



**ADVERTISING
STANDARDS
BUREAU**

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Ms Sarah Mackay
100 Drummond Street
CARLTON VIC 3053

2 May 2011

1. Complaint reference number: 0103/11
2. Advertiser: McDonald's Aust Ltd

Dear Ms Mackay ,

We refer to your complaint regarding the above advertisement.

The Advertising Standards Board viewed the advertisement and considered your complaint at its recent meeting. We have to advise you that the Board did not uphold your complaint.

A copy of the case report reflecting the Board's determination is enclosed.

Please note that if you are dissatisfied with the determination it may be possible for you to request a review, within 10 business days of the date of this letter. Before submitting a request for review, please refer to the information about the Independent Review process. This will ensure that you have the right information to decide if you have grounds to make the request. This information is available on our website at

<http://www.adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>

Please consider completing a survey about your ASB experience at
<http://www.surveymonkey.com/s/8QXBRSF>.

Thank you for writing to us.

With regards,

Daniela Gray/Nikki Paterson

Case Managers

Advertising Standards Bureau

complaint@adstandards.com.au



Case Report

1	Case Number	0103/11
2	Advertiser	McDonald's Aust Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	13/04/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Advertising to Children Code 2.15 Food and beverages
Advertising Message QSR - 4.1 - Advertising and Marketing Message

DESCRIPTION OF THE ADVERTISEMENT

McDonald's Happy Meal website: www.happymeal.com.au

THE COMPLAINT

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

We believe the Happy Meal website breaches clauses 4.1 4.2 and 4.6 of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children.

Breach of clause 4.1

Clause 4.1 of the Initiative states:

Advertising or Marketing Communications to Children for food and/or beverages must:

(a) Represent healthier choices as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and/or

(b) Represent a healthy lifestyle designed to appeal to the intended audience through messaging that encourages:

(i) Healthier choices as determined by a defined set of Nutrition Criteria for assessing children's meals (see Appendix 1); and

(ii) Physical activity.'

We believe the website is a Marketing Communication to Children for food and/or beverages as it promotes the McDonald's Happy Meal product (which typically consists of a burger fries and a soft drink) to young children.

Clause 7 of the QSR Initiative defines 'Advertising and Marketing Communications' as 'any matter generated by a Participant which is published or broadcast using any Medium for payment or other valuable consideration...'. Clause 7 defines 'Medium' as 'television radio newspapers magazines outdoor billboards and posters emails interactive games cinema and internet sites'.

The AANA Food and Beverages Advertising and Marketing Communications Code (AANA Food Code) includes substantially the same definitions of 'Advertising and Marketing Communications' and 'Medium' as the QSR Initiative. The Advertising Standards Board has determined that the AANA Food Code applies to company-owned websites because they fall within the 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 company-owned websites must also fall within the definition of Advertising and Marketing Communications in the QSR Initiative and that the Happy Meal website is covered by the Initiative.

It is clear that the themes visuals and language of the website are directed primarily to children. The website features or promotes children's toys games activities and birthday parties.

It is also clear that the website is intended to promote and has the overall effect of promoting Happy Meals to children and is therefore an advertising or marketing communication 'for food and/or beverages'. The website domain name is www.happymeal.com.au the website features the Happy Meal logo and it promotes the toys that are available with Happy Meals. This view is consistent with the Board's recent determination that a Happy Meal banner on the Disney website was an advertising or marketing communication 'for food and/or beverages' (McDonald's Aust Ltd (internet) case number 0523/10 19 January 2011).

The constituent products of the Happy Meal are not featured on the website so the effect of the website is to promote Happy Meals in general rather than a particular Happy Meal. The QSR initiative requires that only meals that meet the nutrition criteria in the Initiative can be advertised to children. According to the Board's recent determination in relation to the Happy Meal website banner an advertisement promoting Happy Meals generally is an advertisement for all such meals including those that do not meet the nutrition criteria.

A Happy Meal can consist of any combination of:

- 1) a cheeseburger hamburger chicken McNuggets crispy chicken snack wrap or seared chicken snack wrap;
- 2) a serve of small fries or an apple bag; and
- 3) a small drink (Coca-cola Fanta Sprite Diet Coca-cola Coke Zero chocolate shake vanilla shake strawberry shake Goulburn Valley Fruit Fizz orange juice apple juice or water).

Many of the possible Happy Meal combinations do not meet the QSR Initiative nutrition criteria. Therefore the website does not represent healthier choices as required by clause 4.1 of the QSR Initiative. Nor does the website represent a healthy lifestyle as it does not encourage healthier choices or physical activity.

Breach of clause 4.2

Clause 4.2 of the Initiative states:

Popular Personalities or Licensed Characters must not be used in Advertising or Marketing Communications to Children for food and/or beverage products unless such Advertising or

Marketing Communications complies with the messaging options set out in Article 4.1 and the specific requirements of Section 22 (Promotions and Endorsements by Program Characters) of the Children's Television Standards 2005.'

The Happy Meal website currently features 'Hello Kitty' and 'Hot Wheels Battle Force 5' characters. The website also promotes toy characters from children's film Rio (by the makers of Ice Age 3) which are available with Happy Meals next month. These characters are popular children's animated characters and/or popular program/movie characters and are therefore 'Popular Personalities or Licensed Characters' according to the QSR Initiative definition.

The website does not comply with the messaging options in clause 4.1 and therefore breaches clause 4.2 of the Initiative.

Breach of clause 4.6

Clause 4.6 of the Initiative states:

Participants must not advertise Premium offers in any Medium directed primarily to Children unless the reference to the Premium is merely incidental to the food and/or beverage product being advertised in accordance with the AANA Codes and Section 20 (Disclaimers and Premium Offers) of the Children's Television Standards 2005'

We believe the 'Hello Kitty' 'Hot Wheels Battle Force 5' and Rio character toys promoted on the Happy Meal website are Premium offers according to the QSR Initiative definition ('anything offered free or at a reduced price and which is conditional upon the purchase of regular Children's Food or Beverage Product').

We note that the Australian Communications and Media Authority (ACMA) has recently decided that a toy offered with a Happy Meal does constitute a premium offer (ACMA. Investigation Report No. 2364 2389 2390 and 2391. McDonalds Happy Meal 'Did you know?' advertisement broadcast December 2009). The ACMA held that the previous view of the Australian Broadcasting Authority that toys in Happy Meals are part of a bundled products and not premium offers was 'incorrect'.

Following the ACMA's decision we ask the ASB to reconsider its view that a toy offered as part of a meal is an integral part of the product and consequently not a premium. We do not believe there is any logical policy rationale for distinguishing between a toy that is offered 'as part of' a product and a toy that is offered free with a product. In both cases the offer of a toy has exactly the same effect on children – it makes children want the fast food product so that they can collect the toy on offer and encourages them to pester their parents to take them to the fast food restaurant. It is highly unlikely that children would recognise the distinction between a toy offered 'as part of' a product and a toy offered free with a product. If the ASB does not change its approach we ask the ASB and/or AANA to provide a clear explanation of the policy rationale (rather than just the technical basis) for distinguishing between a toy offered free with a product and a toy offered 'as part of' a product particularly the manner in which the ASB and/or AANA believes that the effect on children of these two types of toy offer is likely to differ.

Irrespective of the approach the ASB takes on this issue we think it is clear in this case that the 'Hello Kitty' 'Hot Wheels Battle Force 5' and Rio character toys promoted on the Happy Meal website constitute premium offers. The toys are promoted independently on the website; they are not promoted as integral parts of the Happy Meal or in conjunction with the food and beverage products contained in the meal. In addition the toys are promoted as being conditional upon the purchase of the Happy Meal. The Toy Box section of the website states that one toy is available per Happy Meal and that different toys are available each week. We also believe that the reference to the toys on the website is more than incidental to the food and beverage product being advertised. The homepage of the website features prominent 'Hello Kitty' and 'Hot Wheels Battle Force 5' logos large pictures of the 'Hello

Kitty' and 'Hot Wheels Battle Force 5' characters and a box with rotating promotions of the 'Hello Kitty' and 'Hot Wheels Battle Force 5' toys available with Happy Meals. One of the main tabs on the homepage is the 'Toy Box' tab. This section of the website is entirely devoted to promotion of the 'Hello Kitty' and 'Hot Wheels Battle Force 5' toys as well as the Rio character toys available with Happy Meals next month. Children can click through to view further images of the toys and demonstrations of how each Hello Kitty and Hot Wheels Battle Force toy works.

In contrast the Happy Meal logo appears only on a floating hot-air balloon on the top left-hand side of the page. The images and promotion of the Hello Kitty' and 'Hot Wheels Battle Force 5' toys are given far more prominence on the website than the Happy Meal and are clearly more than merely incidental to promotion of the Happy Meal.

Conclusion

A number of the products available in Happy Meals are high in energy fat sugar and/or salt. Such products may contribute to weight gain obesity and other health problems. We believe it is irresponsible for McDonald's to advertise Happy Meals directly to children particularly when nearly one quarter of Australian children are overweight or obese.

We ask the ASB to consider the issues we have raised and to request McDonald's to withdraw the Happy Meal website.

THE ADVERTISER'S RESPONSE

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

First, we thank the Bureau and the Board for the opportunity to respond to this complaint. At the outset we would like to point out that it is open to the Board to determine this complaint differently to the recent decision in case number 0523/10, as there is a fundamental difference between an advertising banner featured on another brand's website (in that case, our McDonald's banner on the Disney website) and a website that is branded in respect of a particular company and product. We understand that parents, particularly those of younger and primary-school aged children, closely monitor the internet content that their children are exposed to. In this respect, the appearance of a McDonald's advertisement on a Disney cartoon website is something that would just "pop up", whereas the www.happymeal.com.au (Website) content must be deliberately navigated to and in that comparison there is a clear difference in the nature of the website, as one is involuntary and the other is happened upon entirely by choice. In that sense, we submit that the Website is not properly characterised as "advertising and marketing communications", but it is a product in itself.

We are of the opinion that the Website is not in breach of the Australian Quick Service Industry Initiative for Responsible Advertising and Marketing to Children (QSR Code), because the Website is not "Advertising and Marketing Communications to Children for food and/or beverages" as is required under clause 4.1 of the QSR Code for that clause to apply. Quite apart from the concept advertised on the online banner considered in case 0523/10, no purchase of a Happy Meal is required to enjoy the Website.

The Website exists as an extension of the Happy Meal product and brand, not to promote food or beverages. The idea is, after you've bought a Happy Meal you learn of the Website and navigate to it to enjoy some games and content, some of which will relate back to the toy

in your Happy Meal box, some of which will not. Wanting to distance the website from being about selling food, it has been a long-standing policy of McDonald's not to show any food or drinks or refer to food or drinks at all on the Website - the Website is not about selling meals, it is a fun site for kids to play some free games, look around, play and be creative. Our customers, after all, are the parents of the children and not the children themselves, so while the Website is branded "Happy Meal" it isn't a call to action and doesn't encourage children to make unhealthy choices or pester their parents. The Website features a lot of fun games and activities for children, from electronic games to colouring in sheets, as well as a "parents" page. If we are running any competitions, the Website houses the terms and conditions and the instructions on how to enter.

We were very disappointed by the Board's decision in 0523/10 that an advertisement for no food is by implication an advertisement for all food.

As we have previously noted, this is not a commonsense approach and in some instances will lead to absurd results. We are committed to only ever showing Happy Meal combinations that meet the nutritional criteria (Complying Meals), and have done so since the introduction of the QSR Code; however we disagree that showing the Happy Meal logo without displaying a Complying Meal has the same effect as if we had shown a meal that does not comply. The whole point of the initiative is to represent healthier choices and to ensure parents and guardians make informed choices for their children, by adding food shots to everything we produce we are turning all of our brand communication into a sales pitch for meals, when the materials don't necessarily have to have that theme. The Website is an example of this - while it will usually feature whatever licensed brand is part of that month's Happy Meal, it contains many more games and activities that don't tie into a toy or premium, it's just a fun, free website for kids to enjoy. And, unlike an advertisement on TV or a pop up banner on another website that appears uninvited, if a parent wishes for their child not to use the website, it is perfectly within their control to navigate away from the page. This is why we argue the site is a product in itself, as it is something we tell our customers about when they have bought a Happy Meal, and just like the toy that comes as part of the meal; it is a fun and enjoyable extra for children.

In respect of the complainant's comments that a Happy Meal toy is a premium, we note that the ASB has never regarded Happy Meal toys as a premium for several reasons. The main reason being that the toy is an integral part of the Happy Meal bundle, and is not a "gift with purchase".

While the definition of "premium" under the Children's Television Standard has changed in early 2010 (meaning that ACMA now regards a toy as a premium), the wording in each of the codes administered by the ASB has not changed and accordingly there is nothing to hand that would reasonably allow the ASB to alter its view. Further, the definition of "Premium" in the QSR Code requires that obtaining the item be conditional upon the purchase of a regular children's food or beverage product. The complainant specifically notes that "the toys are being promoted as conditional upon the purchase of a Happy Meal". This is entirely incorrect. While it is the case that a toy is included in a McDonald's Happy Meal, a toy can also be purchased separately without any food or beverage purchase required. This has always been the case. Accordingly, a Happy Meal toy does not meet the definition of "premium" in the QSR Code.

As Happy Meal toys do not meet the definition of a "Premium", there is no requirement for the Website to show toys in an incidental manner.

For the reasons set out above, we believe that the Website is not in breach of the QSR Code, or the Food & Beverages Code. We thank the Board for its consideration of our response and look forward to hearing the outcome.

THE DETERMINATION

The Advertising Standards Board ('the Board') considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSR Initiative), Section 2 of the AANA Advertiser Code of Ethics (the "Code") and the AANA Code for Advertising and Marketing Communications to Children.

McDonald's 0103/11

The Advertising Standards Board ('the Board') considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (the QSR Initiative), Section 2 of the AANA Advertiser Code of Ethics (the "Code") and the AANA Code for Advertising and Marketing Communications to Children.

The Board noted the complainant's concern that the website constitutes an advertisement directed to children and as a consequence breaches provisions of the QSR Initiative relating to Happy Meals not representing a healthier choice as determined by the defined nutrient criteria (4.1), uses popular personality and licensed characters in conjunction with products that don't meet healthier choice criteria (4.2) and used premium offers in a manner that breaches the Initiative (4.6).

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

The Board noted that the QSR Initiative is designed to ensure that only food and beverages that represent healthier choices are promoted directly to children.

The Board considered that the website is clearly directed to children but that the complaint relates to an entire website www.happymeals.com.au and the threshold issue is whether this website is an advertising or marketing communication as defined in the Codes.

The Board noted that in a broad sense advertiser owned microsites have been considered by the Board to be advertising or marketing communications for several years. The Board considered the definition of advertising or marketing communication as set out in the QSR Initiative. The QSR Initiative provides that "advertising or marketing communication means any matter generated by a participant which is published or broadcast using any medium for payment or other valuable consideration and which draws the attention of the public or a segment to it, to a product, service, person, organisation or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organisation or line of conduct...".

In the Board's view the website is matter published, for valuable consideration. The issue is whether the website 'draws the attention of ..a segment of the public...to a product..or organisation in a manner calculated to promote ..that product or organisation...'.

The Board noted its previous decision in 0523/10 in which it determined that a website featuring HappyMeals was an advertisement for Happy Meals. In that case the Board stated that:

‘The advertisement appeared on a website www.disney.com.au. The Board noted that the target audience for this website is children. The Board noted that this advertisement is a call for action to children – asking children to visit the website ‘www.happymeal.com.au’ to direct where money should be donated. The Board considered that this advertisement is clearly directed primarily to children.

The Board then considered whether the advertisement is for food and/or beverage products. The Board noted that the primary stated aim of the advertisement is to encourage children to direct where 10c from the Happy Meal they purchased would be donated.

The Board noted the advertiser’s response which indicated that the advertisement ‘highlights and benefits a children’s charity that supports seriously ill children and their families.’ The Board also noted that under the promotion ‘children or parents who purchase a Happy Meal during the Mighty Me Mighty Us program may go online and choose which of the various RMHMC initiatives they would like their 10c donation to go to.

The Board noted that the advertisement contains the McDonald’s Happy Meal logo and specific references to the ‘happy meal’ available in stores. The Board noted that although there is a reference to ‘kids meals’ there are no images of the content of kids’ meals or references to the content of the kid’s meals and that children are directed to visit www.happymeals.com.au.’

A minority of the Board considered that the advertisement is not for a food or beverage product – but rather is an advertisement for Ronald McDonald House Charities.

The majority of the Board considered however that the overwhelming impact of the message of the advertisement to a child would be a promotion of McDonalds Happy Meals.’

The Board considered that there is a difference with the current website. The Board noted that the website contains only one substantive reference (apart from the website address) to McDonald’s or to HappyMeals in the form of the HappyMeals logo suspended from a balloon. On the remainder of the website there is no information or images about any food or beverage products from McDonald’s or to McDonald’s itself.

The Board considered that this website does not promote the organisation (McDonald’s) or the Happy Meal product or actively encourage children to buy the product (cf: the abovementioned case which required purchase of the product in order to activate the promotion). The website is focused on providing games and entertainment to the child and in most cases would be visited by a child only after they had already purchased a HappyMeal. The Board noted, however, that brand association is an important part of marketing communications and that there will be clearly be an association for children with the website and the advertiser.

The Board determined that the website does not of itself constitute an advertisement or marketing communication as it is not drawing the attention of children to Happy Meals in a manner calculated to promote Happy Meals. However the Board cautioned that advertiser owned microsites directed to children must clearly avoid any reference to particular products and minimise organisational promotion in order for the website as a whole NOT to be considered as an advertising or marketing communication. The Board also noted that content within the website can amount to an advertising or marketing communication but in the case of the current website the Board considered that there was no specific advertising or marketing material.

The Board therefore determined that the website www.happymeals.com.au is not an advertising or marketing communication and the provisions of the Code of Ethics, the Food Code, the Children's Code and the QSR Initiative do not apply. The Board also determined that there was no advertising or marketing communication material contained within the website.

As the abovementioned Codes do not apply to the website the Board did not consider the application of specific provisions of the QSR initiative, applying as it does only to advertising or marketing communications.

The Board dismissed the complaint.