



Case Report

1	Case Number	0349/15
2	Advertiser	Gourmet Garden
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	09/09/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This series of TV advertisements feature Gourmet Garden's Lightly Dried Herbs, presented as the 'closest thing to fresh chopped herbs' but 'last for 4 weeks in the fridge'. The adverts show a woman cooking with the dried herbs and finish with the Gourmet Garden slogan "it's like a herb garden at your fingertips".

THE COMPLAINT

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

I object because of the high salt content in this product. Fresh herbs don't have added salt over 1000mg per 100g.

THE ADVERTISER'S RESPONSE

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

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

As outlined in the Substantiation of Claims, the statement of the 'closest thing to chopped fresh herbs' was gained from numerous years of researching consumers across the world. The respondents were asked to provide feedback on how they would describe lightly dried

herbs. The respondents were asked to provide feedback on how they would describe lightly dried herbs. Qualitatively, after using the new lightly dried herbs in cooking, respondents said they would describe these herbs as 'the closest thing to chopped fresh herbs' as their colour, taste and aroma is very similar to fresh herbs compared to other herb and spice formats currently on the market (i.e. dried herbs which lack the colour, taste and aroma of fresh herbs).

In addition to telling us that the range was the 'closest thing to fresh herbs', respondents also commented that having the range on hand in their fridge door was 'like having a herb garden at your fingertips' because the products provided a similar flavour, colour and appearance to fresh herbs and they lasted for 4 weeks once opened, so were on hand for everyday cooking.

It is important to note that by claiming that the products are the 'closest thing to fresh chopped herbs' and 'so close to fresh, it's like a herb garden at your fingertips' the advertisements are not claiming that Lightly Dried herbs are 'fresh herbs' or 'the same or identical to fresh herbs'. The claim suggests Lightly Dried herbs as a close alternative to fresh herbs (particularly compared to other herb formats such as dried herbs) which last for 4 weeks once opened.

To allow them to last for 4 weeks once opened, the products go through a unique, lightly drying process where the herbs and spices are not fully dried and combined with vegetable oil, salt and antioxidant so that there is still some residual moisture and the colour, aromas and texture is also retained.

The Lightly Dried range consists of 5 varieties Basil (10g), Coriander (8g), Chilli (10g), Ginger (12g) and Parsley (8g). The ingredients list for all varieties includes 4 simple ingredients: Herbs/Spices (92-94%) Vegetable Oil (Non-GM Canola Oil), Sea Salt, Ascorbic Acid (a form of vitamin C). There are no artificial colours or preservatives used.

Salt is an important ingredient for the preservation process. Whilst the sodium content is greater than 1000mg per 100g, it is important to note that the net weight of packs ranges between 8g – 12g. The products are designed to be an ingredient to compliment a meal, so it is unlikely that 100g of product will be consumed at one time.

The optimal weight for each variety was validated through consumer home user testing, specifically determining how much the home cooks used the products over the 4 week shelf life. This home usage testing also validated that the average serving size of the herbs was 1 teaspoon or 0.5g – 0.6g for the herb varieties and 1.1g for the spice varieties. Using the serving size as a guide, this would mean that the greatest sodium content would be 24mg per 0.5g (this is for the basil variant). The Australian RDI, as per NHMRC 1991 specifies a Daily Intake value (%DI) for sodium of 2,300mg per day. Therefore 1 serve of Lightly Dried herbs contributes no more than 1% of the DI and therefore does not add excessive amounts of sodium to the meal.

For these reasons we believe that the advertisement was neither misleading nor deceptive.

2.1 - Discrimination or vilification

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.

2.2 - Exploitative and degrading

The advertisement does not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people

2.3 – Violence

The advertisement does not present or portray violence.

2.4 - Sex, sexuality and nudity

The advertisement treats sex, sexuality and nudity with sensitivity to the relevant audience.

2.5 – Language

The advertisement only uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium).

2.6 - Health and Safety

Does not depict material contrary to Prevailing Community Standards on health and safety.

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 advertised product is as good as fresh herbs when in fact it contains high salt content.

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

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 there are three versions of this advertisement and each features a woman describing Gourmet Gardens' Lightly Dried Herbs as being "the closest thing to fresh herbs" and "so close to fresh".

The Board noted the complainant's concerns that the advertisement is misleading because the product contains salt whereas fresh herbs do not.

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 the advertiser's response that they do not claim their product is a fresh herb but rather that it is the closest thing to a fresh herb and that salt was used as it is an important ingredient in the preservation process.

The Board noted that current government health guidelines suggest choosing foods with less than 120mg of sodium per 100g (Department of Health and Aging Australian Dietary Guidelines). The Board noted the advertised product contains around 9 times the recommended guidelines (over 1,000mg per 100g) but considered that an individual product weighs between 8 and 12g and the normal serving would be a fraction of this amount.

The Board considered that an average consumer would understand that for a product to be 'lightly dried' and able to last for four weeks, a preservative such as salt would need to have been used. The Board noted that the advertisement does not make any reference to the salt content of the advertised product but considered that it is under no obligation to do so. In the Board's view the advertisement clearly states that the product is close to fresh herbs and considered that there is no suggestion that the advertised product is the same as fresh herbs but rather that it is a longer lasting, semi-dried, alternative.

Based on the above the Board considered that the advertisement is not misleading or untruthful and 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.

