



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0058-20
2. Advertiser :	Dineamic
3. Product :	Food/Bev Venue
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	12-Feb-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

DESCRIPTION OF ADVERTISEMENT

This television advertisement opens on a beef farm in Fisch Creek, Gippsland, owned and operated by Paul Crock who is featured in the opening scenes. The scene then changes to a Free-Range Chicken Farm in Watchem that is operated by Hazeldene's. The scene changes to a broccoli farm in Werribee featuring Chris Santalucia from Tasty Chips. The scene then changes Rachel Hau, Dineamic Quality Assurance Coordinator and Team Nutritionist, followed by Alex Pendlebury, a Dineamic Ambassador and qualified nutritionist. The advertisement closes on a montage of product shots of the ready meal in the packaging and on the plate before ending with a range shot and call to action.

THE COMPLAINT

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

Very misleading, not acceptable when it's so hard for people to navigate healthy eating.

THE ADVERTISER'S RESPONSE



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

Thank you for the opportunity to respond to the consumer complaint for our “Better for it” campaign.

As an organisation we pride ourselves on operating with the highest level of integrity in all areas of our business operational and marketing. Therefore, we wish to acknowledge we take this concern very seriously as we would never intentionally seek to mislead or misrepresent our product.

As per the request for further information, please find below our response to each item highlighted in your letter.

Regarding the post-times for Saturday the 1st, we had 6 spots across the whole broadcast. Air times in the AO provided. Also attached in an excel file is the complete airtimes for the remainder of the campaign

- Whether the audience of the programs is predominantly children
Our spots are scheduled to rotate - 70% peak / 30% off peak schedule.
Our core target audience is Ppl 25-65*
- Substantiation of any health, nutrition or ingredient claims or statements made in the advertisement;*

Dineamic was founded on a company mission to help make Australia healthier one meal at a time. Our dietitian founder (Karen Inge), and our Chefs pride themselves on delivering a menu that meets the highest standards of food integrity. We are aiming to redefine the idea of what “Eating Ethically” can look like in the ready-meals segment.

Our meals are:

- hand cooked by Chefs in our purpose-built kitchen using the highest quality locally sourced fresh ingredients deliver no more than 24 hours prior to being cooked*
- the final meals are manually assembled by our team and immediately sealed using the MAP method <https://dansensor.com/solutions/modified-atmosphere-packaging-food-and-beverage-industry>*
- we blast chill the finished ready meal immediately and store in an industrial refrigerator before despatching to customers*
- because the meals are fresh, they only have a 16-day shelf life from the day of cooking. So, we must be very careful with our stock and only produce to demand. We guarantee our online customers a 7-day minimum use-by*
- unlike our competitors, our meals do not contain any artificial flavours or have any added preservatives*
- we deliver our meals fresh not frozen*



We absolutely understand that other advertisers may imply a level of healthiness that would not actually pass the pub test which means for consumers this can be confusing. However, we hold ourselves accountable to nutritional integrity being our golden standard - offering the best quality meals at the most affordable price possible.

- *Your comprehensive comments in relation to the complaint (taking into account the need to address all aspects of the advertising codes); and*

Our script describes our product offering as 'fresh ready meals' which is in-line with the ACCC Food Descriptors guidelines. i.e.

Claims that goods are 'fresh' are also subject to provisions relating to misleading or deceptive representations. The Macquarie dictionary¹³ defines 'fresh' as retaining the original properties unimpaired: not deteriorated; not canned or frozen; not preserved by pickling, salting, drying, etc. The term 'fresh' is used in different contexts and can refer to the nature of a food, its age or taste. The term may even be used as part of a brand name. When used as a brand name, the term should not be used to give an impression that the product is 'fresh' when it is not. 'Fresh' generally refers to food that is put on sale at the earliest possible time and close to the state it would be in at the time of 'picking', 'catching', producing etc. The term fresh generally implies that food has not been frozen or preserved. Some foods stay fresh longer than others and so it is not appropriate to give guidance on all foods. Generally, consumers may understand that a 'fresh' food has not been canned, cured, dehydrated, frozen, processed or preserved. On the other hand, consumers are likely to be aware that milk is a pasteurised product because of the level of disclosure and may still be considered fresh but consumers may not necessarily draw the same conclusion of a pasteurised fruit juice product unless it is disclosed on the label. Similarly, meats, fruits and vegetables which have only been stored for a short time post-harvest are likely to be considered 'fresh' by consumers.

When we think of other categories, such as milk consumers attribute milk in the fridge to being "fresh milk" (despite being homogenized and packaged), where UHT shelf stable milk is not seen/called fresh. Our product is equivalent to fresh milk as we are not delivered frozen.

Our understanding of the ACCC previous interpretations has been when the product has claimed fresh without disclosing additives on packaging (such as added sugar), or where the product has changes so much through processing that its unrecognisable from the claim e.g. "Uncle Toby's Rollups contain 65% fresh fruit". Our meals are as close to as you had cooked yourself as possible.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).



The Panel noted the complainant's concern that the advertisement is deceptive as it suggests that the product is fresh when it is actually processed and packaged meals that are prepared elsewhere then delivered to people's homes.

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

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel 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."

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

"The Panel 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 an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel 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, an advertising or marketing communication may make reference to one or more of the nutritional values 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 Panel noted the advertiser's response that meals are:

- prepared with ingredients delivered no more than 24 hours prior to preparation
- are blast chilled immediately after cooking
- do not contain artificial flavours or have any added preservatives
- delivered chilled but not frozen
- have a shelf life of 14 days



The Panel noted that there is no definition of 'fresh' in the Food Standards Australia New Zealand, however considered that the Australian Competition and Consumer Commission does have guidelines for food descriptors. The Panel noted the guidelines state:

"Claims that goods are 'fresh' are also subject to provisions relating to misleading or deceptive representations. The Macquarie dictionary defines 'fresh' as retaining the original properties unimpaired: not deteriorated; not canned or frozen; not preserved by pickling, salting, drying, etc. ... 'Fresh' generally refers to food that is put on sale at the earliest possible time and close to the state it would be in at the time of 'picking', 'catching', producing etc. The term fresh generally implies that food has not been frozen or preserved. Some foods stay fresh longer than others and so it is not appropriate to give guidance on all foods. Generally consumers may understand that a 'fresh' food has not been canned, cured, dehydrated, frozen, processed or preserved. On the other hand, consumers are likely to be aware that milk is a pasteurised product because of the level of disclosure and may still be considered fresh but consumers may not necessarily draw the same conclusion of a pasteurised fruit juice product unless it is disclosed on the label. Similarly, meats, fruits and vegetables which have only been stored for a short time post-harvest are likely to be considered 'fresh' by consumers."

The Panel considered that in the context of the specific advertisement, the claim of "fresh ready meals" was not misleading as the products are consistent with what most consumers would expect from a description of a 'fresh ready meal', i.e. a meal that is not frozen, one that has a reasonably short shelf life, and is delivered close to the time of preparation.

The Panel considered that the advertisement did make a claim about the product depicted in the advertisement being prepared from fresh ingredients and that this claim, in the context of the advertisement under complaint and the response provided by the advertiser, was not misleading. The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach any other sections of the Food Code the Panel dismissed the complaint.