



## Case Report

1	Case Number	0068/17
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	22/02/2017
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

### DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a 30 second television commercial for Nestlé Health Science's OPTIFAST program. It features Sabine, Rob and Jaime (Nestlé's OPTIFAST ambassadors). Sabine, Rob and Jaime introduce themselves and indicate that they are each starting the OPTIFAST program with the aim of achieving a healthy weight. They invite viewers to follow their journey to a healthier future on the website at [www.optifast.com.au](http://www.optifast.com.au).

### THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

*Information portrayed was incorrect. They claim the product put you into ketosis (which may be correct) however they claimed.this. causes fat burning. Ketosis in fact is the process of burning protein and can significantly reduce muscle mass including the mass of.the heart. If what the product claims is true this is a very dangerous product and could cause heart issues.*

### THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complainant/s regarding this advertisement include the following:

*In making our submission, Nestlé has considered the Advertisement under the AANA Food & Beverage Advertising & Marketing Communications Code (Food Code), specifically section*

2.1, and the AANA Advertiser Code of Ethics (Code of Ethics).

### 1. The Complaint

*The complainant asserts that:*

*“Information portrayed [in the Advertisement] was incorrect. They claim the product put you into ketosis (which may be correct) however they claimed this causes fat burning. Ketosis in fact is the process of burning protein and can significantly reduce muscle mass including the mass of the heart. If what the product claims is true this is a very dangerous product and could cause heart issues.”*

*The product in the Advertisement is the Optifast® VLCD™ Program (the Optifast® Program or the Program), further details of the Program are set out below.*

*Nestlé has considered the Complaint and submits that the Advertisement does not breach the Food Code or the Code of Ethics for the reasons detailed in this letter.*

### 2. Ketosis

*At the outset, we respectfully disagree with the complainant’s understanding of the process of ketosis and its consequences. Ketosis is a metabolic process by which the body burns fat stored on the body as an energy reserve. Ketosis is induced when a person’s dietary intake of carbohydrates is restricted or very low. Once the body’s carbohydrate energy stores are depleted, the body proceeds to oxidise fat and uses ketones from the breakdown of fatty acids in the liver as an energy source.*

*The Optifast® Program promoted in the Advertisement is based on a very low energy diet specifically formulated for the dietary management of obesity. In an obese person who needs to lose excess fat for their health, energy and carbohydrate restriction which results in burning excess body fat via ketosis is a clinically proven and safe way to lose weight.*

*The nutritional composition of the Optifast® product range has been developed to minimise loss of muscle mass as detailed below. In addition, we recommend that consumers who use the Optifast® Program do so under the supervision of a healthcare professional.*

### 3. An overview of the Optifast® Program

*3.1 The Optifast® Program is based on a very low energy diet specifically formulated for the dietary management of obesity. The Program has been widely researched and proven safe and effective in numerous clinical studies.*

*3.2 The Program is a step-by-step program and products are to be consumed under the supervision of a healthcare professional and in conjunction with an exercise plan and structured meal plan.*

*3.3 The initial level of the Program is the Intensive Level, which is referred to in the Advertisement. The Intensive Level of the Optifast® Program involves replacing all 3 meals per day with Optifast® products for a period of up to 12 weeks. Certain non-starchy vegetables and a small amount of oil are also recommended to be consumed during the Intensive Level of the Program.*

*3.4 The Program is designed to induce ketosis during the initial Intensive Level. Ketosis is induced in the consumer as a result of the restricted carbohydrates in Optifast® products.*

*3.5 Ketosis is a metabolic process that occurs in the body whereby the body shifts from using primarily carbohydrates consumed in the diet to fats stored on the body as an energy source. This usually results in weight loss. As the Intensive Level of the Optifast® Program causes only mild ketosis, it is a safe approach to weight loss.*

*3.6 Burning excess body fat via ketosis is a clinically proven and safe way to lose weight for an obese person who needs to lose excess fat for his or her health.*

*3.7 There is no evidence in the published literature that short term ketosis experienced when using a very low energy diet is dangerous or results in significant muscle wasting.*

*3.8 The Optifast® product range has been developed to minimise loss of muscle mass by providing 60g of protein per day during the Intensive phase (based on 3 shakes) which is greater than the estimated average requirement (EAR) for adult men and women.*

*3.9 The Optifast® Program is nutritionally complete, meaning that consumers receive all essential micro and macro nutrients to stay healthy and adequately nourished throughout the Program. Consumers receive adequate nutrition during the Intensive Level from a combination of both a nutritionally complete intake and excess body fat reserves.*

*3.10 We recommend that consumers use Optifast® products under the supervision of their healthcare professional. This recommendation is communicated to consumers on the Optifast® website ([www.optifast.com.au](http://www.optifast.com.au)) and on Optifast® product packaging. It is also conveyed in voice and text in the Advertisement.*

*3.11 The Intensive Level of the Optifast® Program is indicated for adults who are obese, that is with a body mass index (BMI) greater than 30, or those with a BMI greater than 27 who also have risk factors, poor mobility, or a need for weight reduction prior to surgery. The program is not indicated for certain individuals, including those under the age of 18 or over the age of 65 or women who are pregnant or breastfeeding.*

*3.12 The purpose of the Optifast® Program is to achieve weight loss that is sustainable for obese consumers in the long term. As a consumer moves through different levels of the Program, Optifast® products are slowly reduced, then eliminated, and replaced by a balanced diet from ordinary foods.*

*3.13 More information on the Optifast® Program can be found on our website at [www.optifast.com.au](http://www.optifast.com.au).*

#### *4. Overview of the Advertisement*

*4.1 The Advertisement is a 30 second television commercial.*

*4.2 The intention of the Advertisement and our Optifast® Program is to encourage weight loss for obese people in a legally compliant, safe, clinically proven, healthcare professional-supervised manner.*

4.3 The Advertisement features Sabine, Rob and Jaime, our Optifast® ambassadors, who are each starting the Optifast® Program with the aim of achieving a healthy weight.

4.4 Each of the featured consumers are adults, within the indication for the Program and portrayed responsibly.

4.5 At the opening of the Advertisement, Sabine states that her doctor told her she should lose weight for her health. This communicates several important messages to the consumer, which are reinforced throughout the Advertisement. These include:

- (a) the type of consumer for whom the Optifast® Program is suitable;
- (b) that obesity can be a health risk;
- (c) that consumers should consult a healthcare professional if they are obese;
- (d) that healthcare professional supervision is advised for participants on the Program; and
- (e) that the key motivation for losing weight is health related, as opposed to image or purely cosmetic reasons (this is reinforced at the end of the Advertisement where consumers are invited to “follow our journey to a healthier future”).

4.6 The Advertisement contains a statement that the Program is to be followed in conjunction with an exercise plan and structured meal plan.

4.7 Ketosis, the metabolic condition that promotes weight loss, is accurately and succinctly described in the Advertisement. Rob states that the Program “induces ketosis, meaning your body burns fat” and this is supported by text relating to the Intensive Level of the Program. On the Intensive Level, the body burns excess fat/energy stores held by an obese/overweight person and the Program provides the consumer with all their other nutritional requirements. Ketosis is induced in the Intensive Level only.

4.8 Healthcare professional supervision is recommended in the Advertisement. The Advertisement opens with a voice reference to consulting a GP. This is supported by text in the Advertisement (“Must be used under medical supervision” in the opening shot and “Always speak to your healthcare professional to find out how the Optifast® VLCD™ Program can assist you” appears twice).

4.9 The Advertisement also refers consumers to the Program website at [www.optifast.com.au](http://www.optifast.com.au), which contains further information about the Program, ketosis, our Optifast® product range and on-line support for consumers (including support by healthcare professionals).

4.10 The Advertisement is not directed at, and does not have a strong or evident appeal to people under the age of 18. The consumers portrayed are clearly over the age of 18 years and their stated motivating factor for weight loss is for health reasons, not for any image or cosmetic reason that might be more appealing to a person under the age of 18 years.

4.11 The Advertisement was first aired in Australia in September 2016 and we have not received any other complaint relating to this Advertisement.

## 5 Alleged breach under section 2.1 of the Food Code

5.1 Section 2.1 of the Food Code states;

“Advertising or Marketing Communications for Food or Beverage Products shall be truthful

*and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”*

*5.2 We believe the concerns raised by the complainant can be summarised as follows. The complainant alleges that:*

- (a) it is incorrect to claim that ketosis causes fat burning;*
- (b) ketosis is the process of burning protein;*
- (c) burning protein in ketosis can significantly reduce muscle mass including the mass of the heart; and*
- (d) the Optifast® products are dangerous and could cause heart issues.*

*5.3 The allegations in paragraphs (a) and (b) are rejected for the reasons set out in this letter. These allegations are based on a misunderstanding of the metabolic process of ketosis.*

*5.4 We recognise that there are wildly divergent sources of health information available to consumers, not all of them accurate. This can result in confusion for some consumers. We are committed to communicating openly and transparently with consumers about our products. Nestlé Health Science is a member of the Australian Weight Management Council and is bound by the Weight Management Code of Practice. Among other things, this code aims to provide consumers with safe and effective weight management products and services and ensure that consumers receive products and services that are nutritionally sound. Our Optifast® Program has been assessed by independent experts to ensure compliance with the Weight Management Code of Practice. Nestlé Health Science has an ongoing commitment to both conducting our own research in the area of nutrition science and to monitoring emerging science worldwide.*

*5.5 The Advertisement contains a simple, truthful and honest statement about ketosis. Ketosis is truthfully and accurately described as the body burning fat, a process which is triggered by following the Intensive Level of the Program. The Advertisement directs consumers to the Program website, which contains further detailed and accurate information about the Program, ketosis and our Optifast® product range.*

*5.6 The allegation summarised in paragraph 5.2(c) is also rejected. With a proper understanding of ketosis and the Optifast® products, this allegation cannot be sustained. The nutritional composition of the Optifast® product range has been developed to minimise loss of muscle mass. A key advantage of the Optifast® Program is that it is nutritionally complete, meaning that consumers receive all essential amino acids and micro and macro nutrients in our Optifast® products to stay healthy and adequately nourished throughout the Program.*

*5.7 Given the above, we also reject the allegation in paragraph 5.2(d). Obesity is a well-known major risk factor in cardiovascular disease. The Optifast® Program encourages weight loss for obese people in a legally compliant, safe, clinically proven manner, whilst under the supervision of healthcare professionals.*

*5.8 We submit that the claims in the Advertisement are truthful and honest and do not contravene any prevailing community standards. We also submit that the Optifast® Program is promoted in the Advertisement in a responsible and appropriate manner, having regard to*

*the target audience.*

#### *6. Other considerations under the Code of Ethics*

*We have reviewed the Advertisement for compliance with the Code of Ethics and are confident the Advertisement complies in all respects.*

*Nestlé takes its legal, ethical and social responsibilities in developing and marketing its products very seriously. For the above reasons, we respectfully disagree that the Advertisement is in contravention of Section 2.1 of the Food Code and request the Complaint be dismissed.*

### **THE DETERMINATION**

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board noted the complainants’ concerns that the advertisement refers to a state of ‘ketosis’ which is dangerous and unsafe.

The Board viewed the advertisement and noted the advertiser’s response.

The Board noted that the product advertised is food and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply. In particular the Board considered section 2.1 of the Food Code which provides:

*'Advertising or marketing communications for food ...shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene prevailing community standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.'*

The Board noted that the advertisement depicts three people who are starting the 'Optifast' weight loss program. One of the participants refers to the product inducing Ketosis meaning your body burns fat.

The Board noted the advertiser’s response that Ketosis is “a metabolic process that occurs in the body whereby the body shifts from using primarily carbohydrates consumed in the diet to fats stored on the body as an energy source. This usually results in weight loss. As the Intensive Level of the Optifast® Program causes only mild ketosis, it is a safe approach to weight loss.”

The Board noted that the product is a weight loss product and that these types of products are regulated by the Therapeutic Goods Administration regarding safety and accuracy of claims <https://www.tga.gov.au>. The Board considered that these types of meal replacement solutions are allowed to be advertised and in the Board’s view the advertisement does not suggest that consuming this product will be the best approach for every person.

The Board noted there is genuine community concern regarding wellbeing and weight loss and considered that the advertisement was not a replacement for medical advice and was not condoning a product for all situations.

The Board noted that they are unable to comment specifically on the process of Ketosis, but on the representation of the product in the advertisement. The Board considered that overall the advertisement was not suggesting that people looking to lose weight should do so without medical advice and considered that the advertisement is not misleading and does not contravene prevailing community standards.

The Board considered that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaints.