



## Case Report

1	Case Number	0113/15
2	Advertiser	Fonterra Brands (Australia) Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	15/04/2015
6	DETERMINATION	Upheld - Modified or Discontinued

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement opens on a box filled with straw-like packaging and split in to four sections. A man's voiceover says that Tamar Valley yoghurt is created in the Tamar Valley from premium ingredients and fresh local milk. We see a pot of yoghurt being placed in the box, followed by a selection of photographs of the Tamar Valley, some honey and some fresh berries. The box is then wrapped in brown paper, tied up with string and the voiceover says, "Made in Tasmania, exported to Australia".

### THE COMPLAINT

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

*Am very annoyed at this not telling us the real truth of their products. eg. Made from local and imported ingredients.... Tell us which and what ingredients are local, probably most of the time the most minute ingredient such as a drop of water is the local ingredient.*

### THE ADVERTISER'S RESPONSE

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

*The complaint to the ASB raises potential concerns as to the origin of Tamar Valley yoghurt.*

*Fonterra notes that country of origin is currently a topical issue with extensive media coverage regarding the safety concerns of imported berries from China.*

*In Fonterra's view, these concerns outlined in the complaint are misplaced since the Advertisement clearly states that "Tamar Valley yoghurt is created in the pristine Tamar Valley...from premium ingredients...and fresh local milk".*

*As discussed in Fonterra's letter to the CAD Board in Attachment D, the statement that Tamar Valley yoghurt is made in the Tamar Valley is substantiated because:*

*(a) the Fonterra Group of Companies manufactures Tamar Valley yoghurt at Tamar Valley Dairy; and*

*(b) the manufacturing site for the Tamar Valley Dairy is physically located beside the Tamar Valley river at 1 River Street, Invermay, Tasmania, 7248.*

*The statement regarding the origin of the milk used to make the yoghurt is also substantiated because, as discussed in Fonterra's letter to the CAD Board in Attachment D, the fresh milk used to create the yoghurt is sourced from dairy farms located in Tasmania who supply milk to the Tamar Valley production site. The fresh milk is a major ingredient in Tamar Valley yoghurt. The Advertisement makes no further statements as to the origin of any other essential ingredients used to produce Tamar Valley yoghurt.*

*The Advertisement further clearly states that Tamar Valley yoghurt is "made in Tasmania... exported to Australia..."*

*As discussed in Fonterra's letter to the CAD Board in Attachment D, the statement that Tamar Valley yoghurt is made in Tasmania is substantiated through the following facts:*

*(a) Tamar Valley Dairy is the sole Fonterra production site for all Tamar Valley branded yoghurt (ie Tamar Valley yoghurt is not manufactured in any location other than the Tamar Valley);*

*(b) the location of the Tamar Valley Dairy as discussed above at paragraph 11.4(b) is in Tamar Valley in Tasmania, and accordingly Tamar Valley yoghurt is only manufactured in Tasmania; and*

*(c) the yoghurt manufactured at the Tamar Valley Dairy is transported from Tasmania to mainland Australia where it is commercially available for retail sale.*

*ACCC guidance on the issue*

*The Australian Consumer Law contains safe harbour defences relating to country of origin claims, including the use of claims that a product was 'made in' a particular country. The ACCC has issued guidelines regarding country of origin claims and the safe harbours under the Australian Consumer Law. While the safe harbours and ACCC guidelines pertain to the broader notion of a product being made in a particular country rather than a place or region, they provide helpful and supportive guidance as to how a "made in" claim should be interpreted.*

*The guidelines summarise and provide guidance on the applicable safe harbour defence as follows:*

*'Many general country of origin claims (like 'Made in') go to production/manufacture rather than content. A product with a 'Made in Australia' label will not necessarily contain Australian ingredients or components.'*

*If businesses are to rely on the general country of origin safe harbour defence, they must satisfy two separate criteria:*

*(i) the goods must be substantially transformed in the country of origin being claimed (substantial transformation test) and*

*(ii) 50 per cent or more of the total costs to produce or manufacture the goods must have occurred in that country (cost of production/manufacture test).*

*In Fonterra's view, the above guidance applies to the place of origin statements made in the Advertisement, including the reasoning that a statement that a product is made in a particular place or region does not necessarily contain ingredients or components from that place or region. Fonterra confirms that the above criteria – ie the substantial transformation test cost of production/manufacture test – would be met with respect to the production of Tamar Valley yoghurt in Tasmania.*

*Further, Fonterra complies with the country of origin requirements in the Australia New Zealand Food Standards Code.*

*The audience is not predominantly children. Fonterra is a signatory to the Australian Food and Grocery Council Responsible Children's Marketing Initiative. The target audience for the campaign is adult purchasers and consumers of Tamar Valley yoghurt, as reflected in the audience of the programs set out in Attachment C. Tamar Valley Yoghurt is not aimed at, nor promoted directly to, children aged 14 years or less.*

*The Advertisement does not breach the Advertiser Code of Ethics.*

*Accordingly, Fonterra does not consider that the Advertisement breaches the Advertiser Code of Ethics.*

*Advertisement scheduled to cease being broadcast at end March*

*Fonterra takes all feedback from consumers very seriously. Fonterra notes that the Advertisement will cease broadcast as per the media schedule on 29 March 2015. Fonterra will not broadcast the current form of Advertisement again.*

## **THE DETERMINATION**

The Advertising Standards Board ("the Board") considered whether this advertisement breaches 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 Tamar Dairy yoghurt is made from Tasmanian ingredients as the berries are imported.

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

The Board noted that the advertiser is a signatory of the AFGC RCMI but that the complaint does not raise any issues under that Industry Initiative.

The Board noted that the product advertised is food and 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 advertisement features a voiceover stating that Tamar Valley yoghurt is created in the Tamar Valley from “premium ingredients and fresh local milk”.

The Board noted the advertiser’s response that they had adhered to the ACCC guidelines regarding the criteria for making a “made in” claim. The Board noted the Practice Note to Section 2.1 of the Food Code which provides:

“The Board 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 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.”

The Board therefore acknowledged the advertiser’s claim regarding the ACCC guidelines but considered that its role as a community Board is to consider the advertisement under the provisions of the AANA Codes only and in particular consider the message that would be taken by an average consumer watching the television advertisement.

The Board noted the complainant’s concern regarding the origin of the berries depicted in the advertisement. The Board noted that in its response to the complaint the advertiser had remained silent on the origin of the berries depicted in the advertisement.

The Board noted the advertisement’s use of the phrase, “premium ingredients and fresh local milk” as well as images of the Tamar Valley and the tagline of “Made in Tasmania”. The

Board noted that whilst the advertisement does not specify the origin of the additional ingredients depicted in the advertisement (the berries and the honey) the Board considered that the overall impression is strongly suggestive that all the ingredients are local to Tasmania, specifically the Tamar Valley region. The Board acknowledged that there is greater community awareness around the place of origin of food products and following recent health scares through imported products consumers are becoming more aware that advertisers may not fully disclose the origin of ingredients and that there is a distinction between the phrase 'made in' and the source of the ingredients used to make the finished product.

The Board noted that the words in the advertisement are technically correct and a minority of the Board considered that the advertisement did not depict material which is misleading or deceptive. The majority of the Board however considered that with regards to the Practice Note the message most likely to be taken from this advertisement, considering the visual images of the packaged elements being wrapped for 'export' to mainland Australia, is that all the ingredients are from Tasmania. The Board considered that in light of the current community concerns regarding the Hepatitis A link with sourced berries the strong suggestion in this advertisement that the ingredients are from Tasmania is a suggestion which is misleading and deceptive.

Based on the above the Board determined that the advertisement did breach Section 2.1 of the Food Code.

Finding that the advertisement did breach the Food Code the Board upheld the complaint.

### **THE ADVERTISER'S RESPONSE TO DETERMINATION**

Fonterra notes that the Advertisement for Tamar Valley Dairy yoghurt has not been broadcast since 29 March 2015. Fonterra will not broadcast the current form of Advertisement again.