

COMPLAINT NUMBER	22/074
ADVERTISER	Mondelēz International
ADVERTISEMENT	Cadbury, Facebook
DATE OF MEETING	12 April 2022
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Cadbury sponsored Facebook post promoting the return of Caramilk chocolate. The Complaints Board said the Advertiser had sufficient substantiation to support the claim that the product is “NZ’s original” and a “local invention”.

Advertisement

The Cadbury Facebook advertisement promotes Caramilk. The image shows a block of Caramilk against a purple background and enveloped in a golden swirl. Text on the image states, “NZ’s original caramelised white chocolate” and “A choice as local invention”. The accompanying caption states “Cadbury Caramilk is loved all over the world, but it was invented here! And that’s choice as.”

Summary of the Complaint

The Complainant was concerned the advertisement falsely claims that the Caramilk product is “NZ Original” and a “local invention”. The Complainant says the Advertiser’s website states that Caramilk is made in Canada and “it’s a mystery as to when it was first created”.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said that the complaint is “based on an unfortunate misunderstanding of how Cadbury has used the CARAMILK brand in different countries”. CARAMILK in Canada is milk chocolate filled with flowing caramel (called CAMELLO in New Zealand), while CARAMILK in New Zealand is a caramelised white chocolate. The Advertiser confirmed the New Zealand CARAMILK, caramelised white chocolate, was invented in New Zealand in 1994. They provided a trade brochure from 1994 which advertises the new product to retailers.

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 decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 21/489 which was Settled, and 12/566 which was Not Upheld.

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

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

Decision 21/489 concerned an advertisement for Otis Oat Milk which claimed the product was “NZ’s first homegrown oat milk” despite that it was produced in Sweden. The Advertiser removed the advertisement and confirmed they would not use the phrase in this form or context in future advertising.

Decision 12/566 concerned two advertisements for Chanui Tea which claimed to be “New Zealand’s tea”. The Complainant alleged this implied the tea was grown in New Zealand. The Complaints Board did not uphold the complaint as they said the advertisements neither stated nor implied that the tea was grown in New Zealand. They considered the average consumer takeout to be that the tea was blended to suit the tastes of New Zealanders.

Complaints Board Discussion

The Chair noted that the Complaints Board’s role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: Origin claim for Caramilk Chocolate
 - Medium: Digital Marketing – Facebook
 - Audience: New Zealand consumers
 - Product: Confectionery

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was that the Cadbury Caramilk product, a caramelised white chocolate, was invented in New Zealand.

Is the advertisement likely to mislead, deceive or confuse consumers?

The Complaints Board said the Advertiser had made a factual claim in the advertisement which required substantiation.

The Advertiser clarified the New Zealand Caramilk product, a caramelised milk product, was invented in New Zealand in 1994. They provided a trade brochure from 1994 which advertises the new product to retailers.

The Complaints Board said the substantiation provided by the Advertiser was sufficient grounds for making the claim that the chocolate was “NZ’s original” and a “local invention”. They also agreed with the Advertiser that the average New Zealand consumer would

understand that Caramilk refers to the caramelised white chocolate product and not the Canadian product which is a milk chocolate product filled with flowing caramel.

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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

APPENDICES

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

Appendix 1

COMPLAINT

I believe Cadbury's claim that 'Caramilk' is 'NZ Original' and a 'local invention' is false advertising. I wasn't able to find any evidence of this online, and in fact found this statement on the Mondelez International website: "Caramilk is a proud "made in Canada" story, yet it's a mystery as to when it was first created."

<https://www.mondelezinternational.com/Canada/Our-Brands/Caramilk> Accessed 2nd March 2022

Appendix 2

RESPONSE FROM ADVERTISER,

Thank you for the opportunity to respond to **Complaint 22/074**.

The complaint is based on an unfortunate misunderstanding of how Cadbury has used the CARAMILK brand in different countries.

The CARAMILK brand was (and still is) used in Canada to refer to a milk chocolate filled with flowing caramel. The article cited by the complainant makes this clear, when it states: "Today there are hundreds of online urban myths about the Caramilk Secret to get the soft flowing caramel into those delicious bars of chocolate." In New Zealand, we do not use the CARAMILK brand to sell milk chocolate filled with flowing caramel and use the CAMELLO brand instead.

See the below images which were extracted from the book *Candymaking in Canada: The History and Business of Canada's Confectionery Industry* which can be accessed online. That book confirms that what we call CAMELLO chocolates in New Zealand were first launched as CARAMILK chocolates in Canada and the UK in 1968.

By contrast, the CARAMILK chocolate beloved by New Zealand consumers is a caramelised white chocolate. That chocolate was invented in New Zealand in 1994. Attached with our email submission is a trade brochure from 1994 advertising the new product to retailers.

We are confident that New Zealanders will recognise that when we refer to CARAMILK, we are referring to the caramelised white chocolate and not the Canadian product. We note that the advertisement includes a depiction of caramelised white chocolate which is easily distinguishable from milk chocolate.

We therefore submit that we are not in breach of Principle 2, Rule 2(b) and that our advertisement is truthful and not misleading, and defend our advertisement.