



Case Report

1	Case Number	0118/12
2	Advertiser	Woolworths Supermarkets
3	Product	Food and Beverages
4	Type of Advertisement / media	Outdoor
5	Date of Determination	11/04/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

Outdoor advertisement featuring images of grocery products sold by Woolworths, including apples, strawberries, yoghurts, bread etc.

At the top of the advertisement it reads, ">Scan here to start shopping" and at the bottom is information about the Woolworths app and the words, "Woolworths the fresh food people." Underneath the pictures of the produce are barcodes and descriptors of each product, for example fresh carrots, fresh apples.

THE COMPLAINT

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

The advertisement repeatedly uses the word 'fresh' in relation to carrots, apples etc. It has been shown by several investigators that many fruits and vegetables especially apples are kept in cold storage by Woolworths and Coles for periods of up to over a year during which time their nutritional content diminishes steadily. Using 'fresh' in their advertisements is deceptive and deliberately so. As such it violates the AANA Food and Beverages Advertising and Marketing Communication Code in the following areas: truth and honesty, misleading or deceptive nutritional or health comparisons and accuracy of claims related to the product.

THE ADVERTISER'S RESPONSE

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

Woolworths takes its advertising obligations very seriously. It is Woolworths' submission that the complaint should be dismissed and no further action taken in the matter for the reasons expressed below.

The use of the word 'Fresh' is governed by the Competition and Consumer Act, Food Standards Code and related legislation.

Woolworths considers that the use of the word 'Fresh' where used in relation to fruit, vegetables and other products is compliant with the law including the law relating to misleading and deceptive conduct.

The descriptor 'Fresh' is used to describe food in its natural state and which has not undergone any process to alter such state including processing, manufacturing, smoking or freezing to name a few.

Supply of some products to meet customer year round demand may require the supplementary supply of overseas product, if required, or controlled use of cold storage in our supply chain.

However, in either case the use of the word 'Fresh' is well established and compliant as required under the law.

Woolworths greatly appreciates the Board's careful consideration of a complaint and will accept Woolworths' submission that this complaint should be dismissed.

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 in its use of the word ‘fresh’.

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 the word 'fresh' appears as part of the product descriptor next to the barcode under the fresh produce pictured in the advertisement. The Board noted the advertiser's response that in order to meet year round demand some products may require the controlled use of cold storage. The Board noted that it is common practice for food bought in its natural state (i.e. not frozen or tinned) to be described as fresh and considered that Woolworths is not being misleading in using the word 'fresh' in relation to products such as strawberries, apples and salad leaves on the basis that Woolworths has stated they may use cold storage, not freezing, for some products some of the time and that the use of cold storage is reasonable in a country such as Australia which necessitates extensive travelling time for produce.

The Board noted that the word 'fresh' also appears in this advertisement as part of Woolworths' logo: "the fresh food people" and considered that the use of the word 'fresh' in this context is in relation to the Woolworths' brand and not in relation to the freshness of a specific product.

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.