



Case Report

1	Case Number	0067/12
2	Advertiser	Coles
3	Product	Food and Beverages
4	Type of Advertisement / media	Print
5	Date of Determination	14/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

Print advertisement for Coles which has images of fruit and vegetables with their corresponding prices as well as pictures of Curtis Stone and the text, "We never freeze we never thaw any of our fresh Aussie fruit and veg."

THE COMPLAINT

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

I don't feel it is a truthful advertisement as to my knowledge fresh produce cannot be frozen and thawed. I'm referring to the Coles ad that say "We never freeze and we never thaw our fresh produce". I suspect we the general public are supposed to presume this applies to all products i.e.meat.

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. 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 Gladsville – 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 fresh fruit and vegetables cannot be frozen and thawed.

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 “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.

The Board noted the complainant’s concerns that fruit and vegetables cannot be frozen and thawed and considered that as fresh fruit can be frozen and thawed the advertisement is not being untruthful. The Board noted the complainant’s concerns about the statement applying to other products including meat and considered that as the advertisement clearly mentions fresh fruit and vegetables and does not mention other grocery items it is unlikely that most

members of the community would consider the advertisement to be suggesting that Coles do not freeze or thaw any of the products they sell.

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.