



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0072-21
2. Advertiser :	Primo Foods
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	14-Apr-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

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

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a life guard looking through binoculars at a group of children sharing a tray of bacon rolls. The life guard asks, 'Have you got any more!?', and as he pulls down his binoculars a young girl is right in front of him offering a tray full of bacon rolls to the lifeguard, and his colleagues. As the bacon rolls are taken off the tray it reveals an image of two eggs and a rasher of bacon arranged in the shape of a 'smiley face', which then cuts to the 'smiley face' being on the grill of a barbecue. The shot tracks upwards to reveal people around the barbecue, while the young girl says, "From Coogee to Cottesloe, there ain't no mistakin', the taste that makes Primo...Australia's favourite bacon". The line "Australia's favourite bacon" is said in unison by everyone on the beach, while the shot zooms out to depict the crowd of people in the shape of Australia. The Primo Foods logo appears in the middle of the screen in combination with the words "AUSTRALIA'S FAVOURITE BACON".

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The product being advertised by Primo is not Australian made. Primo are breaching section 2.1 of the advertising food and beverage standards in that the advertisement



dishonestly misleads and deceives the viewer into believing the bacon product is an Australian made product.

Their product contains less than 25% Australian content. But presents itself by implication otherwise.

Once again Primo are advertising their bacon as 'Australia's Favourite Bacon', and featuring a map of Australia at the conclusion, with the name 'Primo' through the middle. Unless things have changed, Primo bacon on the whole is not Australian, but made from imported pork, and for those who are unaware of their volume of imports, I think the inference is clear and deceptive.

It presents something as Australian made which is only 10% Australian.

THE ADVERTISER'S RESPONSE

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

Thank you for providing Primo Foods the opportunity to respond to the Complaint.

Primo Foods confirms its support for the Ad Standards Community Panel and its commitment to ensuring that the marketing and advertising of Primo Foods products comply with the relevant laws, industry codes and initiatives.

We have set out for your understanding an overview of the Advertisement followed by our overall position and our responses to the specific issues raised in the Complaint.

Advertisement Description

The Advertisement is set on a beach and opens with a life guard looking through binoculars at a group of children sharing a tray of bacon rolls (with Primo bacon). The lifeguard tempted by the food exclaims, 'Have you got any more!?', and as he pulls down his binoculars a young girl is right in front of him offering a tray full of bacon rolls to the lifeguard, and his colleagues. A bird's-eye view shot of the young girl holding the tray shows the lifeguards' hands taking the bacon rolls. As the bacon rolls are taken off the tray it reveals an image of two eggs and a rasher of bacon arranged in the shape of a 'smiley face', which then cuts to the 'smiley face' being on the grill of a barbecue. The shot tracks upwards to reveal many people (young and old) around the barbeque, while the young girl says, "From Coogee to Cottesloe, there ain't no mistakin', the taste that makes Primo...Australia's favourite bacon". The line "Australia's favourite bacon" is said in unison by everyone on the beach, while the shot zooms out to depict the crowd of people in the shape of Australia. The Primo Foods logo appears in the middle of the screen in combination with the words "AUSTRALIA'S FAVOURITE BACON".



Response to Complaint

The complainants' issues raised relate to the following Codes:

*AANA Food and Beverages Advertising and Marketing Communications Code (Food Code); and
AANA Advertiser Code of Ethics (Code of Ethics).*

(together, the Codes)

Set out below is our overarching response regarding the applicability of each of the Codes, together with our response on specific sections of the Codes raised by the Complaint:

Food Code

The complainants have asserted that the Advertisement is 'misleading and deceptive' by suggesting or representing that the advertised Product is 'made' in Australia when this is not the case. In respect of the above complaint Section 2.1 of the Food Code will be relevant to consider.

"2.1 Advertising or Marketing Communication for Food or Beverage Products 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"

Each of the complaints assert that the Advertisement is falsely representing to consumers that the bacon Product is Australian, or 'made' in Australia, due to the Advertisement's statement "AUSTRALIA'S FAVOURITE BACON". Primo Foods submits that the Advertisement in no way makes or attempts to make a country of origin claim in respect of the Product. The statement "AUSTRALIA'S FAVOURITE BACON" does not suggest that Primo bacon is Australian or 'made' in Australia, but rather that Primo Foods' bacon is the most preferred bacon product by Australians, out of all other bacon brands. This message is reflected in the Advertisement by depicting a large group of Australians of a diverse demographic that have gathered and are excited to eat Primo Foods bacon. The statement "AUSTRALIA'S FAVOURITE" is a common advertising and marketing tool used by brands to indicate that their product is the most preferred brand amongst Australians. This expression means customer preference as demonstrated by highest market share, and is not to be mistakenly interpreted or deemed as a country of origin claim.

We have considered whether the imagery of the people in the shape of Australia amounts to a country of origin claim for the Product. On an analysis of this in the context of the claims and overall impression, the shape of Australia is simply being used to accompany the statement "AUSTRALIA'S FAVOURITE BACON", because the



Product is popular and has the highest market share in Australia. Simply depicting the shape of Australia does not suggest that a product is made from Australia. There is nothing else in the Advertisement that suggests or claims that the Product is made or produced in Australia. The statement “AUSTRALIA’S FAVOURITE BACON” directly relates to the preference of Australians for the Product, therefore using imagery of the shape of Australia is simply a visual extension of this statement.

For completeness Primo Foods has attached to this Complaint quantitative market share data which shows that at the time the Advertisement was broadcast, Primo Foods had the highest market share of bacon sales for their Primo bacon product in comparison to any other brand. Based on this evidence it is clear that the statement “AUSTRALIA’S FAVOURITE BACON” is substantiated. The sales data shows that in Australia, Primo is the highest selling brand out of all other bacon brands and accordingly, the ‘Australia’s favourite bacon’ claim is true and not misleading.

Primo Foods submits that the complainants have incorrectly interpreted the statement “AUSTRALIA’S FAVOURITE BACON” as a country of origin claim. All statements made in the Advertisement are truthful and substantiated and do not mislead or deceive the consumer in any way and for this reason the Advertisement does not fall in breach of Sections 2.1 of the Food Code.

Primo Foods also submits that this result would be consistent with the Panel’s previous determination of a highly similar case, 0082/19, which concerned a Primo Foods television advertisement containing the same statement “AUSTRALIA’S FAVOURITE BACON”. The Panel determined in that case that the advertisement did not depict material which was misleading or deceptive and determined that the advertisement did not breach Section 2.1 of the Food Code. In assessing this complaint, the Panel’s report stated:

“The Board noted the advertisement is promoting bacon and considered that the average consumer in the target market of grocery buyers would interpret the advertisement as saying that Primo’s bacon is popular in Australia rather than Primo’s bacon is itself Australian, and in the Board’s view the complainant’s interpretation of the advertisement is unlikely to be shared by the broader community.”

While it is not applicable to this Advertisement, Primo Foods acknowledges its responsibility and commitment to ensuring that the marketing and advertising of Primo Foods products comply with the relevant laws, in particular the Country of Origin Food Labelling Information Standard 2016 made under Australian Consumer Law.

Code of Ethics

Notwithstanding all of the above, if the Panel were to assess the Advertisement’s compliance with any other section of the Code of Ethics more generally, Primo Foods considers that the Panel would find that no breach has occurred. Sub-sections of Section 2 of the Code of Ethics relate to, (2.1) discriminating against or vilifying a



person or section of the community; (2.2) sexual appeal of minors or sexual appeal used in an exploitative/degrading manner; (2.3) the portrayal of violence; (2.4) sex, sexuality and nudity; (2.5) language; (2.6) Prevailing Community Standards on health and safety; and (2.7) distinguishability as advertising. Primo Foods confirms that in its view the Advertisement does not breach any of these sub-sections.

While the Advertisement does contain child actors, Primo Foods submits that the Advertisement having regard to the theme, visuals and language used, is not directed primarily to Children and therefore the AANA Code for Advertising and Marketing Communications to Children does not apply.

Summary

In summary, the Advertisement is truthful and honest and is not misleading or deceptive. The statement "AUSTRALIA'S FAVOURITE BACON" communicates a message as to consumer preference which is supported by current market share data for grocery sales of bacon in Australia which prove that Primo bacon is indeed 'Australia's favourite'. The complainants have incorrectly interpreted the above statement as a country of origin claim. The statement (and the other content) does not represent to the average consumer in the market that the Product is Australian or made in Australia. Incorporating imagery of the shape of Australia is used to visually pair the statement "AUSTRALIA'S FAVOURITE BACON" as it relates to the preference of Australians. All provisions of the Codes that may be considered by the Board to be applicable (except for those which do not apply) have been considered for the purpose of this Complaint response and Primo Foods submits that the Advertisement does not fall in breach of the Codes in any event.

Primo Foods submits that the Complaint should be dismissed in its entirety and thanks the Panel for the opportunity to respond to the Complaint.

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 complainants' concern that the advertisement implies that the product is Australian made when it is not.

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

Food Code 2.1 Advertising or Marketing Communication for Food or Beverage Products 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 Panel noted that the advertisement depicts a beach scene and a girl describing the product as “Australia’s favourite bacon”.

The Panel noted the advertisement does not talk about the provenance of Primo Bacon and considered that the phrase, ‘Australia’s favourite bacon’ suggests people in Australia prefer this brand of bacon rather than that the bacon itself comes from Australia.

The Panel noted the Practice Note to Section 2.1 of the Food Code which provides:

“The Community Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful or 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 be truthful and honest, the Panel 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.”

The Panel noted the advertisement is promoting bacon and considered that the average consumer in the target market of grocery buyers would interpret the advertisement as saying that Primo’s bacon is popular in Australia rather than Primo’s bacon is itself Australian, and in the Panel’s view the complainant’s interpretation of the advertisement is unlikely to be shared by the broader community.

Section 2.1 Conclusion

The Panel determined that the advertisement was not and was not designed to be misleading or deceptive nor did it otherwise contravene Prevailing Community Standards, and did not breach Section 2.1 of the Food Code.

Conclusion

Finding that the advertisement did not breach the AFGC RCMI or the Food Code the Panel dismissed the complaints.