



Case Report

1	Case Number	0406/14
2	Advertiser	Hungry Jacks
3	Product	Food / Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/10/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement in question shows a group of young people enjoying each other's company, then we cut to food preparation shots of the the new Hungry Jack's Hash Brown Cheeseburger. Cheese is sliced, cheese is melted onto a patty and hash browns are shown. We then introduce the rest of the cheeseburger collection (4x burgers available).

THE COMPLAINT

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

Uses images of a block of cheese getting sliced. They use processed cheese slices. Misleading

THE ADVERTISER'S RESPONSE

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

Advertiser's response to complaint

Hungry Jacks® takes complaints about its advertising seriously and endeavours to be a responsible advertiser.

The complainant has raised a complaint under section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code ("Food and Beverages Code") on the basis that the complainant is of the view that the image of a block of cheese being sliced is misleading because processed cheese slices are used in the Hungry Jack's burgers.

We note the provisions of section 2.1 provides that:

2.1 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.

In respect of the complainant, Hungry Jack's® makes the following comments.

Hungry Jack's® confirms that the TVC depicts a block of cheese being sliced and that processed cheese slices are used in its burgers. However, it denies strongly that the depiction of the block of cheese, in the manner it was depicted in the TVC is misleading or deceptive or likely to mislead or deceive the average consumer into thinking that non-processed cheese is used in its burgers.

It is extremely common in the industry (and in line with reasonable consumer expectation) to depict the main ingredient of a product to symbolise that product, for example, using imagery of fresh chillies in an advertisement to signify that product includes a chilli sauce (as opposed to fresh unprocessed chillies being included in the product). In another example, the depiction of fresh mangoes or berries in connection with smoothies can be used to signify that that the smoothie mix contains mangoes or berries (which does not necessarily represent that pieces of fresh unprocessed mango or berries are in the product). We note that in determination No. 0079/14, the ASB previously determined that an advertisement depicting fresh mangoes and berries was not misleading or deceptive where the smoothie mix contained the (processed) fruit (rather than fresh fruit).

Similarly, a reasonable consumer is likely to consider the depiction of a block of cheese being sliced as being symbolic of cheese. Processed cheese is a genuine food product made from cheese and accordingly, the depiction of the block of cheese signifies that processed cheese is a cheese product and/or that the cheeseburger contains cheese, which is truthful and honest and not misleading or deceptive.

The block of cheese is depicted on its own and is only intended to serve as an easily-recognisable symbol for cheese. This is supported by the fact that all four other depictions of cheese in the TVC (which constitute the overwhelming majority of cheese depictions in the TVC) are of processed cheese together with the rest of the cheeseburger.

In our view, it is unlikely that the reasonable consumer, on seeing a block of cheese on its own being sliced, followed by 4 different scenes showing processed cheese being used on the actual burger is likely to be misled or deceived into thinking that non-processed cheese is used on the actual burger instead of processed cheese.

Accordingly, we submit that the complaint under 2.1 of the Food and Beverages Code should

be dismissed.

In relation to the other matters addressed by the Food and Beverages Code, we note that the TVC:

- (i) makes no references to nutritional values or health benefits;*
- (ii) does not undermine the importance of health or active lifestyles;*
- (iii) makes no health or nutrition claims;*
- (iv) contains no nutritional or health related comparisons;*
- (v) does not make any reference to consumer taste or preference tests in a manner that implies statistical validity when there is none;*
- (vi) does not contain any claims as to the material characteristics of the products;*
- (vii) does not use sporting, news or current affairs personalities;*
- (viii) does not portrayed the advertised product as a substitute for meals; and*
- (ix) is not directed to children.*

Accordingly, in our view the other sections of the Food and Beverages Code are not applicable.

We note that the TVC does not raise any issues under the AANA Code of Ethics in relation to discrimination/vilification, exploitative or degrading depictions, violence, sex, sexuality and nudity, language or health and safety issues. Accordingly, in our view no complaint should be upheld in relation to the AANA Code of Ethics.

We note that the TVC is not directed primarily to children and are not for goods which are targeted toward or have principal appeal to persons 14 years or younger. Accordingly, we submit that no complaint should be upheld in relation to the AANA Code for Advertising & Marketing Communications to Children.

Hungry Jack's® is not a signatory to the Australian Food and Grocery Council ("AFGC") Responsible Children's Marketing Initiative. However, Hungry Jack's® confirms that it is a signatory to the Quick Service Restaurant Industry Code for Responsible Advertising and Marketing to Children ("QSRI"). In relation to the QSRI, Hungry Jack's® notes that the TVC is not directed primarily to children under 14 years of age and submits that no complaint should be upheld in relation to the QSRI. In light of the above, we request that the complaint be dismissed in relation to all applicable codes.

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 depiction of a block of cheese being sliced when the cheese used is cheese slices.

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 the advertiser's response that the use of the block of cheese is intended to serve as an easily-recognisable symbol for cheese and that the other depictions of cheese are pre-sliced pieces of cheese.

The Board noted that the visuals include all the ingredients of the "hash brown cheeseburger" being assembled and displayed with the other flavours of burger. The Board noted that at the same time, the voiceover describes how to make "your everyday more interesting" with the Hungry Jacks hash brown cheeseburger. The Voiceover does not refer to the type of cheese that is used and mentions that it is just one of four other flavours of cheeseburger available. The Board noted that the most likely interpretation of the advertisement is that the burgers contain cheese and that the source of the cheese is not the focus of the advertisement. The Board agreed that the use of a block of cheese is a representation that is familiar to most members of the community and the use of this representation in the advertisement cannot be interpreted as an intention to mislead or deceive.

Based on the above the Board considered that the advertisement was not misleading or deceptive in relation to the inclusion of visuals showing block cheese as opposed to sliced cheese. The Board 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 complaints.