



CASE REPORT

1. Complaint reference number	401/09
2. Advertiser	Collins Food Group (Sizzler)
3. Product	Food & Beverages
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 9 September 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

The television infomercial commences with a group of cyclists training together with the caption "food for pleasure". Then the advertisement cuts to the Sizzler Restaurant with a man - Jeremy Ryland, (a qualified food expert) commenting that not a week goes by these days without so many so called "food experts" promoting foods which are good for us today. The advertisement then cuts to the group of cyclists attending the Sizzler restaurant and Jeremy explains how there is a great variety of fresh and healthy foods available and still indulge in a decadent desert at Sizzler restaurants. There are a range of balanced, fresh, healthy options for all of the family. when you think salad think Sizzler, the salad bar experts. Ends with the caption, Sizzler, does it for me.

THE COMPLAINT

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

The fact that Sizzler - a fast food chain, of all places - denounces actual, qualified food experts by calling them 'so-called' experts, to promote it's own brand of food, which, despite having a salad bar, is mostly sugar-filled, junk food that children and adults alike should NOT think is better than the advice offered by nutritionists, doctors, health-care workers and other food experts (yes, experts - not 'so-called' experts).

The commercial is basically trying to discredit the current health warnings about overeating and unhealthy diets, and literally promotes itself as the 'real' food experts. It's unethical and misleading, and blatantly untrue. Disgusting.

THE ADVERTISER'S RESPONSE

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

This advertisement is one of eight (8) specific infomercials produced to be run in the Tour de France coverage on SBS in July 2009.

This advertisement is one in a series of infomercials produced by Sizzler under the title "Food for Pleasure" – designed to promote food and dining as a guilt-free pleasurable experience. Sizzler has produced over 120x 90 second and 60 second "infomercials" as part of the "Food for Pleasure" series, over the past four years.

Complainant Concerns:

"Sizzler is a fast food chain" – Sizzler is not a fast food chain. It is a chain of family restaurants. Sizzler has 26 restaurants in Australia, all wholly company owned with each operating as a separate unit. Fast Food chains basically use unskilled labour to reheat frozen and/or pre prepared foods. Restaurants are more complex small food production centres. Sizzler uses fresh ingredients and makes most of the salads, desserts and other products on site in each restaurant every day. All grill meals are cooked to order and staff undergo significant training to ensure quality, safe healthy foods.

"Sizzler ...denounces actual qualified food experts...". The advertisement does not denounce food experts but is simply a comment by a food expert (see below) on the huge range and variety of advice on diet and

eating in the current market.

I, Jeremy Ryland – presenter of the commercial and Director of Marketing at Sizzler – am myself a highly qualified “food expert”. I am a passionate food professional with more than 30 years experience in the Australian food industry. I have worked in the food and allied industries for most of my working life and have a unique background in both science, sociology and marketing. I have an honours degree in Food Technology, an MBA in Marketing and a Master of Arts in Gastronomy from Le Cordon Bleu, Academie D’Art Culinaire de Paris.

I am the Director of Marketing for Sizzler Restaurants in Australia, a position I have held for over twelve years. I am passionate about good food, good wine and the importance that food plays in our history, culture, social lives and health. I play an active role in the food industry through the Food Media Club and other professional organizations. I write on food and gastronomy for the press and appear regularly on both radio and television, promoting food science, good food and commonsense – and I am also a restaurant reviewer and critic.

It is well documented that Australian’s are bombarded with different and conflicting advice on health and nutrition. For example...

“Diet and Nutrition

A healthy diet forms an important part of a healthy lifestyle. It seems everyday we are bombarded with different information about what is good for us and what we should be eating. It is important that you develop an understanding of how your own body works and what is best for you. ”

Queensland University of Technology

http://www.hlth.qut.edu.au/nrs/research/associated_centres_and_programs/wwps/DietandNutrition.jsp

“Why can’t people just stop their eating disorder?”

An eating disorder can be seen as a way someone has developed to cope with not only personal stressors, but also the pressures living in our society brings. Everyday we are bombarded with messages about how to be ‘good’, or ‘perfect’, or simply, ‘thin’. “

Reality Check – Eating Disorders

http://www.realitycheck.net.au/disorders_and_conditions/eating_disorders.html

“Top five nutrition myths

We’re constantly being bombarded with advice about what’s good for us and what’s not, and what we should and shouldn’t eat. Here, we uncover the top five nutrition myths.”

Health & Wellbeing

<http://health.ninemsn.com.au/shapemate/shapeyourlife/>

“Knowing what to believe when it comes to food and nutrition

With so much conflicting nutrition advice around it can be difficult to know who and what to believe. The Dietitians Association of Australia (DAA) provides the following guidelines to help you separate fact from fiction. “

Dietitians Association of Australia

<http://www.healthyweightweek.com.au/index.asp?pageID=2145857411>

“Transform your health and vitality by eating ‘real’ fresh foods

Invariably, the diets we’re supposed to follow from the myriad of so-called ‘experts’ are all about meticulous calorie counting, eating products with a reduced fat content, increasing your intake of protein, reducing your intake of dairy foods, eating more fibre, switching from white breads to wholemeal breads, and so on and so forth, with the ultimate goal of losing weight or improving your health”

<http://www.livingnow.com.au/2009/04/transform-your-health-and-vitality-by-eating-‘real’-fresh-foods/>

“Sizzler...food...is mostly sugar-filled, junk food...” This is simply not true – Sizzler provides a wide range and choice of healthy foods from raw salad ingredients through to ready prepared salads. The products presented at Sizzler differ little from those found in homes and other quality restaurants.

Sizzler only adds sugar to products that would normally have sugar added such as desserts like the bread and butter pudding, which is made from fresh bread, margarine and fresh custard in each restaurant. Sugar is not added to the range of over 40 salads and salad ingredients on the salad bar – although some may have added sugar from the ingredients such as dried fruit and from commercial sauces. With the exception of dry coleslaw, all salads are made in each restaurant daily from fresh and/or commonly used ingredients. Some raw materials are bought in partially prepared such as washed, diced celery – but this is simply to reduce waste. Desserts are made in restaurant sometimes using partially prepared products such as sponge cake or pavlova base. Potato skins are purchased raw and are then steamed in restaurant, cooled and then fried in restaurant. Some products such as the soups and sauces and our cheese toast, are made under contract by third party manufacturers but to strict procedures and standards.

Last year we served over 5 million customers. Here is an example of the raw materials we used...

- 46,000 kilograms of fresh tomatoes
- 100,000 kilograms of lettuce
- 67 000 kgs of red and green capsicum
- 18 000 kgs of fresh onions
- 240,000 kilograms of watermelon
- 80,000 kilograms of fresh pineapple
- 6 600 kgs of bananas
- About 220,000 kgs of prime Australian beef
- 12,000 kgs of Australian Barramundi
- 100,000 kgs washed potatoes (baked)
- Over 360 000 kilograms of golden fried chips
- 500,000 litres of real dairy ice-cream
- 345,000 kilos of crispy seasoned potato skins (from raw potato)

Sizzler is prepared to provide the Advertising Standards Bureau with food procedures to demonstrate this if required. These however can only be provided "commercial-in confidence" and not for publication.

With regard to the comment on sugar, we believe that the occasional indulgence in menu items such as desserts can in fact be beneficial. This is supported by experts such as Dr Dale Atrens from the University of Sydney.

"The commercial is basically trying to discredit the current health warnings about overeating and unhealthy diets, and literally promotes itself as the 'real' food experts. It's unethical and misleading, and blatantly untrue". Sizzler is concerned about overeating and unhealthy diets. The "Food for Pleasure" series of infomercials is designed to get people thinking about the food they eat and to promote food as a pleasure, not a problem. The current problems of overeating and unhealthy diets can be partially attributed to a lack of information and knowledge – and increasingly are being shown to be affected by our obsession with nutrients and diet. Eating for pleasure – in the company of others rather than alone – promotes better eating and nutrition as we tend to eat less when we are being social than when eating alone, and food choice is often better and more balanced when eaten socially.

Through our "Food for Pleasure" series and other communication such as my regular radio show on 4BC in Brisbane, we promote good health with balanced food intake combined with sensible exercise, eating less but better, common sense and eating for pleasure. Sizzler supports sporting activities through schools, cycling clubs, through Surf Lifesaving and is currently supporting The Butterfly Foundation – an organisation set up to offer help to people with eating disorders such as anorexia.

In summary, the infomercial in question is presented by a food expert, is not discrediting anyone and simply advocating choice, variety and eating for pleasure. It is part of a series designed to inform people on how to eat better by enjoying the food we eat. The contents of the commercial are informative and factual.

This premise is supported by many other "food experts" and sources, including...

- Dr Dale Atrens "The Power of Pleasure" (Why indulgence is good for you and other palatable truths) 2000. Duffy & Snellgrove
- Michael Pollan "In Defence of Food" (The Myth of Nutrition and the Pleasure of Eating) 2008 Penguin
- The Social Issues Research Centre - <http://www.sirc.org/>

Sizzler restaurants promote freedom of choice, offering a wide range of quality fresh foods prepared in restaurant.

THE DETERMINATION

The Advertising Standards Board ("Board") considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the "Code"), the AANA Food and Beverages Advertising and Marketing Communication Code (the "F&B Code").

The Board noted the complainant's concerns that the advertisement was misleading and untruthful because it denounced the advice of actual qualified food experts and instead promoted its own brand of food which was mostly sugar-filled.

The Board reviewed the advertisement and noted the advertiser's response that the "Food for Pleasure" campaign was promoting good health with balanced food intake combined with sensible exercise, eating less

but better, common sense and eating for pleasure. In particular, the Board noted the presenter of the advertisement was presented by a food expert, and was not discrediting anyone and simply advocating choice, and that the comments in the commercial were informative and factual.

In considering whether the advertisement was in breach of the Code and the F & B Code, the Board referred to 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:

Section 2.1

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.

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. (complaints about matters such as 'taste and decency', language, sex and violence).

The Board then considered section 2.1 of the Code and noted that section 2.1 requires it to consider whether an advertisement is truthful and honest or is misleading, or is designed to be, misleading or deceptive.

The Board noted that its role is different from the role of the court or the ACCC and that it is not for the Board to see itself in the position of the court. The Board has a special role given the broad principles in the various Codes and its role as set out in the provisions of the Codes and other sources such as the Food and Beverage Practice Note. The Board reflects community standards and expectations and these necessarily change over time. Its task is to deal with complaints. By upholding or rejecting a complaint, it determines whether the community considers an advertisement acceptable or not. In this way, it provides guidance to advertisers and assists in maintenance of confidence in advertising. The Board's task, as properly understood, is not to reflect on or speculate about what a court would do if the advertisements were the subject of an allegation of Trade Practices Act breach nor to reach a legal opinion. Rather, the task is to reflect the community's attitude - to assess whether the advertisements meet current community expectations for truthfulness given what the advertisements convey to ordinary consumers and in light of the relevant circumstances and given the grounds of the complaint.

Having regard to the generality of the advertisement (it does not make specific health claims or state the benefits of particular ingredients) and the availability of a variety of healthy food choices at the restaurant, the Board considered that the statements made by the advertiser were fair and reasonable and that most

members of the community would consider the infomercial to be a positive message to the community by promoting a healthier eating choice that was benefited by a balance of exercise and social interaction. The Board considered that presenting a point of view that may be contrary to others was not misleading or deceptive in this instance.

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