

Case Report

1. Case Number :	0321-24
2. Advertiser :	McDonald's Australia Limited
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Decision:	22-Jan-2025
6. Decision:	Upheld – Modified or Discontinued

ISSUES RAISED

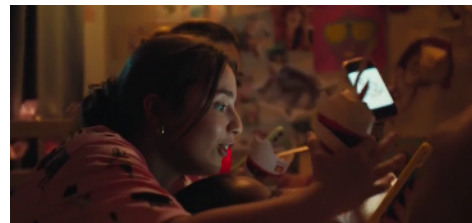
AANA Food and Beverages Code\3.1 Must not target children

AANA Code of Ethics\2.1 Discrimination or Vilification

AANA Code of Ethics\2.6 Health and Safety

DESCRIPTION OF ADVERTISEMENT

This television advertisement features four teenagers sitting on a bed eating McDonald's McFlurrys while looking at their phones. A voice-over says "Macca's new Cadbury cherry ripe McFlurry. Available in vanilla and chocolate. Best served with a side of goss!"



THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

Product best served with gossiping. Girls used to depict having fun gossiping with McFlurry Gossiping on social media is a major contributor to bullying. Social media now to be banned for under 16. Even if had not come in this is so irresponsible and disrespectful to all bullying victims - having fun is about gossiping- seriously! Bad timing given sensitivity

A specific ad for McFlurry has a few young teenage girls sitting on a bed with their phones and the voice over states "served with a touch of goss". Australia is trying to stop 'goss' among young teens as well as their use of phones, social media etc. I feel the ad in at this time is inappropriate.

The add is promoting online bullying by stating that their new cherry ripe sundae goes well with gossip.

The recent advertisement for Cherry Ripe flavoured McFlurries depicts 3 pre-teen girls in a bedroom eating a McFlurrie while sharing a screen. The ad' states McFlurries are best eaten with a side of 'goss' a term colloquially short for gossip.

It's poor judgement to endorse and encourage a favourable experience of shared eating with friends beside sharing gossiping behaviours, linked to an online device, that many would consider can cause harm to others.

This is especially the case in light of widely available evidence that young girls are negatively affected by online bullying, shaming and unwelcome attention from peers and adults. Gossip has long been regarded as a negative behaviour, potentially causing harm when shared.

Appears to promote online bullying or harassment

The Mac Donald's ad for a ice cream and said the ice cream goes well with "hot goss". To use the the issue of gossiping in such a " positive " manner fills me with disbelief and anger .

THE ADVERTISER'S RESPONSE

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

Description of advertisement

This 15 second TV advertisement is promoting McDonald's Cherry Ripe McFlurry. The advertisement depicts teenage girls laughing and talking at a sleepover on their phones. The voice over says, "Macca's new CadbuRy Cherry Ripe McFlurry, available in

vanilla and chocolate. Best served with a side of goss". The advertisement concludes with text that says "the time to spill the tea Macca's run".

Whether the audience of the program is predominantly children

No, the audience of the advertisement is not predominantly children, with the expected child audience of the placement of the ads not above 25% or more children. We have confirmed that the buying audience for TV is P18-54 and is projected to have less than 15% of the audience under the age of 15. These figures are well under the AANA code stipulation.

Advertiser's response to complaint

Thank you for requesting a response to complaint number 0321-24 (Complaint).

We note that the Complaint has raised issues under the following codes of practice:

AANA Code of Ethics – section 2.6 Healthy and Safety – Bullying (non violent):

McDonald's takes its obligations seriously in respect of adherence to all the codes of practice administered by Ad Standards. McDonald's entirely refutes any suggestion in the complaint or otherwise that the Advertisement breaches the Codes. Please see details below.

AANA Food and Beverages Advertising Code - Section 2.6 provides the following:

"Advertising shall not depict material contrary to Prevailing Community Standards on health and safety".

In the current case, the complainant claims McDonald's is promoting bullying. We submit that our advertisement does not breach section 2.6 on the following basis:

- The Advertisement does not display, promote or condone any person being bullied. The complainant's note that the voice over states the McFlurry is "best served with a side of goss" and that gossip is a major contributor to bullying on social media. Whilst we acknowledge in some circumstance gossip can be hurtful, it is not always the case nor does it mean that the girls featured in the Advertisement are necessarily talking badly about another person or bullying them. According to the Oxford English dictionary, 'goss' is a colloquial term derived from the word 'gossip', meaning 'casual and unconstrained conversation or reports about other people typically involving details that are not confirmed as being true'. Based on this meaning, gossip is not always bad, and does not necessarily mean it is done in a malicious manner. There is no reference in the script as to what the girls are gossiping about nor any depiction of what is displayed*

on their phones, and their conversations could be as trivial as news about their favourite celebrity, or rumours about an event coming up. The girls in the Advertisement are shown visibly having fun together, chatting and sharing stories and the Advertisement implies their conversations are positive, with no reference or depiction of the girls bullying, harassing or talking ill of another person.

- *Similarly, the overlay of text stating ‘the time to spill the tea Macca’s run’, also does not imply, promote or encourage bullying. ‘Spill the tea’ is a popular phrase used on social media meaning to share or reveal interesting news or personal information. Like the definition of gossip, spilling the tea does not necessarily mean that the conversations shared are malicious or bullying.*
- *Furthermore, the Ad Standards Board has previously dismissed a case (0064/14) that raised concerns under section 2.6 of the code for bullying on the basis that the language used in that advertisement was seen as a “reflection of women chatting and gossiping rather than bullying behaviour”, further highlighting that gossip does not always equate to bullying, and such, this distinction should be considered in the current case.*

Given the above, the Advertisement does not depict material contrary to community standards on health and safety, nor depict, encourage or condone bullying.

AANA Advertising to Children Code

We note that this Code is only applicable if the Advertisement is considered as Advertising or Marketing Communications to Children.

We submit that this Code is not applicable to the Advertisement considering that the language used, theme and visuals of the Advertisement have a primary appeal to adults rather than children aged 15 years or younger.

AANA Code of Ethics

McDonald’s does not believe the Advertisement is in breach of the following parts of section 2 of the Code of Ethics:

- *2.1 – Discrimination or vilification;*
- *2.2 – Exploitative and degrading;*
- *2.3 – Violence;*
- *2.4 – Sex, sexuality and nudity;*
- *2.5 – Language;*
- *2.6 – Health and Safety (as discussed above); and*
- *2.7 – Distinguishable as advertising*

AANA Food and Beverages Advertising Code

McDonald's does not believe the Advertisement is in breach of any of the parts of the Food and Beverages Advertising Code.

Conclusion

McDonald's concludes that the Advertisement does not breach any of the codes, and in particular does not depict material contrary to prevailing community standards on health and safety. McDonald's is a family brand and does not encourage nor condone bullying behaviour of any kind. Therefore, McDonald's respectfully disagrees with the complaint and request that the Panel dismiss the complaint on this basis.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches Section 2 of the AANA Code of Ethics (the Code) or the AANA Food and Beverages Advertising Code (the Food Code).

The Panel noted the complainants' concerns that the advertisement depicts gossiping and bullying behaviours.

The Panel viewed the advertisement and noted the advertiser's response.

Food Code Section 3.1 Advertising (including sponsorship advertising) of Occasional Food or Beverage Products must not target Children.

Is the advertisement for an Occasional Food or Beverage Product?

The Panel noted that the definition of Food or Beverage Product in the Food Code is: *"food or beverages products which do not meet the Food Standards Australia Nutrient Profile Scoring Criterion as published from time to time by Food Standards Australia New Zealand"*.

The Panel noted the advertisement is promoting Cadbury Cherry Ripe McFlurry. The Panel noted the advertiser had not provided information as to whether the product meets the FSANZ criteria, however as the advertised product is an ice cream dessert it is likely to be an occasional food product.

Does the advertisement target children?

The Panel noted that the Food Code defines "target children" as:

"Target Children is determined by the context of the advertisement and the following three criteria:

1. *Nature and intended purpose of the product being promoted is principally or significantly appealing to Children;*
2. *Presentation of the advertisement content (e.g. theme, images, colours, wording, music and language used) is principally appealing to Children;*
3. *Expected average audience at the time or place the advertisement appears includes a significant proportion of Children."*

The Panel noted that the Practice Note provides guidance on the interpretation of "target children":

"All three criteria will be considered by the Community Panel in determining whether or not advertising targets Children. The weighting given by the Community Panel to each of the three criteria will be determined on a case by case basis. In the event of a complaint being considered by the Community Panel, the advertiser should be in a position to provide details in terms of the nature and intended purpose of the product, the presentation of the advertisement content and the expected average audience at the time or place the advertisement appears.

"In relation to the third criteria, measures to determine if Children are likely to be a 'significant proportion' of the expected average audience may include one or a combination of the following:

- *Where data exists, 25% or more of the predicted audience will be Children. In relation to outdoor advertising, if across a campaign the data shows a predicted audience with less than 25% Children, and there is a Children's event or concert that is incidental to the ad placement, the audience of that incidental Children's concert or event will not be captured.*
- *C&P programmes.*
- *Programs, artists, playlists, video, movies, magazines or other content with significant appeal to Children (e.g. featuring personalities or characters popular with Children).*
- *Compliance with the Outdoor Media Association Placement Policy and Health & Wellbeing Policy which regulate the placement of advertising at primary and secondary schools which are locations where Children regularly and predictably gather. Where accurate program audience data is not available, the Community Panel may have regard to other factors listed above such as the program content, the time or the location where the advertisement is being shown (in line with the above provision)."*

Point 1: Is the nature and intended purpose of the product principally or significantly appealing to children?

The Panel noted that the test is whether the product is *principally or significantly* appealing to children, not *only* appealing to children, and the Panel considered that soft serve ice cream is generally a product of significant appeal to children.

The Panel considered that that the nature and intended purpose of the product was significantly appealing to children.

Point 2: Is the content of the advertisement principally appealing to children?

The Panel noted that to be within Section 3 of the Food Code the Panel must find that the advertisement is aimed in the first instance at children under 15.

The Panel noted the advertiser's response that the language used, theme, and visuals of the advertisement have a primary appeal to adults rather than children aged 15 years or younger.

Is the theme of the advertisement principally appealing to children?

The Panel noted that the theme of the advertisement is gossiping with friends over ice cream. The Panel considered that this is an activity that could be undertaken at any age, however in the advertisement the girls appeared to be teenagers, spending time in a bedroom as though at a sleepover. The Panel considered that the use of older teenagers in the advertisement is an aspirational age group for children, and this age group and the themes of spending time with friends and eating ice cream would be principally appealing to children under 15.

Are the visuals of the advertisement principally appealing to children?

The Panel noted that the advertisement did not feature bright colours or cartoon imagery which would attract the attention of young children. However, the Panel considered that the depiction of teenagers would attract the attention of children under 15.

The Panel considered that the girls are shown hanging out in a bedroom which is decorated as a teenager's room. The Panel considered that the girls are depicted wearing pyjamas as though at a sleep over. The Panel considered that the use of older teenagers in the advertisement is an aspirational age group for children under 15.

Overall, the Panel considered that the visuals would be principally appealing to children under 15.

Is the language/wording/music of the advertisement principally appealing to children?

The Panel considered that “side of goss” and “spill the tea” are colloquial phrases used by both children and adults. The Panel considered that the phrase “Macca’s run” is popular with teenagers who are old enough to drive to a McDonald’s, but is also used by children who can be driven by their parents.

The Panel considered that the language of the advertisement would be equally appealing to children under 15 and adults.

Is the content of the advertisement overall principally appealing to children?

The Panel reiterated that it is essential that they consider all elements of the advertisement and make a decision based on how all of the elements of the advertisement interact, and the overall impression that they make, in determining whether an advertisement is principally appealing to children.

The Panel considered that the overall impression of the advertisement is of teenage girls at a sleepover. The Panel considered that the girls may be 15 or over, but the theme of having a sleepover with friends and gossiping is one which would principally attract the attention of children under 15.

Overall, the Panel considered that the advertisement would attract the attention and interest of children under 15 ahead of any other audience.

Point 3: Does the expected average audience of the advertisement include a significant proportion of children?

The Panel noted the advertiser’s response that the expected average audience of the advertisement was less than 15% children under 15.

The Panel noted that the advertisement does not have an expected average audience which would include a significant proportion of children.

Does the advertisement target children?

The Panel noted that in order to determine whether an advertisement targets children it is required to weigh each of the three criteria above.

The Panel considered that:

- the product would have significant appeal to children
- the content of the advertisement was principally appealing to children
- audiences for the advertisement would not include a significant proportion of children.

Weighing these three elements, the Panel found that the expected average audience did not mitigate the appeal of the product and content of the advertisement. The Panel therefore found that the advertisement did target children under 15.

Section 3.1 conclusion

The Panel noted that this advertisement for an Occasional Food or Beverage Product did target children, and therefore the Panel determined that the advertisement did breach Section 3.1 of the Food Code.

Code of Ethics Section 2.1: Advertising shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief.

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

- *Discrimination – unfair or less favourable treatment.*
- *Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.*
- *Gender – refer to the attributes, roles, behaviours, activities, opportunities or restrictions that society considers appropriate for girls or boys, women or men. Gender is distinct from ‘sex’, which refers to biological differences*

The Panel noted the Practice Note to Section 2.1 states:

“Advertising which shows members of a certain group as ridiculous, unintelligible or unable to recognise a dangerous situation incites ridicule towards their behaviour.

A negative depiction of a group of people in society may be found to breach Section 2.1, even if humour is used. The depiction will be regarded as a breach if a negative impression is created by the imagery and language used in the advertisement of a person or group of people on the basis of a defined attribute listed above. Advertisements can humorously or satirically suggest stereotypical aspects of a group of people in society provided the overall impression of the advertisement does not convey a negative impression of people of that group on the basis of one or more of the attributes listed above.”

The Panel considered that the advertisement depicted three teenage girls getting together to gossip. The Panel considered that gossiping is an activity stereotypically associated with girls, and can be associated with negative stereotypes of women being vapid or incapable of intelligent conversation.

However, in this instance the Panel considered that the subject of the gossip is not known, and gossiping for the teenage girls is shown as a positive bonding experience. The Panel considered that the advertisement did not suggest that the girls are

deserving of less favourable treatment because of their gender, or depict them in a way which humiliates them, or incites hatred, contempt or ridicule.

Section 2.1 conclusion

The Panel found that the advertisement did not breach Section 2.1 of the Code.

Section 2.6: Advertising shall not depict material contrary to Prevailing Community Standards on health and safety.

The Panel noted the Practice Note for this section of the Code includes:

“The age of the people depicted in an advertisement, their relationship to each other and the nature of the communication are relevant in determining whether an advertisement constitutes bullying and is contrary to Prevailing Community Standards. More care must be taken when the people depicted in an advertisement are Minors or if there is an unequal relationship between the people in the advertisement, e.g. student and teacher, manager and worker.”

The Panel acknowledged that cyber bullying is an area of increasing concern in the community, especially amongst teenagers on social media. However, the Panel considered that the advertisement does not show or suggest that another person is the subject of the “goss” amongst the teenagers. The Panel considered that gossip can refer to celebrity gossip, personal disclosures, or thoughts and opinions on popular culture. The Panel considered that the advertisement does not depict or suggest bullying.

The Panel considered that the advertisement did not contain material contrary to Prevailing Community Standards on health and safety.

Section 2.6 conclusion

The Panel considered that the advertisement did not breach Section 2.6 of the Code.

Conclusion

Finding that the advertisement breached Section 3.1 of the Food Code the Panel upheld the complaints.

THE ADVERTISER’S RESPONSE TO DECISION

At McDonald’s we take our responsibility as an advertiser very seriously. Whilst we are disappointed with the outcome of the complaint, McDonald’s remains committed to ensuring compliance with the AANA Advertising Codes and we respect the final decision from Ad Standards. This advertisement is no longer being broadcast.