



Case Report

1	Case Number	0510/11
2	Advertiser	McDonald's Aust Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	18/01/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The advertisement shows a man leaving a McDonald's outlet with a burger in hand. he disposes of the packaging and walks outside to bite into the burger. Scenes of a lit fuse is scene as it heads toward crates of peppers that explode as the fuse ignites them. There are shots of the chicken patty and the ingredients of the burger. The man chews his food and walks away nodding his head and with a pleased smile on his face.

THE COMPLAINT

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

I object because the burger patty in the vision has the obvious texture of real chicken breast rather than the obvious texture of a re-constituted chicken "patty". The audio describes it as a "patty" but the vision is clearly of real, unprocessed chicken meat. The two look very different from each other. This ad has tricked me. A number of weeks ago, under an impression of what I saw (rather than what I heard - I may have been distracted or perhaps I had the tele on mute), I purchased one of these burgers and was disappointed that it was not as I had expected from the ad.

THE ADVERTISER'S RESPONSE

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

Thank you for the opportunity to respond to this complaint. As noted by the complainant, the television commercial refers to a chicken breast patty which is what the Chicken Scorcher burger is made with. It features a patty made from 100% chicken breast meat that has marinated in a chilli marinade, and coated in a crispy coating. The patty that was used in this television commercial was one of the actual patties that are served in McDonald's restaurants; it came directly from the supplier from a batch of patties produced for sale in our restaurants, and is in no way different to the patty that is sold to customers. McDonald's is committed to accurate and truthful advertising, and we only ever showcase our real products in all of our advertisements. Accordingly, we cannot understand how this television commercial is in any way misleading or deceptive, when it clearly shows the actual product that we sell. If the complainant believes that the chicken looks "unprocessed" that is because we use 100% chicken breast meat in our patties and so when the patty is torn in half, it is chicken breast meat that can be seen. We respectfully submit that the Board should dismiss this complaint.

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 concern that the advertisement is misleading because it states that McDonald's show a chicken breast but sell reconstituted meat.

The Board reviewed the advertisement and noted the advertiser's response.

The Board determined that the advertisement is not directed to children or likely to appeal to children and that the AANA code for Advertising and Marketing to Children does not apply.

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 the advertiser’s response that they used the same chicken in the advertisement as they sell in their stores. The Board considered that the advertisement suggested to people that the product is made from breast meat and that the advertiser stated that the product is made from breast meat. On that basis the Board considered that the impression that an average person would take from the advertisement was consistent with the content of the product.

Based on the information provided by the advertiser, the Board considered that the advertisement was not misleading or deceptive.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Code.

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

