



Case Report

1	Case Number	0043/16
2	Advertiser	Subway Franchisee Advertising Fund
3	Product	Food / Beverages
4	Type of Advertisement / media	Poster
5	Date of Determination	09/03/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a street sign to promote the Peri Peri Chicken Sub and is displayed on the footpath outside of the Subway® restaurant located at 493 Ipswich Rd, Annerley, Brisbane, Queensland. The street sign features a large image of a Peri Peri Chicken Subway Six Inch® Sub with the words “Peri Peri” written above the image. The kilojoule content of the Sub displayed also features on the street sign and the reference statement of “the average adult daily energy intake is 8,700kJ”. The purpose of the advertisement is to communicate the quality and taste associated with Peri Peri Chicken Sub product.

THE COMPLAINT

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

The ad provides the KJ (1340) of the product, and adds the words "The average adult daily energy intake is 8700KJ."

*I feel this aims to mislead readers to understand that 8700KJ is the *recommended* daily intake by adults, rather than what adults actually eat (which may higher).*

THE ADVERTISER'S RESPONSE

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

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

The average energy content of the Peri Peri Chicken Sub has been calculated in accordance with Standard 1.2.8 of the Australia New Zealand Food Standards Code. The average energy content has been expressed in kilojoules in accordance with the requirements of the Food Act 2003 (NSW) and the Food Regulation 2015. Similarly, the following statement “the average adult daily energy intake is 8,700 kJ” (the reference statement) has been provided in accordance with the Food Act 2003 (NSW).

Your comprehensive comments in relation to the complaint:

With respect to the specific concern raised in the complaint:

*1. That the advertisement could be considered misleading/deceptive pursuant to provision 2.1(a) of the Food and Beverage Code as it provides the kilojoule content of the product (1340 kJ) and adds the words “The average daily energy intake is 8,700kJ” which aims to “mislead readers to understand that 8700kJ is the *recommended* daily intake by adults, rather than what adults actually eat (which may be higher).”*

Thank you for the opportunity to comment. We have considered all parts of section 2 of the AANA Advertiser Code of Ethics and the Food and Beverage Advertising and Marketing Communications Code (the “Code”).

We respectfully deny the complaint pursuant to provision 2.1(a) (Misleading or deceptive) of the Code and assert that the advertisement is not in breach of this provision or any other provision of the Code.

*We refer to the complainant’s allegation that the intent of displaying the average energy intake statement (that is, the reference statement) on the advertisement was to “mislead readers to understand that 8700kJ is the *recommended* daily intake by adults.”*

As noted above, the reference statement is required to appear on certain advertising materials (including street signs) in relation to standard food outlets in NSW. There are similar requirements across other Australian states. The Queensland Government has announced plans to introduce similar legislation which is currently before parliament. Copy of the media release attached.

We have voluntarily started displaying energy content information on our menus and store advertising materials where possible as a pro-active measure to provide our Queensland consumers with the same information that our other customers in Australia receive. This is part of the Subway® brand’s commitment to nutritional transparency.

This information is provided to assist consumers to make educated and informed choices about our products and it was not our intention to mislead or deceive consumers by providing this information. The reference statement is the recommended average daily energy intake for adults as provided by national dietary guidelines and included in legislation enacted by the NSW government and other state governments across Australia and is in line with what the Queensland Government has announced in its media statement.

SFAFA goes to great lengths throughout the production process to ensure that our advertisements are not misleading or contain deceptive information or perceptions for consumers. SFAFA also works to ensure that all claims relating to material characteristics and representations of Subway® products are verified and accurate working with our suppliers, in line with the Food and Beverage Advertising and Marketing Communications Code.

On the basis of the above, we respectfully submit that the complaint received should be dismissed.

THE DETERMINATION

The Advertising Standards Board (“the Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the “Food Code”).

The Board noted the complainant’s concerns that the advertisement is misleading in its suggestion that 8,700KJ is what most adults consume each day rather than depicting what adults actually eat, which may be higher.

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

The Board noted that the product advertised is food and 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 the advertisement features an image of a Subway Peri Peri Chicken Sub with the text, “Subway six inch sub 1340kj...The average adult daily energy intake is 8700kj”.

The Board noted the advertiser’s response that the reference statement, “The average adult daily energy intake is 8700kj” is required to appear on certain food advertisements in NSW

and that the advertiser had opted to include this information on their advertisements in Queensland prior to those same requirements being adopted there.

The Board noted that the reference to an adult's daily energy intake in the advertisement is qualified by the word 'average'. The Board noted that this information is often found on food labels and considered that most members of the community would interpret this statement to mean that the average healthy adult would eat 8,700kj each day. The Board noted the complainant's concern that adults may eat more than 8700kj but considered that the advertisement does not suggest all adults eat this amount, or that adults would never eat more than this amount, but rather the average adult would consume this amount.

Overall the Board considered that the depiction of standard labelling information which is consistent with current food consumption guidelines in Australia the advertisement is not misleading or deceptive.

The Board determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.