

COMPLAINT NUMBER	19/330
COMPLAINANT	A Brien
ADVERTISER	McDonald's Restaurants (New Zealand) Limited
ADVERTISEMENT	McDonald's
DATE OF MEETING	30 October 2019
OUTCOME	Not Upheld No further action required

Description of Advertisement

The McDonald's sponsored Instagram advertisement shows a photo of two McDonalds cheeseburgers, fries and a drink which has 'No sugar' and Coca Cola written on the outside of the paper cup. There is a big "\$5" next to the food and drink. Across the bottom of the advertisement is the text: "mcdonaldsnz Only on the Macca's App. Available Wed 25 and Thurs 26 September, 10.30am – 10.30pm, 2x cheeseburgers, small fries and small drink for just \$5!"

Summary of the Complaint

The Complainant was concerned the advertisement was undermining the health and well-being of individuals because the food depicted does not meet the Ministry of Health Eating and Activity Guidelines and contains an excessive amount of energy for one meal. The Guidelines recommend foods with unsaturated fats, that are low in sodium, have little or no added sugar and are mostly 'whole' or less processed. They also recommend plain water over other drinks.

Issues Raised:

- Social Responsibility
- Health and Well-being
- Truthful Presentation
- Food and Beverage Claims

Summary of the Advertiser's Response

The Advertiser said the advertisement doesn't encourage excessive consumption or show food that exceeds portion size. The Advertiser said if the complaint was upheld it would be effectively banning the advertising of occasional food and beverages. The Advertiser said the advertisement only ran for several days and is no longer live.

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about an Instagram advertisement for a McDonalds cheeseburger meal. The Board said the advertisement was a straightforward "price and product" advertisement for an occasional food and did not promote a meal in a way that undermined the health and well-being of individuals.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 1: Social Responsibility: Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

Rule 1 (h) Health and well-being: Advertisements must not undermine the health and well-being of individuals.

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2 (g) Food and Beverage Claims: Food and Beverage claims must be factual and able to be substantiated and must not be misleading.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 19/088, which was Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 19/088 concerned a television advertisement for Burger King. The advertisement showed people eating burgers and then asking for more. One customer holds out his tray and says: “Just need another three”. The Complaints Board said the advertisement could be seen to normalise excessive consumption and there was not sufficient context or exaggeration for the statement to be dismissed as hyperbole.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was you can buy two McDonalds cheeseburgers, fries and a drink for \$5. The offer was for a limited time only.

Does the advertisement undermine the health and well-being of individuals?

The Complaints Board said the advertisement did not undermine the health and well-being of individuals.

The Complaints Board said the advertisement was a straightforward “price and product” advertisement for an occasional food and did not contain any other references to health or to encourage excessive consumption.

The Complaints Board said the Instagram page is age-gated for those aged 18+ and the Advertiser can therefore assume the potential purchaser is an adult. It also noted the offer was for a limited time and could only be used once.

The Complaints Board said it was not unreasonable for 40% of a person’s recommended daily food intake to be consumed in one meal.

The Complaints Board said the advertisement does not specify that the food displayed in the photo is one serving, although the image of only one drink and one packet of fries does suggest this.

Is the advertisement making food and beverage claims?

The Complaints Board said the advertisement was not making any food and beverage claims.

The Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Principal 2, Rule 1(h) or Rule 2(g) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

APPENDICES

- 1. Complaint**
 - 2. Response from the Advertiser**
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Appendix 1

COMPLAINT FROM A BRIEN

I was served the attached ad via sponsored Facebook content at 10:55am on Wednesday 25 September 2019 and feel it breaches Rule 1 (h) Health and well-being - advertisements must not undermine the health and well-being of individuals.

The advertisement depicts a meal of 2x cheeseburgers, 1x small fires and 1x small no sugar drink (although any small drink could be selected). The nutritional profile for this meal according to nutrition information on the McDonald's website is 3530kJ (or 3939kJ with a sugary drink), 35.6g total fat, 10.6 sugar (or 34.9g with a sugary drink) and 1606mg sodium. The MoH's Eating and Activity Guidelines for NZ Adults recommend we choose and/or prepare foods and drinks with unsaturated fats instead of saturated, are low in sodium, with little or no added sugar and that are mostly 'whole' and less processed. They also recommend that plain water is the first choice over other drinks. The depicted meal does not meet these recommendations.

Food Standards NZ sets out the percentage daily intake information for nutrition information panels and this is based on 8700kJ diet for an 'average' adult. The depicted meal represents is equivalent to 40.6% of an average adults energy requirements (or 45.3% if a sugary drink is included). That is an excessive amount of energy for one meal, especially when it's described as a 'small combo'.

FSANZ recommend adults eat less than 2300mg of sodium per day, this meal would provide 69.8% of an adults daily requirements. Again, this is an excessive amount of one nutrient for a 'small combo'.

When clicking on the redeem button and going through to the McDonald's app it shows the deal is only available 10:30am - 10:30pm and expires 26 September 2019. Limited time offers are likely to create a sense of urgency for consumers to buy more quickly.

Also contained within the app were other concerning meal deals with even higher energy, fat and sodium levels than the \$5 cheeseburger small combo + cheeseburger.

The promotion of high energy, fat, sugar and sodium containing foods is causing harm to New Zealanders with 1 in 3 adults found to be obese (32%) in the 2017/18 NZ Health survey.

Food retailers and manufacturers need to promote their offerings in a more responsible way to avoid undermining the health and well-being of individuals. In particular, high energy, high fat, high sugar and high sodium meals like the advertisement I have raised here.

Appendix 2

RESPONSE FROM ADVERTISER, MCDONALD'S RESTAURANTS (NEW ZEALAND) LIMITED

Thank you for forwarding the complaint from A Brien regarding a McDonald's digital advertisement run on Instagram (note: Complainant stated the advertisement was on Facebook but provided an image from Instagram) promoting a \$5 app deal.

Description of \$5 app deal ad

The advertisement was for a limited time offer, available via the McDonald's app, for two cheeseburgers, a small fries and small drink for \$5. The advertisement shows the products included in the offer, with post copy explaining the terms and conditions of the deal.

ASA's Advertising Code

The complainant alleges the advertisement breaches:

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

RULE 1 (H) HEALTH AND WELL-BEING

Advertisements must not undermine the health and well-being of individuals.

Advertiser's response

Principle 1: Social Responsibility

- The advertisement was placed on Instagram, where all McDonald's advertisements are age-gated to be 18+. Therefore, paid reach means the advertisement would not appear in accounts for children and young people.
- The \$5 app deal advertisement in question is presented in a very functional way, with no elements to suggest it has not been prepared and placed with a due sense of social responsibility to consumers and to society.
- The ad does not target "vulnerable consumers" such as pregnant women, children or older people and so does not undermine the Food and Nutritional Guidelines. Nor does the ad suggest that the food items should be consumed every day.
- Care was taken to ensure that the "No Sugar" drink option was depicted along with small fries.
- Neither the Advertising Standards Authority' Advertising Code nor the Ministry of Health's Eating and Activity Guidelines prevent the advertising of occasional food and beverages.
- Occasional foods, whether they are single items or bundles of intended for one or multiple people are permitted to be advertised. The test under the ASA code is not how many KJ the food items contain but that the food items are advertised in a socially responsible way.

Rule 1 (h) Health and well-being

- Nothing in the advertisement undermines the health and well-being of individuals or the food and nutrition policies of the Government and the Ministry of Health, such as the Food and Nutrition Guidelines or the Eating and Activity Guidelines. As stated above advertisements for occasional foods are permitted provided they are advertised in a responsible way.
- The advertisement does not feature any people and therefore does not condone or encourage excessive consumption or show a quantity of food or beverage that exceeds the

portion size that would be appropriate for consumption by the person or people of the age depicted in the advertisement.

- The advertisement does not promote inactive or unhealthy lifestyles, or portray people who choose a healthy, active lifestyle in a negative manner.
- The advertisement makes no claims regarding health or excessive consumption and does not include any imagery of people.
- Neither the Food and Nutrition Guidelines nor the Eating and Activity Guidelines prevent the advertising of occasional food and beverages.
- As with any McDonald's 'combo' the size relates to the drink and fries. In this example the bundle includes a small fries and beverage. In the advertisement there is no reference to a 'small combo', but on the McDonald's app it referenced a '\$5 cheeseburger small combo + cheeseburger'

McDonald's provides choice and flexibility in its menu. For example, with the food bundle advertised a customer can swap the soft drink for water and fries for salad.

Conclusion

The ad was reviewed by McDonald's legal and marketing teams as part of our due diligence and compliance process. Given the nature of the advertisement, it only ran for several days, and therefore is no longer live. Most McDonald's app offers are a 'one time use' and therefore can only be redeemed once.

As a global iconic brand McDonald's takes its advertising responsibilities very seriously, often times going above and beyond industry standards and advertising standards authority codes. We believe if this complaint was upheld it would be a precedent to effectively ban the advertising of occasional food and beverages. This is not the stated intent of the Ministry of Health's Eating and Activity Guidelines, or the Advertising Standards Code.