

COMPLAINT NUMBER	20/232
ADVERTISER	Simplot Australasia Pty Ltd
ADVERTISEMENT	John West television
DATE OF MEETING	21 July 2020
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a television advertisement for John West Deli Tuna. The Board said the advertisement was not misleading and did not reach the threshold to denigrate a competitor.

Advertisement

The television advertisement for John West Deli Tuna showed a fisherman on his boat catch an animated fish which was flying through the air. The voiceover said “It might look like a beauty but it’s a “no” from John West.”

In the next shot the fisherman places the fish he caught into a bin labelled “Other Brands”, and not the one labelled “John West”. The voiceover said: “It’s what John West rejects that makes new loin cut Deli Tuna with real ingredients ...The Best”.

Summary of the Complaint

The Complainant was concerned the advertisement was misleading because it implies “their competitors use fish other than tuna in their tuna products.”

Issues Raised:

- Truthful presentation
- Comparative advertising

Summary of the Advertiser’s Response

The Advertiser defended the advertisement and said all that can be implied from it, is that John West rejects some fish and then fishermen are left with no other alternative but to offer the rejected fish to “Other Brands”. The Advertiser said it is not claimed in the advertisement, nor was it ever the intention of Simplot to claim or to imply that its competitors use anything other than tuna in their tuna products.

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.

Rule 2(d) Comparative advertising: Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.

Guideline:

Advertisements that do not specify a specific competitor can still be considered a comparative advertisement, eg if a comparison is made against all competition within an industry or with specific aspects of an unnamed competitor product or service.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 11/184, which was Not Upheld.

Decision 11/184 concerned television, print and website advertisements for John West tuna which describe the product as "JOHN WEST -The Best".

The Panel said the unqualified term "The Best", in the context of the advertisements before it, was subjective and puffery. The Panel said in this case the term "The Best" did not require substantiation.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was John West has a new tuna product and it's just as good as their other products. John West has a quality standard because it rejects some of the fish it catches, and other brands accept this fish.

Is the advertisement misleading?

The Complaints Board said the advertisement was not misleading and did not imply "their competitors use fish other than tuna in their tuna products."

The Complaints Board accepted the advertisement for the tuna product, featured images of salmon throughout, not tuna. The Board said the average consumer might not be able to distinguish the difference. The Board noted that John West sells both salmon and tuna.

The Board said the point the advertisement was making was John West products are high quality because they reject some of the fish they catch. The Board said while it was not obvious

why the fish in the advertisement was rejected, presumably it was because it didn't meet the required standard.

Does the advertisement fit the definition of a comparative advertisement and if so, does it denigrate any competitors?

The Complaints Board said the advertisement did fit the definition of a comparative advertisement, but it did not reach the threshold to denigrate any competitors.

The Complaints Board said the advertisement referred to "other brands" of fish products generally and implied they accept the fish that John West rejects. The Board said the issue raised by the Complainant was that the advertisement implied John West's competitors use fish other than tuna in their tuna products. The Board did not accept this would be the consumer takeout of the advertisement. The advertisement was therefore not denigrating any competitors, because it did not imply that John West's competitors mislead their consumers about the type of fish they sell.

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, Rule 2(b) or Rule 2(d) 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 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
-

Appendix 1

COMPLAINT

Television Ad Details: Prime

2020-05-28 1959

Complaint Details:

John west show a flying Salmon and then claim its the fish they reject that makes their Tuna so much better.

This is very misleading, treats their customers as fools an implies that their competitors use fish other than Tuna in their Tuna products.

Appendix 2

RESPONSE FROM ADVERTISER, SIMPLOT AUSTRALIA PTY LTD

We refer to your email dated 22 June 2020 regarding the above complaint.

You have advised Simplot Australia Pty Ltd (**Simplot**) that the complaint raises concerns under Principle 2 of the Advertising Standards Code 2018 (**Code**) and will be considered at the meeting of the Complaints Board (**Board**).

The complaint is notified as one that relates to a John West TVC shown on Prime television on 28 May 2020 featuring a flying salmon and the claim it's the fish they reject that makes their Tuna much better (**Advertisement**).

Simplot conducts all advertising and promotions to the highest standards in compliance with community standards and all applicable legislation. We take all complaints very seriously. We also wish to refer the Board to previous complaints numbered 11/184 made to the ASA in New Zealand (in relation to "The Best" tagline) and complaints 0134/15, 0524/16 and 0525/16 made to the ASA in Australia and note that all complaints were dismissed.

Simplot as the owner of John West brand, would like to defend the complaint as it believes that the Advertisement complies with the Code. Simplot sets out relevant information and its response below.

Digital Copy & Script

The digital media file is attached to our response.

The Advertisement opens on a shot of a salmon...

"Aah, it might look like a beauty...but it's a no from John West."

Close in on fisherman catching fish and placing the fish into a storage bin...

"It's what John West rejects that makes..."
"New Loin Cut Deli Tuna with real ingredients The Best."

Wording is superimposed in the frame to read "Delicate loin cut with real ingredients."

Final frame shows canned products and superimposed John West green logo with words underneath ... "The Best."

Media & Media Schedule

The Advertisement featured in a TV campaign on Sky/Prime, TVNZ, Mediaworks; on TVNZ On Demand and on Three Now. Please see the attached media schedule.

The Advertisement was not placed in any other media.

Simplot may wish to run the Advertisement in the future in New Zealand and Australia, with possible modifications to the end frame, featuring different John West products.

CAB No & Target Audience

The CAB approval number for this Advertisement was JOHNNZ0006.

The target audience was all persons aged 30-59 years. The tools used to determine the target audience were Nielsen Ariana and TV Maps.

Nature of the complaint

You have advised that the complaint potentially relates to Principle 2, Rule 2(B) and Rule 2(d) of the Code.

Principle 2 provides: *Advertisements must be truthful, balanced and not misleading.*

Rule 2(b) provides: *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.*

Rule 2(d) provides: *Comparative advertisements, or advertising that identifies a competing product or service, must be factual, accurate, make clear the nature of the comparison, must not denigrate competitors and must be of 'like' products or services available in the same market.*

The Complaint

The complaint made on 28 May 2020 provides:

This is very misleading, treats their customers as fools and implies that their competitors use fish other than Tuna in their Tuna products..

Our Defence

Simplot wishes to defend this Complaint on the basis that the Advertisement is in complete compliance with Code.

Simplot further rejects the assertion in the complaint that Simplot *"treats its customers as fools"*. Simplot greatly values its customers and goes to great lengths to ensure that its products and advertisements are enjoyed and cherished by its customers.

Further, we feel that due to the content of the Advertisement, the interpretation taken by the Complainant is truly a "one off" opinion and not one that would reasonably be formed by other members of the community, competitors or by the Board.

And finally, while it may be the case that the Complainant feels strongly about their Complaint, and that interpretation may lead the Complainant to feel the Advertisement is not suitable, we submit that the Complainant is so mistaken in their Complaint as to render the Complaint not worth considering against the principles and rules of the Code.

Comments as to Principle 2

Simplot's view is that the Advertisement is truthful, balanced and not misleading.

The Advertisement features a humorous depiction of our classic John West quality story told with hyperbole that "It's the fish that John West Rejects that makes...John West Deli tuna...The Best".

As to whether the Advertisement is "balanced", we state that the Advertisement does not present an unreasonable or extreme view on any aspect that it is trying to communicate. It presents all information in a fair and metered out approach and so should be seen as balanced and in compliance with Principle 2.

The concept of John West having high quality standards in its catch methods, selection of fish species and processes to ensure high quality ingredients are used, while commonly known by consumers, are not called into question with this complaint. Further we state that this ad portrays those concepts of quality with hyperbole and puffery, and so could not be seen as untruthful or misleading.

Further the concept that the Ad starts with featuring salmon, and then finishes featuring tuna products, is also a common approach that John West, and other brands, take to show the qualities and features of the brand and how they apply to different products. In this case, the quality shown in the choice of salmon is also able to be applied to how John West selects and prepares its tuna products.

We draw the Board's attention to the prior decision of the Australian Advertising Standards Board No. 0134/15 that dismissed a complaint on this point and held that advertisement to not be misleading and that to advertise a tuna product at the end of a salmon Masterbrand campaign was entirely suitable. We respectfully submit that the facts of this matter share a close enough resemblance to this earlier case that the Board should adopt a similar ruling in this decision and find that the Advertisement is not misleading.

Based on the above points, we submit that the Advertisement complies with Principle 2.

Comments as to Rule 2(b)

The Complainant's argument that the Advertisement is misleading is because the Advertisement "*implies that their competitors use fish other than Tuna in their Tuna products*".

The Advertisement shows a salmon being placed into a storage bin of many other salmon with the label "OTHER BRANDS" on the storage bin. This *Other Brands* storage bin is right next door to the "JOHN WEST" storage bin that also contains many salmon. As a result it is not possible to conclude that the Advertisement implies that competitors use fish other than tuna. All that can be implied is that John West rejects some salmon and then fishermen are left with no other alternative but to offer the rejected salmon to *Other Brands*.

So it would appear that the Complainant has mistakenly judged the fish in the *John West* storage bin to be Tuna. And while it is regretful that the Complainant has drawn an incorrect conclusion from the Advertisement that does not mean that the Advertisement is in breach of the Code. It is not claimed in the Advertisement, nor was it ever the intention of Simplot to claim or to imply that its competitors use anything other than tuna in their tuna products.

The approach taken by John West in the Advertisement was to present a playful and humorous scene of a fish thinking that he was “of good quality” and that he would be able to be used for John West, but then at the last minute he is assessed to be not quite up to the John West standard, so the poor little salmon is put into the *Other Brands* storage bin. In this way the Advertisement follows the famous and iconic elements of the John West “The Best” ad campaigns using hyperbole to tell its brand story that “...it’s the Fish that John West Rejects that makes John West the Best”.

Otherwise in relation to the elements of Rule 2(b) we state:

- A. In relation to that the Advertisement must not mislead or be likely to mislead consumers, we repeat the matters raised above in relation to Principle 2.
- B. In relation to that the Advertisement must not deceive or confuse consumers, we state that while the Complainant may not understand the message that we were trying to convey to consumers, this does not mean we have “deceived or confused” consumers. We submit that consumers would not be confused by this Advertisement and that the clear meaning of John West rejecting less than perfect fish, would be a safe conclusion for all consumers. Further the view of the Complainant, we submit would not be shared by other consumers, and we have not, in any way, actual or implied, communicated that competitors do not use tuna in their tuna products.
- C. In relation to that the Advertisement must not abuse consumers’ trust or exploit their lack of knowledge, we state that the Advertisement does not in any way abuse trust or exploit a lack of knowledge. While consumers may not know all the steps that are taken to source and process seafood into a retail product, the Advertisement presents a humours snapshot of only one small part of a larger and more complicated process. And it does so in a way that is respectful and sensitive to the level of knowledge that consumers have.

As a result we do not feel that the Advertisement is in breach of Rule 2(b).

Comments as to Rule 2(d)

Rule 2(d) is applicable to “comparative advertisements”. We have assumed that as the complaint references competitor products and that this Advertisement features a storage bin that is labelled *Other Brands* that it could be considered to be a comparative advertisement by the Board.

We do not feel that this ad is a comparative advertisement as it neither identifies nor makes any comparisons between John West products and any specific competitor brands or products.

However if it is viewed by the board as a comparative advertisement then we say that it is factual, accurate and does not denigrate competitors and that it does not make any product comparisons to require it to ensure that those comparisons are of like products available in the same market.

The Advertisement is factual and accurate. John West has very high standards of selection when it comes to the quality of the seafood that it selects. There are other brands of seafood products that do not have the same high standards. And while this is presented with humour and John West’s famous hyperbole approach of *rejecting* what the layman may feel is a good looking fish, it is still based in fact.

The Advertisement does not denigrate competitors. The Complainant feels that the Advertisement “*implies that their competitors use fish other than Tuna in their Tuna products*”. As we have set out above, the Advertisement shows salmon going into both

storage bins. At no point do we state, show or imply that John West is using tuna but competitors are using salmon in their tuna products. The Advertisement does not mention a competitor by name it simply refers to “other brands”. As a result the Complainant’s conclusion is not reasonable and the ad does not denigrate competitors.

The Advertisement does not refer to any other products or product features in the usual sense of a comparative advertisement. If John West was to refer that its tuna product as having 25% less fat than a comparative tuna product, then we would of course show and reference to the comparative product. But in this case the Advertisement does not make a claim that requires us to reference a comparative product and so the Advertisement does not breach Rule 2(d), nor the FSANZ guidelines on comparative claims.

As a result of the above, the Advertisement is not in breach of Rule 2(d).

Summary

We trust that the above information enables the Board to find that the Advertisement is not a breach of the Code and that the complaint should be dismissed.

In addition, we have reviewed the Advertisement against other sections of the Code and we do not believe that the Advertisement should cause the Board any concern under any other section of the Code.

We do not consider the Advertisement to be unsuitable for display in this type of forum or other like forums for future campaigns.

We trust that our comments above will help to alleviate the Complainant’s concerns and assist the Board to dismiss the complaint.

We look forward to your response.

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Thank you for the opportunity to comment on the complaint that the above commercial breaches the Advertising Standards Code Rule 2b (Truthful presentation) and Rule 2d (Comparative Advertising).

The complainant appears to have misconstrued the “it’s what John West rejects” line in this commercial as a claim that John West’s competitors “use fish other than tuna in their tuna products”. In our opinion, this is an extreme interpretation of the line and most viewers will correctly understand it to mean that John West are fussy about the tuna selected for its Deli Tuna range.