



Case Report

1	Case Number	0432/12
2	Advertiser	Coles
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	14/11/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

The advertisement features celebrity chef Curtis Stone and a number of Coles Bakery team members promoting the 'Coles Bakery' in-store bread range which is prepared in and available from Coles stores with in-store bakeries. The advertisement was filmed in the in-store bakery at Coles Taylor's Hill in Victoria and depicts staff members removing bread from ovens.

THE COMPLAINT

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

The advertisement stated that "our bread comes straight from the oven to you". However, Coles pre-bakes its bread, freezes it and then reheats it. When I complained to Coles (April 2012) upon purchasing "freshly baked bread" that was frozen in the middle, I received a reply stating that yes they do freeze their bread but their definition of fresh included "fresh when frozen."

Advertising that "our bread comes straight from the oven to you" implies that the items are freshly baked when in fact they are frozen and reheated. This I believe is untruthful as any reasonable person viewing the ad would assume the bread came straight from a baking oven, not reheated frozen product.

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 in relation to a television advertisement for "Coles Bakery" bread featuring Curtis Stone (complaint no. 0432/12). Specifically, the Bureau is concerned that the complaint raises issues under section 2.1(a) of the AANA Food and Beverage Code.

In relation to your specific requests, Coles provides the following documents and information:

Description of advertisement: The advertisement the subject of the complaint features celebrity chef Curtis Stone and a number of Coles Bakery team members promoting the 'Coles Bakery' in-store bread range which is prepared in and available from Coles stores with in-store bakeries. Mr Stone highlights that a number of products within the range have won awards, that the range is made from 100% Australian flour and that the range is free of preservatives and artificial additives. The advertisement was filmed in the in-store bakery at Coles Taylor's Hill in Victoria.

Details of CAD reference number and rating: The CAD reference number for the above advertisement is 960844. The advertisement was given a 'G' rating.

Details of programs in which advertisement appears: The TVC was aired on metropolitan television stations in Melbourne, Sydney, Brisbane, Perth and Adelaide between 14 October 2012 and 27 October 2012 during a range of programs and time slots including daytime talk shows such as 'The Ellen Degeneres Show', afternoon game shows such as 'Hot Seat' and evening drama shows such as 'CSI: Crime Scene Investigation'.

Other Relevant Information: By way of background, Coles' in-store bakery operations vary between stores depending on factors such as geographic location, size of operations and availability of skills. Depending on the store, 'Coles Bakery' bread includes bread that has been prepared from scratch in Coles' in-store bakeries and bread baked from a 'par bake' product. Par bake products are products which have been prepared and partially baked at the supplier's premises and then blast frozen before being transported to Coles Supermarkets. Prior to being offered for sale to customers, parbake products are moved from the freezer and baked in Coles' in-store bakery ovens. This completes the baking process and generates the crust.

Coles notes that par-bake technology is widely used by supermarkets, restaurants, cafes and bakeries as it enables a wide range of artisan-quality products to be available on a daily regardless of geographic location or size of operations.

Response to complaint: Coles understands that the complainant considers the statement "straight from the oven to you" to be misleading. It appears that the complainant's understanding is that Coles reheats frozen bread that has already been fully baked. As outlined above, this is not the case. Coles is satisfied that the statement that Coles Bakery bread is "straight from the oven to you" is not misleading or in breach of section 2.1 of the AANA Food and Beverage Code. The statement truthfully and accurately represents to customers that Coles Bakery bread has been baked on-site in one of Coles' ovens that day. This is true of all Coles Bakery bread, regardless of whether it has been prepared from scratch or baked from a par bake product. Coles notes in particular that:

- *Coles Bakery bread is only sold to customers on the day that it is baked. At the end of the trading*

day, any unsold bread is cleared from shelves and is usually given to charity;

- *Coles encourages bakery team members to display Coles Bakery bread as soon as possible after baking (provided the product has rested and is cool to touch) so that customers are buying the freshest possible product;*

- *Coles also encourages in-store bakeries to practice 'wave baking' throughout the day where possible so that customers shopping later in the day are able to purchase the freshest possible product;*

- *Whilst the Taylor's Hill in-store bakery featured in the advertisement bakes a number of lines from scratch, because of the range of bakery operations across Coles in-store bakery network, Coles ensured that Bakery team members filmed in the IVC were only filmed removing Coles Bakery bread from ovens, cooling bread on racks and moving bread around the bakery and that there were no shots of Coles bakery team members mixing or preparing dough.*

Coles understands that truthful and accurate advertising is critical to building trust in its brand, a strategic imperative for Coles, and is committed to ensuring that advertising is not misleading.

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) or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement is misleading because it implies that Coles’ bread is freshly made and baked when in fact they bake their bread from frozen and then reheat it in store and that people will assume from the advertisement that the bread came straight from a baking oven

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 that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide:

“The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and 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 advertisements and/or marketing communications 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.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser’s stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, advertising and/or marketing communications may make reference to one or more of the nutritional values and/or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product...”

The Board noted that the advertisement features Curtis Stone describing how all of Coles’ bread features 100% Australian flour and no artificial additives and no preservatives and that it comes “straight from the oven to you” and we see Coles’ employees removing bread from the oven.

The Board noted that the advertisement claims that the Coles bread is 100% Australian flour and has no artificial additives and no preservatives . The Board noted that the complainant had not raised concern about these statements and that Coles has not made any statement about the accuracy of those statements. The Board therefore had not considered whether these claims are true but proceeds on the basis that they are in fact truthful.

The Board considered the complainants concern that the advertisement represents that Coles bread is prepared in store and baked in store. The Board noted the advertiser’s response that bakery operations vary between stores but that the fresh baked bread is either ‘prepared from scratch’ or ‘baked from a ‘par baked’ product’. The Board noted that where a par baked product is used the par baked product is prepared in a supplier’s premises, par baked then frozen and delivered to Coles for final baking in store.

The Board carefully considered the advertisement. It noted that the advertisement makes no specific claims as to where the bread is prepared or whether or not the bread is frozen before being cooked in the in-store ovens.

The Board considered that the statement “straight from the oven to you” is correct in that bread is taken from the oven and placed in store for purchase. The Board also noted that, according to Coles, products are baked in store – not simply reheated.

The Board considered that the advertisement does represent that the bread is baked in store. The Board noted the Macquarie dictionary definition of ‘Bake’ which includes ‘to cook by dry heat in an oven, to harden by heat, bake bread.’

The Board considered that there is not an inference in the advertisement about preparation of dough and also considered that many people in the community would be familiar with the practice of using frozen dough and then completing the cooking process at a later time – either through knowing that this occurs in store or through purchase in supermarkets of par baked products for baking at home.

The Board also considered that many people would assume that the product was fully prepared in store or would not think about the issue.

Overall however the Board considered that the advertisement does not create a positive impression to reasonable consumers that the product is prepared from scratch in store or that it is baked from fresh dough instore. The Board considered that the community would simply consider that the product has been baked freshly in store and that, in the Board’s view, such a belief is not false.

The Board considered that the advertisement is truthful and is not misleading or deceptive.

The Board also considered that the advertisement did not otherwise contravene prevailing community standards.

Based on the information provided by Coles that all of their Coles bakery bread is baked in store and not simply reheated the Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Food Code.

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