

# How to avoid having your great ad campaign frozen by the ASA



By [Kelly Thompson](#)

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The Advertising Standards Authority's final ruling of 2014 showed us once again how easily a carefully crafted and catchy advertisement can be kyboshed if one fails to pay attention to the provisions of the ASA Code and respond carefully to any complaints lodged by one's competitors.

Late last year, frozen food giant McCain Foods took issue with its competitor, Nature's Garden, using the tag line "CHECKED 3X MORE THAN THE INDUSTRY STANDARD" in respect of its frozen vegetable products. McCain argued that, since it is the industry leader, its quality control standards effectively constitute the "industry standard".

The Nature's Garden advertisement was therefore disparaging of McCain products and falsely implied that they were subject to inferior quality control measures. McCain complained that the statement was accordingly misleading and subject to the ASA's rules regarding substantiation.

## Supporting all claims

It is one of the general principles of the ASA Code that all advertisements should be legal, decent, honest and truthful and should not contain claims which mislead the consumer. More specifically, however, the Code contains rules regarding advertisers being able to prove that the facts included in their advertisements are truthful. The Code says that, before advertising is published, advertisers must hold in their possession documentary evidence to support all claims that are capable of objective substantiation.

Nature's Garden accordingly submitted to the ASA a confidential document detailing the quality control process followed by the frozen vegetable industry. The document explained that the industry draws a "quality control sample" from their production line every hour, and what defines the sample process is how many vegetables pass through a line in an hour.

Most other manufacturers run their lines at 7 to 8 tons per hour, whereas Nature's Garden runs their line at 2.3 tons per hour. This means that Nature's Garden does a quality control check for every 2.3 tons of vegetables, whereas the industry only does a quality check every 7 to 8 tons. Nature's Garden therefore checks its vegetables three times more than the industry standard and it was of the view that its claim to that effect was accurate. Sounds great, right?

Not so, said the ASA. The relevant provisions of the ASA Code state clearly that documentary evidence in support of a claim must emanate from, or be evaluated by, a person/entity who is independent, credible and an expert in the relevant field. The document filed by Nature's Garden was an internal document and therefore did not comply with the requirement

of independence. There was also nothing to indicate that the author was credible and an expert in the field. As such, the claim was held not to have been properly substantiated and the ASA ordered Nature's Garden to withdraw it from all advertising.

## **Stick to the ASA's requirements**

Although it is still possible for Nature's Garden to obtain a report from an independent, credible, expert at this stage, and ask the ASA to reverse its decision, the mistake that it made in its initial response to the complaint may have already cost it dearly if advertisements had to be withdrawn in the meantime.

Unfortunately, it is a mistake that is all too frequently made by advertisers, despite the ASA having repeatedly placed emphasis on the requirement of independent expert evidence in many previous rulings. Advertisers would do well to take heed of the ASA's strict requirements regarding substantiation of claims and to seek advice before responding to a competitor complaint. Failing to do so could see your great ad left out in the cold.

## **ABOUT KELLY THOMPSON**

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