

COMPLAINT NUMBER	18/418
COMPLAINANT	B Henderson
ADVERTISER	BP Oil NZ Ltd
ADVERTISEMENT	Good Mood Food, Digital, In-Store, Out of Home
DATE OF MEETING	12 February 2019
OUTCOME	Not Upheld

SUMMARY

The BP Oil NZ Ltd multi-media advertising campaign, Good Mood Food, appeared on billboards, bus stops, instore and digital marketing. The advertisements show the wording 'Good Mood Food' with ice cream scoops, doughnuts and food plates used in place of the double O letters.

The Complainant is concerned the advertising claims that unhealthy, high sugar foods such as doughnuts and ice cream can improve the mood of the consumer, when such food can actually result in negative health effects.

The Advertiser said the advertising introduced three new menu options. It said the concept was a playful representation, matching the food being promoted to the letter O. The Advertiser said it was not making any nutritional claims or suggesting the products featured are beneficial to health. The Advertiser said the serving sizes shown were appropriate for an adult consumer and did not encourage excessive consumption

The majority of the Complaints Board found that the advertising was not likely to mislead or deceive consumers or encourage excessive consumption. It said the advertising had been prepared with a due sense of social responsibility. The majority of the Board said the advertising was not in breach of Principles 1 or 2 or Guidelines 1(c), 1(d), 2(b) or 2(c) of the Code for Advertising Food.

A minority of the Complaints Board said the advertising made an implicit health claim linking food high in fat, salt and or sugar to well-being. It said the advertising could misled consumers about the nutritive value of food and images showed excessive serving sizes for children. The minority of the Board said the advertising had breached Principles 1 and 2 and Guidelines 1(c), 1(d), 2(b) and 2(c) of the Code for Advertising Food.

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

[No further action required]

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

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertising with reference to the Code for Advertising Food, Principle 1, Principle 2, Guideline 1(c), Guideline 1(d), Guideline 2(b) and Guideline 2(c).

Principle 1 requires the Complaints Board to determine whether advertising for a food product was prepared with a due sense of social responsibility to consumers and to society. Food advertisements containing nutrient, nutrition or health claims, should observe a high standard of social responsibility.

Principle 2 requires the Complaints Board to determine whether advertising for food products could by implication, omission, ambiguity or exaggerated claim, be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guideline 1(c) requires the Complaints Board to determine whether the quantity of the food depicted in the advertisement exceeds serving sizes that would be appropriate for consumption by a person or persons of the age depicted.

Guideline 1(d) requires the Complaints Board to determine whether the advertisement encourages excessive consumption or depicts inappropriately large portions of any particular food.

Guideline 2(b) requires the Complaints Board to determine whether the advertisement takes care ensure not to mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

Guideline 2(c) requires the Complaints Board to determine that any obvious hyperbole in the advertisement identifiable as such by the intended audience are not considered misleading.

The Complaints Board ruled the complaint was Not Upheld

The Complaint

The Complainant is concerned the advertisements claim that unhealthy, high sugar foods such as doughnuts and ice cream can improve the mood of the consumer, when such food can actually result in negative health effects.

The Advertiser's Response

The Advertiser said the purpose of the advertisements was to introduce three new menu options to its range, Krispy Kreme doughnuts, Wishbone lunches and Haagen Dazs desserts. It said the concept was a playful representation, matching the food being promoted to the letter O. The Advertiser said it was not making any nutritional claims or suggesting the products featured are beneficial to health. The Advertiser said the serving sizes shown were appropriate for an adult consumer and did not encourage excessive consumption

The Complaints Board Discussion

The Complaints Board reviewed the advertisement, the complaint and the response from the Advertiser.

Consumer Takeout

The majority of the Complaints Board said the likely consumer takeout of the advertising was a range of new premium products are now available at BP. The majority said the featured products would be seen as enjoyable comfort foods or an occasional treat.

A minority of the Complaints Board said a consumer takeout was the foods depicted could change and improve your mood and is therefore were beneficial for health and wellbeing.

Is the advertising making health claims?

The majority of the Complainants Board said the advertising was not making health claims and the “good mood” reference was about the enjoyment of consuming comfort food. The majority of the Complaints Board agreed the advertising had not breached Principle 1 of the Code for Advertising Food.

A minority of the Complaints Board disagreed and said there was a link between a good mood and well-being which in turn was an implied health claim. The minority of the Board said the inclusion of a health claim for foods high in fat, salt and or sugar was in breach of Principle 1 of the Code for Advertising Food.

Does the advertising depict inappropriate portion sizes or encourage excessive consumption?

The majority of the Complaints Board said the use of food as a substitution for the letter O would be interpreted by most consumers to be part of the creative execution rather than suggested serving sizes. The majority of the Complaints Board agreed the advertising had not breached Guidelines 1(c) or 1(d) of the Code for Advertising Food.

A minority of the Complaints Board said some of the platforms chosen to display the advertising meant an unrestricted audience could engage with the images, including children. A minority said the depicted portions of two doughnuts and two scoops of ice cream would have a high appeal to children and were not an appropriate portion size. A minority of the Complaints Board said the advertising had breached Guidelines 1(c) and 1(d) of the Code for Advertising Food.

Is the advertising misleading consumers about health claims?

The majority of the Complaints Board said the advertising was not making health claims and consumers would not be misled as to the nutritive value of the food.

The majority of the Complaints Board said the advertising was not in breach of Principle 2 or Guidelines 2(b) and 2(c) of the Code for Advertising Food.

A minority of the Complaints Board disagreed and said the likely audience of the unrestricted advertising would include children.

The minority of the Board said the playful execution of the advertisement with the food images replacing the letter O was not enough to save the advertising from being misleading in relation to a health claim. The minority said the advertising had reached the threshold to breach Principle 2 and Guidelines 2(b) and 2(c) of the Code for Advertising Food.

Summary

The majority of the Complaints Board found the advertising was not likely to mislead or deceive consumers or encourage excessive consumption and had been prepared with a due sense of social responsibility. The majority of the Board said the advertising was not in breach of Principles 1 or 2 or Guidelines 1(c), 1(d), 2(b) or 2(c) of the Code for Advertising Food.

A minority of the Complaints Board said the advertising made an implicit health claim linking food high in fat, salt and / or sugar to well-being. It said the advertising could misled consumers about the nutritive value of the food and the images depicted an excessive serving size. The minority of the Board said the advertisement had breached Principles 1, and 2 and Guidelines 1(c), 1(d), 2(b) and 2(c) of the Code for Advertising Food.

Therefore, in accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The BP Oil NZ Ltd multi-media advertising campaign, 'Good Mood Food', appeared on billboards, bus stops, instore and digital marketing. The advertisement shows the wording Good Mood Food with ice cream scoops, doughnuts and food plates used in place of the double O letters.

COMPLAINT FROM B HENDERSON

The BP 'GOOD MOOD FOOD' campaign is found across online and offline channels; digital billboards, social media, in store, bus stops and their website.

The campaign dictates unhealthy, ultra high sugar foods; donuts and ice cream as 'good mood foods'.

The fact is that these foods may increase ones mood due to the temporary effect that sugar has on dopamine levels of humans - the effect is comparable to cocaine and equally as addictive.

In a nation with an obesity crisis it is irresponsible and unethical for BP to market these foods as some kind of elixir for good health.

Using unhealthy, high sugar, blood sugar spiking foods as a reward or mood booster can trigger a viscous cycle of healthy uneating and sugar addiction that can cause Type 2 Diabetes and cause numerous other negative health effects.

CODES OF PRACTICE

CODE FOR ADVERTISING FOOD

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

Guideline 1(c): The quantity of the food depicted in the advertisement should not exceed serving sizes that would be appropriate for consumption by a person or persons of the age depicted.

Guideline 1(d): Advertisements should not encourage excessive consumption or depict inappropriately large portions of any particular food.

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

Guideline 2(b): Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

Guideline 2(c): Food advertisements containing obvious hyperbole, identifiable as such by the intended audience are not considered misleading.

RESPONSE FROM ADVERTISER, BP OIL NEW ZEALAND

We refer to your email of 18 January 2019. BP previously responded to the complaint made by Ben Henderson to the Advertising Standards Authority (ASA) on 29 November 2018 on the basis of the new guidelines, as per your request to us on 12 December 2018. As per your further request we have applied the ASC Principles and Rules that were applicable to advertisements in market prior to 1 November 2018. For the reasons previously stated, BP does not believe that the advertisement referred to breaches any standards laid out in the Advertising Standards Code (ASC) Principles and Rules.

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

The Good Mood Food offer at BP covers three different food occasions: snack / treat (Krispy Kreme), lunch / dinner (Wishbone), and dessert (Haagen-Dazs). These are new offers at BP and the campaign in question is designed to advertise their availability at BP stores. The campaign is not making any nutritional claims but is a playful representation of BP's innovative new product range. The advertisement simply refers to "Good Mood Food" and links the quality of the products on offer to the enjoyment of that food.

The advertisement was prepared with a due sense of responsibility to consumers and to society.

1c The quantity of the food depicted in the advertisement should not exceed serving sizes that would be appropriate for consumption by a person or persons of the age depicted.

1d Advertisements should not encourage excessive consumption or depict inappropriately large portions of any particular food.

The products are displayed in a deliberate way, to match the letters "O" in the phrase, and are not serving suggestions. In any event the advertisement shows the products in amounts and quantities which do not exceed serving sizes that would be appropriate for our adult customers. This advertisement does not encourage excessive consumption nor do we believe the quantity of food depicted shows inappropriately large portions of the products.

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

The advertisement in no way, by implication or otherwise, misleads or deceives consumers. It simply notifies the availability of a new range of products at BP stores, in a playful way. The advertisement does not in any way exploit the lack of knowledge of consumers, exploit the superstitious or play on fear.

2b Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

There are no nutritional claims made or implied in the advertisement and therefore the advertisement is not misleading as to the nutritive value nor does it suggest the products are beneficial to health. The advertisement does not imply that the products can replace a

healthy diet or undermine the importance of consuming a variety of foods. As we said in principle 1, the advertisement is simply notifying the availability of a range of new products at BP. It does not make any suggestion that a “good mood” is equivalent to good health.

2c Food advertisements containing obvious hyperbole, identifiable as such by the intended audience are not considered misleading.

The intent of the advertisement was to depict the new range of products available at BP in a playful way. Good Mood Food is a play on words and an obvious hyperbole that we consider would be identifiable as such by the intended adult audience. As we said above, the advertisement simply refers to “Good Mood Food” and links the quality of the products on offer to the enjoyment of that food.

BP takes compliance with its obligations under the ASC Rules, and all other requirements, incredibly seriously. BP does not believe the use of “Good Mood Food” together with the playful graphic in any way breaches any ASC Rule. The intent of the “Good Mood Food” advertisement was to make consumers aware of the three new products available at BP, which are an extension of the current products available at our stores.

Contact person for advertising complaints	Luke Rive
Name and contact at creative agency	Chris Hotchin
Name and contact at media agency	Natasha Le Marinel
A basic, neutral description of the advertisement	GOOD MOOD FOOD text with ice cream scoops, doughnuts and food plates used in place of the double O.
Date advertisement began	10 September 2018
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	Billboards – until 31/12/18 (We are aware that at one site in Auckland the Billboard has not been taken down in accordance with the media schedule but we have requested this be removed) Adshel - until 31/12/18 Radio - until 31/12/18 Website Social Media

	eDM to registered Wild Bean Café/BPMe customers In-store POS
Is the advertisement still accessible – where and until when?	Website - ongoing In-store POS – ongoing
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Attached
Who is the product / brand target audience?	The marketing campaign is targeted at adults who enjoy food and are looking for easy food solutions.
Clear substantiation on claims that are challenged by the complainant.	N/A
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
For Broadcast advertisements:	
A copy of the script	N/A
A copy of the media schedule and spot list (Please remove all financial information)	N/A
CAB key number and rating	N/A
For Digital advertisements:	
What platform tools have you used to target your audience?	Facebook targeting – Audience 18+, North Island

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.