



Case Report

1	Case Number	0124/11
2	Advertiser	McCain Australia and New Zealand
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	27/04/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.8 - Food and Beverage Code untruthful/dishonest

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features Samantha Stouser, a well known Australian Tennis player, who after finishing a tennis match returns home, grabs a McCain Healthy Choice meal from the freezer and places it in the microwave to cook. Whilst it cooks, Samantha reads the ingredients on the back on the pack. Once it's ready she sits down at the table and begins to eat when at the same time she receives a call from her Dad, she answers and re-assures him that yes she is looking after herself.

THE COMPLAINT

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

In the TV advert it shows the meal being taken out of the microwave, it shows the veggies and chicken are side by side in the dish which is covered. There are also more veggies and chicken in the TV advert than in reality.

When I spoke to McCain's customer service on the phone I was told the ingredients are strictly checked for quality and weight. I said that what is in the meal brought from the supermarket and what is shown on TV advert is very different. I could not get a straight answer to this question except for repeating that ingredients are checked for quality and weight. I said all I wanted to know was how I could make the supermarket meal look like the one in the TV advert.

In response to this I was told that a different bowl was used in the TV advert. I said this was not a satisfactory response to my question.

I hope you will look into this and see what you think about it.

THE ADVERTISER'S RESPONSE

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

In response to the points of the complaints:

- *'In the TV advert it shows the meal being taken out of the microwave, it shows the veggies and chicken are side by side in the dish which is covered... At no point does the advertisement show the meal being taken out of the microwave nor does it show the veggies and chicken being side by side with the dish covered.'*
- *...there is also more veggies and chicken in the TV advert than in reality The ingredients used in the meal featured in this commercial are weighed to ensure that the same amount are used and shown as is in the meal as in the product that is available for sale.'*
- *'I said that what is in the meal brought from the supermarket and what is shown on TV advert is very different.'*
- *I said all I wanted to know was how I could make the supermarket meal look like the one in the TV advert. In response to this I was told that a different bowl was used in the TV advert. I said this was not a satisfactory response to my question. This commercial portrays how the meal could reasonably appear after being cooked in the microwave and then placed into a bowl and served. We believe this to be a reasonable representation based on:*
 - *All ingredients shown in the meal being as per the ingredients listed on the back of the pack available for sale.*
 - *The amount (weight) of the ingredients used in the meal featured in this commercial being as per the amount included in the microwavable pack.*
 - *All ingredients used in the meal being sourced directly from the McCain factory to ensure consistency.*

Consideration to the relevant advertising codes:

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.

A food stylist was used to prepare the meal, ensuring it was presented in an appetizing / appealing way however at no-point was the presentation of the food exaggerated or the amount of food falsified to mislead or deceive consumers.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement misrepresents the size of the actual product.

The Board reviewed 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

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. (complaints about matters such as ‘taste and decency’, language, sex and violence).”

The Board then considered Section 2.1 of the Code and noted that Section 2.1 requires it to consider whether an advertisement is truthful and honest or is misleading, or is designed to be, misleading or deceptive.

The Board noted the advertiser’s response that the ingredients used in the meal are weighed to ensure that the same amount is used in the advertising as is available in the product.

The Board accepted the advertiser’s response and considered that most consumers accept that some food products look more appealing in an advertisement than they may actually do once purchased. The Board considered that most consumers would not consider such ‘styling’ of food to be a misrepresentation of the product.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Code.

The Board also noted section 2.6 of the Code which provides that: ‘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.’

The Board also noted the Practice Note to the Food Code which provides:

‘In testing whether any claim is included within an advertising or marketing communication, the Board will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a ‘claim’ as defined under other legislation).

Once a claim relating to a material characteristic of a promoted product is established, the Board will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Board will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis on information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a ‘suggested serving’ will not, on its own, represent grounds for finding a advertisement or marketing communication in breach of the Code.

Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.’

The Board considered that the depiction of the product was not of itself a claim about the size of the product and that there was no other material in this particular advertisement that amounted to a claim about the size or content of the product that would be inaccurate.

The Board determined that the advertisement did not breach section 2.6 of the Food Code.

Finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.