



Case Report

1	Case Number	0483/11
2	Advertiser	Coles
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	04/01/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code untruthful/dishonest

DESCRIPTION OF THE ADVERTISEMENT

Curtis Stone promotes Australian Christmas foods including Crystal Bay prawns "fresh from the waters of tropical North Queensland" and we see lots of people sat around a festive dinner table as well as close-ups of the various foods Curtis describes.

THE COMPLAINT

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

The Actor referred to 'Crystal Bay Prawns' followed by "from the tropical waters of North Queensland" I find this to be misleading and an attempt to make it sound like these are ocean caught prawns when in fact they are farmed prawns.

In the advertisement the suggest buying Crystal Bay prawns which are described as " fresh from the tropical waters of north Queensland " This gives the impression that these prawns are "free range" freshly caught from the ocean around north Queensland. Crystal Bay prawns are from one of the largest prawn farms in Australia. They are bred and raised in large dams and fed on an artificial diet and are not caught in the tropical water of north Queensland.

I believe the advertisement would lead the average man in the street to believe they are buying prawns that were trawler caught somewhere of the coast of Queensland.

The ad is misleading and untruthful and should be discontinued.

THE ADVERTISER'S RESPONSE

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

Crystal Bay prawns are featured in both the National advertisement and each version of the State advertisement. However the relevant statement raised by the complainant features only in the State versions of the advertisement.

Coles understands the complainants' concerns are that:

- i. The statement that Crystal Bay prawns are "fresh from the waters of tropical North Queensland" is inaccurate; and*
- ii. That this statement "gives the impression that these prawns are free range, freshly caught from the ocean around north Queensland" and so is misleading.*

Coles is satisfied that the statement at (i) above which was featured in the 30 second State versions of the Coles Christmas advertisement is not misleading or in breach of either section 2.1 of the AANA Code of Ethics or section 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code because:

- The above statement makes two claims – (i) that Crystal Bay prawns are fresh and (ii) the prawns come from the waters of tropical North Queensland*
- Crystal Bay prawns are 'fresh'; that is, they are cooked and packed within approximately 3 hours of harvesting;*
- Crystal Bay prawns come from the waters of tropical North Queensland (from dams in Cardwell and Mosman, located adjacent to and filled with ocean water from the Coral Sea). Therefore the statement that Crystal Bay prawns are "from the waters of tropical North Queensland" is correct;*
- Coles does not agree that the statement "fresh from the waters of tropical North Queensland" gives the impression that the prawns are free range or caught from the ocean as stated by the complainant. In any event, there is information in store at the point of purchase which makes clear that the product is farmed;*
- Coles has approximately 13 million customer transactions occurring per week and has received only one complaint in relation to the Crystal Bay prawns on this issue (likely the same complainant to the Bureau).*

Coles strongly disagrees that the statements contained in relation to the Crystal Bay prawns in the 30 second State advertisement could be construed as misleading. Coles has made no statement at all as to the type or nature of the seafood, it has simply referenced that the product is from the waters of tropical North Queensland.

I trust that the attached information addresses any concerns the Bureau may have.

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 complainants' concern that the advertisement is misleading because it implies that Coles' Crystal Bay Prawns are free range prawns freshly caught from the ocean.

The Board reviewed 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 states that Crystal Bay Prawns are “fresh from the waters of tropical Queensland”.

The Board considered the statements to be conveying a message to a reasonable consumer that the prawns are fresh and they are from tropical Queensland. The Board noted the complainants’ concerns that the phrase “waters of tropical Queensland” implies the ocean but considered that as the advertisement states “waters” and not “ocean” the advertisement is not misleading.

The Board noted that the advertisement makes no claims as to the prawns being free range and considered that this was an assumption the complainants had made based on their interpretation of the statement made in the advertisement. The Board considered that the most likely interpretation of the advertisement is that the prawns are fresh, an assumption confirmed in the advertiser’s response, and that they come from Queensland, again backed up in the response. The Board considered that the statements in the advertisement are not misleading or deceptive.

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.