



Case Report

1	Case Number	0348/10
2	Advertiser	McCain Foods Asia Pacific
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	25/08/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

2.8 - Food and Beverage Code untruthful/dishonest

DESCRIPTION OF THE ADVERTISEMENT

A grandfather opens a pea pod and shows the granddaughter the peas. The granddaughter comments that real peas come from the freezer, so the grandfather then explains to her that peas are grown in the soil and then picked by McCain, frozen and put in a bag.

THE COMPLAINT

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

The television advertisement portrays an Australian-accented grandfather and his granddaughter picking sampling and planting McCains baby peas. It gives the strong impression the peas are Australian grown.

As I understand it McCains no longer grow a single Australian pea for processing. McCains announced the closure of its vegetable processing facilities in Smithton North West Tasmania last year and the shift of this facility and its vegetable sourcing to Hastings New Zealand. The advertisement is therefore misleading the general public into thinking its baby peas are Australian Grown through the use of actors with Australian accents. In particular I believe the advertisement may breach the AANA's Food & Beverages Advertising & Marketing Communications Code which states among other things:

• "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."

- "... accurate in all such representations." and "shall be represented in a non-misleading and non-deceptive manner."

I would appreciate your review of the advertisement and if found to be in breach of the Code a request be made to McCain Foods for its immediate withdrawal from all mediums of advertising.

THE ADVERTISER'S RESPONSE

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

Our understanding is that the complainant says the advertisement misleadingly conveys to the general public that the McCain baby peas are Australian grown, through the use of actors with Australian accents.

McCain rejects the assertion that the general public seeing the advertisement would be led to believe that McCain baby peas are Australian grown.

Message conveyed by the advertisement

As you will see from the TV Copy/Script, the message intended by the advertisement is that real peas do not come from the freezer and that they are grown from the goodness of soil, sun and rain and are then frozen fresh and put into a bag by McCain.

The advertisement shows a generic farm scene which is not identifiable and could be from any rural vegetable growing region in the world.

As noted, this advertisement is part of a campaign to highlight the goodness of the earth and vegetables and educate children where vegetables come from.

The advertisement was filmed in Australia, and naturally, Australian actors were used. It is worth noting, the advertisement, whilst filmed in Australia, was filmed for use in both Australia and New Zealand and has been used in both of those countries. Clearly there would be no commercial advantage for McCain in its New Zealand advertising to have an advertisement that was designed or intended to convey an Australian origin for its vegetables. This was not the intention and was not the impression conveyed. As part of the campaign to educate children on the goodness of vegetables and where they come from, McCain also has a McCain School Veggies Patches Program which operates in Australia and New Zealand in primary schools. Primary Schools in Australia and New Zealand who participate are sharing in over \$500,000 worth of seeds and gardening equipment to encourage Veggie Patches in the local primary schools in Australia and New Zealand.

The message in the Television Advertisement is consistent with the School Veggie Patches Program in that it focuses on the goodness and source of vegetables.

No part of the Wise Grandfather or the School Veggie Patches advertisements or the School Veggie Patches Program focuses on or refers to the country of origin of the McCain's vegetables, and again it is noted that it would be commercially disadvantageous for television advertisements or other marketing to suggest the McCain vegetables were grown in Australia, when the intended market for all of the campaign is both Australia and New Zealand.

It is noted that the complainant has requested confidentiality, and we understand that there has been some concern at the announcement of the closure of McCain's Tasmanian vegetable processing plant and it may be that this concern has prompted the complaint. Whilst McCain

is sympathetic to that concern, it is irrelevant to determining the message that is conveyed by the advertisement

We stress again that McCain's position is that the advertisement does not convey any representation as to the origin of its baby peas.

Issues arising under applicable codes

Your letter of 29 July 2010 also asks McCain Foods to respond by addressing any relevant issues arising under each of the codes. To that end we respond on behalf of McCain as follows:

1. Code of Ethics

Sections 2.4 and 2.8 of the Code of Ethics provide that the Code of Advertising and Marketing Communications to Children ("the Children's Code") and the Food & Beverages Advertising & Marketing Communications Code ("the Food Code") must be complied with. Issues arising under the Children's Code and the Food Code are dealt with separately below. Leaving sections 2.4 and 2.8 aside, the sections of the Code of Ethics which appear to have potential application to the complaint are sections 1.2 and 1.5.

In relation to section 1.2, the advertisement is not misleading or deceptive or likely to mislead or deceive, and in relation to section 1.5 the advertisement does not make claims about the Australian origin or content of products advertised in a manner that is misleading. This is because, for the reasons outlined in detail earlier in this response, the advertisement does not make any representation or convey any impression as to the origin of McCain's baby peas.

2. Food Code

The sections of the Food Code which appear to have potential application to the complaint (and appear to have been alluded to in the complaint) are sections 2.1, 2.4 and 2.6.

In relation to section 2.1, the advertisement is truthful and honest and is not and has not been designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards. This is because, for the reasons outlined in detail earlier in this response, the advertisement does not make any representation or convey any impression as to the origin of McCain's baby peas.

In relation to section 2.4, to the extent the advertisement makes any nutritional or health related comparisons (such as the goodness of peas grown from the ground and frozen) these are not represented in a misleading or deceptive manner and the message is clearly understandable by an Average Consumer.

In relation to section 2.6, the advertisement is accurate in all its representations, as it does not make claims about the Australian origin or content of products advertised. It is accurate for the same reasons outlined in detail earlier in this letter, including in relation to our response to the Code of Ethics.

3. Children's Code

Your letter of 29 July 2010 notes that section 2 of the Code of Ethics incorporates the Children's Code. The Children's Code does not apply to the advertisement because having regard to the theme, visuals and language used in the advertisement, the advertisement is not directed primarily to Children, and is not for a product (peas) which have a principal appeal to children. Section 1 of the Children's Code requires both of these two criteria to be met before that Code applies.

In any event, the parts of the Children Code which could possibly apply to the advertisement relate to an obligation for the advertisement not to mislead or deceive Children. For the reasons outlined in detail earlier in this response, the advertisement does not mislead or deceive Children.

THE DETERMINATION

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

The Board noted the complainant’s concerns that the advertisement is misleading about where its peas are sourced.

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 that the message of the advertisement was meant to be that vegetables come from the soil and not from the freezer, and that at no point in the advertisement is it claimed that the peas featured are being grown in Australia. The Board noted that the actors featured in the advertisement had Australian accents and that the advertisement was filmed in Australia, but considered that the overall focus was on the peas coming from the soil, and that no reference was made to the country of origin of the soil. The Board considered that a reasonable consumer would not draw any conclusion about the origin of the advertiser’s product from this advertisement.

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

The Board determined that the advertisement did not breach the Food and Beverages Code on any other grounds.

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

