



Case Report

1	Case Number	0069/12
2	Advertiser	Yum Restaurants International
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

The Advertisement opens on a shot of a cricket player biting into a grilled wing. The player then bites into the wing again and the wing appears in a "hot spot" view. "Hot Spot" technology is an infra-red imaging system used during cricket matches to determine whether the ball has struck the batsman, bat or pad. It is used as an adjudication tool. More shots of the grilled wings were then depicted and the Advertisement ends with KFC's Fresh Test logo and So Good trade mark.

THE COMPLAINT

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

A thermal test can not show freshness of a product it will only show how hot the product is. This is false advertising.

THE ADVERTISER'S RESPONSE

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

The Advertisement, which was aired Jan 2, 2012 - Feb 6, 2012, uses the well-known voice of cricket commentator, Tony Grieg, who makes "tongue in cheek" comments about the freshness, heat and spicy flavor profile of KFC's fiery grilled wings chicken product.

The Complaint

The complainant has asserted that the Advertisement is "false advertising", stating that "The commentator claims how a thermal test shows that the chicken is fresh". The complainant cites as their reason for concern that "A thermal test cannot show freshness of a product, it will only show how hot the product is. This is false advertising".

Relevant Codes

Australian Association of National Advertisers Code of Ethics (the Code)

Section 2 of the Code has been cited as relevant.

Australian Association of National Advertisers Food and Beverages Marketing and Communications Code (the F&B Code)

There is a suggestion that the Advertisement breaches the F&B Code in that it is misleading/deceptive.

Australian Association of National Advertisers Code for Advertising and Marketing Communications to Children (the Children's Code)

There is no suggestion that the Advertisement has breached the Children's Code.

Has the Code and/or the F&B Code been breached?

Yum considers that the advertisement is not misleading or deceptive contrary to the Code and the F&B Code (and, specifically, clause 2.1 of the F&B Code).

First, the well-known commentator in the Advertisement, Tony Greig, does not claim "how a thermal test shows that the chicken is fresh", as asserted by the complainant. That is, there is nothing to indicate that the hot spot technology is measuring freshness.

The commentator simply makes a comment in the Advertisement voiceover along the same lines as that which he would make during a cricket match, namely, "You can't argue with hot spot". He then states, in the next sentence "That's fresh chicken right there", as though he were pointing to the chicken product.

The use of the words "hot spot" in this context are a play on the use of the infra-red imaging system which is used during cricket matches (as an analysis aid for televised coverage) to help show whether or not the umpire has made a correct decision. Hence, the voiceover, "You can't argue with hot spot. That's fresh chicken right there", when coupled with the image of the "infra red" fiery chicken wing, is essentially saying to the consumer "there can be no argument that KFC's new fiery chicken wings are fresh, as hot spot technology is never wrong". In other words, you can't argue with the impartial umpire. There is no suggestion that hot spot technology is measuring the freshness of the product and we do not believe that the average consumer would reach that conclusion.

Secondly, the product highlighted in the Advertisement in "hot shot" view, is in fact KFC's fiery grilled wing product. That is, a product which is "hot and spicy". As the complainant correctly points out, hot spot technology is used to measure heat. Referring to "hot spot" technology in the context of advertising a hot and spicy product, and showing an image of the product in infra red hot spot view, is also serving to highlight the hot and spicy product that is the subject of the advertisement.

We trust this addresses the complainants concerns and illustrates that the Advertisement is not misleading or deceptive contrary to any of the above-mentioned Codes.

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 suggests you can check the freshness of cooked chicken using thermal testing.

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 the advertisement was played during the Cricket and considered the context of the advertisement during that placement highlighted the frivolous and tongue in cheek nature of the advertisement and that references to the Hot Spot were a well-understood analogy to the cricketing ‘hot spot’.

The Board noted that the advertisement shows a man biting in to some chicken wings using a thermal imaging camera to highlight the chicken is hot. The Board noted that the voice over states, “Fresh test time again” and the words ‘fresh test’ appear on the top right of the screen and considered that the use of the thermal camera tied in with the voice over continuing to say, “You can’t argue with hot spot” was to highlight that the chicken was hot and freshly cooked.

In the Board’s view the most members of the community would consider the advertisement does not suggest that a thermal imaging camera could or should be used to test the freshness of a food product such as chicken and that the overall tone of the advertisement is humorous and unrealistic in any case.

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.