



Case Report

1	Case Number	0063/12
2	Advertiser	Coles
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	14/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

Curtis Stone talks about the freshness of Coles' fruit and vegetables and states that Coles never freeze and never thaw their "fresh Aussie fruit and veggies."

THE COMPLAINT

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

I feel that they are being deceitful by stating they don't freeze or thaw thereby inferring that perhaps other suppliers do.

I suspect we the general public are supposed to presume this applies to all products i.e. meat. Coles give the impression that other shops freeze and thaw their fruit and veg when they cannot prove this they infer that this practice occurs when in fact it is not possible to freeze and thaw fresh fruit and veg. All fresh fruit and veg is fresh if its frozen it's in a bag and in the freezer section they are promoting a false hood.

THE ADVERTISER'S RESPONSE

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

I refer to your letter of 10 February 2012 advising Coles Supermarkets (Coles) of a complaint received by the Advertising Standards Bureau (ASB) in relation to the current Coles Freshness campaign television advertisements. Specifically, the ASB advises of its concern that the complaint received raises issues under Section 2 of the AANA Advertiser Code of Ethics.

I note that Section 2 of the revised AANA Advertiser Code of Ethics that came into effect on 1 January 2012 deals with consumer complaints alleging that advertising is inter alia discriminatory, vilifying, exploitative, degrading, violent or obscene. The television advertisements relevant here concern fresh fruit and vegetables and do not raise these section 2 issues.

In light of the details of the consumer complaint provided in your letter, the following response addresses issues falling within section 3.3 of the AANA Advertiser Code of Ethics, namely compliance with the AANA Food & Beverage Advertising & Marketing Communications Code, and in particular section 2.1 of that Code requiring advertising or marketing communications for food or beverage products to not be or be designed to be misleading or deceptive.

In relation to your specific requests, Coles provides the following information and documents.

Description of the advertisement

There are two Coles television advertisements featuring fresh fruit and vegetable produce available at Coles. These include one 45 second advertisement and one 30 second advertisement. Both of these advertisements aired nationally. Both advertisements focus on the quality fresh fruit and vegetable products sourced from local farmers and growers by Coles and available for purchase by consumers at Coles supermarkets.

1. The 45 second advertisement features chef Curtis Stone visiting farmers, growers and Coles stores examining, tasting and endorsing various fresh produce products. Fruit and vegetable products are variously shown growing in the ground, during harvest, in transit, on display in Coles stores and ultimately during meal preparation. Curtis Stone states in the advertisement that “We never freeze, and we never thaw our fresh Aussie fruit and veggies”. The advertisement also features the jingle and tagline “There’s no freshness like Coles”.

2. The 30 second advertisement features similar images to the 45 second version however shows chef Curtis Stone speaking of his visits to farms and growers and to Coles’ commitment to Australian farmers. The freshness message is again highlighted with Stone commenting on transporting fresh produce quickly through the supply chain from farm to store, and stating “And at Coles, we never freeze, and we never thaw any of our fresh Aussie fruit and veggies”. The advertisement features the jingle and tagline “There’s no freshness like Coles”.

Other Relevant Information

Coles notes the complainant’s concerns are that its statement “We never freeze, and we never thaw our fresh Aussie fruit and veggies” is deceptive. The complainant asserts without evidence that freezing fresh fruit and vegetables is not done by any retailer and further that the Coles advertisements seek to suggest that Coles does not utilise cold storage for its produce.

These Coles Freshness advertisements were created to address and correct a documented misunderstanding held by some supermarket customers that Coles sells fruit and vegetable products that have been frozen and then thawed before sale. Coles undertakes various forms of consumer research in order to obtain insights into customer perceptions and was concerned at the existence of this incorrect belief regarding Coles’ fresh produce. An examination of customer satisfaction surveys conducted by Coles in 2011 and 2012 revealed

that this inaccurate perception was widely held and was reflected in customer statements like:

“I know that most of the produce has been frozen beforehand but don’t want to see it in the stores. I like believing that theres (sic) the possibility they were only picked today.” (Coles Gladesville – 02/07/2011 5:19pm)

“More variety of fruit would be great. Non-frozen fruit that is” (Coles Phoenix 09/07/2011, 12:24pm)

“It would appear that all fresh fruit and vege is frozen and does not keep for more than a couple of days” (Coles Grafton, 01/09/2011, 03:32pm)

“Sometimes fruit seems to have been frozen before going on the shelf as it is black inside when cut into” (Coles North Ward, 10/09/2011, 3:57pm)

“French beans looked as though half of them had been frozen and then thawed. One look was enough to get out of the F&V section. Repulsive and revolting” (Coles Doncaster, 18/10/2011, 11:34am)

“My suggestion is ... that all fruit and vegetables be high quality and fresh not frozen for consumer purchase” (Coles Rouse Hill, 11/11/2011, 03:49pm)

“Nectarines were frozen and once purchased and thawed rarely last longer than a day” (Coles Joondalup, 04/01/2012, 4:06pm)

These statements are only a selection of many, indicating that the incorrect belief regarding the sale by Coles of frozen fruit and vegetables is widely held. Additional qualitative research conducted by Coles confirmed these inaccurate perceptions. Customers also advised that given the size of the Coles organization they assumed that fresh produce took considerable time to travel from the farm gate to Coles stores, thus impacting upon freshness.

The Coles Freshness campaign was therefore specifically designed to address the incorrectly held belief that Coles sold fruit and vegetable produce that had been frozen and thawed, and to reinforce Coles’ efforts to transport fresh product from grower to consumer as quickly as possible.

Coles makes no reference in either of the advertisements to the activities of other retailers. Instead all references relate to what Coles does with the Australian fruit and vegetables it sells and these statements are absolutely correct. The appearance of Curtis Stone in these advertisements reinforces that this message is about Coles given he has held a high profile role as a Coles ambassador for some years.

Coles rejects absolutely that its Coles Freshness advertisements seek to imply anything about the conduct of other retailers and the produce they may or may not sell. Coles also rejects any suggestion that the campaign is deceptive regarding any cold storage of fruit and vegetable products. This campaign was designed to specifically address documented and researched misconceptions held by customers that Coles sells fruit and vegetables that have been frozen. There is no clearer way to do this than to confirm to customers that “We never freeze, and we never thaw our fresh Aussie fruit and veggies”. The statement is true and Coles strongly rejects any allegation that it is in any way misleading or deceptive.

Coles is satisfied that its advertisements, and specifically the statements reproduced above that feature in both versions of the Coles Freshness advertisements are not misleading or in breach of either the AANA Advertiser Code of Ethics or section 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code.

I trust that the attached information addresses any concerns the Advertising Standards Bureau may have in relation to this complaint.

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 complainant’s concern that the advertisement is misleading because it implies that whilst other fruit and vegetable providers freeze their produce, Coles doesn’t.

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 in the advertisement Curtis Stone states, “we never freeze and we never thaw...” and considered that the most likely interpretation of this statement is that Coles doesn’t freeze its fresh fruit and vegetables. The Board noted that the advertisement makes no reference to how other suppliers of fresh fruit and vegetables treat their produce and considered that the advertisement is not misleading.

The Board noted one complainant’s concern that Coles do sell frozen fruit and vegetables and considered that in this instance the advertisement is only referring to its fresh produce and not to its entire range which would include the frozen products.

Based on the information provided by Coles that their fresh fruit and vegetables are not frozen 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.