



# Case Report

<b>1</b>	<b>Case Number</b>	<b>0191/16</b>
<b>2</b>	<b>Advertiser</b>	<b>Spud Shed</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>11/05/2016</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

There are two television advertisements featuring the owner of Spudshed, Tony Galati, showcasing the produce available to buy in any of the seven Spudshed stores.

Version 1: Tony is shown interacting with customers and we see images from inside a store as well as images of farms where some of the produce is grown. The final tagline is, "We grow it, we sell it, you save".

Version 2: Tony describes the Easter specials which include chocolate and bottled water. The final tagline is, "We grow it, we sell it, you save".

## THE COMPLAINT

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

*To me... his statement is an out and out lie.*

## THE ADVERTISER'S RESPONSE

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

*As our prices at Spudshed are consistently low every week we do not advertise “half price” as frequently done by other advertisers. The statement “don’t be fooled” is in reference to the fact that other advertisers may have a product advertised as half price one week but then it will be more expensive the next week, whereas our prices are consistently low everyday, week in and week out.*

*We refer to your letter advising us of a complaint received in relation to a recent commercial that appeared on free to air television and in particular the possible contravention of the Food and Beverage Code 2.1. (a) – misleading or deceptive.*

*The complainant believes that the statement “we grow it” made by the owner of Spudshed, Tony Galati, is in their words “rubbish” and the concern is that this statement is an “out and out lie.”*

*Tony Galati owns a number of Spudshed stores in WA and also owns a number of farms from Manjimup and Myalup in the south to as far as Kununurra in the north. It is common knowledge that Tony grows a wide variety of potatoes as well as a range of produce such as onions, carrots, cauliflower, broccoli and cabbage to name the main lines. On the Kununurra farm he grows mangoes and bananas and in Geraldton he grows table grapes. The produce grown on these farms is supplied direct to the Spudshed stores. In addition to this we have our own chicken farm that supplies freshly laid eggs to our stores on a daily basis,*

*The statement “we grow it” is part of the tag line “we grow it, we sell it, you save”. This refers to the fact that Spudshed sells fresh produce that has been grown on their own farms and that by reducing the number of people in the supply chain the consumer ultimately saves. The advert shows a variety of products, all of which are in fact grown on our own farms.*

*As a store, Spudshed does not only sell fresh produce or fruit and vegetables, we sell a wide variety of products such as bread, milk, meat and groceries. These products may be advertised in a commercial and any reasonable person would know that the tag line is not referring to these products. The statement is no different to Woolworths who claim to be “the fresh food people” yet sell non-food products and food that may not be considered “fresh” in the traditional sense as it may be canned or dried.*

*There is no intention on the part of Spudshed to mislead or deceive anyone and we are of the opinion that in no way does the advert in question do this.*

*In your letter, further reference was made to Section 2 of the AANA Code of Ethics, once again we do not believe that the advert breaches any of these.*

*We trust this clarifies the concerns raised from our commercial.*

## **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).

The Board noted the complainant's concerns that the advertisement is misleading as it suggests that the advertiser grows all products sold in their stores.

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 there are two advertisements in this campaign, each ending with the slogan, "We grow it, we sell it, you save".

The Board noted the advertiser's response that they do grow produce sold in their stores, for example mangoes, bananas and grapes, and that they also sell other goods which are not grown – for example bread, milk and other groceries.

The Board noted that it had previously dismissed complaints about Woolworth's use of the tagline, 'Fresh Food People' in case 0118/12 where:

"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 noted the current complaint refers to the logo, 'We grow it, we sell it, you save' and considered that consistent with its previous determination in the Board's view the advertisement does not suggest that the advertiser grows every single product available to purchase in their stores but rather that the produce they are able to grow is sold by them. The Board considered that most reasonable members of the community would not find the advertisement to be misleading.

Based on the above the Board considered that the advertisement was not misleading and 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.