



CASE REPORT

1. Complaint reference number	371/09
2. Advertiser	Meat & Livestock
3. Product	Food & Beverages
4. Type of advertisement	TV
5. Nature of complaint	Violence Cruelty to animals – section 2.2
6. Date of determination	Wednesday, 26 August 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement starts with Sam Neil in the outdoors saying to Dennis the orangutan (who is depicted sleeping in a hammock wearing an eye mask), "it's time to seize the day, come on Dennis, rise and shine". Sam Neil discusses with Dennis whilst they are riding their bikes (Dennis is riding a bike with training wheels) through the park, that '61% of people say they have had trouble thinking clearly even after a good night's sleep...to help keep our brain sharp and alert it needs a potent bundle of nutrients every day...omega 3, iron, zinc, amino acids and B12...and those five critical nutrients can all be found in one amazing food - red meat.'

THE COMPLAINT

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

I would suggest that the advert is in contradiction of the AANA Code of Ethics as follows. Section 1.2: Advertising or Marketing Communications shall not be misleading or deceptive or be likely to mislead or deceive.

The use of an orang-utan to promote meat consumption is deceptive in that Orang-utans are vegetarian. It is bizarre to imply that an Orang-utan would promote the eating of meat. So if the orang-utan is there to endorse the product it is misleading.

The major threat to the survival of Orang-utans is habitat destruction. Large portions of pristine forest are cleared every year to allow for agricultural practices, including the production of meat. It is misleading to imply that orang-utans would support a product that is threatening their very existence.

A second process threatening the survival of the Orang-utan is climate change. Meat is a carbon intensive product and its consumption therefore contributes to the loss of species such as Orang-utans.

Section 1.4: Advertising or Marketing Communications shall not exploit community concerns in relation to protecting the environment by presenting or portraying distinctions in products or services advertised in a misleading way or in a way which implies a benefit to the environment which the product or services do not have.

Communities are concerned that our consumptive lifestyle is destroying the wilderness areas of the planet. Thousands of people support programs to help endangered animals like Orang-utans. One of the biggest contributors to carbon emissions and hence to climate change is the production and consumption of red meat. This advert, set in a tropical setting and using an ambassador species for rain forests, the Orang-utan, leads the public to believe that red meat is environmentally sustainable product. This is just not true and is a clear exploitation of the community concerns with respect to red meat production.

The advert does not show any element that is actually involved in the production of red meat, factory farms, feed lots and slaughterhouses. Instead it promotes red meat production as protecting the environment through the images that are shown.

Section 2.1: Advertising or Marketing Communications shall not portray people or depict material

in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief. The orang-utan used in the advert has no hair on either forearm. In the care of the great apes this is an indication of 'hair plucking', a common condition in ape suffering from stress. No doubt the advertiser will talk about complying with performing animal standards but the welfare of the individual would appear to be compromised.

In terms of moral integrity it seems exploitive to make use of a distressed animal as a subject of ridicule. This would not be tolerated if the orang-utan were human.

Animals do are not able to speak so when we communicate on their behalf it is so important that we depict them in a dignified way.

I strongly object to the use of the Orang Utan for the sole reason of advertising a product. The Orang is trained to do behaviours that are not natural such as ride a bike! This ad makes me feel extremely sad everytime that I see it because the Orang cannot speak to object to this cruel behaviour. I am so disappointed in Sam Neill and the MLA for this appalling ad.

I object to these adds because it is advertising a trained Orangutan who does not eat meat,(they are vegetarians) I feel this is false advertising.Because meat is the product of slaughtered animals,I'm sure the Orangutan would not approve these advertisements of another species that has been killed for the sake of man's consumption. The training of an Orangutan is also wrong, so many animal lovers condemn the training of wild animals in the circus, and this add has gone backwards in advertising this cruel act. When an Orangutan grins, it is because the animal is stressed. I have voluneered in helping the plight of endangered Orangutans and studied their behaviour.

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

The complaints relate to a Meat & Livestock Australia Limited (MLA) television commercial for red meat titled "Wake Up" featuring the actor Sam Neill and an orang utan referred to as Dennis.

Background

The "Wake Up" television commercial makes very few nutritional claims with respect to red meat which require scientific substantiation. The advertisement clearly states that five critical nutrients, namely Omega-3, Iron, Zinc, Amino Acids and B12 "can be found in one amazing food: Red Meat". This is a statement of fact which MLA can substantiate and has substantiated in the past (in the context of complaints about earlier advertising). In any event, none of the complaints allege that this statement is misleading.

Given the lack of controversial scientific claims, MLA does not consider that the Advertising Standards Bureau (ASB) needs to obtain independent expert advice on the statement made in the advertisement. In the event that the ASB considers that expert input is required, MLA wishes to be consulted on the process by which this is to occur, as it is not set out on the ASB website or in the information provided when the complaint was brought to MLA's attention.

The use of an Orang-utan

A number of the complaints raise issues regarding the use of wild animals in advertising. However, there are no provisions in the AANA Code of Ethics that relate to the treatment of animals in advertising. Section 2.2 of the Code, to which the complaints refer or have been seen to relate, relates to the portrayal of violence but makes no mention of wild animals. Even if there were a relevant standard, MLA notes that the orang utan featured in the television commercial was not taken from a wild habitat for the purpose of the advertisement. The featured orang-utan is a zoo animal that resides in a controlled environment under supervision, and is already involved in activities of this kind. The orang utan's use in advertising is carefully managed and supervised to ensure its wellbeing. In any case, the television commercial does not "present or portray violence" towards the orang utan which could possibly breach section 2.2 of the Code. While opinions will differ on the use of animals in advertising, there is no question of any provisions of the Code being breached.

The complaints also suggest that the use of the orang utan to promote meat consumption is

deceptive and false advertising, as orang utans are "vegetarians". Notwithstanding the fact that orang-utans are omnivores – they consume a variety of insects – MLA submits that no reasonable member of the audience would conclude that this particular orang utan, or orang-utans generally, are advocating the consumption of red meat by humans. It is not a message that is relevant to the audience and it is clear that Dennis has not been featured in the television commercial for the purpose of conveying such a message.

The advertisement depicts Dennis sleeping in a hammock with a sleeping mask over his eyes, riding a bicycle, and slapping Sam Neill on the bottom which all clearly demonstrate that the advertisement is to be taken light heartedly and is not intended to be a documentary on the activities or preferences of orang utans. Dennis is not shown eating red meat or in any way actively advocating it – this role is solely that of Sam Neill. While MLA does not set out to offend viewers by featuring the orang utan, the portrayal of the orang utan in this way is not a breach of the Code.

One of the complaints also suggests that the advertisement breaches section 2.1 of the Code. This section of the Code relates to the discrimination or vilification of a person or section of the community on the basis on account of race, ethnicity, nationality, sex, age, sexual preference, religion disability or political belief. MLA notes that there is no mention or reference to vilification on the basis of dietary preferences or views on the treatment of wild animals in the section. In any case, the fact that some viewers may object to the use of animals in this way does not mean that those viewers have been vilified or discriminated against by this advertisement. It may be contrary to their views on the use of animals for entertainment purposes, as may be the conduct of zoos or circuses, but the advertisement does not contravene the Code or any law.

Environmental issues

Another basis for two of the complaints is that the setting of the advertisement "leads the public to believe that red meat is [an] environmentally sustainable product" and "promotes red meat production as protecting the environment" in breach of section 1.4 of the Code. MLA submits that no environmental claims or assertions are made expressly or impliedly by the television advertisement.

MLA is of the view that it is fanciful to assert that the "Wake Up" television advertisement breaches section 1.4 of the Code by exploiting community concerns in relation to protecting the environment or is, in any way, either directly or by implication suggesting that red meat "has a benefit to the environment". MLA accepts that community concerns exist with respect to carbon emissions. However, MLA notes that many products advertised in Australia, such as motor vehicles, could not be advertised if their mere promotion in a natural setting was said to imply that the product has a benefit to the environment. There is no basis for the suggestion that this advertisement conveys any such inference.

Specific issue raised by a complaint

MLA also wishes to respond to a specific statement made by a complainant alleging that the television commercial contains an assertion by Sam Neill that "red meat is good for intelligence". MLA notes that there is no such assertion made by Sam Neill in the "Wake Up" television commercial. MLA submits that this complaint probably relates to a previous MLA advertisement and that the same issue has already been the subject of a determination by the ASB in respect of that advertisement.

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In view of the above, MLA respectfully submits that these complaints should not be upheld as the "Wake Up" television commercial complies with the provisions of the AANA Code of Ethics.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code").

The Board noted the complainants' concerns that the advertisement is exploitative of animals because it portrays the orangutan as a plaything for humans.

The Board reviewed the advertisement and considered the application of Section 2.2 of the Code.

Section 2.2 relates to portrayal of violence. The Board considered the response of the advertiser which explained that the featured orangutan is a zoo animal who resides in a controlled environment, under supervision and is already involved in activities of this kind.

Whilst opinions differ on the use of animals in advertising, the Board found that there was no breach of section 2.2 of the Code.

The Board also considered whether the advertisement discriminated against or vilified people on account of being vegetarian. The Board noted that this is an advertisement for red meat and is clearly indicated as such. The Board considered that the community would see this statement as part of an advertising message aimed to increase meat consumption and would be unlikely to be seen as a statement of fact or as discriminating against or vilifying people who choose not to eat red meat. The Board considered that this statement did not breach section 2.1 of the Code.

The Board then considered the requirements of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code). The Board noted key elements of the Code in particular:

- that the advertisements shall be truthful and honest, not be or be designed to be misleading or deceptive (section 2.1),
- that any health or nutrition claims must be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code (section 2.3)
- any claims relating to material characteristics such as nutrition and health benefits shall be specific to the promoted product and accurate in all such representations (section 2.6);
- not otherwise contravene community standards (section 2.1); and
- be communicated in a manner appropriate to the level of understanding of the target audience with an accurate representation of all information including any references to nutritional values or health benefits (section 2.1)

The Board considered that the advertisement did not breach section 2.2, 2.4, 2.5

In relation to the complainant's concerns regarding untruthful and dishonest nutrition claims, the Board considered the information supplied by the advertiser which drew upon the Government recommendation indicated in the Australian Dietary Guidelines published by the Australian Government Department of Health and Ageing and the National Health and Medical Research (2003). The Board noted that the Australian Dietary Guidelines recommend the consumption of red meat 3 to 4 times a week to obtain necessary levels of iron but notes that iron can be obtained from other foods.

The advertiser submitted that to the extent that the advertisement conveys a message that red meat can be an important part of a healthy diet and deliver nutritional benefits it is not untruthful, dishonest, misleading or deceptive or likely to mislead or deceive.

The Board noted the references in the advertisement to needing a potent bundle of nutrients to 'keep our brains sharp and alert' and Omega 3 but iron, zinc, amino acids and vitamin B12. And those five critical nutrients can be found in one amazing food...red meat.'

The Board considered that this advertisement discussed the importance of certain nutrients in brain function and then states that these nutrients are found in red meat. The Board considered that reasonable members of the community would consider that this advertisement is suggesting that these nutrients can be found in red meat. The Board considered that there is no suggestion in the advertisement that red meat is the only product in which these nutrients can be found or that these nutrients cannot be found in other products.

The Board noted the advertiser response which included information substantiating that red meat provides these nutrients. The Board considered that on the basis of the information provide by the advertiser, the product advertised does generally contain the nutrients referred to in the advertisement. On this basis the Board determined that the advertisement did not breach sections 2.1, 2.3 or 2.6 in relation to the nutrient claims in the advertisement.

The Board noted some complainant concern that it is misleading to promote red meat as a product with nutrients as it fails to indicate that the product can increase health risks. The Board noted the Australian Dietary Guidelines regarding the consumption of red meat and considered that the

community would consider advertising red meat as in line with community standards.

After considering this information the Board discussed the concept of such statements made in advertising and whether or not some of the claims would be seen as advertising 'puffery' and exaggeration by the target audience, and not as scientific fact. The Board also commented that the target and likely audience would be able to distinguish this advertisement as just that, an advertisement for red meat.

The Board also considered that the advertisement represented the nutrition information about the product in a manner which was appropriate for the target audience of grocery buyers and adults.

The Board considered that the advertisement did not breach the AANA Food and Beverages Advertising and Marketing Communication Code.

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