

Decision of the ADVERTISING REGULATORY BOARD

Complainants	Charissa Kemp Joanne Fairbrother Jon-Jon Keegan Samantha Smith Rima Geffen Bianca Sarembock Nikola Halsall Ruan Smith Roberta Bach Jolene Nel Cristy North
Advertiser	Fair Cape Dairies (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Fair Cape Dairies – Charissa kemp & others
Outcome	Dismissed
Date	20 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by 11 consumers against social media advertising for fair Cape Dairies.

Description of the advertising

The claims in question are “#happycows” and the use of the word “humane”.

Complaint

In essence, the Complainants submit that dairy farming is by its very nature inhumane. They refer to, *inter alia*, the fact that milk cows are separated from their calves which always causes trauma; and that male calves are used as veal.

Response

The Advertiser submitted a detailed response and an audit from the Dairies Standards Agency.

The Advertiser drew attention to the fact that the number of complaints stems from an orchestrated call for complaints from the Vegan Society of South Africa. It pointed out that the complainants take issue with the existence of dairy farming per se, and that fair Cape is being used as a proxy for the dairy industry in this matter.

It took issue with the quality of the complaints, and pointed out, *inter alia*, that if this complaint is upheld, there will be a case against any use of a vaguely happy looking cow.

It nonetheless submitted arguments as to why it feels it treats its cows humanely, which arguments are more fully canvassed in the Audit report and will be discussed below.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Substantiation – Clause 4.1 of Section II

Misleading claims – Clause 4.2.1 of Section II

Decision

The complaints in this matter essentially boil down to the allegation that, no matter how comparatively humane the Advertiser’s farming practices are, dairy farming is still inhumane and the cows cannot be described as happy.

The Directorate faces a challenge with matters such as this. On the one hand, it understands the complainants’ stance. Dairy farming is an extremely controversial area, and there is always space to argue that any commercial farming of animals is inherently inhumane, no matter how carefully conducted. The Directorate can see that within this context, the claims “#happycows”, “humane” and similar are a source of discomfort for the consumer.

On the other hand, the Directorate must accept that dairy farming is legal; and that the ARB is not the correct body to decide whether or not that is justifiable and whether or not the above argument is correct. The Directorate needs to consider what the reasonable person would understand from the advertising and whether they would feel misled if they knew “the truth”.

In this context, the Directorate has to accept that the end product on sale is cow’s milk. The hypothetical reasonable consumer could not expect that such a product could be sold without some compromise being made around the animals’ freedoms. Just as meat cannot possibly arrive on a shelf without some suffering to an animal (it is killed), the same applies to dairy products (the cow is milked and separated from its calf). The consumer who believes otherwise is naïve, and we will return to this naïve consumer shortly.

In this context, the Directorate asks what the hypothetical reasonable consumer would expect from the advertising. The Directorate is of the opinion that the hypothetical reasonable consumer would expect that, so far as is possible within the context of dairy farming, the cows are humanely treated. In saying this, the Directorate does not make a

finding as to the morality of dairy farming, but a finding with respect to the claim in the context that it exists.

The Advertiser submitted an audit from the Dairy Standards Agency, which appears to be an independent expert in terms of Clause 4.1 of Section II of the Code.

The audit is thorough and measures a number of criteria that relate to cow comfort or, one could say, “happiness”. The Directorate perused this report in detail. Some examples of measures on which the Advertiser scored well include, but are not limited to:

- Is milking comfortable for the lactating animal? Are lactating animals checked regularly for abnormal milk and udder health?
- During the milking procedure, are cows free from pain, injury or discomfort?
- Are all dairy cattle in a good condition. . . ?
- Are external sources that may lead to animal stress limited and managed e.g. excessive noise, other animals and mistreatment by herd handlers, extreme heat conditions?
- Are the dairy animals treated in a humane manner? The use of sticks, goads and prodders are not allowed.
- Are efforts made to develop positive relationships between handlers and animals through gentle handling?
- Is there any evidence of abuse or maltreatment of dairy cattle?
- Are housed calves inspected regularly for signs of injury illness and distress?
- Are provision made for neonatal calf care and adequate provision of colostrum to calves?

While the Advertiser did not receive a completely problem free audit, none of the issues raised were completely non-compliant; and they did not relate to the issues under consideration in this matter.

The Directorate therefore concludes that within the context of dairy farming, the cows are as humanely treated and therefore as “happy” as possible.

The Directorate now returns to the question of the naïve consumer, who imagines cows frolicking with their calves in a daisy field, and happily meeting the jolly farmer to be hand milked. The Directorate acknowledges that a number of consumers may well fall into this category, and be completely oblivious to any controversy around dairy farming.

The question that the Directorate has to ask in that case is whether the use of the hashtag #happycows, the use of the word “Humane” and similar phrases is misleading that consumer; and whether the withdrawal of those phrases would educate them.

The Directorate does have some reservations about the effect of the claims on the naïve consumer. The claims do, to some extent, confirm their misapprehensions about dairy farming and to the extent that this is so, the Directorate shares the complainants’ discomfort with the claims. However, in considering this, the Directorate has to accept that it cannot cater to the ignorant consumer, the uneducated consumer or the wilfully naïve consumer. The law calls on one to consider the “reasonable” consumer. To do otherwise would put too heavy a burden on advertisers.

With this in mind, the Directorate is of the opinion that for the naïve consumer, the takeout of the advertising in question would be substantially the same with or without the use of the words “#happycows”, “humane” and similar.

Given this, within the context of dairy farming, the Directorate finds that the claims “#happycows” and “humane” are substantiated and are not misleading. There is therefore no basis for finding of breach of Clause 4.1 and 4.2.1 of Section II.