

COMPLAINT NUMBER	19/168
COMPLAINANT	E Whittome
ADVERTISER	Heinz Wattie
ADVERTISEMENT	Heinz Wattie website
DATE OF MEETING	28 May 2019
OUTCOME	Not Upheld No further action required

Description of Advertisement

The website advertisement for Heinz Wattie Original Mayonnaise says “Making a mayonnaise with the finest ingredients, including free range eggs, unsurprisingly gives the greatest flavours. A creamy, velvety mayo that will transform the plainest of dishes into something rather exciting.”

Summary of the Complaint from E Whittome

The Complainant said the use of the phrase “free range eggs” in the advertisement is misleading and the advertiser should define which certification applying to “free range” they are adhering to, as the term can have a range of definitions.

Issue Raised

Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said it is generally understood that the term “free range” refers to hens which have access to the outdoors, as opposed to hens which are kept in cages or otherwise only kept indoors.

The Advertiser said in the Animal Welfare (Layer Hens) Code of Welfare 2012 “barns with access to outdoors are usually referred to as free range systems” and the minimum amount of space for free range hens is 1 hectare per 2,500 hens and no amount of time outdoors is specified.

The Advertiser said the farms where they source their eggs meet the requirements of the Animal Welfare (Layer Hens) Code of Welfare 2012, and they are regularly audited by the Ministry for Primary Industries (MPI).

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint that the use of the phrase “free range eggs” on the Heinz Wattie website was misleading. This is because the use of the phrase “free range eggs”, as used in the advertisement, fits the definition of “free range” as defined in the Animal Welfare (Layer Hens) Code of Welfare 2012. That is, the hens which lay these “free range” eggs have access to the outdoors.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b): Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Relevant precedent decision

In considering this complaint the Complaints Board referred to a precedent decision, 16/151 Appeal 16/005.

Decision 16/151 Appeal 16/005 concerned the Complainant's appeal of the Complaints Board Not Upheld decision regarding a Countdown advertisement Facebook page in which Countdown promoted its position on phasing out conventional caged eggs. The Complainant said the advertisement was misleading because consumers do not understand the difference between conventional and colony eggs. The majority of the Complaints Board ruled the advertisement was not misleading as it was clear the advertisement was referring to conventional caged eggs only. The Complainant said the Complaints Board had not adequately considered the consumer takeout of "conventional caged eggs".

The Appeal Board ruled to settle the complaint. This is because the further changes made to the advertisement by the Advertiser gave a clear signal there was a difference between colony and conventional eggs and clarified Countdown's position in relation to the egg farming industry.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Complaints Board Discussion of Complaint 19/168

Consumer Takeout

The Complaints Board agreed the consumer takeout of the advertisement was Heinz Original Mayonnaise is available in different sizes and is made with "free range" eggs.

The Complaints Board agreed the consumer takeout of "free range" is the hens are not restricted to being in cages all the time and are able to go outside.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. This is because the use of the phrase "free range eggs", as used in the advertisement, fits the definition of "free range" as defined in the Animal Welfare (Layer Hens) Code of Welfare 2012, which is the industry standard. That is, the hens which lay these "free range" eggs have access to the outdoors.

The Complaints Board noted the farms which supply the free range eggs to Heinz Wattie are audited by the Ministry for Primary Industries (MPI).

The Complaints Board said the advertisement was not misleading taking into account context, medium, audience and product and was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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.

APPENDICES

1. Complaint
 2. Response from Advertiser
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Appendix 1

COMPLAINT FROM E WHITTOME

This company states “free range” eggs in their product. There is no regulation on free range eggs in NZ. A chicken may be outdoors for 1 minute or 24 hours a day. However no time period constitutes free range. This company needs to state the free range certification, eg SPCA. otherwise the company is making false claims and merely cashing in on the “free range” buzz word In it’s advertising catch phrases.

Appendix 2

RESPONSE FROM ADVERTISER, HEINZ WATTIE

- 1 We respond to your letter and email of 29 April 2019 addressed to Daniel Paki of Heinz Wattie’s Limited (“**Heinz**”), in relation to Complaint 19/168 (“**the complaint**”).

The complaint

- 2 The complaint concerns claims made by Heinz regarding the eggs used in our HEINZ® [SERIOUSLY] GOOD™ mayonnaise products (“**the products**”) being described as “free range” eggs. A copy of the impugned advertising is included at the end of this letter.
- 3 The wording of the complaint is as follows:
This company states “free range” eggs in their product. There is no regulation on free range eggs in NZ. A chicken may be outdoors for 1 minute or 24 hours a day. However no time period constitutes free range. This company needs to state the free range certification, eg SPCA. otherwise the company is making false claims and merely cashing in on the “free range” buzz word In it’s advertising catch phrases.

Advertising Standards Code

- 4 We understand that the relevant section of the ASA *Advertising Standards Code* (“**the ASA Code**”) is Principle 2, Rule 2(b), which provides:

Rule 2 (b) Truthful presentation

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

Definition of “free range”

- 5 Across different countries and jurisdictions, it generally understood that the term “free range” refers in the first instance to hens which have access to the outdoors, as opposed to hens which are kept in cages or otherwise only kept indoors.
- 6 In some countries (e.g. the United States), outdoor access is the only requirement, regardless of how much space is provided or other conditions. In other countries, certain conditions are specified, including the amount of outdoor space that must be provided. In the European Union, the standard is 4m² of outdoor space for every hen, among other requirements (*EU Council Regulation No 1804/1999*). In Australia, the

minimum required space is 1m² per hen, to which the hens must have “regular and meaningful” access (*Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017*).

- 7 Under New Zealand law, there is no precise, regulated definition which applies to the term “free range”. The *Animal Welfare (Layer Hens) Code of Welfare 2012* (“**the Code of Welfare**”) is the primary source of rules in New Zealand governing the way layer hens should be treated. In relation to what constitutes “free range”, the Code of Welfare is aligned with the basic definition provide in paragraph 5, above:
Barns with access to the outdoors are usually referred to as free range systems and the building can be either fixed or moveable.
- 8 Standard 6 (“Stocking Densities”) in the Code of Welfare provides that the minimum amount of outdoor space for free range hens is 1 hectare per 2,500 hens (which is the same as the EU standard of 4m² per hen). The Code of Welfare additionally sets out other requirements in the interests of the welfare of layer hens, including requirements for their care, food and water, shelter and shade, housing, handling and transport. No required amount of time outdoors is specified in the Code of Welfare, though the term “free range” would suggest reasonably free access to the available outdoor areas.

The eggs used in the products

- 9 Our egg supplier has confirmed that the farms where we source our free range eggs for the products meet or exceed the requirements set out in the Code of Welfare, and that those farms are regularly audited against this standard by an independent veterinary specialist and by a representative of the Ministry of Primary Industries.
- 10 We are able to provide the following additional details about the conditions in which the hens are kept:
- (a) The hens have free daytime access to the outdoors through “pop-holes” (openings from the shed onto the range area).
 - (b) The pop-holes are opened early in the morning and typically the hens can stay outside until dusk.
 - (c) At least one hectare of outdoor area is provided for every 2,500 hens.
 - (d) The hens are free to roam as far as they like within the paddocks.
 - (e) The hens naturally come inside the shed to roost at night, where they are protected from any predators or poor weather (i.e. just like wild birds who flock together to roost at night).
 - (f) Because hens are naturally fearful of wide open spaces, trees have been planted and other artificial shelters erected on the land to encourage hens to use the range fully and to promote the health and welfare of the hens.
 - (g) In the barn, hens are provided with at least the required amount of space, as well as sufficient access to food and water, as required under the Code of Welfare.
 - (h) Eggs are collected daily and are stamped with a unique farm code to ensure traceability through the supply chain.
 - (i) Farm managers and staff are well trained and competent in managing the flock and ensuring that the hens’ needs are met on a daily basis.

Our response to the complaint

- 11 We do not agree with the complainant’s assertion that we are making false claims. The representation that the products are made with free range eggs is truthful and does not contravene the ASA Code, as the eggs are laid by hens which have had free access to the outdoors in circumstances which either meet or exceed the standards required under the Code of Welfare, as set out above.
- 12 We do not agree that we are simply “cashing in on the “free range” buzzword”. Our use of free range whole eggs in the products creates a point of difference in the market, primarily in terms of cost and animal welfare considerations, but also in the interests of creating a premium product. We believe it is reasonable to communicate this difference to consumers as we have done.

- 13 We do not agree with the complainant's assertion that we are required to obtain a particular certification (e.g. SPCA) in order to claim that the products are made with free range eggs. We have not made any claims regarding any certifications.
- 14 Please do not hesitate to contact us if you require any further information or clarification.