



**ADVERTISING  
STANDARDS  
BUREAU**

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## **CASE REPORT**

1.	Complaint reference number	0103/11
2.	Advertiser	McDonalds Aust Ltd
3.	Product	Food and Beverages
4.	Type of advertisement	Internet
5.	Date of determination	13 April 2011
6.	DETERMINATION	DISMISSED
7.	IR Recommendation	Reconfirm original decision

### **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](http://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 raise 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](http://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.

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](http://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 Happy Meals was an advertisement for Happy Meals. In that case the Board stated that:

‘The advertisement appeared on a website [www.disney.com.au](http://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](http://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](http://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 Happy Meals in the form of the Happy Meals 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 Happy Meal. 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](http://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.

### **INDEPENDENT REVIEWER'S RECOMMENDATION**

I confirm that I have accepted the request for review in regard to the above decision of the Advertising Standards Board (ASB), received from the Obesity Policy Coalition (the complainant) on Friday 6 May 2011.

I have now viewed and reviewed all of the relevant material considered by the Board, together with the additional submissions and information provided to me by the complainant and by the advertiser.

On all the information available I am satisfied that it was open to the Board to reach its original decision and that the decision should stand.

As the parties are no doubt aware, my role as the independent reviewer is not to remake the decision of the Board, or to decide whether I would have made a different decision to that of the Board, but to audit compliance by the Board with the provisions of the Code/s.

In the current case this required an examination of whether, in determining if the subject advertisement breached the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR Initiative), Section 2 of the AANA Advertiser Code of Ethics or the AANA Code for Advertising and Marketing Communications to Children, the Board had made an error, or had made a decision which was against the weight of the evidence (including any new evidence) or that there was a substantial flaw in the process by which the decision of the Board was made.

The grounds of complaint are that the advertisement breaches clauses 4.1, 4.2, and 4.6 of the QSR Initiative. In summary the Complainant alleges the breaches occur because:

- Clause 4.1 The Happy Meal website is a Marketing Communication to Children that promotes McDonald's Happy Meals and does not represent healthier choices in accordance with the requirements of the QSR Initiative;
- Clause 4.2 The Happy Meal website features Popular Personalities or Licensed Characters; and

- Clause 4.6 The Happy Meal website promotes premium offers through toys offered free with Happy Meals.

It is not necessary to restate the full argument of the Complainant upon which the request for review is based, but I will refer to a number of specific allegations that required particular consideration.

1. That the bases for the Board's decision are substantially flawed and that the decision is not reasonable on the facts.
2. That certain statements in the Board's decision are factually incorrect, lack factual basis or fail to take into account relevant considerations.

In support of these grounds the Complainant provided additional material from the Happy Meal website. Although, arguably, not strictly 'new or additional relevant evidence' I have viewed and carefully considered this additional material.

3. That the Board's decision appears to have turned on the issues of whether the website actively or overtly encourages children to buy the Happy Meal product – and the number of substantive references to the Happy Meal product on the website.

In support of this allegation The Complainant refers to the wording of the *Advertising or Marketing Communications* definition and draws attention to part of the definition, namely:

- That the published or broadcast matter draws the attention of the public or a segment of the public to the Happy Meal product or McDonald's; and,
- The matter does this in a way that is calculated to promote the Happy Meal product or McDonald's.

The Complainant does not specifically refer to the wording of the definition of "Advertising or Marketing Communications to Children" in the QSR Initiative which states that "*Advertising or Marketing Communications which, having regard to the theme, visuals and language used, **are directed primarily to Children and are for food and/or beverage products***" ( *emphasis added*). This definition is, in my opinion, relevant to any consideration of the decision of the Board.

The Complainant submits that "*It is clear that the website has the effect of drawing the attention of children to the Happy Meal product and McDonald's*" and supports this assertion with a number of quite detailed reasons which, the Complainant states, make it clear that the website is calculated to promote the Happy Meal product and McDonald's. It is not necessary to repeat the stated reasons in detail in this review but I have considered them and agree that they support the Complainant's argument.

The Complainant also argues that there are factual inaccuracies in the Board's decision and that the decision fails to take account of relevant considerations. In support of this argument the Complainant refers to the number of times that the website depicts Happy Meal references.

The Complainant's argument, however, is essentially based upon an interpretation of the pictures, words, logos and other material on the web site. Whilst the argument has merit, other views or interpretations are open for consideration.

Perhaps unsurprisingly, the Advertiser offers a different interpretation and argues that the website is not properly characterised as advertising and marketing communications but is, in itself, a product.

The Advertiser also submits that, in the event that the independent reviewer finds that the website can be categorised as "*Advertising and Marketing Communications to Children*," that the website is not in breach of the QSR Initiative as it does represent healthier choices and a healthier lifestyle as required by clause 4.1 of the Code.

In support of this argument the Advertiser refers inter alia to the fact that:

- the website features a range of games and activities for children,
- no food is shown on the website,
- "*no purchase of a Happy Meal is required to enjoy the Website;*" and
- that no purchase of a Happy Meal "*is required to participate in...competitions*" or to purchase a toy depicted on the website.

These references, which in the opinion of the reviewer are valid, are relevant to any consideration of the requirements of the "*Advertising or Marketing Communications to Children*" definition contained within the QSR Initiative.

The Board in considering the original complaint noted specifically that the QSR Initiative is designed to ensure that only food and beverages that represent healthier choices are directed to children and found that the McDonald's Happy Meal website is clearly directed to children. The Board also, however, correctly in my view, identified that the complaint related to the entire [www.happymeal.com.au](http://www.happymeal.com.au) website and that the threshold issue for determination was whether the website is an advertising or marketing communication as defined in the Codes.

The Board noted in its deliberations that "*in a broad sense advertiser owned micro-sites have been considered by the Board to be advertising or marketing communications for several years.*" In considering this issue the Board examined the definition of "*Advertising or Marketing Communication*" in the QSR Initiative and reviewed its earlier decision in Case 0523/10 before reaching a decision that there was a difference between Case 0523/10 and the McDonald's Happy Meal website. The Board also decided that the Happy Meal 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.*"

As a consequence the Board determined that the website [www.happymeal.com.au](http://www.happymeal.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*".

Having carefully examined all of the material and information made available to me I am satisfied that it was open to the Board to distinguish between the current matter and Case 0523/10, to validly make this determination and to dismiss the complaint.

I make this finding having regard to the comprehensive submission made by the complainant and recognising that the Board arguably erred in noting that the website contains only one substantive reference (apart from the website address) to McDonald's or to Happy Meal/s.

The issue of healthy eating for children is important and the QSR Initiative is to be applauded. Unavoidably though, given that participants in the QSR Initiative are quick-service food retailers, for whom children are a natural customer base, 'boundary' issues will periodically arise. In all such cases any determination is likely to be based on an interpretation of the intent, purpose and effect of the advertisement or material which, in the eyes of others, may appear subjective.

In the instant case I find that the Board, in the exercise of its discretion, acted in compliance with the relevant Codes in determining that their provisions do not apply to the McDonald's Happy Meal website and that, as a consequence, the specific provisions of the QSR Initiative do not apply to the website.

I recommend that the Board decision to dismiss the complaint be confirmed.