



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0198/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Subway Franchisee Advertising Fund</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>13/06/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Upheld - Modified or Discontinued</b>

### ISSUES RAISED

Food and Beverage Code      Misleading / deceptive

### DESCRIPTION OF THE ADVERTISEMENT

TV advertisement promoting the \$7 Subway Footlong(R) Chicken Fillet Sub.

### THE COMPLAINT

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

*I want to raise a problem with I think is false advertising of a food product from subway. I purchased a chicken fillet subway roll and when I got it home I was disgusted to find after biting it that it is in fact a processed chicken piece. My understanding of a chicken fillet is a fillet of chicken not processed chicken meat. I am very annoyed at this as it should not be advertised as a chicken fillet sub when it is not I would never have purchased let alone put a piece of processed chicken near my mouth had I of known. I think this is 100% false advertising as a fillet is as it is like a fillet of any meat un-processed.*

### THE ADVERTISER'S RESPONSE

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

*The complaint does not cite a specific ad rather it references “TC, billboards etc”. As the customer indicated that they purchased the product attached is an example of a window cling used in the restaurant for advertising this product in association with this limited time campaign. The advertising is not directed to children. The KJ information is provided in accordance with current regulation and does not include any further nutritional claim. The “Chicken Fillet Sub” has been offered for sale in Subway restaurants throughout Australia for at least ten years. The brand has not substantially changed the formula for the product during this time period. The Subway Footlong Chicken Fillet Sub was recently included as a limited time offer on the brand’s \$7 menu which is available at participating locations.*

*The ingredients for the Chicken Fillet in the Chicken Fillet Sub as listed on the brand’s website are as follows:*

*Chicken (82%), Flour (wheat), Water, Mineral Salt (450, 451, 452), Salt, Vegetable Oil, Wheat Starch, Sugar, Herbs and Spices, Hydrolysed Vegetable Protein, Egg Albumen, Dehydrated Vegetable (Garlic), Yeast Extract, Soy Sauce (Wheat), Flavours (Wheat, Milk), Maltodextrin, Acidity Regulators (331, 336), Whey Protein (Milk).*

*After review, the Food Standards Australia New Zealand does not appear to have a standard of identity or definition for ‘chicken fillet’ and the Australian Chicken Meat Federation does not include it in its terms of “Cuts of Chicken Meat”*

*<http://www.chicken.org.au/paeg.php?id=12>*

*The chicken fillet is a formed product and the brand has been using the descriptor “fillet” on the basis of the shape of the product and that the meat is boneless. The Online Dictionary – Australia Web Site it defines fillet as follows: 2(Cooking) A piece of lean meat without bone; sometimes, a long strip rolled together and tied. (1913 Webster).*

*No reference or claim has been made that the product is from whole muscle and the company has made information about the product readily available to consumers on its website.*

*Please note that after evaluation of this matter the company has decided to change the name of this long term product and is in the process of withdrawing the associated advertising with the old name “Chicken Fillet Sub” and renaming the product. The new name will not include the word “Fillet”. The national price point advertising noted above concluded on May 20th 2012 and associated advertising with the national promotion (including the sample window cling) is in the process of being removed from the restaurants. The associated national TV ads will not be re-broadcast. However the name change will require a menu panel update which is scheduled to occur (at the over 1300 individually owned and operated locations throughout the country) over the next several months.*

*It is the company’s intent not to continue advertising the product as the “Chicken Fillet Sub”. Please advise if the ASB requires any additional information concerning the name change or if you have questions or comments on the above. We hope that this will resolve the matter.*

## **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 complainants’ concerns that the advertisement is misleading its suggestion that the footlong sub being offered with a chicken fillet is not in fact a fillet of chicken but rather processed chicken meat.

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 considered that the advertisement features images of, and voiceover descriptions of the deal being offered at Subway and that the particular Footlong Sub is described as containing a fillet of chicken. The Board noted the advertiser’s response regarding the definition of ‘fillet’ as provided by the online dictionary and the requirements outlined by the Australian Chicken Meat Federation and Food Standards Australia New Zealand.

The Board noted that the prevailing community standard on what a fillet of chicken is, does not include chicken presented in pieces or formed or processed chicken meat. In the Board’s view, most members of the community would associate chicken fillets with the breast or thigh portion of the chicken in one whole piece or as a cut of chicken rather than reconstituted into a particular shape.

Based on the above the Board considered that the advertisement was misleading or deceptive and did breach Section 2.1 of the Food Code.

The Board noted that the advertiser has taken some steps and continues to put measures in place to remove this advertising and to change both short and long term advertising and references to fillets of chicken.

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

## **ADVERTISER RESPONSE TO DETERMINATION**

Please note as outlined in our response on May 23, 2012, the company advised you of its decision to change the name of this long term product and we had thought that this would resolve this matter without the need for consideration by the ASB as it was our understanding that the ASB does not take up matters where the advertising is withdrawn or discontinued. As indicated, all advertising of the \$7 Subway Footlong® Chicken Fillet advertising has ceased including TVC, outdoor and POP material. As of Monday 25th June, the [www.subway.com.au](http://www.subway.com.au) website is being modified to change name from Chicken Fillet to Chicken Classic. As of Monday 30th July, the instore menus are being updated to change the name from Chicken Fillet to Chicken Classic. (We have expedited this to occur as timely as possible. However, as previously noted it takes time to update the menu panels, print 1300 new menu panels and deliver them to all the locations throughout Australia.) Again, please advise if the ASB requires any additional information concerning the name change or if you have questions or comments on the above. We hope that this will resolve the matter.