



Case Report

1	Case Number	0511/11
2	Advertiser	Oporto Franchising Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Poster
5	Date of Determination	18/01/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

In-store point of sale to communicate the ability to 'upsized chips & drink' on meal deals. The text reads, "Upsize from a Single Fillet meal. 600ml drink and regular chips only \$1.80 + 620 Kj."

THE COMPLAINT

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

The advert is misleading. When you order your food the staff offer you an "Upgrade" to a "Large" meal being hungry I accepted this offer. Instead of being charged the \$1.80 (to upgrade the large drink and fries) as advertised they actually charged \$2.70. When questioned the staff explained that the advertised upgrade was only for a "regular" fries & that if you want the "large" fries the upgrade price is actually \$2.70. The advert doesn't make mention of this additional cost for a large fries. Additionally the meal price on their boards only specifies that the "Meal" comes with a 375ml drink and "fries" (without mentioning which size is offered included in the meal price).

This is only \$0.90 so for me personally it's annoying however assuming they do this to every customer this is a huge amount of money.

The advert should clearly show that the \$1.80 upgrade offer is only for a regular fries & if you opt for the "large" (that the staff offer you at the counter) then the charge is actually

\$2.70. There is no mention of the \$2.70 charge on the advert or anywhere else that I could locate.

THE ADVERTISER'S RESPONSE

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

Oporto, like most QSR's, offers customers the ability to upsize their chips and drinks from the default meal deal combinations – our standard upsize to the next size chips and drink is \$1.80 and this offer is heavily merchandised both on our menu boards and in-store point of sales (see attached counter cards). Our upgrades are as follows:

- *Single Fillet Burger Range = default meal deal is small chips & 375ml can of drink > upsize for \$1.80 to regular chips & 600ml can of drink (see attached single fillet menu board example)*
- *Double Fillet Burger Range = default meal deal is regular chips & 375ml can of drink > upsize for \$1.80 to large chips & 600ml can of drink (see attached double fillet menu board example)*

The above represents our standard default meal deals for the single and double fillet burger ranges of which an upsize option is offered; and as demonstrated on the menu boards examples. These have been our standard offers in the marketplace for well over a decade. In relation to the complaint lodged and allegations of the offer being misleading there are a number of point to clarify and consider:

1) Upsize Offer – albeit the complainant hasn't specified which 'meal deal' they were purchasing at the time, based on the information provided we can only ascertain that it must have been a single fillet meal deal and they have been offered an upsize to 'large chips and 600ml drink'. Whilst we don't actually promote this offer, a large number of customers request a 'double upsize' from small chips to large chips (skipping the regular size) with their single fillet meal deal and this is available for \$2.70. In the same way some customers only want to 'upsized' their drink from a 375ml can to a 600ml bottle – in this case the upsize cost is only \$0.90. Albeit, our default offers for 'upsizes' are as listed above and this is what is promoted and the customer could have purchased.

2) Menu Board Descriptions – the complainant is misleading in their statement about the menu panels not mentioning the 'size' of the chips supplied with each meal deal. As per the attached menu board examples this is clear and legible on all panels.

Additionally, prior to the completion of the sale it is our standard procedure to repeat the order and state the price so that any changes can be made to the order before the order is finalised and paid for.

It is therefore the opinion of the advertiser, Oporto Franchising Pty Ltd, that this piece of advertising cannot be construed as either misleading or deceptive.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concern that the advertisement is misleading because it implies that you can upgrade to a large meal for \$1.80 whereas the actual upgrade price is \$2.70.

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 Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Board 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 noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide:

“The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or

otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, advertising and/or marketing communications may make reference to one or more of the nutritional values and/or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product...’

The Board noted that the advertisement states that the advertisement states that you can “upsized from a Single Fillet meal” for \$1.80.

The Board noted the complainant’s concerns that they had upgraded their meal to a large and were charged \$2.70 rather than the \$1.80 advertised. The Board noted that the advertisement does state “600ml drink and regular chips” next to the price of \$1.80 and considered that most members of the community would understand this to mean they could upgrade a Single meal to a regular meal for \$1.80.

The Board considered that the statements in the advertisement are not misleading or deceptive.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.