

Case Report

1. Case Number :	0078-24
2. Advertiser :	Our Cow
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	Email
5. Date of Decision:	3-Apr-2024
6. Decision:	Upheld – Not Modified or Discontinued

ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive
AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims
AANA Code of Ethics\2.1 Discrimination or Vilification

DESCRIPTION OF ADVERTISEMENT

This email advertisement featured the subject line, "Antibiotic and hormone free meat [steak emoji]".

The body text of the email includes:

"A customer recently said to me; "Bianca, I would rather pay a little more for good quality food now, than pay for a lifetime of bad health." We couldn't agree more. When you join our Exclusive Eaters Club, in addition to getting some of the best free range and grass-fed meat possible, you are also making a health decision.

Let me explain how:

- The majority of meat that is sold in Australia is produced on a mass, industrial scale.
- There's over 450 Industrial Farms around Australia, most of which sell into the big chains, they often use hormones and antibiotics, they do this so they can minimise illnesses and maximise production. In fact, antibiotic usage data on farms has not been realised since 2010, so we really have no transparency on this issue.
- We don't condone this form of farming, although we understand why they do it, generating a profit on a farm is challenging and this often helps maximise profitability, we also understand that there does need to be cheaper food options available for people.
- There is a small group of farmers that choose to avoid these intensive farming practices, these are the farmers that work with Our Cow.

We see it like a person who takes medication to stay well verses a person who keeps fit, healthy and looks after themselves so they are well all of the time.

- The farmers who supply Our Cow create an environment that allows their animals to live a healthy, natural and very happy life.

- This means animal welfare is their number one priority, they completely avoid hormones and antibiotics.
- When you consume meat and other foods that have been exposed to high levels of chemicals and antibiotics, the toxins are often stored in the meat and science tells us that your energy levels can be lower, you feel more lethargic, you may experience brain fog and bloating as well as other digesting problems.
- Because our farmers produce a natural grass fed, antibiotic free animal, the health benefits are worth more than the slightly higher price you may pay for our meat.
- You actually feel better, you've got more energy and you've just eaten the best steak in your life from the comfort of your own home.... In your pyjamas!"

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

They make claims about meat quality without actually collecting any information from their suppliers that would verify the claim. It is largely untrue.

THE ADVERTISER'S RESPONSE

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

AANA Food and Beverages Code\2.1 Not misleading or deceptive\not misleading or deceptive

The complain that has been made in relation to 2.1: It is an add for their meat product that is "hormone and antibiotic free".

Our Cow does not have 'anti-biotic free' certification (organic or similar), However, We follow a non-hormone or antibiotic policy at Our Cow. Attached IMG_3898, is a national vendor declaration form all our farmers sign when onboarding with Our Cow. This form states the non-use of hormone products, and also vaccination programs must be declared (to which there are none). We employ livestock managers to regular visit farms to make sure they are upholding the NVP declaration.

AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims\health and nutrition claims supported

The complaint that has been made in relation to 2.3:"They also make an assertion that you will feel better and have more energy if you eat this kind of meat. There is no evidence for this whatsoever and they do not even try to supply evidence."

We generalise, and by no means provide health advice to customers. As a grass-fed producer, we site qualified studies of meat and grass-fed produce to which healthy

omega & vitamin properties, are not only found, but have increased presence in this type of produce.

US based study (PMC2846864 - National Library of Medicine) "Red meat is an important source of essential amino acids, vitamins A, B6, B12, D, E, and minerals, including iron, zinc and selenium"

In relation to grass-fed produce, the same study sites: "changes in finishing diets of conventional cattle can alter the lipid profile in such a way as to improve upon this nutritional package. Although there are genetic, age related and gender differences among the various meat producing species with respect to lipid profiles and ratios, the effect of animal nutrition is quite significant "

Since this has caused concern and warrant a response, we will be conducting genetic research of our livestock in the near future, and will not make any further health claims as part of our approach, until this has been deemed appropriate to use. We will also put further appropriate checks on copywriting in the future.

THE DECISION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) and the AANA Code of Ethics.

The Panel noted the complainant's concern that the advertisement is misleading.

The Panel viewed the advertisement and noted the advertiser's response.

Food Code 2.1 Advertising or Marketing Communication for Food or Beverage Products 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 Panel noted the Practice Note to this section of the Food Code which states:

"The Panel 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 an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel 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.”

The Panel noted that the advertisement made a number of claims in relation to the product, including:

- The products are antibiotic and hormone free
- Consuming the product means that you will feel better and have more energy (than eating other products which have been exposed to antibiotics and other chemicals).

The Panel first considered the claim that the products are antibiotic and hormone free.

The Panel noted the advertiser’s response that they do not have certification that the meat they sell is antibiotic free, however all their vendors have signed an agreement that their cattle are hormonal growth promotant (HGP) free and which asks them to provide vaccination information.

The Panel considered that most members of the community would understand that all animals have natural hormones, and that hormone free refers to added growth hormones. The Panel considered that most members of the community would also consider antibiotics and vaccines to be separate things, and that the advertiser has not provided any information on how they assess if a cow has been treated with antibiotics.

The Panel considered that the meat sold by the advertiser may be hormone and antibiotic free, but that the advertiser had not provided sufficient proof of this claim, and considered that this statement may mislead or deceive consumers.

The Panel then considered the claim that consuming the product will mean that you feel better and have more energy. The Panel noted the advertiser’s response citing a study showing that changes in diets of cattle can alter the lipid profile to improve on their nutritional package.

The Panel considered that while this single study may suggest that certain diets are more beneficial for producing more nutrients in meat, the study did not appear to show that consuming meat that has been exposed to antibiotics can cause low energy levels in people that consume them.

The Panel found that the advertiser was not able to provide substantiation for the claim that the meat will make you feel better and have more energy.

Section 2.1 Conclusion

The Panel concluded that the advertisement was misleading and deceptive and did breach Section 2.1 of the Food Code.

Section 2.3 Advertising or Marketing Communication for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

The Panel noted that the Practice Note for this Section of the Food Code states:

“This provision is intended to be triggered by the Community Panel when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Community Panel will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.”

The Panel noted that the Food Standards Code defines a health claim as “a claim which states, suggests or implies that a food or a property of food has, or may have, a health effect”.

The Panel considered that an average consumer would understand the advertisement to be stating that consuming the product would have a health effect in making them feel better and have more energy.

The Panel noted that no substantiation or references for these claims were available on the website, and the advertiser had not substantiated this claim.

The Panel considered that an average consumer would interpret the advertisement as making a health claim about the product, and that this was not supported by any evidence as was required under the Food Code.

Section 2.3 conclusion

The Panel found that the advertisement did breach Section 2.3 of the Food Code.

Code of Ethics Section 2.1: Advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on

account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief.

The Panel noted the Practice Note to Section 2.1 provides the following definitions:

- Discrimination – unfair or less favourable treatment
- Vilification – humiliates, intimidates, incites hatred, contempt or ridicule.
- Disability – a current, past or potential physical, intellectual, psychiatric, or sensory illness, disease, disorder, malfunction, malformation, disfigurement or impairment, including mental illness.

The Panel noted the section of the advertisement which states, “We see it like a person who takes medication to stay well verses a person who keeps fit, healthy and looks after themselves so they are well all of the time”.

The Panel considered that a person usually has to take medication to stay healthy when they have a current or potential disease or disorder requiring medical treatment.

The Panel considered that the suggestion that people who take medication to stay healthy are unhealthy because they are unfit and don’t look after themselves, would be offensive to many people with a disability who require medication regardless of their physical fitness. The Panel considered that this comparison was unfair, and not necessary to the overall message of the ad.

The Panel considered that making a comparison between unfit people who don’t look after themselves and people who take medication, was a statement treating disabled people unfairly or less favourably. The panel considered the advertisement did discriminate against people with a disability.

2.1 Conclusion

The Panel found that the advertisement did portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of disability and determined that the advertisement did breach Section 2.1 of the Code.

Conclusion

Finding that the advertisement breached Sections 2.1 and 2.3 of the Food Code and Section 2.1 of the Code of Ethics the Panel upheld the complaint.

THE ADVERTISER’S RESPONSE TO DECISION

The advertiser has not provided a response to the Panel's decision. Ad Standards will continue to work with the relevant authorities regarding this issue of non-compliance.