



Request for Review of Advertising Standards Board decision

Case number 0103/11

McDonald's Happy Meal website

6 May 2011

The Obesity Policy Coalition requests a review of the Advertising Standards Board's decision in relation to our recent complaint about the McDonald's Happy Meal website (www.happymeal.com.au) (complaint reference number 0103/11). We were informed of this decision by a letter from the Advertising Standards Bureau dated 2 May 2011.

Obesity Policy Coalition's complaint

In summary, the grounds for the Obesity Policy Coalition's complaint about the Happy Meal website were as follows:

1. The Happy Meal website breaches clause 4.1 of the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSR II) because:
 - a) the website is a Marketing Communication to Children that promotes McDonald's Happy Meals; and
 - b) the website does not represent healthier choices, in accordance with nutrition criteria in the QSR II.
2. The Happy Meal website breaches clause 4.2 of the QSR II because it features Popular Personalities or Licensed Characters – 'Hello Kitty' and 'Hot Wheels Battle Force 5' characters, and characters from children's film Rio.
3. The Happy Meal website breaches clause 4.6 of the QSR II because it promotes premium offers – the 'Hello Kitty', 'Hot Wheels Battle Force 5' and Rio character toys, offered free with Happy Meals.

Advertising Standards Board's decision

The Advertising Standards Board held that the Happy Meal website constitutes 'matter published, for valuable consideration' and is clearly directed to children. However, the Board rejected the complaint on the basis 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'. The Board's determination notes that the website contains only one substantive reference to Happy Meals – the Happy Meals logo suspended from a balloon – in addition to the name of the website. The determination states that the website does not promote McDonald's or Happy Meals or actively encourage children to buy the product because the website is focused on providing games and entertainment to the child, and in most cases would be visited by the child only after they had purchased a Happy Meal.

Grounds for appeal

We believe that the bases for the Board's decision, set out above, are substantially flawed, and that the decision is not reasonable on the facts.

In addition, we believe certain statements in the Board's decision are factually incorrect, lack factual basis or fail to take into account relevant considerations.

We have provided the following specific material from the Happy Meal website to support these grounds:

- ‘Looney Tunes Dance’ download with Happy Meal logo and Ronald McDonald.
- ‘Rio’ colouring-in sheet download with Happy Meal logo.
- Happy Meal website screenshot with additional Happy Meal logo.
- Happy Meal screenshot with ‘Send to friends’ and ‘Go to my Happy Meal’ tabs.
- Email sent from Happy Meal website using ‘Send to friends’ function.

(Specific material from the website was not submitted with the Obesity Policy Coalition’s initial complaint, as it was not apparent at that stage that the material was needed to support the grounds for complaint. The complaint did refer to the Happy Meal website in general, and it was anticipated that the Board would review all the material on the website.)

1. Decision that Happy Meal website does not constitute a marketing communication is substantially flawed

The QSRII defines ‘Advertising or Marketing Communications’ as published or broadcast matter that ‘...draws the attention of the public or a segment to it, to a product, service, organisation or line of conduct, in a manner calculated to promote or oppose directly or indirectly that product, service, organisation or line of conduct...’

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. These appear to be the Board’s bases for distinguishing its previous decision that a Happy Meal banner on the Disney website (case number 0523/10) did promote Happy Meals to children. However, neither of these issues is crucial to the definition of ‘Advertising or Marketing Communication’, and in any case, the Board’s finding on the second issue is factually incorrect.

To meet the ‘Advertising or Marketing Communication’ definition, published or broadcast matter must

- (1) draw the attention of the public, or a segment of the public, to the Happy Meal product or McDonald’s; and
- (2) do this in a way that is calculated to promote the Happy Meal product or McDonald’s.

It is clear that the website has the effect of drawing the attention of children to the Happy Meal product and McDonald’s for the following reasons:

- (1) The domain name of the website (www.happymeal.com.au) is the name of the Happy Meal product.
- (2) The Happy Meal logo and McDonald’s ‘M’ trade mark are constantly visible on the website. The website features a hanging balloon with the McDonald’s ‘M’ trade mark and the words ‘happy meal’ on the top left-hand corner of the screen. This balloon is constantly present as children navigate through different pages of the website. This balloon also appears in the centre of the screen when children click through to the activities and games pages of the website.
- (3) The website includes downloads with Happy Meal and McDonald’s branding. For example, the website includes a ‘Looney Tunes Dance’ download with the McDonald’s Happy Meal logo, a picture of Ronald McDonald and the words ‘EVERY HAPPY MEAL INCLUDES A FUN TOY!’ (see copy attached), and a downloadable ‘Rio’ colouring-in sheet with the McDonald’s Happy Meal logo (see copy attached).

- (4) The website promotes the toys available free with Happy Meals, and includes statements explaining that one toy is available per Happy Meal.
- (5) The website contains information about children's birthday parties at McDonald's.

It is also clear, for the reasons above, that the website is *calculated to promote* the Happy Meal product and McDonald's. The Oxford Dictionary definition of 'promote' is to 'give publicity to (a product, organization, or venture) so as to increase sales or public awareness'. The overriding purpose of the www.happymeal.com.au website is to give publicity to Happy Meals and McDonald's in order to encourage sales of Happy Meals and visits to McDonald's. This is indicated by the Happy Meal domain name, the Happy Meal balloon on the website, the website's promotion of McDonald's children's birthday parties, and the website's promotion of toys currently or soon to be available with Happy Meals. The aim of this toy promotion is clearly to encourage children to desire and request the toys, and thus to encourage sales of Happy Meals and visits to McDonald's stores. Indeed, in previous decisions, the Board has consistently held that toys are an integral part of Happy Meals. (See, for example, cases 249/07, 250/07 and 572/09.) In addition, the website features competitions that promote Happy Meals to children. For example, currently, the website features a downloadable 'Rio' colouring-in competition with Happy Meal branding (see colouring-in sheet attached).

It is also a matter of commonsense that the purpose of the Happy Meals website is to promote Happy Meals. McDonald's is a commercial company in the business of selling food and beverage products. It would not invest money in establishing and promoting the Happy Meal website if the purpose of the website were not to promote its products.

2. Factual inaccuracies in Board's decision

The Board's statement that there is only one substantive reference on the website to Happy Meals, other than the website name, is factually incorrect and fails to take into account relevant considerations. In fact, an additional Happy Meal balloon appears in the centre of the screen each time a child clicks on a game or activity. There is also a section of the website entitled 'My Happy Meal', which children can enter upon registering or logging in, and the website features a number of downloads with Happy Meal and McDonald's branding, including the 'Looney Tunes Dance' download (described above and attached), and the downloadable 'Rio' colouring-in sheet (described above and attached).

The Board's statement that there is no information on the remainder of the website about McDonald's is also factually incorrect and fails to take into account relevant considerations. The website features information about McDonald's children's birthday parties, and links to the McDonald's children's birthday parties website (<http://www.mcdonaldsparties.com.au>).

We do not think there is any factual basis for the Board's statement that in most cases children would only visit the Happy Meal website after purchasing a Happy Meal. There are many other ways in which the Happy Meal website is promoted to children or by which children would become aware of the website. For example, the 'activities' and 'games' pages of the Happy Meal website encourage children to send emails to their friends inviting them to visit the website to participate in the games and activities and 'see the toys' (see attached copies of screenshots and an email sent from Happy Meal website). Children are also directed to the website by other advertisements and sources, such as the Happy Meal banner on the Disney website, referred to in the Board's decision and the subject of a previous decision (case number 0523/10). The Happy Meal website is the first result of a Google search for 'happy meals'.

Even if children did only visit the Happy Meal website after purchasing the product, this does not in any way indicate that the website is not a marketing communication. The website would still have the effect and purpose of encouraging further Happy Meal sales by children who had already purchased or consumed a Happy Meal.

Conclusion

The Happy Meal website is owned by a food and beverage company and named after a food and beverage product; it features the company logo and product brand name, and it promotes toys available free with the product. The Advertising Standards Board's decision that this website is not a marketing communication is an absurd outcome that is contrary to common sense.

We ask the Independent Reviewer to review the Board's decision on the grounds set out above.

(We are not initiating legal proceedings in relation to this decision.)

If you need any further information, please contact Sarah MacKay, Legal Policy Adviser to the Obesity Policy Coalition on (03) 9635 5612 or sarah.mackay@cancervic.org.au.