

COMPLAINT NUMBER	15/529
COMPLAINANT	T. Emmerson
ADVERTISER	Antares Restaurant Group
ADVERTISEMENT	Burger King Direct Mail
DATE OF MEETING	23 February 2016
OUTCOME	Not Upheld

SUMMARY

The direct mail advertisement for Burger King promoted coupon specials with over “\$65 of savings available until 14th December.” The advertisement also showed a Triple Whopper burger and a Double Whopper burger next to each other.

The Complainant said the Triple Whopper burger was misleading because it appeared much larger than the Double Whopper when the only difference was that one had an extra meat patty.

The majority of the Complaints Board said the advertisement was not misleading. In the majority view the consumer takeout would be difference in size was an additional meat patty. The majority said while the Complainant was technically correct, the slight difference in size displayed in the advertisement was hyperbolic and did not reach the threshold to effect a breach of the Code for Advertising Food.

In accordance with the majority, the Complaints Board said the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

Preliminary matter: The Complaints Board considered at its meeting on 9 February 2016 that further information was required from the Advertiser and the complaint was adjourned. The Secretariat requested further information from the Advertiser and all the relevant information from provided to the Complaints Board.

The Chairman directed the Complaints Board to consider the advertisement with reference to Principle 1 and 2 of the Code for Advertising Food. This required the Complaints Board to

consider whether the advertisement by implication, omission, ambiguity or exaggerated claim was likely to mislead or deceive consumers and whether it had been prepared with a due sense of social responsibility to consumers and society.

The Complaints Board noted the concerns of the Complainant the advertisement was misleading as “the height difference between the Triple Whopper and the Double Whopper wasn’t right... the Triple Whopper has been stretched to make it seem much larger than the Double whereas the only actual difference is the inclusion of an extra patty... I believe this constitutes false advertising far beyond the typical issue that the burgers advertised in no way resemble what you physically purchase.”

The Complaints Board noted the responses from the Advertiser which said in part: “we have measured the products ourselves and believe they are an accurate representation of the 2 products... There is a 2mm variation between the bun widths. Height remains identical. I would concede that there is a slight operator error when fitting the picture to the layout. However, it is not material and hardly observable.”

The majority of the Complaints Board said it was reasonable to expect the Triple Whopper burger to be higher as it included an extra patty. It said the slight stretching of the width of the burger of 2mm was a small exaggeration of the burger but, in its view, it was not material. The majority said the ingredients were clearly identified as the same in both burgers, with the exception for the extra meat patty in the Triple Whopper burger, and it was unlikely to mislead consumers in to thinking they were getting a significantly bigger burger than the Double Whopper burger.

While the majority noted the Complainant was technically correct in their assertions, it said the advertisement did not reach the threshold required to effect a breach of the Code. Therefore, the majority said the advertisement had been prepared with a due sense of social responsibility and it was not in breach of Principle 2 or 3 of the Code for Advertising Food.

A minority disagreed. It was of the view the advertisement went beyond acceptable food hyperbole as it appeared the image had been altered to be larger when in reality, except for the extra meat patty, the burgers were exactly the same. Therefore, it was of the view the advertisement was in breach of the Code for Advertising Food.

However, in accordance with the majority, the Complaints Board ruled to Not Uphold the complaint.

DESCRIPTION OF ADVERTISEMENT

The direct mail advertisement for Burger King promoted coupon specials with over \$65 of savings available until 14th December. The advertisement also showed a Triple Whopper and a Double Whopper next to each other.

COMPLAINT FROM T. EMMERSON

I received the direct marketing flyer from Burger King and noticed that the height difference between the Triple Whopper and the Double Whopper wasn't right. I ran the advert through Photoshop and measured the differences (seems a lot of effort but I was writing an article about the ethics of junk food advertising).

The Triple Whopper has been stretched to make it seem much larger than the Double whereas the only actual difference is the inclusion of an extra patty. To confirm this I noticed

that several elements of the two burgers were exactly the same (lettuce, tomatoes, bun etc).

I wrote about it in an article which can be viewed using the following link.

<http://www.vanguard86.com/#!/blank/f5ycs>

I believe this constitutes false advertising far beyond the typical issue that the burgers advertised in no way resemble what you physically purchase.

I would appreciate being kept informed of the ruling of this complaint, especially as I doubt the average recipient would be aware of why this breaches advertising standards.

CODE FOR ADVERTISING FOOD

Principle 1 – All food advertisements should be prepared with a due sense of social responsibility to consumers and society. However food advertisements containing nutrient, nutrition or health claims*, should observe a high standard.

Principle 2 – Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive consumers, abuse the trust or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

RESPONSE FROM ADVERTISER, ANTARES RESTAURANT GROUP LTD

We have gone back and reviewed this piece of artwork from briefing through to sign off. Furthermore, we have measured the products ourselves and believe they are an accurate representation of the 2 products (Triple Whopper with cheese & Double Whopper with cheese).

The coupon book concerned has expired and is no longer in circulation.

FURTHER RESPONSE FROM ADVERTISER, ANTARES RESTAURANT GROUP LTD

I have attached a copy of the artwork and subsequently measured the 2 products concerned.

There is a 2mm variation between the bun width. Height remains identical. I would concede that there is a slight operator error when fitting the picture to the layout. However, it is not material and hardly observable. As advised prior, this marketing material is no longer in market since 14th December, 2015.