcast using any Medium 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; or

(b) any activity which is undertaken by or on behalf of an advertiser or marketer 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

but does not include Excluded Advertising or Marketing Communications.

The Advertising Standards Board has previously determined that the AANA Food Code applies to company-owned websites because they fall within this definition of Advertising and Marketing Communications (McDonald's Australia Ltd (Shrek – internet) case number 256/07 14 August 2007). The Board noted in its determination that a McDonald's website was 'considered to be within the definition of advertising and/or marketing communications within the scope of the Food Code as it is material that is published that the company has incurred cost in publishing the material and that it is material that draws the attention of the public or a segment of it to a particular product in a manner calculated to promote that product.'

It follows from the Board's previous determination that the Hog's Breath Café website is an Advertising and Marketing Communication within the meaning of the Food Code.

The homepage of the website features the animated "Hogster" that would appeal to and attract the interest of children. The Hogster promotes a range of unhealthy foods including burgers fries soft drinks and desserts. The website also features the "Hogster's Kids Zone" section which contains the "Hungry Hogster Online game". This game features the Hogster searching for ice-creams in a maze. The Kids Zone section also features a range of "Hogster" images for children to download and colour in. The downloadable images feature the Hog's Breath Cafe kids menu promoting burgers and fries to children. At a time when nearly one quarter of Australian children are overweight or obese we believe it is irresponsible of to promote Hog's Breath Café to children and undermine healthy food messages that they may be receiving from their family school and/or community.

Breach of clause 2.1 of the Food Code:

Clause 2.1 of the Food Code states:

Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.

We believe that the website contravenes Prevailing Community Standards about unhealthy food advertising to children via the internet. In a 2010 national survey by Cancer Council Victoria just under 9 in every 10 consumers surveyed responded that the government should regulate the featuring of unhealthy food products in games and competitions on websites aimed at kids with 42% in favour of stopping it completely.

For all of the above reasons we ask that the ASB request Hog's Breath to withdraw the Hog's Breath Café website.

Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

*Hog's Breath is not a signatory to the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR II). This is disappointing given there are approximately 70 Hog's Breath Caf  s across Australia. Hog's Breath Caf  s are clearly aimed at children and Hog's Breath's marketing strategy (including via TV advertisements directed to children) is clearly directed to children.*

*If Hog's Breath was a signatory to the QSR II we believe its website would constitute a breach of clause 4.1 as it is an advertising or marketing communication to children for food and beverages that do not represent healthier choices.*

*Given Hog's Breath is a key member of the quick service restaurant industry in Australia we ask that the ASB and AANA encourage Hog's Breath to become a signatory to the QSR II. In the meantime the ASB and AANA should also urge Hog's Breath to conduct its advertising and marketing communications in a manner that is consistent with industry standards. In particular the ASB and AANA should request that Hog's Breath cease promoting its unhealthy food directly to children via its website and withdraw the Hogster's Kids Zone section of the website.*

## **THE ADVERTISER'S RESPONSE**

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

*In first responding I would like to advise that we undertook all processes and a briefing of an all ages and fun and family internet site.*

*This is the first complaint we have ever had regarding our website on this topic since the inception of the site in approx 1999.*

*The complainant has registered the complaint with no mention of the positive stance that we have undertaken to promote healthy lifestyles for all ages through in-store menu advice, 'lite options' junior and adult sports sponsorships, sports carnivals and involvement with Australian sporting stars.*

*In no way is it our intention to deliberately mislead the public or to promote unhealthy eating to children.*

*Being a website people must want to enter, it is not a "consumable" such as television, radio, outdoor or some forms of print. To find the site people must either know the web address, go to a search engine, or follow the links from one of the many national sporting teams we sponsor, they need to physically search for the website and have access to the web.*

*When opening the site, Hogster (our mascot) welcomes you, introduces himself, says we are the home of Prime Rib steak and invites you to start "clickin", it's that simple.*

*The game in the "Kids Zone" that is referred to is a remake of the classic game Pac Man. There are four ice cream cones situated in the game, the other items that are shown are pieces of Broccoli and Prime Rib steaks once you begin playing.*

*The only other part to the Kids Zone is the downloadable colouring in pictures.*

*The other downloads available, not in the Kids Zone are, mobile ring tone, current menu, party menu and kids colouring in.*

*I would also like to refer to our "Hogsters Health Helpings" from our CURRENT menu and one of our kids colouring in packs to reflect our positive stance. We also include "Did you know" health facts throughout our current and previous menu's, as well as being one of Australia's first companies to provide "Lite Options", smaller size meals and gluten free meals, again throughout our menus.*

*When you click on "Our Menu" and then to the individual items site on the left, you will find many "Did you know?" health pieces on our menu.*

*For example:*

*Did you know?*

*Salmon is an excellent provider of omega 3, which is essential to your health!*

*Did you know?*

*Avocados are full of unsaturated fats and assist in reducing cholesterol levels!*

*Did you know?*

*Beetroot is rich in vitamin C, fibre, potassium, magnesium, manganese, and folic acid!*

*Did you know?*

*Our chicken is 100% natural, cage free and completely free of growth hormones. Now that's something to crow about!*

*Did you know?*

*Mushrooms contain all the essential amino acids & vitamins!*

*Did you know?*

*Broccoli is a miracle food, high in antioxidants, vitamin C, vitamin E and rich in folate!*

*In the scheme of websites ours is fairly basic, Who are we? What do we do? Career opportunities, and most importantly, Locations.*

*In closing, as an Australian owned and operated company, serving Australian families, we feel that we have our own moral compass that guides us, and self regulates us for the betterment of Hog's Breath Cafe and those we serve and deliver our Hog'spitality to.*

*The web address is [www.hogsbreath.com.au](http://www.hogsbreath.com.au)*

## **THE DETERMINATION**

The Advertising Standards Board (Board) considered whether this advertisement breaches Section 2 of the AANA Advertiser Code of Ethics (the "Code"), the AANA Code for Advertising and Marketing Communications to Children (the Kids Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board reviewed the advertisement and noted the advertiser's response.

The Board noted the complainant's concern that the advertisement presents unhealthy food to children.

The Board considered the advertisement under the AANA Code for Advertising and Marketing Communications to Children. The definition of what is advertising and marketing communications to children' in the AANA Children's Code is "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product".

The Board noted that Children means, “children 14 years old or younger” and Product means, “goods, services and/or facilities which are targeted toward and have principle appeal to children.”

The Board noted the advertisement relates to the home webpage of Hog’s Breath Café and features images of menu choices and the Hog’s Breath mascot as well as a Kids Zone section where children can download images to colour in or play games.

The Board noted that the website has some images likely to be of interest to children but the overall content of the home page is clearly directed to an adult audience and “primarily directed to children.” The Board determined that as the website is aimed at all ages, the product is not a product of ‘principal appeal to children’.

The Board considered that the advertisement is not directed primarily at children, and does not therefore breach the provisions of the Kids Code.

The Board noted section 2.1 of the Food Code which provides that: advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...’

The Board considered that advertising a menu on a home website is not, of itself, something which is contrary to prevailing community standards.

The Board noted section 2.2 which states: “the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.”

The Board considered that the advertising or promotion of food available at a restaurant is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board determined that the advertisement did not depict or encourage excess consumption and that there was nothing in this advertisement that would amount to undermining of a balanced diet or healthy lifestyle.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

The Board determined that the advertisement did not breach any provisions of the Code.

Finding that the advertisement did not breach the AANA Code of Ethics, Food Code or Kids Code, the Board dismissed the complaint.

