

## Case Report

1. Case Number :	0122-24
2. Advertiser :	Golden Eggs
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	Internet
5. Date of Decision:	15-May-2024
6. Decision:	Dismissed
7. IR Recommendation:	Panel to Reconsider
8. Date of reviewed decision:	24-Jul-2024
9. Decision on review:	Upheld – Not Modified or Discontinued

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

This website advertisement features information and descriptions of the products, and includes statements such as "Hens are less stressed which means they produce more eggs" and "Cage hens live in a climate-controlled environment which allows them to live almost stress-free."

#### What is the difference between Free Range Eggs and Cage Eggs?

Free-range hens have access to the outdoors during daylight hours allowing them to socialise and explore. Hens are then kept inside during the night to keep them safe from predators. Cage hens are kept individually inside a cage away from harsh weather and predators. Cage hens live in a climate-controlled environment which allows them to live almost stress-free.



**Cage Eggs**

- Hens are protected from harsh weather conditions.
- Hens are less stressed which means they produce more eggs.
- Cage eggs are more cost-effective allowing a cheaper price for the consumer.
- The controlled environment eliminates the risk of diseases and predators.
- Cage eggs have the lowest carbon footprint and are the most sustainable form of farming.

## **THE COMPLAINT**

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

*Misleading images on free range egg cartons and misleading information plus images on their website regarding free range eggs. Misleading information on website – “less stressed” and “almost stress-free” claims.*

## **THE ADVERTISER’S RESPONSE**

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

*Regarding the letter received on 1/05/2024, case reference number: 0122-24*

*As a business, we've been producing eggs since 1946 and employ over 200 Western Australians. We take the 'Australian Guidelines for Animal Welfare and Poultry' extremely seriously and we are proud of our track record in this regard.*

*Our industry peak body 'Australian Eggs' (<https://www.australianeggs.org.au/>) is also a key source of information that is used by participants in the industry to provide information to consumers.*

*We note that this complaint has 2 parts, both relating to information on our website. 1) claims and images regarding hen density, and 2) wording in our FAQ section about Cage Hens.*

*1) All claims and imagery regarding hen density are accurate and reflect industry guidelines. In addition, on our website we include actual video footage of our farms and other aspects of our operations including processing of eggs to our extremely high-quality standards. The link to our website can be found here <https://www.goldeneggs.com.au/>*

*2) The full wording of the section the complaint is drawn from in our FAQ's and can be found here <https://www.goldeneggs.com.au/faq>. We believe this succinct statement is accurate and reflects both industry standards, and our experience working in the industry.*

*In the past we have received one complaint on this issue, who asked we amend wording on our website to make information about hen density clearer to consumers and we were happy to do that.*

*This complaint does not have relevance to sections 2.2 to 2.7, of the guidelines, and does not have relevance to the advertising to children or environment guidelines.*

## **THE ORIGINAL DECISION**

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

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

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

### **Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.**

The Panel noted the complainant's concern that the advertisement is misleading by making claims that cage hens are less stressed than free-range hens.

The Panel noted the advertiser's response that these claims are made based on industry standards, and its experience working in the industry.

The Panel noted that the website also includes a video which explains the difference between the experiences of cage hens and free-range hens and provides further explanation as to why the advertiser believes cage hens are less stressed.

The Panel noted that while the advertiser was unable to provide academic research to substantiate these claims, the claims were made based on the advertiser's experience in farming both cage and free-range hens.

The Panel considered that the advertiser had adequate grounds for making these claims, and that the average consumer visiting the advertiser's webpage would not be misled or deceived by the statements.

### **Section 2.1 Conclusion**

The Panel determined that the advertisement was not, and was not designed to be, misleading or deceptive and did not otherwise contravene Prevailing Community Standards, and did not breach Section 2.1 of the Food Code.

### **Conclusion**

Finding that the advertisement did not breach any other section of the Food Code the Panel dismissed the complaint.

## REQUEST FOR REVIEW

### Substantial Flaw in Reviewer's decision

*Grounds for Review – I believe there are substantial flaws in the Community Panel's decision as there seems to be clear misinterpretation of the evidence and claims that I provided in my complaint and the Case Report does not address all the concerns that I raised in my initial complaint. There also seems to be a substantial flaw in the Community Panel's process to make the decision as not all of the initial complaint was considered, and it was just the advertisers 'beliefs' and 'experiences' that were used as the basis for their decision. Additional, new evidence provided by the advertiser (reference to a video on the home page of their website), provided as evidence in response to the complaint, states information that is contradicted by Australian Eggs, provided opinions not facts, confusing/incomplete information and limited video evidence of what they were aiming to show, hence does not seem a reliable source of evidence and is misleading in itself.*

*From Case Report 0122-24:*

- 1. 'Type of Advertisement/Media': Only 'Internet' stated. My original complaint states 'misleading images on free range egg cartons' as well as 'misleading information plus images on their website'. Was the physical product packaging of Golden Eggs free range egg cartons considered during the review and determination?*
- 2. 'Description of Advertisement': Only the stated claims "Hens are less stressed which means they produce more eggs." and "Cage hens live in a climate-controlled environment which allows them to live almost stress-free." are included in this section. There is no mention in this section of these parts of my complaint:  
'Images depict hens in a yard that do not accurately reflect the stocking density claim or all the health, behavioural and environmental conditions experienced by the hens that produce the eggs sold.' or 'Misleading images on free range egg cartons and misleading information plus images on their website regarding free range eggs.'  
Were these parts considered as part of the review and determination?*
- 3. 'The Advertiser's Response': They state 'We note that this complaint has 2 parts, both relating to information on our website. 1) claims and images regarding hen density, and 2) wording in our FAQ section about Cage Hens'. My complaint also included concerns about misleading images on their physical egg cartons that they supply their product in, misleading information plus images on their website regarding free range eggs and wording about 'Cage Eggs' in their 'Products' section. There is no mention of addressing these concerns.*

4. *The advertiser also states my complaint included 'claims and images regarding hen density' – I did not make a complaint to Ad Standards about 'claims' about hen density, only 'images' about hen density. Has the advertiser interpreted my complaint, or Ad Standards representation of my complaint, accurately and responded appropriately?*
5. *The only evidence the advertiser provides in response to 'claims and images regarding hen density' is video evidence on their website's home page (<https://www.goldeneggs.com.au/>). The only video I can see on this page is a link to an external website 'Our State On A Plate' with a 4 minute and 35 second video of a cooking demonstration including only 8 seconds of footage of actual hens. The cooking demonstrator talks about using 'Pastured Free Range Golden Eggs' with images of egg cartons stating the eggs come from hens stocked at 1500 per hectare. My concerns with relying on this video as reliable evidence are:*
  - a. *Eight seconds of video of hens does not give a good representation of their lives*
  - b. *No information found on their website about what is involved with 'Pastured Free Range Eggs' as referenced in the video*
  - c. *Presenter states that 'eggs are completely no carb' which is a contradiction to the Australian Eggs website that states eggs 'contain very little carbohydrates' (<https://www.australianeggs.org.au/nutrition/carbs>)*
  - d. *The presenter states that the hens from which the eggs she is using came from are 'happy', which is her opinion and a word open to interpretation*
6. *'The Advertiser's Response' to 'wording in our FAQ section about Cage Hens': They only refer to one statement in my complaint - "Cage hens live in a climate-controlled environment which allows them to live almost stress-free." (<https://www.goldeneggs.com.au/faq>). They provide no evidence as to how they determine hens live almost stress free, only that it is their 'belief' and 'experience'. As I stated in my initial complaint, according to the RSPCA, who has provided referenced sources, (<https://kb.rspca.org.au/knowledge-base/are-stress-levels-of-hens-in-battery-cages-the-same-as-those-in-cage-free-systems/>), this is likely to be incorrect and more research needs to be done.*
7. *The Panel has noted that their decision is a result of claims made by the advertiser based on their experience, acknowledging that they are unable to provide academic research to substantiate their claims. The RSPCA does provide academic research to substantiate their claims, that hens experience negative welfare in caged housing systems (which likely leads to the experience of stress), while noting there is unclear scientific evidence about actual stress levels experienced by these hens and that more research needs to be done.*

*Stating that hens are less stressed is misleading when there is no clear evidence to support this, and the reality is likely that they do experience a high degree of stress, as a result of negative welfare. I believe that the average consumer who reads the statement made by the advertiser "Cage hens live in a climate-controlled environment which allows them to live almost stress-free." on their website will be lead to believe this is true, when there is no academic research to support this, and although further research is required to substantiate whether this claim is true or false, the current evidence supports a negative condition experienced by caged hens.*

8. *There is no reference in 'The Decision' section of the Case Report about the panel considering the following parts of my complaint in their decision:*
  - a. *On their website, regarding 'Cage Eggs', it is stated "Hens are less stressed which means they produce more eggs." (no evidence to support this claim, appears to be deceptive, <https://www.goldeneggs.com.au/products>)*
  - b. *Images (website and egg cartons) depict hens in a yard that do not accurately reflect the stocking density claim or all the health, behavioural and environmental conditions experienced by the hens that produce the eggs sold. (The advertisers stocking density claim is 10,000 hens per hectare, or in other words 1 hen per 1 square metre, the images show hens with much more room than this. The images also only depict hens during one aspect of their lives producing eggs, not representative of all the conditions experienced by the hens in order to produce the eggs that are sold by the advertiser, example of images here <https://www.goldeneggs.com.au/products>)*
  - c. *Misleading images on free range egg cartons (actual physical egg carton that eggs are sold in, example of this image can be found on their website <https://www.goldeneggs.com.au/products>)*
  - d. *Misleading information plus images on their website regarding free range eggs (see item b. above regarding images, selected information is provided only regarding free range eggs on their website, <https://www.goldeneggs.com.au/products>, not representative of all the conditions experienced by the hens in order to produce the eggs that are sold by the advertiser)*

*In reference to 'Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.' of the 'AANA Food and Beverages Advertising Code', I firmly believe that the average consumer will be mislead and deceived by the images and words chosen by the advertiser on their egg carton packaging and website. I do not believe that the Ad Standards Community Panel has considered all the information that was provided to them in the initial complaint.*

### Substantial Flaw in Process

*See reasons above - There also seems to be a substantial flaw in the Community Panel's process to make the decision as not all of the initial complaint was considered, and it was just the advertisers 'beliefs' and 'experiences' that were used as the basis for their decision.*

## **INDEPENDENT REVIEWER'S RECOMMENDATION**

### Issues raised

AANA Food and Beverages Code 2.1 - Whether advertisements "misleading or deceptive"

### Description of advertisement

The website advertisement related to Cage Eggs. The advertisement contained statements of hens in caged environments such as:

- Hens are less stressed which means they produce more eggs;
- Cage hens live in a climate-controlled environment which allows them to live almost stress-free;
- Cage eggs are more cost-effective allowing a cheaper price for consumers;
- The controlled environment eliminates the risk of diseases and predators; and
- Cage eggs have the lowest carbon footprint and are the most sustainable form of farming.

## COMPLAINT

The complaints were:

- Images depicted do not accurately reflect the stocking density claim or all the health, behavior and environmental conditions experienced by the hens that produce the eggs sold; and
- [Of the first two statements] "These are both vague statements that are not backed up with any evidence. This is likely to be incorrect and more research needs to be done according to the RSPCA";
- Reasons for concern: Misleading images on free range egg cartons and misleading information plus images on their website regarding free range eggs.
- Misleading informing on website – "less stressed" and "almost stress-free" claims.

### Role of reviewer

The Independent Reviewer has a limited but important role. Having decided to accept the complaint for review, the Reviewer considers the decision of the Panel and makes a recommendation. In doing so, the Independent Reviewer's opinion is to decide according to the relevant test for this case:

*Whether there was a substantial flaw in the Community Panel's determination (determination clearly in error having regard to the provisions of the Codes or Initiatives, or clearly made against the weight of evidence).*

The test depends on a finding of a 'substantial' or serious flaw in the Panel's reasoning. The outcome of the review may be to uphold the Panel's decision or, if the Independent Reviewer finds such a flaw, the complaint is remitted to the Panel for reconsideration.

The advertiser kindly provided the link to the *Australian Animal Welfare Standards and Guidelines for Poultry* (Poultry Guidelines). The document is not to come into effect until 2025. The Poultry Guidelines may support the statement in the Advertiser's response that "All claims and imagery regarding hen density are accurate and reflect industry guidelines" but they do not cover the specific issues raised by the tests to be applied in this matter.

#### Advertiser's response

As relevant:

- "All claims and imagery regarding hen density are accurate and reflect industry guidelines".
- "We believe this succinct statement is accurate and reflects both industry standards and our experience working in the industry".

#### Panel's reasons

The Community Panel:

1. "...noted the website also includes a video which explains the difference between the experiences of cage hens and free-range hens and provides further explanation as to why the advertiser believes cage hens are less stressed.
2. The Panel noted that while the advertiser was unable to provide academic research to substantiate these claims, the claims were made based on the advertiser's experience in farming both cage and free-range hens.



3. The Panel considered that the advertiser had adequate grounds for making these claims, and that the average consumer visiting the advertiser's webpage would not be misled or deceived by the statements.

### **Section 2.1 Conclusion**

The Panel determined that the advertisement was not, and was not designed to be, misleading or deceptive and did not otherwise contravene Prevailing Community Standards and did not breach Section 2.1 of the Food Code.

#### Consideration by reviewer

Section 2.1 of the *Food and Beverages Advertising Code* states:

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'.

That section is consistent with the Objectives of the Code that requires advertisers and marketers to conduct their business 'in a manner that is 'legal, honest, [and] truthful'. Those criteria are reflected in the requirement in section 2.1 that the communication "*shall not be ... misleading or deceptive*".

There is no suggestion in the Panel's reasons that the advertiser has been dishonest. The focus is on whether all the assertions in advertisement are 'truthful', cover 'all' information' and are misleading or deceptive or designed to mislead or deceive.

#### ***Legal and truthful***

The High Court has established that the test of whether or not conduct is misleading or deceptive is an objective one:

"The question whether conduct is misleading or deceptive or is likely to mislead or deceive is a question of fact... *It is determined in the light of the relevant surrounding facts and circumstances. It is an objective question.*"<sup>1</sup>

The Panel did not apply objective criteria to reach its findings.

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<sup>1</sup> *Campbell v Backoffice Investments Pty Ltd* [2009] HCA 25 at [102] per Gummow, Hayne, Heydon and Kiefel JJ.

***The controlled environment allows hens to live almost stress free and produce more eggs***

The claim that hens that are “less stressed ... [which] means they produce more eggs” could have been supported by sampling egg production of the hens at Golden Eggs. This was not done, nor provided. Evidence from a veterinary scientist or others who specialise in bird conditions or diseases could have been asked for a report.

The available evidence on the web does not support the assertion that caged hens are less stressed than hens in a free range environment. In most cage farms, the hens are unable to practise some natural behaviours like nesting and dust-bathing. While they can socialise, the denial of these natural behaviours suggests the hens are more likely to be ‘more’, not ‘less’ stressed. No evidence was provided by the advertiser as to the truth of this assertion.

Nor was evidence provided, as presumably it could have been, by figures based on egg production for their free range and cage egg layers in the Golden Eggs company. Without some factual basis, the claims are likely to be misleading.

The absence of evidence on these issues means the advertiser did not address ‘all information’ on the ‘health, behaviour and environmental conditions experienced by the [cage egg] hens’ .

***The controlled environment eliminates the risk of diseases***

Nor is there evidence that ‘the controlled environment *eliminates* the risk of diseases’. There is some generally available material suggesting ‘There is less need for veterinary medications in cage systems’,<sup>2</sup> but it is misleading to suggest that the risk of disease is *eliminated*. Against that information, there is material on the web stating that the concentration of birds within the ‘cage’ system contributes to a higher rate of shared infections.

The available evidence on the web is equivocal and was not explored by the Panel.

The Panel is not required to seek evidence in support of the advertiser’s claims, but nor was evidence provided by the advertiser, for example, of visits to Golden Eggs by veterinarians to treat their free range or their caged hens, which could have authenticated these claims.

The absence of such evidence in support, coupled with that fact that at first sight such a statement is an overstatement means the assertion is likely to be misleading.

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<sup>2</sup> <https://www.australianeggs.org.au/farming/hen-welfare>.

***Cage eggs have the lowest carbon footprint and are the most sustainable form of farming***

These claims suggest there are scientific bases for the claim and that they are based on statistical comparative information that can be verified.

No such information was provided to the Panel.

They are large claims. General knowledge indicates that successful maintenance of hens in a caged environment requires power for heat and light, power which is not needed for hens in a free range situation. This suggests an increased, nor reduced, carbon footprint.

The 'most sustainable form of farming', assertion is not based on evidence of what is 'sustainable' nor whether it applies to all forms of farming or only farming of eggs.

No evidence again is provided in support. The claims are large ones and are likely to be misleading.

***'Average consumer'***

Section 2.1 is met only if the advertisements would be misleading to the 'average consumer'. The average consumer is defined in the Code as 'a regular adult shopper'. The category covers most adult Australians. The average consumer is likely to treat with a degree of scepticism information provided in advertisements. The shopper knows that the purpose of the advertisement is to sell a particular product and that it is likely that any disadvantages of the goods are likely to be glossed over and the focus will be on its advantages. Nonetheless, the level of scepticism or knowledge will vary with the product.

In relation to purchase of eggs, the average shopper is difficult to identify. Information from the web is that between 40% and 50% of consumers buy cage produced eggs. This suggest that the numbers who choose caged hen eggs is almost the same as those who choose free range eggs. No evidence was provided to the Panel as to the reasons for the consumers' choice. Nor was there evidence to indicate whether the advertisements impacted on that choice. Presumably a survey of customers of its eggs could have been undertaken by or for Golden Eggs.

Without more, it is hard to accept the statement that 'the advertiser had adequate grounds for making these claims', that the advertiser provided 'all information', and to conclude that the average consumer would not have been misled.

The evidence provided is the advertiser's subjective view, and does not meet the objective test required to establish that the advertisement is not 'deceptive and misleading'.

### Conclusion

In my opinion, the Panel failed to consider the tests involved in deciding whether the advertisements are 'misleading or deceptive'. In so doing they did not consider what led to the choices of the 'average consumer' and whether those choices had been influenced by the advertisements. They did not consider whether the advertisement led the average consumer to have made a choice they would not otherwise have made, that is, to make a mistaken choice or fall into error.

The absence of evidence in support of the claims means it is difficult to accept the Panel's conclusion that 'the advertiser had adequate grounds for making these claims'. To have simply accepted the information in the advertisements, the assertions by the advertiser, and the terms of the advertiser's internet cartoon, was not to have come to an independent decision based on objective facts as the legal tests require. Rather it was to rely on the subjective views of the advertiser. There were no objective facts or research to uphold these claims. Accordingly, there were no 'adequate grounds' to support them.

These errors amounted to a substantial flaw in the Community Panel's determination. They comprised a failure to have regard to a key aspect of section 2.1 of the Food and Beverages Code. The reasons of the Panel did not sufficiently address the issues of whether the advertisement was truthful, whether it was 'misleading or deceptive' and whether it was communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication.

I recommend the matter be remitted to the Panel for redetermination.

### **THE DECISION ON REVIEW**

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

The Panel noted the Independent Reviewer's recommendation that the Panel reconsider the case, specifically looking at the evidence for the claims made in the advertisement, whether the advertisement was truthful, whether it was 'misleading or deceptive' and whether it was communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication.

## **Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.**

The Panel noted the requirement of the Code to consider if the advertisement is likely to mislead or deceive an average member of the target audience. The Panel considered that eggs are a widely consumed product, and with current egg shortages in Australia, there is an increased likelihood of consumers going online to find information about the differences between cage and free-range eggs. The Panel considered that the audience for this advertisement would be grocery buyers.

The Panel noted the Independent Reviewer's findings that the advertisement contained three claims:

- The controlled environment allows hens to live almost stress free and produce more eggs
- The controlled environment eliminates the risk of diseases
- Cage eggs have the lowest carbon footprint and are the most sustainable form of farming.

The Panel noted the advertiser's response that these claims are made based on industry standards, and its experience working in the industry. However, the Panel considered that the average consumer would expect such claims to be based on research and evidence, and not subjective experience or industry practice.

The Panel noted that the advertiser had not provided evidence or substantiation for any of the three claims identified above. The Panel considered that the statements on the website had the potential to mislead the average consumer that these claims were factual statements that the advertiser would be able to independently substantiate.

### **Section 2.1 Conclusion**

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

### **Conclusion**

On review, finding that the advertisement did breach Section 2.1 of the Food Code the Panel upheld the complaint.

### **ADVERTISER'S RESPONSE TO IR DECISION**

The advertiser provided the following response:

*We will update our website and including references for claims to ensure our marketing reflects our approach to industry best practice and there is no ambiguity for consumers.*

Ad Standards notes that the FAQ page has been updated to remove “stress free life”, however the claims about cage eggs made on the product page have not been updated.