



## Case Report

1	Case Number	0451/15
2	Advertiser	Golden Circle Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/11/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement features a man and a girl at a pineapple farm on a sunny day. We see the man cutting a pineapple in half to reveal the fruit's flesh. Shortly thereafter, a bottle of Golden Circle Pineapple Juice is also shown in the advertisement, together with a range of other Golden Circle beverage products.

### THE COMPLAINT

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

*Golden Circle pineapple juice is made from imported and local product. I am not a scientist, so I can not analyse the content that is imported, but can not see Golden Circle importing the water content. I see this advert as being very misleading.*

### THE ADVERTISER'S RESPONSE

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

*3. Golden Circle's response to the complaint*

*3.1 The complainant has alleged that the advertisement is misleading because it creates an impression that the pineapple juice contained in Golden Circle Pineapple Juice is made from*

*pineapples grown in Australia.*

*3.2 Golden Circle denies that the advertisement contains any representations as to the country of origin of the pineapples used in Golden Circle Pineapple Juice.*

*3.3 The complainant has not provided a detailed explanation for his conclusion that the pineapple that is shown in the advertisement is an “Australian pineapple”. It appears that the complainant may have formed this view based on the two actors in the advertisement appearing to be Australian. As the advertisement was filmed in Australia, it is not unreasonable to expect that the actors used would be Australian.*

*3.4 It follows that if the complainant’s position is upheld, then any advertisement filmed in Australia, using Australian actors could be deemed a representation of the country of origin of the product being advertised.*

*3.5 In contrast to the complainant’s assertions, the farm depicted in the advertisement is entirely generic and could be located in any pineapple growing region in the world. There are no identifiable landmarks to suggest the farm is located at any particular place or country, including Australia.*

*3.6 There are no written or oral statements made in the advertisement referring or alluding to the country of origin of the pineapples. The complainant appears to have disregarded the dialogue and focused almost exclusively on the non-textual aspects of the advertisement.*

*3.7 Considering the advertisement as a whole, there is a clear and obvious predominant message which is directed to the importance of the sun in cultivating the fruit that goes into Golden Circle beverage products.*

*3.8 This message is apparent from the repeated references to the sun and sunshine in the voiceover and visuals throughout the advertisement. The act of the man cutting the pineapple is entirely consistent with this message; the fruit’s yellow flesh provides an obvious visual metaphor for the sun.*

*3.9 The sun is a strong theme in the Golden Circle range of products and the design of its logo is in fact based upon a representation of the sun.*

*3.10 In the circumstances described above, Golden Circle does not believe that any reasonable member of the general public who sees the advertisement would be led to believe that Golden Circle Pineapple Juice is made from pineapples grown in Australia.*

*3.11 Golden Circle denies that the advertisement is in any way misleading or likely to mislead in the manner alleged by the complainant (or otherwise), and the complaint should be dismissed accordingly.*

*3.12 We note for completeness, that the complainant appears to have relied on extraneous information in making his complaint, which he has presumably obtained from the product labelling for Golden Circle Pineapple Juice. This is apparent from the complainant’s reference to Golden Circle Pineapple Juice being made from local and imported ingredients, which is not mentioned in the advertisement but is on the product labelling.*

*3.13 Product labelling is expressly excluded from the application of section 2.1 of the Food and Beverages Advertising and Marketing Communications Code (and other applicable AANA codes), and is therefore irrelevant to determining the present complaint.*

*Notwithstanding the exclusion of labelling considerations, Golden Circle’s labelling of its juice products is not misleading and is otherwise fully compliant with the Foods Standards Code.*

*4. Issues arising under applicable codes*

*4.1 We understand that the Board will review the advertisement for issues arising under all applicable codes in addition to the specific issues raised by the complainant which we have addressed above.*

*4.2 In this respect, we note and respond to the following comments regarding the AANA codes referred to in the ASB’s letter of 30 October:*

*Section 2 of Advertiser Code of Ethics*

*4.3 Our position is that the advertisement is compliant with sections 2.1 to 2.6 having regard to prevailing community standards.*

*Food and Beverages Advertising and Marketing Communications Code*

*4.4 Section 3 is not applicable as the advertisement is not “directed primarily to children” (for the same reasons discussed below in relation to the Code of Advertising and Marketing to Children).*

*4.5 In regards to section 2:*

*(a) The advertisement is truthful and honest and it does not and has not been designed to be misleading or deceptive or to otherwise contravene prevailing community standards.*

*(b) The target audience for the advertisement is grocery buyers with or without children.*

*Golden Circle has booked television places in line with this audience and considers that the advertisement is and will be communicated in a manner appropriate to the level of understanding of this target audience.*

*(c) The advertisement does not undermine the importance of healthy or active lifestyles or the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.*

*(d) There are no health or nutrition claims in the advertisement.*

*(e) The advertisement does not make reference to consumer taste or preference tests in any way, or otherwise use scientific terms to ascribe validity to advertising claims.*

*(f) The advertisement does not include claims relating to material characteristics such as taste, size, content, nutrition and health benefits.*

*(g) The advertisement does not use associated sporting, news or current affairs personalities, live or animated.*

*(h) The advertisement does not portray Golden Circle beverage products as intended or suitable as substitutes for meals.*

*Code of Advertising and Marketing to Children*

*4.6 This code is not applicable because the advertisement is not “directed primarily to children” having regard to the theme, visuals and language used in the advertisement, and to the fact that the Golden Circle beverage products shown in the advertisement are not products that have primary appeal to children.*

*4.7 In reaching this view, we have had regard to the nine factors referred to in the AANA Practice Note for the Code of Advertising and Marketing to Children.*

*Australian Food and Grocery Council Codes*

*4.8 The AFGC Responsible Children’s Marketing Initiative and the Australian Quick Services Restaurant Industry Code for Responsible Advertising and Marketing to Children are not applicable because Golden Circle is not a signatory to these codes (nor for that matter is Heinz).*

**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”) or the AANA Code of Ethics (the Code).

The Board noted the complainant’s concerns that the advertisement is misleading in its suggestion that the product is Australian when in fact the labelling suggest the product is

made from imported and local ingredients.

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 this television advertisement features a man and a girl in a field looking at a pineapple the man has just sliced open and the voiceover describes the product, fruit juice, as "sunshine-grown fruit in every glass".

The Board noted the complainant's concerns that the advertisement is misleading because the advertisement gives the impression that the actors and the pineapple are Australian, therefore the product is Australian, but the product actually includes imported ingredients.

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 although the advertisement was filmed in Australia and features Australian actors there are no verbal or written claims made in the advertisement with regards to the origins of the ingredients used in the advertised product, but rather the focus is on the sun.

The Board acknowledged that the visuals of the advertisement are strongly suggestive of an Australian setting but considered that an average consumer would expect an Australian advertisement to be filmed in Australia and would understand that the message of the advertisement is that the fruit used in the product is 'sunshine-grown fruit' rather than specifically Australian-grown fruit.

The Board noted that the origins of the product's ingredients are available on its packaging and considered that the advertisement does not create a strong impression that the product is purely Australian.

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.

The Board then considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that in one scene we see the man use a large knife to cut the top off a pineapple he is holding in his other hand. The Board noted that in this scene the young girl is not visible. The Board noted that it is common practice for pineapple farmers to cut pineapples with the tool depicted in the advertisement. The Board noted that the man uses the knife in a professional and controlled manner and considered that there was no suggestion that the man or the girl were in any danger during this scene. The Board considered that the advertisement did not encourage people to cut pineapples in this manner at home as the depiction is clearly in the context of a pineapple farmer who is practised at what he does.

The Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on health and safety.

The Board determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Food Code or the Code of Ethics the Board dismissed the complaint.