

## AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA



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### **Statement to the Senate Environment and Communications Committee**

#### **Supplementing written and oral submissions on**

#### **Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017**

##### **Proposed changes to Commercial Television Industry Code of Practice**

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In our written submission, ACCM stated that 'the industry has already had for some time, and not taken, the opportunity to self-regulate in accordance with community expectations' (p3). Professor Handsley made a similar statement in her oral submission.

We have since become aware that FreeTV Australia in November last year announced a review of the provisions of the Commercial Television Industry Code of Practice relating to the broadcast of gambling and betting commercials and the promotion of odds in live sport, and that new provisions are currently under consideration by the ACMA.

ACCM has sought information about the steps taken to alert the community to this review and will be corresponding with the ACMA regarding their obligations under s 123(4)(b)(iii) of the *Broadcasting Services Act 1992* (Cth).

Monday 5 February 2018





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## Case Report

1	Case Number	0072/17
2	Advertiser	Bakers Delight
3	Product	Food and Beverages
4	Type of Advertisement / media	Billboard
5	Date of Determination	22/02/2017
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

Food and Beverage Code 2.1 (b) - Contravenes community standards  
Advertising to Children Code 2.14 Food and beverages

### DESCRIPTION OF THE ADVERTISEMENT

The complaints refer specifically to ShopaLite Out Of Home (OOH) billboard advertisements viewed at Mitcham Square Shopping Centre and Coolman Court Shopping Centre.

The advertisement placed on this media features 3 Bakers Delight product images, and the copy reads:

“School lunches? Problem solved”

“NEW Mini Finger Bun 4-pack here for a limited time only at Bakers Delight”

“Visit Bakers Delight today”.

### THE COMPLAINT

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

*It really is quite self-explanatory. Advertising of lolly's on bread for school lunches is appalling. Lunch and healthy food choices is challenging enough for most families and to have this as an acceptable choice is unfathomable. A company that promotes bread as sugar free this is a disgrace. This is only contributing to the childhood diabetes and obesity epidemic that we have in Australia.*

*Bakers Delight is specifically targeting children to include M&M finger buns as a day-to-day*

*lunch box item. Such products, should rarely (or preferably never) be eaten by children, let alone promoted and 'normalised' as an everyday food that is appropriate to take to school. At a time when Australia is facing an obesity crisis, it seems incredibly irresponsible and unethical to market such products to children and their carers.*

## **THE ADVERTISER'S RESPONSE**

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

*Whether the audience of the programs is predominantly children  
It is not our intention to target children with any of these advertisements, alternatively our copy is specifically designed to be directed at parents.*

*"School lunches? Problem solved" is intended to target busy parents during the back to school rush period, to encourage them to consider Bakers Delight in their purchasing decisions. There is no copy used that is targeted specifically to children.*

*Substantiation of any health, nutrition or ingredient claims or statements made in the advertisement*

*N/a - no health, nutrition or ingredient claims are made on the advertisement.*

*Your comprehensive comments in relation to the complaint*

*The complaints refer specifically to our limited time only Mini Finger Bun 4-pack topped with Mars Mini M&M Chocolates. Please find below some further information about this product and our marketing approach.*

*Limited time only product*

- The ShopaLite Out Of Home billboard advertisements referenced in the complaints will be removed at the end of this week (by COB Sunday February 12).*
- The product referenced in the complaints is available for a limited time only, and will no longer be available for sale after Wednesday February 22.*

*Mini 4-pack Finger Bun*

- The product referenced in the complaints is a limited time only Mini Finger Bun 4-pack – it's a mini product pack designed for sharing, not for consumption by 1 person alone.*
- This product is a mini sized version of a large Finger Bun, which we designed to be a more appropriate size for children to consume.*
- 1 Mini Finger Bun is almost half the size (50grams vs 92grams) and almost half the calories (160cal vs 294cal) of a large Finger Bun product.*
- Large Finger Buns have been sold by Bakers Delight for over 20 years, and in promoting this mini sized version, we intended to offer a more modern and health conscious portion size for children.*
- As with all Bakers Delight products, we have made the nutritional information for this product readily available on our website, so interested parents have access to the full details if they wish to see this.*

*Comparative products*

*There are many sweet treat products made with Mars Mini M&M Chocolates available to*

*consumers from a range of shops in Australia. We have noted that many of these products have higher celery contents than our offering. For example:*

- *Subway M&M Cookie = 201 cal per serve*

*Source: [http://www.calorieking.com/foods/calories-in-desserts-m-m-cookie\\_f-ZmlkPTkyNzE3.html](http://www.calorieking.com/foods/calories-in-desserts-m-m-cookie_f-ZmlkPTkyNzE3.html)*

- *McDonalds M&M'S MINIS McFlurry = 402 cal per serve*

*Source: <https://mcdonalds.com.au/menu/mini-mm-mcflurry>*

*'Treat' approach*

- *Our in-bakery campaign specifically positions this as a treat product, with copy such as "after school treat, its right here" and "go on, make their day". The copy does not promote this product as an everyday eating occasion, but rather an occasional treat.*

- *It is our intention to promote this product as a limited time only treat for occasional eating.*
- Target audience*

- *The campaign is targeted to the parents of school aged children, to encourage them to consider our products for their children. There are no campaign elements that are targeted to children, everything is considered from the parent's point of view.*

- *The copy "go on, make their day" is specifically addressed to parents, who want to treat their children and make their day with a small mini snack. This copy is further reinforced by our in-bakery marketing material, which features copy lines aimed at parents, such as "hungry kids?", "be a lunchbox hero" and "school lunches? Problems solved".*

*Consideration of section 2 of the AANA Code of Ethics*

*We feel that no parts of section 2 of the AANA Code of Ethics have been breached, specifically because:*

- *Section 2.1: there is no discrimination or vilification in the advertisement*
- *Section 2.2: there is no exploitive or degrading material in the advertisement*
- *Section 2.3: there is no violence in the advertisement*
- *Section 2.4: there is sex or nudity in the advertisement*
- *Section 2.5: there is no coarse language in the advertisement*
- *Section 2.6: there is no health and safety material in the advertisement*

*Consideration of the AANA food & beverages advertising & marketing communications code*

*We feel that this code has not been breached, as the code defines "Advertising or Marketing Communications to Children" to mean "advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for a Children's Food or Beverage Product".*

*We do not feel that this advertisement falls under this definition, because:*

- *The campaign is targeted to the parents of school-aged children, to encourage them to consider our products for their children. There are no campaign elements that are targeted specifically to children, everything is considered from the parent's point of view.*
- *The copy "go on, make their day" is specifically addressed to parents, who want to treat their children and make their day with a small mini snack.*

*Consideration of the AANA code for advertising & marketing communications to children*

*We feel that this code has not been breached, as the code defines "Advertising or Marketing Communications to Children" to mean "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product."*

*We do not feel that this advertisement falls under this definition, because:*

- The campaign is targeted to the parents of school aged children, to encourage them to consider our products for their children. There are no campaign elements that are targeted specifically to children, everything is considered from the parent's point of view.*
- The copy "go on, make their day" is specifically addressed to parents, who want to treat their children and make their day with a small mini snack.*

## **THE DETERMINATION**

The Advertising Standards Board (Board) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Children's Code) and the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board noted the complainants' concerns that the advertisement is targeted to children and is promoting an unhealthy option for inclusion in children's lunchboxes.

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

The Board noted that the product advertised is food and that therefore the provisions of the AANA Children's Code and the Food Code apply.

The Board considered whether the advertisement complied with the AANA Code for Advertising and Marketing Communications to Children. The definition of what is 'advertising and marketing communications to children' in the AANA Children's Code means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition.

For the purposes of this Code, Children means persons 14 years old or younger and Child means a person 14 years old or younger.

The Board noted the complainant's concerns the product being advertised – a mini finger bun with M&M's on top is an unhealthy food option that should not be promoted as a lunch box solution.

The Board noted that the advertisement is a poster that is displayed in shopping areas where Bakers Delight is operating and includes the picture of the mini finger bun 4-pack below the image of a bacon and cheese bun and a savoury scroll. The text reads "School lunches? Problem solved." At the top of the image is a selection of coloured pencils.

Having regard to the provisions outlined above, the Board noted the theme of the advertisement – school lunch box ideas. The visuals used - brightly coloured pencils and the buns themselves with coloured M&M's on top and the language of the text stating, "school lunches? Problem solved." The Board noted that the product itself was attractive to children but that it was the Board's role to look only at the advertisement.

The Board considered that the advertisement would be appealing to children and that in particular the pencils and brightly coloured M&M's would attract the attention of children. However, the Board considered that overall, the images used in connection with the large text referring to school lunches was very clearly targeting parents or carers of school aged children and was offering a solution for what could be included for school lunch ideas.

In the Board's view, some elements of the advertisement would be appealing to children, particularly the images, but considered that overall the content is equally likely to be of appeal to parents and carers and is therefore not directed primarily to children under 14.

The Board considered that the Children's Code did not apply as the advertisement was not directed primarily to children.

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

The Board first considered section 2.1 of the Food Code which provides:

'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'

The Board considered that, consistent with previous decisions (0101/14, 0262/15, 0593/16), the promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle or contrary to prevailing community standards and that the promotion of scrolls or finger buns is not contrary to prevailing community standards.

The Board then noted 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 then noted the Practice Note to section 2.2 which states:

"The Board will not apply a legal test, but consider material subject to complaint as follows:

(1) In testing whether an advertising or marketing communication undermines the importance of a healthy balanced diet, the Board will consider whether the communication is disparaging of healthy foods or food choices or disparaging of physical exercise. Such disparagement need not be explicit, and the Board will consider the message that is likely to be taken by the average consumer within the target market of the communication."

The Board noted the complainant's concern that the advertisement suggests that the finger

buns should be included as a lunch box option on a day-to-day basis and that this is an unhealthy option.

The Board noted the advertiser's response that this is a limited time product only and that the pack is a 4-pack designed for sharing and not for consumption by one person alone.

The Board noted that the advertisement included images of both the mini finger buns and also savoury buns as well. The Board noted that the advertisement did not specifically separate the different product items as being options on their own that could be included as lunch box items.

A minority of the Board considered that the advertisement suggests that you could have a scroll and a finger bun and that this is an easy option to put in a lunch box but was not a suggestion that this should happen everyday or that these are the only items to have in a lunch box.

The majority of the Board noted that the reader may interpret the advertisement as being a suggestion of some items to go in the lunch box, however, in the view of the majority, the text "your lunchbox solution" strongly suggests this is all you could have (a scroll and a finger bun).

The Board noted the guidelines from the NSW healthy kids website <https://www.healthykids.nsw.gov.au/parents-carers/healthy-eating-and-drinking/lunch-box-ideas.aspx> and the VIC State Government guidelines <https://www.betterhealth.vic.gov.au/health/healthyliving/lunch-box-tips> that provide suggestions for foods to include in a lunch box and that these suggestions state a variety of food types such as: fruit and vegetables, starchy food, protein and dairy.

In the majority view, the Board considered this advertisement's text and image amount to a message that is undermining the promotion of healthy balanced diets in relation to school lunches by strongly suggesting that a scroll and finger bun is a complete lunch box.

The Board noted that the advertisement makes no reference to exercise and considered that overall the advertisement is not disparaging of healthy food choices or of physical exercise but considered that the message that is likely to be taken by the average consumer within the target market is that the finger buns (even just 1) could be included with a savoury bun in the one lunch box and that the combination of these items is not overall consistent with the promotion of healthy balanced diets for a school lunch. In the Board's view the advertisement as a whole did breach section 2.2 of the Food code.

The Board then considered whether the advertisement condones excess consumption.

The Practice Note provides that "(2) In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption."

The Board noted that the advertisement depicts finger buns and savoury buns and that whilst designed to be options for a lunch box treat or occasional lunch alternative, this is not clear in



the advertisement. The Board noted that in a similar advertisement for Kellogg LCM Golden Joys (0494/12) the image of the treat item was included in a lunch box that also included a piece of fruit and a sandwich. The Board noted that this depiction more clearly reflected that the sweet item (the LCM) was to be a small component of the total lunch but not the whole thing.

The Board noted however that the finger buns are a ‘mini’ size and that the advertiser has explained that this is to increase the suitability of the item as a small snack for children in comparison to the standard size finger bun available in store.

The majority of the Board considered that the depiction of the mini finger buns in a group of four was not a suggestion that they should be eaten as an entire pack of four by one person and was not a depiction that condones excess consumption.

Based on the above, the Board considered that the advertisement does undermine the promotion of healthy balanced diets through the combination of images and text and that it did breach Section 2.2 of the AANA Food Code.

Finding that the advertisement did breach the Food Code, the Board upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Bakers Delight takes the Matter seriously and, although we were surprised that our recent campaign came to your attention, we will no longer be undertaking that campaign as a result of your intervention.

Specifically, the campaign was designed to only be a special treat for a child; although purchased by a parent, who would make the buying decision. At no point was the finger bun product implied or otherwise as being a lunch replacement for a child. The campaign was a limited-time promotion with a limited quantity product (although the chocolate drops are a freely available ongoing item in supermarkets, Bakers Delight purchased the chocolate drops in a finite amount. So once sold out, they were gone). For this reason the campaign has finished and will not be repeated anyway.

Regardless of the above, the campaign would not have been repeated once Bakers Delight came to the attention of the Advertising Standards Bureau (ASB). Bakers Delight prides itself on its vast array of healthy products on offer, made fresh every day in each and every Bakers Delight bakery throughout Australia and we are disappointed in ourselves for coming to the ASB's attention with this campaign.

