



Case Report

1	Case Number	0279/11
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Pay TV
5	Date of Determination	27/07/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.8 - Food and Beverage Code untruthful/dishonest

DESCRIPTION OF THE ADVERTISEMENT

The advertisement for Uncle Tobys Gourmet Selections Oats is set in a fresh produce market and shows a seller driving a truck to the market and unloading his crates of berries. Customers observe and taste the berries. The seller stacks crates of currants, strawberries, raspberries and cranberries on top of each other. These then morph into the Gourmet Selections pack and bowl shot.

THE COMPLAINT

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

The ad implies that fresh Australian-produced fruit is used in this product. Cranberries are not grown in Australia and therefore cannot be used in this product. I find this ad misleading.

THE ADVERTISER'S RESPONSE

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

I refer to your letter of 15 July 2011 regarding a complaint received from a member of the public concerning the Uncle Tobys Gourmet Selection Oats television commercial (Advertisement). Thank you for the opportunity to comment on the issue raised in the complaint.

I confirm that Uncle Tobys Gourmet Selection Oats is manufactured, distributed and marketed in Australia by Cereal Partners Australia Pty Ltd (CPA).

In relation to the codes administered by the Advertising Standards Board, the complaint refers to section 2 of the AANA Food and Beverage Advertising and Marketing Communications Code (Code) and specifically section 2.1 of the Code, which provides, relevantly, that “Advertising or Marketing Communications for food and beverage products shall be truthful and honest, shall not be or be designed to be misleading or deceptive”.

The complainant alleges that the Advertisement makes the representation that Uncle Tobys buyers are purchasing fresh berries from a farmer’s market, including fresh cranberries which are not grown in Australia and therefore the Advertisement is misleading.

The Advertisement is set in a fresh produce market environment. The representations made show the selling of fresh fruit in large commercial quantities complete with trucks, crates and customers.

The focus of the Advertisement is to show the berries used in the manufacture of the Uncle Tobys Gourmet Selections Oats Cranberry, Raspberry and Strawberry product. The farmer stacking the crates of fresh berries illustrates this.

The Advertisement does not make any representations that the fresh berries are locally grown, as suggested by the complainant, nor does it make any representations regarding their country of origin. The mere fact that the Advertisement is set in a market environment does not itself represent or imply that the berries are Australian grown. Furthermore, it is common for fresh produce markets, including the Sydney Markets at Flemington, to sell both imported and local produce.

On this basis, CPA is firmly of the view that the Advertisement is not misleading, untruthful or dishonest.

Finally, CPA has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA Advertiser Code of Ethics and considers that the Advertisement complies with those codes in all relevant aspects.

THE DETERMINATION

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

The Board noted the complainant’s concerns that the advertisement is misleading as it implies that Australian produced fruit is used in the product.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board considered whether the advertisement was in breach of Section 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code. Section 2.1 of the Code states:

"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."

The Board noted the advertisement is set in a fresh produce market and that the voiceover states that Uncle Tobys uses strawberries, raspberries and cranberries in their Gourmet Selection Oats. The Board noted that the advertisement makes no claims regarding the provenance of the fruit they use, and that the cartons containing the various fruits are labelled with the name of the fruit and not the country of origin.

The Board noted the complainant's concern that the advertisement implies the fruit is from Australia however in the Board's view this interpretation is one which is unlikely to be shared by members of the community. The Board considered that the advertisement does not make any claims regarding where the fruit is from and the advertisement is not misleading.

Based on the above, the Board determined that the advertisement did not breach Section 2.1 of the Food and Beverages Code.

Finding that the advertisement did not breach the Code or the Food and Beverages Code on any other grounds, the Board dismissed the complaint.