



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0134/15</b>
<b>2</b>	<b>Advertiser</b>	<b>Simplot Aust Pty Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV - Free to air</b>
<b>5</b>	<b>Date of Determination</b>	<b>29/04/2015</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement is for John West's new food-on-the-go product "Tuna and Rice". The Advertisement features the well-known bear, fisherman and heroine characters from John West's previous 2012 ad campaign "Into the Woods". The John West Bear chases a woman and the John West fisherman carrying a salmon through the woods. The couple race down a jetty and slip into a boat moored at the end of the jetty as the bear overshoots the boat and jumps into the water.

The Advertisement finishes on a Tuna and Rice product being conveniently pulled from a bag on the floor of the boat featuring the voice over saying "Got a lot on your plate? Add some healthy to your hurry...with delicious John West Tuna and Rice...John West, Be Your Best!"

### THE COMPLAINT

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

*From the advert one is led to assume that the tuna in the 'Tuna and Rice' can was caught in Canada, and was not a product of Thailand which is stated on the can. Currently there is much discussion about the safety of eating some of the larger fish from certain areas.*

### THE ADVERTISER'S RESPONSE

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

*We refer to your letter dated 31 March 2015 regarding the above matter.*

*You have advised Simplot that the complaint raises concerns under section 2 of the AANA Code of Ethics (Code) and will be considered at the upcoming meeting of the Advertising Standards Board (Board). As requested, we have assessed the complaint by reference to all relevant AANA Codes.*

*We are committed to conducting all advertising and promotions to the highest standards and we take seriously any complaints made in relation to any such advertising and promotion.*

*We have set out our response to your request/queries below.*

## **COMPLAINT**

*The complaint received on 20 March 2015 asserts:*

*From the advert one is led to assume that the tuna in the "Tuna and Rice" can was caught in Canada, and was not a product of Thailand which is stated on the can. Currently there is much discussion about the safety of eating some of the larger fish from certain areas.*

## **THE CODES**

### **AANA Code of Ethics**

*We submit, having regard to Section 2 of the AANA Code of Ethics that:*

- the Advertisement does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief, and accordingly, the Advertisement does not contravene Section 2.1 of the AANA Code of Ethics;*
- the Advertisement does not employ sexual appeal, and accordingly, the Advertisement does not contravene Section 2.2 of the AANA Code of Ethics;*
- the Advertisement does not present or portray any violence which is not justifiable in the context of the product advertised, and accordingly, the Advertisement does not contravene Section 2.3 of the AANA Code of Ethics;*
- the Advertisement is not in any way sexually suggestive, and accordingly, the Advertisement does not contravene Section 2.4 of the AANA Code of Ethics;*
- the Advertisement does not feature language which is inappropriate in the circumstances and is not inappropriate for the relevant audience and medium, and accordingly, the Advertisement does not contravene Section 2.5 of the AANA Code of Ethics; and*

• *the Advertisement does not depict any material which is contrary to Prevailing Community Standards on health and safety, and accordingly, the Advertisement does not contravene Section 2.6 of the AANA Code of Ethics.*

*On the basis of the above, we do not consider that the Advertisement contravenes the AANA Code of Ethics, having regard to Sections 2 and 3 of the Code or otherwise.*

#### *AANA Food Code*

*We submit, having regard to Section 2 of the AANA Food Code that the Advertisement is truthful and honest, is not designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and is communicated in a manner which is appropriate to the level of understanding of the target audience of the Advertisements.*

*In relation to the Complaint, as to whether the advertisement is truthful and honest, we state as follows:*

- *The Advertisement does not in any way suggest that the tuna is caught or packed in a particular country;*
- *The Advertisement features the Tuna and Rice product being conveniently pulled from a bag on the floor of the boat that the couple jumps into. It is intended to portray the convenience of the product. At no time does the Advertisement mention that the tuna either comes from Canadian waters or implies that the tuna in the product was sourced from Canada or in the region in which the advertisement was shot;*
- *The Advertisement states “Got a lot on your plate?” and the scene depicts two very busy people that are being chased by a bear which is in keeping the stated question;*
- *The Advertisement further states “Add some healthy to your hurry...” and the tuna and Rice product is a healthy product that is designed to be eaten “on the go”;*
- *The Advertisement features a Tuna and Rice product being pulled from a bag on the floor of a boat, and does not in any way correlate to the salmon that is being held by the Fisherman; and*
- *We consider that an ordinary consumer would not consider that the Advertisement was in any way untruthful or dishonest.*

*In relation to whether the advertisement is designed to be misleading and deceptive, we state as follows:*

- *Simplot’s intention was to present a playful and humorous scene of two people that are clearly leading a busy and rushed lifestyle (being chased by a bear). It is in keeping with much of John West advertising that uses obvious hyperbole, rhyming and humour. In this instance it follows the iconic and famous John West brand elements of the bear, fisherman and heroine;*
- *The John West bear and fisherman are used consistently across advertising of all John West products;*

- *We do not consider that the Advertisement makes any representation that the tuna in the Tuna and Rice product was caught or sourced from Canada, it is pulled out of a bag, not out of the water;*
- *The Advertisement shows the couple experiencing a very hectic event and then reaching for the John West Tuna and Rice product;*
- *The Advertisement further emphasises the couple's hectic experience with the voiceover announcing "Got a lot on your plate?";*
- *At no time does the advertisement state or represent the source or origin of any of the ingredients in the Tuna and Rice product;*
- *We do not consider that the complainant was in fact led to assume that the tuna in the Tuna and Rice product was made in Canada, as they have stated in their complaint that the tuna is a "product of Thailand which is stated on the can";*
- *John West tuna is caught in the Western and Central Pacific Oceans and is not a product of Thailand;*
- *John West Tuna and Rice product is manufactured in Thailand; and*
- *We consider that the average consumer in the target market and reasonable members of the community would not be misled or deceived by the Advertisement.*

*Accordingly, the Advertisement does not contravene Section 2.1 of the AANA Food Code.*

*With regard to the other sections of the AANA Food Co, we state:*

- *The Advertisement does not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonable be considered as excess consumption through the representation of product or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards, and accordingly, the Advertisement does not contravene Section 2.2 of the AANA Food Code;*
- *The Advertisement does not contain any health or nutrition claims - John West states that their tuna and rice products enable people to add some "healthy to your hurry".*

*Please note that we consider that this statement is not a health claim. The product is a source of omega-3 and protein and features a 3.5 health star rating which is considered a healthier choice under the Health Star Rating System. Accordingly, the Advertisement does not contravene Section 2.3 of the AANA Food Code;*

- *The Advertisement does not include any implied or explicit health related comparisons, and accordingly, the Advertisement does not contravene Section 2.4 of the AANA Food Code;*
- *The Advertisement does not make reference to consumer taste or preference tests, nor use any scientific terms to falsely ascribe validity to advertising claims, and accordingly, the*

*Advertisement does not contravene Section 2.5 of the AANA Food Code;*

- The Advertisement does not make reference to taste, size, content, nutrition and health benefits which are non-specific to the promoted product or inaccurate in all such representations, and accordingly, the Advertisement does not contravene Section 2.6 of the AANA Food Code;*
- The Advertisement does not appear within segments of media devoted to general and sports news and/or current affairs, and accordingly, the Advertisement does not contravene Section 2.6 of the AANA Food Code;*
- The Advertisement does not portray the product as a substitute for meals, and accordingly, the Advertisement does not contravene Section 2.8 of the AANA Food Code; and*
- The Advertisement complies with the AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children is not relevant, and accordingly, the Advertisement does not contravene Section 2.9 of the AANA Food Code.*

*We note that clause 3 of the AANA Food Code does not apply to the Advertisement, as the Advertisement is not targeted to Children.*

*On the basis of the above, we do not consider that the Advertisement contravenes the AANA Food Code, having regard to Sections 2 and 3 of the Code or otherwise.*

*Please note that Simplot is a signatory to the Responsible Children's Marketing Initiative (RCMI) and Simplot states that this advertisement was in full compliance with the RCMI as it was not promoted or directed primarily to children.*

*Based on our comments above, we do not consider the Advertisement to be in breach of the relevant Codes or unsuitable for display as Advertising and Marketing Communications (as defined in the Codes).*

*We trust that our comments above will help to alleviate the complainant's concerns and assist the Board in its deliberation of the complaint.*

## **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 the tuna fish in the product was caught in Canada.

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 bear chasing a man and woman through some woods and then falling in to a lake whilst the couple escape in a boat.

The Board noted the complainant's concerns that the advertisement suggests that they are in Canada and that the advertised product, tuna, was caught in Canada.

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 noted that the scenery in the advertisement is generic with no identifying characteristics that would clearly indicate whereabouts in the world it is. The Board acknowledged that the scenery could be Canada as it is known for its wooded parkland, bears and lakes but considered that overall the advertisement does not mention Canada or include any claims about Canada and woods, bears and lakes are found in other regions of the world. The Board noted the advertiser's response that the advertisement does not say that the tuna comes from Canada. The Board noted that the couple are shown pulling the advertised product from a bag and considered that whilst the voiceover highlights the convenience of the snack it does not suggest that it comes from Canada or specifically from anywhere else in the world. The Board noted the advertiser's response that the origins of the tuna are stated on the product's labelling and considered that overall the average consumer would not find that this advertisement suggests that the tuna in the advertised product was sourced in Canada.

Based on the above 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 complaint.