



**ADVERTISING
STANDARDS
BUREAU**

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• www.adstandards.com.au
• ACN 084 452 666

**Ms Caroline Mills
615 St Kilda Road
MELBOURNE VIC 3004**

28 July 2014

1. Complaint reference number: **0230/14**
2. Advertiser: **McDonald's Aust Ltd**

Dear Ms Mills,

We refer to your complaint regarding the above advertisement.

The Advertising Standards Board reviewed this advertisement and considered your complaint at its recent meeting.

The Board upheld your complaint, determining that the advertisement breached one or more of the advertiser codes administered by the ASB.

A copy of the case report of the Board's determination is enclosed. The response and action of the advertiser to the Board determination to uphold the complaint(s) about this advertisement are outlined in the attached case report. Please be aware that, like all complainants, the advertiser is entitled to seek a review of this decision. Information about the review process can be found at <http://www.adstandards.com.au/process/theprocesssteps/independentreviewofasbdeterminations>.

Thank you for your participation in the self regulation system. It would be appreciated if you would complete a short survey about your views on the advertising complaint adjudication process. Your comments will assist the ASB in delivering a best practice complaints system. The survey link is at <https://www.surveymonkey.com/s/8HL8GMD>.

With regards,

Nikki Paterson/ Daniela Gray

Case Managers

Advertising Standards Bureau

complaint@adstandards.com.au



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Case Report

1	Case Number	0230/14
2	Advertiser	McDonald's Aust Ltd
3	Product	Food / Beverages
4	Type of Advertisement / media	Print
5	Date of Determination	09/07/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

QSR - 1.1 - Advertising and Marketing Message Advertising and Marketing Message must comply

QSR - 1.2 - Product Placement no placement in programs unless products consistent with 1.1

QSR - 1.5 - Product/vouchers at childrens sporting events products/vouchers meet nutritional criteria

DESCRIPTION OF THE ADVERTISEMENT

Voucher handed out with admission to the SPC Ardmona KidsTown Adventure Playground. On one side is a picture of Ronald McDonald with a group of people and alongside the image it reads, "Play money. www.kidstown.org.au. 50 fifty dollars". On the other side of the voucher is an image of McDonald's fries and the text, "Free small fries with any purchase".

THE COMPLAINT

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

McDonalds Australia is a signatory to the Quick Service Restaurant Initiative for Responsible Advertising to Children (QSRI). We submit that in promoting fries to children through distributing the voucher, McDonald's has breached the QSRI by advertising and marketing products to children which do not represent healthier dietary choices, and do not promote healthy diets or lifestyles.

The advertising communicatoin for food products has been handed out at a children's sporting event in contravention of SI.5 of the QSRI, which provides that signatories must not give away food and/ or beverage products or vouchers to Children as awards or prizes at Children's sporting events unless those products meet the Nutrition Criteria set out in the QSRI.

In determining whether the handing out of vouchers at the Playground constitutes a giveaway at a “children’s sporting event”, we submit that the Playground provides equipment for various physical games and activities by children, including a flying fox, climbing maze, swings and treehouses, which provide opportunities for active play that amount to engagement in sport pursuant to the definition within the QSRI. We also note that the Board has recourse to dictionary definitions in determining the common sense interpretation of terms such as “primarily” as used in the QSRI (in the sense of “primarily directed to children”).

For the assistance of the Board, the OPC offers the following popular dictionary definitions that elucidate the meaning of ‘sporting event’:

- Oxford Dictionary defines the verb form of “sport” as to “play in a lively, energetic way” (see <http://www.oxforddictionaries.com/definition/english/sport>)*
- Merriam Webster defines sport by several definitions including “a physical activity (such as hunting, fishing, running, swimming, etc.) that is done for enjoyment.” (<http://www.merriam-webster.com/dictionary/sport>)*
- Online dictionary (dictionary.reference.com) provides definitions of sport including “diversion; recreation; pleasant pastime.*
- Event is generally agreed to be defined as “something that happens or is regarded as happening; an occurrence, especially one of some importance” or “something that occurs in a certain place during a particular interval of time” (<http://dictionary.reference.com/browse/event>).*

We submit that children at the Playground are taking part in lively, energetic play in an organised way, for enjoyment, and that their attendance at the Playground constitutes an ‘event’ within the commonly understood meaning. The “kids fest” and “easter egg-stravaganza” mentioned on the voucher would also fit a different, but related definition of event, in the sense of being an occurrence of some particular importance.

Further, in determining the intended meaning of the provision in the QSRI relating to vouchers at sporting events, we submit that regard should be had to the overall intention of the signatories in entering into the commitment. Given that the first express objective of the QSRI is to “Reduce Advertising and Marketing Communications to Children for food and beverage products that do not represent healthier choices”, we consider it is clear that the advertiser intended to be constrained in relation to advertising of this kind. It would, after all, be strange and capricious for a decision about whether this voucher is acceptable advertising conduct to turn on a dispute about the definition of sport. Drawing a distinction between a ‘sporting event’ and an ‘adventure playground’ would be to draw a highly technical distinction that would undermine the intended operation of the QSRI and would not be rational.

b. The product promoted does not represent a healthier dietary choice, as determined by the Nutrition Criteria.

Pursuant to the nutrition criteria in Schedule 2 of the QSRI, meals promoted in advertising communications must comprise multiple elements: at least a main and a beverage. The voucher in question, however, promotes a “free small chips with any purchase”, representing a snack food or “side” part of a meal that is neither a ‘main’ nor a ‘drink’ (let alone both). Therefore the nutrition criteria are not met, amounting to breach of the QSRI.

Further, and in the alternative, the Nutrition Criteria outline requirements relating to meal composition, energy composition and nutrients that should not be consumed to excess.

S2.2 of the QSRI relates to the recommended maximum energy to be contained in each meal:

a. The meal must satisfy an energy criteria based on the Nutrient Reference Values for children of different age groups. The maximum energy limits for each target age group are as follows:

- i. 4-8 years - 2080 kJ per meal
- ii. 9-13 years - 2770 kJ per meal

S.2.3 concerns nutrients of public concern and provides that a meal must not exceed maximum limits as follows:

- i. Saturated fat - 0.4g per 100kJ;
- ii. Sugar - 1.8g per 100kJ; and
- iii. Sodium - 650mg per serve.

The small fries offered in the voucher contain 1070kJ, 1.6g of saturated fat and 245mg of sodium (McDonalds online nutrition information [https://mcdonalds.com.au/maccas-food/nutrition?gclid=CjkKEQjwqYacBRDO-](https://mcdonalds.com.au/maccas-food/nutrition?gclid=CjkKEQjwqYacBRDO-Mrk6_vr8eQBEiQAWJadfGky57jsrtMnrH0LTI5v_3qF2J4RWeT3OHVI5hsimvrw_wcB)

[Mrk6_vr8eQBEiQAWJadfGky57jsrtMnrH0LTI5v_3qF2J4RWeT3OHVI5hsimvrw_wcB](https://mcdonalds.com.au/maccas-food/nutrition?gclid=CjkKEQjwqYacBRDO-Mrk6_vr8eQBEiQAWJadfGky57jsrtMnrH0LTI5v_3qF2J4RWeT3OHVI5hsimvrw_wcB)).

Given that the offer can only be redeemed in conjunction with another purchase, a child redeeming the small fries must buy another product. In our submission, one of the best-known McDonalds products among children (if not the best) is a cheeseburger. It is the well-known cornerstone of the McDonald's Happy Meal, which is heavily marketed to young children across a range of media including TV. We submit that this is a product that is very likely (if not most likely) to be purchased when redeeming the voucher.

Online nutrition information suggests that a cheeseburger contains 1180kJ, 6.1g of saturated fat and 672 mg of sodium. Therefore, if the free small fries offered in the voucher were redeemed through the purchase of a cheeseburger, the child would consume 2250 kJ, 7.7 grams of saturated fat and 917 mg of sodium, exceeding the Nutrition Criteria which provide that for children aged between 4-8 years energy consumed per meal should not exceed 2080 kJ (S2.2 i) and sodium should not exceed 650mg per serve (S2.3 iii). Other products of appeal to children which can be purchased to redeem the free small fries may also lead to excess consumption of nutrients of concern listed in the Nutrition Criteria. Consider, for example, Chicken McNuggets, which deliver 1160kJ and 444mg of sodium per six pack.

Conclusion

We consider the advertisement is a voucher handed out at a children's sporting event within the meaning of the QSRI and that it breaches the advertiser's obligations because it does not constitute a "meal" and is likely to lead to excess consumption of nutrients of concern, as defined by the Nutrition Criteria.

THE ADVERTISER'S RESPONSE

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

McDonald's thanks the Advertising Standards Bureau (ASB) for the opportunity to respond to complaint number 0230 of 2014 (Complaint) in respect of a food voucher issued at Kids Town Adventure Playground in Victoria (Voucher). We understand that the Voucher is redeemable for a free Small Fries with any menu purchase at McDonald's Shepparton South, Shepparton City, Shepparton North, Echuca and Moorpana (the Nominated Restaurants).

McDonald's takes its responsibilities under the Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children (QSRI) very seriously and were disappointed to learn of the Complaint. We believe this Complaint to be an isolated incident concerning the Nominated Restaurants only. McDonald's is a business with over 920

restaurants and whilst we have strict controls in place to ensure compliance with the QSRI, the Voucher was unfortunately not passed through our standard internal review and approval process.

*As soon as McDonald's became aware of the Complaint it **undertook corrective action** and instructed Kids Town Adventure Playground to withdraw the Voucher and any other similar food vouchers. McDonald's confirms that the vouchers are no longer available at Kids Town Adventure Playground.*

McDonald's remains committed to ensuring compliance with the QSRI. We will continue training all members of the McDonald's system to improve understanding of our internal approval process and our responsibilities under the QSRI.

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'), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food and Beverages Code'), AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code') and the AANA Code of Ethics for Advertising (the Code).

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

The Board noted the complainant's concern that the advertisement is advertising fast food to children.

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 first considered whether the material complained about is an advertising or marketing communication as defined in the QSRI. Specifically this is defined as:

'any material which is published or broadcast using any Medium which is undertaken by, or on behalf of a Signatory, and

- Over which the Signatory has a reasonable degree of control, and
- That draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct

But does not include labels or packaging for products, public relations communications or in-store point of sale material.’

The Board considered two elements of the definition: was the material published using any ‘medium’ and is the material in-store point of sale material?

The Board noted that the definition of Medium in the QSRI is ‘television, radio, newspaper, magazines, outdoor billboards and posters, emails, interactive games, cinema and internet sites.’ The Board considered that the material in question was not easily identifiable as any of these medium. However the Board noted that the substantive provisions of the QSRI refer to ‘products or vouchers’ as a matter within the control of the QSRI and also considered the objectives of the QSRI including the objective of ‘reducing advertising and marketing communications to children for food and beverage products that do not represent healthier choices.’ The Board considered that a broad interpretation of the definition of ‘medium’ to include a form mentioned elsewhere in the QSRI (ie a voucher) would be consistent with the stated objectives of the QSRI.

The Board therefore considered that the advertising material (a McDonald’s discount) is part of the voucher and is therefore material published using any medium. The Board also considered that the voucher was not an in-store point of sale material.

The Board considered then whether the material is advertising or marketing communications to children. The definition 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.’ Under this Initiative children means “persons under the age of 14 years of age.”

The Board first considered whether the advertisement was directed primarily to children. The Board noted the advertisement is featured on a voucher that was handed out upon entering a children’s adventure playground. The Board noted the theme (‘play money’ with a value of 50 dollars, free small fries with any menu purchase at McDonald’s), visuals (cartoon and real images of Ronald McDonald) and language (play money) and considered that the voucher is directed primarily at children. The Board also considered that the advertisement is for food, namely McDonald’s fries and other products.

Finding that the advertisement did fall under the provisions of the QSRI on the basis that it is a marketing communication directed primarily for a food product, the Board considered the complaint under Schedule 1.1 of the Code which provides:

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

- (a) Represent healthier dietary choices, as determined by the Nutrition Criteria; and
- (b) Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:
 - (i) Good dietary habits, consistent with established scientific or government standards; and
 - (ii) Physical activity.”

With regards to the first requirement s.1.1(a), the Board noted that the advertisement is promoting a free portion of small fries with any menu purchase and that the small print underneath the promotion reads, “Not to be used to discount any other offer or with a McValue Meal/Happy Meal purchase”.

The Board noted that although McDonald’s does offer a healthy choice menu for children there is no mention of the healthy choice products in the advertisement. The Board noted that other than the image of the fries there is no other food product pictured or mentioned in the advertisement and considered that the advertisement does not represent healthier dietary choices as determined by the Nutrition Criteria.

The Board determined that the advertisement breached S1.1 of the QSRI. The Board noted the advertiser’s **response which indicated that this had been an inadvertent breach and** the promotion would cease immediately.

The Board noted the complainant’s concern that the material breached s1.5 of the Initiative. Schedule 1.5 of the Initiative provides:

“Signatories must not give away food and/or beverage products or vouchers to children as awards or prizes at Children’s sporting events unless those products meet the Nutrition Criteria.”

The Board noted the complainant’s significant argument that the SPC playground is a children’s sporting event. The Board considered however that the playground is quite clearly and playground. The Board noted that the voucher was handed out with entry to a Children’s Adventure Playground and considered that an Adventure Playground is not a ‘children’s sporting event’ and neither was the voucher an ‘award or prize’. The Board determined therefore that the provisions of S1.5 do not apply in this instance.

The Board then considered whether the advertisement complied with the requirements of the AANA Code for Advertising and Marketing Communications to Children (the Children's Code).

To fall within this Code the advertisement must be "having regard to the theme, visuals and language used [...] be directed primarily to children and are for product."

For the reasons mentioned above, the Board considered that the advertisement is directed primarily to children. The Board considered that the product – small fries is however not a product targeted to and of principal appeal to children. The Board determined therefore that the Children's Code and Part 3 of the Food Code do not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the AANA Food and Beverages Code.

The Board noted in particular 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 noted that the advertised product is a voucher for free small fries. The Board considered that, consistent with previous decisions (Hungry Jacks 282/11, Mars 208/11), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Board noted that the food item being promoted includes limitations and restrictions on the quantity allowed per customer, per day and considered that the likely interpretation of the advertisement is that the product advertised is intended as a treat or to supplement a meal. The Board considered that the advertisement did not encourage excess consumption or otherwise undermine the importance of a healthy active lifestyle. The Board determined that the advertisement did not breach Section 2.2 or any other provision of the Food Code.

Finding that the advertisement breached s1.1 of the QSRI the Board upheld the complaint.

ADVERTISER'S RESPONSE TO DETERMINATION

McDonald's was disappointed to learn of the complaint and continues to remain committed to ensuring compliance with the QSRI. As indicated in our first response to the ASB, as soon as McDonald's became aware of the complaint it undertook corrective action and instructed Kids Town Adventure Playground to withdraw the voucher of issue and any other similar food vouchers.

McDonald's confirms that such vouchers are no longer available at Kids Town Adventure Playground.