



Case Report

1	Case Number	0407/14
2	Advertiser	Coles
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	22/10/2014
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

Curtis Stone asks what is fresh at Coles right now and we see some Tasmanian Pink Lady Apples on special for \$2.80 per kg. The text on screen says they are "TAS grown. Available until 4/9/14. Subject to availability".

THE COMPLAINT

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

This is wrong and not possible, I live in Tassie and my apple tree is dormant! These apples would have been in storage for MONTHS, they are not fresh.

This ad is misleading and my wife would like a personal apology from Curtis (or cash).

THE ADVERTISER'S RESPONSE

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

The Advertisement was aired in Tasmania only from 29 August 2014 until 1 September 2014. It is worth confirming at the outset that while similar "Feed Your Family Better" advertisements with Curtis Stone may continue to air featuring other fruit and vegetables, Coles will not re-publish or re-broadcast this particular advertisement featuring apples.

Issues arising under Section 2 of the Advertiser Code of Ethics

You have requested that our response addresses all parts of Section 2 of the AANA Code of Ethics.

The Advertisement features celebrity chef Curtis Stone talking at the start and end, and a screen shot of Tasmanian pink lady apples in the middle. The full script is included as Attachment 1, and a digital copy is included as Attachment 2.

Coles submits that each part of the Advertisement, and the Advertisement in its entirety, complies with each of the principles set out in subsections 2.1 to 2.6 of the AANA Code of Ethics.

Response to the complaint

Coles understands that the complainant considers the Advertisement misleading as the apples advertised could not be fresh given the time of year, and the fact that the complainant's apple tree in Tasmania is currently dormant.

Coles is satisfied that the Advertisement is not misleading or in breach of section 2.1 of the AANA Food and Beverage Code.

The harvesting of each variety of Australian apples generally only lasts two to three weeks in a particular region. In totality, apples are harvested across Australia over a period of approximately two months during Autumn. Coles sources the bulk of its apples from Tasmania, and the pink lady variety featured in the advertisement were harvested this year in Tasmania in the last half of April.

During the period of harvest Coles sells the harvested apples that have been delivered directly to its stores. For the remaining ten months of the year, Coles could choose to source apples from outside of Australia to fulfil year round customer demand for apples, however it chooses to support local growers by only selling in Coles stores Australian apples grown by local growers.

Coles is able to continue to deliver a fresh apple outside of the harvesting period due to the availability of advanced cold storage facilities. Cold storage facilities place apples in a controlled low temperature and reduced oxygen (no nitrogen is added) environment to preserve their freshness. While the temperature at which apples are kept in cold storage varies between varieties, the apples are not frozen.

Coles considers apples can remain fresh, even if placed in cold storage. 'Freshness' is determined with regard to the quality of the produce, not whether it has been stored or not. Coles assesses quality against a number of criteria, including taste, texture, smell, size, colour, absence of deterioration and lack of blemishes. Coles enforces strict quality control throughout its supply chain, including identifying and disposing of inferior quality produce through daily inspections. The maturity of apples when they are harvested and the way the apples are handled both before and after storage can have a much bigger influence on the quality of the apple, than storage itself.

Coles' view that produce can remain "fresh" despite storage is consistent with the Macquarie Dictionary, which defines 'fresh' as retaining the original properties unimpaired; not deteriorated; not canned or frozen; not preserved by pickling, salting, drying, etc.

Coles is committed to ensuring that its customers are provided with high quality fresh produce throughout the year, and to maintaining consumer confidence in its advertising and marketing claims. Coles is satisfied that the Advertisement is not in breach of either the AANA Advertiser Code of Ethics or the AANA Food and Beverages Advertising and Marketing Communications Code.

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).

The Board noted the complainant’s concerns that the advertisement is misleading in its suggestion that their apples from Tasmania are fresh.

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 noted the advertiser’s response that whilst the apples from Tasmania were picked during April of this year, their storage in “advanced cold storage facilities” means that the apples were able to preserve their freshness in an environment which had a controlled temperature and reduced oxygen.

The Board noted it had previously considered a similar complaint regarding a representation of ‘fresh’ produce at Woolworths in case 0118/12 where:

“The Board noted that the word ‘fresh’ appears as part of the product descriptor next to the barcode under the fresh produce pictured in the advertisement. The Board noted the advertiser’s response that in order to meet year round demand some products may require the controlled use of cold storage. The Board noted that it is common practice for food bought in its natural state (i.e. not frozen or tinned) to be described as fresh and considered that Woolworths is not being misleading in using the word ‘fresh’ in relation to products such as strawberries, apples and salad leaves on the basis that Woolworths has stated they may use cold storage, not freezing, for some products some of the time and that the use of cold storage is reasonable in a country such as Australia which necessitates extensive travelling time for produce.”

The Board noted the previous decision in 0118/12 and the majority of the Board considered that a reasonable Australian consumer does understand that cold storage for a period of time, even an extended period of time, is still resulting in a ‘fresh’ product. The minority of the Board considered consumers do not realise this and that ‘fresh’ would be expected to mean freshly picked. Overall the Board considered that it is common practice for food bought in its

natural state to be described as fresh and that the use of the word 'fresh' in relation to apples is not of itself misleading or designed to be misleading.

The Board noted in the current advertisement that Curtis Stone makes reference to the Tasmanian grown apples being fresh at Coles right now and suggests that you "feed your family better, fresher, with spring fruit and veg from Coles..."

The Board noted that in the current advertisement there is a reference to 'Spring' fruit and considered that these additional references to Spring change the context of the word 'fresh' to imply that the advertised apples are Spring fruit and have been freshly picked during the Spring season ready for immediate sale.

The Board noted the Practice Note for the Food Code which provides:

"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 apples are generally harvested in Australia during autumn and considered that the average consumer would be used to seeing apples available in supermarkets all year round and may not be aware of this fact. The Board considered that the likely interpretation of the advertisement by the average consumer would be that the Tasmanian apples being promoted as fresh this Spring would have been freshly picked in recent weeks and not over 3 months ago.

Based on the above the Board considered that the advertisement was misleading.

The Board determined that the advertisement did breach Section 2.1 of the Food Code.

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

THE ADVERTISER'S RESPONSE TO DETERMINATION

This advertisement will not be aired again.