



ADVERTISING
STANDARDS
BUREAU

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Case Report

1	Case Number	0079/14
2	Advertiser	Hungry Jacks
3	Product	Food / Beverages
4	Type of Advertisement / media	Poster
5	Date of Determination	09/04/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The in-store poster for the Hungry Jack's® Fruit Smoothies ("Poster") depicts two smoothies in colourless cups, together with pictures of mango and strawberries. The text of the Poster reads "Hungry Jack's® Fruit Smoothies 98% Fat Free \$2.50 SML" and "Available in Mango or Strawberry SML \$2.50 803kJ MED \$3.50 988kJ".

THE COMPLAINT

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

*A reasonable person would assume that it would be made from mangoes. It is not and is artificially colored and flavoured with syrup
The flavour was far removed from what it would be if made from mango. The lightbox ad is MISLEADING.*

THE ADVERTISER'S RESPONSE

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

Hungry Jack's® takes complaints about its advertising seriously and endeavours to be a responsible advertiser.

In respect of the AANA Food & Beverages Advertising & Marketing Communications Code ("Food and Beverages Code"), we note the provisions of section 2.1, 2.3 and 2.6, which provides that:

2.1 Advertising or Marketing Communications 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.

2.3 Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

2.6 Advertising or Marketing Communications for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, shall be specific to the promoted product/s and accurate in all such representations.

In relation to section 2.1 of the Food & Beverages Code, including in particular the complainant's concern that the Mango Smoothie is not be made from mangos, the Mango Smoothie Mix from which the product is made does in fact contain a significant amount of real mango. Attached is the product specification for the Mango Smoothie Mix, which is supplied by Trisco Foods Pty Ltd. As noted in the specification, the Mango Smoothie Mix contains 32% mango puree. Similarly, the Strawberry Smoothie is made from a mix which contains 14.5% strawberries (and attached is the product specification for Strawberry Smoothie Mix). Contrary to the complainant's assertion that the Mango Smoothie is not made from mangoes, the Mango and Strawberry Smoothie Mixes do in fact contain and are made from real fruit. In light of the above, the Poster is in its entirety, truthful and honest, is neither misleading or deceptive (nor designed to be misleading or deceptive) and does not contravene Prevailing Community Standard. The Poster displays the mandatory kilojoule content claim as required in under NSW, SA and ACT food legislation, and does not make any claims in respect health benefits.

In respect of section 2.3 and 2.6 of the Food & Beverages Code, we confirm that the 98% Fat Free claim is supported by evidence, meets the requirements of the Australia New Zealand Foods Standards Code ("FSC") (including in particular the claim conditions set out in Standard 1.2.7 (Nutrition, Health and Related Claims)), is specific to the promoted

products and accurate in all such representations. In particular, we confirm that the Mango and Strawberry Smoothies each contain only 1.01% fat by weight (i.e. is more than 98% fat free). More nutritional information can be obtained from the Hungry Jacks website at <http://www.hungryjacks.com.au/images/pdf/NutriGuide.pdf>.

In respect of the other provisions of the Food & Beverages Code, we note that the Poster:

- (i) makes no comments regarding the importance (or otherwise) of healthy or active lifestyles and diets nor encourages excess consumption;*
- (ii) as described above, the fat free claim is supportable by evidence and is in compliance with the FSC;*
- (iii) does not contain any nutritional or health related comparisons;*
- (iv) does not make any reference to consumer taste or preference tests;*
- (v) does not make any claims regarding material characteristics not specific to the promoter product;*
- (vi) does not appear in segments of media devoted to general, sports news or current events; and*
- (vii) is not portrayed as a substitute for meals.*

Whilst we note that the Board will review the advertisement in its entirety against Section 2 of the Advertiser Code of Ethics, we note that the Poster:

- (i) does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on any account;*
- (ii) does not employ sexual appeal in any manner;*
- (iii) does not present or portray violence;*
- (iv) does not contain sex, sexuality or nudity;*
- (v) does not contain any inappropriate language; and*
- (vi) does not depict material contrary to prevailing community standards on health and safety.*

As noted above, the Poster and the Hungry Jack's® Fruit Smoothies are not directly primarily toward, targeted toward and do not have principal appeal to, children As such, the

AANA Code For Advertising & Marketing Communications to Children, Australian Food and Grocery Council Responsible Children's Marketing Initiative and Australian Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children do not apply.

In light of the above, we submit that the complaint should be dismissed.

THE DETERMINATION

The Advertising Standards Board ("the Board") considered whether this advertisement breaches the Australian Quick Service Restaurant Industry Initiative for Responsible Advertising to Children (the 'QSR Initiative') and the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code?"). The Board noted the complainant's concerns that the advertisement is misleading in its suggestion that the smoothies are made from mango and strawberry.

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

The Board noted that the objectives of the QSR Initiative are to:

- Reduce Advertising and Marketing Communications to Children for food and beverage products that do not represent healthier choices;
- Use Advertising and Marketing Communications to Children to help promote healthy dietary choices and healthy lifestyles amongst Australian children.....

The Board noted that the QSR Initiative applies to "Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products." Under this initiative children means "persons under the age of 14 years of age."

The Board noted that the promotion includes images of the two flavours of fruit smoothies ie:

Mango and Strawberry. The text on the poster reads “Fruit Smoothies 98% Fat Free \$2.50 sml. Available in Mango or Strawberry” and the price and the kilojoule content are included.

The Board noted that the advertisement was displayed as an in store poster and also as part of the in store behind counter menu. The Board considered that the advertisement does appear in a location that would be viewed by children. The Board also considered that the advertisement itself does not depict material that is inherently attractive to children and that the customers more likely to notice and then order the products pictured in the poster would be older teenagers and adults.

The Board considered that this advertisement is not directed primarily to children under 14 and therefore that the provisions of the QSR Initiative do not apply.

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 the advertiser's response that Smoothie mix from which the product is made, contains 32% mango puree and 14.5% strawberry puree. Based on the advertiser's response and the product specification sheets provided to the Board, the Board considered that the advertisement was not designed to mislead or deceive and did provide information that was truthful and honest.

The Board noted the claim about the fat free component of the product.

The Board noted that the 98% fat free statement is supported by evidence and meets the requirements of the Australia New Zealand Food Standards Code, specifically the requirements relating to fat free claims.

The Board considered that overall the most likely interpretation of the advertisement is that the product is low in fat and that it does contain fruit and in the Board's view these claims are not deceptive or misleading.

Based on the above the Board considered that the advertisement was not misleading or deceptive in that the promotion did not claim that the product was made of real mango or strawberry, as indicated by the complainant and did not contravene prevailing community standards on healthy eating.

The Board determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaints.