



Case Report

1	Case Number	0083/11
2	Advertiser	Unilever Australasia
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	23/03/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

2.8 - Food and Beverage Code 2.5 inaccurate taste-size-content-nutrition-health claim

DESCRIPTION OF THE ADVERTISEMENT

A lady and her husband and daughter talk about how she was diagnosed with high cholesterol but that after using Flora pro-activ her cholesterol levels dropped.

THE COMPLAINT

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

*The main testimonial in the advertisement shows a counter that drops from 6.9 to 5.4. This is a measure of the lady's cholesterol level in moL/L. The advertisement claims that combined with a healthy diet and lifestyle Pro Active can lower your Cholesterol by *UP TO* 15% when combined with a healthy diet and lifestyle.*

6.9mmol/L lowered by 15% is only 5.9mmol/L. To reach the amount shown on screen Pro Active would need to lower your cholesterol by 22%. The numbers displayed don't match the claims.

THE ADVERTISER'S RESPONSE

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

The complaint

The complainant claims that the counter showing a reduction in cholesterol from 6.9 mmol/L to 5.4 mmol/L is inconsistent with the claim that Flora pro-activ can lower cholesterol absorption by up to 15% in 3 weeks when combined with a healthy diet and lifestyle.

The issue appears to fall under Item 2.5 of the AANA Food & Beverage Advertising & Marketing Communications Code. For the reasons outlined below, we do not consider that the advertisement is in breach of Item 2.5 of the AANA Food & Beverage Code or any other provision of any other AANA Code.

The product and the advertising message

The product in the advertisement is Flora pro-activ, a margarine spread with added plant sterols. The product is designed to have the effect of blocking cholesterol absorption and re-absorption in the body to lower cholesterol levels. Both the product itself and the plant sterol active ingredients in the product have been the subject of extensive clinical and scientific testing to prove its efficacy in reducing cholesterol levels.

Flora pro-activ is the top selling plant sterol margarine in Australia and is principally purchased by consumers looking to lower or control their cholesterol levels.

The key advertising message communicated by the advertisement is that the product is effective in reducing cholesterol, the amount by which is demonstrated both by a testimonial and a general statement reflecting the results of clinical and scientific trials.

There is no dispute based on scientific evidence and based on the complaint received that the product is in fact effective in lowering cholesterol.

The Testimonial

The main character in the advertisement providing the testimonial is Nina Ann-McCurley, a real consumer of Flora pro-activ and not an actress.

In summary from the contents of the enclosed CAD substantiation letter:

- Nina did in fact have a cholesterol problem and in two tests conducted in January 2010, her cholesterol levels were 7.0 mmol/L and 6.7 mmol/L, giving an average of 6.9 mmol/L.*
- After completing the initial cholesterol tests, Nina commenced the “Flora pro-activ 3 week challenge”, where participants consumed a recommended amount of Flora pro-activ on a daily basis and followed a lifestyle plan.*
- In two cholesterol tests conducted in mid February 2010 at the end of the Flora pro-activ 3 week Challenge, Nina’s cholesterol level was 5.4 mmol/L and 5.3 mmol/L, giving an average of 5.4 mmol/L.*
- Nina then continued the consumption of Flora pro-activ and continued to follow the lifestyle plan.*
- In two more cholesterol tests conducted in late January 2011, almost a year after the end of the Flora pro-activ 3 week Challenge, Nina’s cholesterol levels were 5.4 mmol/L and 5.6 mmol/L giving an average of 5.5 mmol/L, therefore demonstrating that her cholesterol levels remained at the reduced level.*

All statements made by Nina and all numbers used in the advertisement relating to Nina’s cholesterol levels were based on the above actual figures obtained from cholesterol tests. It is not possible to provide consumers with these results without providing the actual results of cholesterol tests.

Our representation that Nina’s result was a reduction in cholesterol levels from 6.9 mmol/L to 5.4 mmol/L is limited to a representation of Nina’s result only. We do not infer in any way that a result similar to that achieved by Nina is to be reasonably expected by a consumer.

The 15% claim

The claim that Flora pro-activ is scientifically proven to reduce cholesterol absorption by up to 15% in three weeks when moving to a healthy diet and lifestyle is the result of a substantial body of scientific studies conducted both on the product itself and on plant sterols added to products in amounts equal to the amount in Flora pro-activ.

Based on clinical and scientific substantiation, the average expected effect of eating 2g plant sterols daily (25g of the product) on the cholesterol levels is 10% from the product itself and 5% from the move to a healthy diet and lifestyle, the effects of which are additive.

With any sample, there are necessarily variances in the results. In fact, the words “Individual results may vary” is shown as a super on screen when Nina’s cholesterol numbers are shown clearly indicates this.

The consumer that would have a particular interest in the message in the advertisement is someone who is aware or conscious of an elevated level of cholesterol and a desire to lower their cholesterol levels. We represent to these consumers that the expected reduction in cholesterol levels over the first three weeks of consuming Flora pro-activ along with a move to a healthy diet and lifestyle can be up to 15%. This is an average combined reduction supported by scientific evidence.

The complaint appears to suggest that the claim of “up to 15%” somehow implies a maximum cholesterol level reduction and that Nina’s result is false as it exceeds 15%.

We do not see any reasonable basis for this reasoning to be the basis of a complaint.

As mentioned above, the consumer who would have a particular interest in the message in the advertisement is someone who is aware or conscious of an elevated level of cholesterol and has a desire to reduce their cholesterol level. For such consumers, a promise of any more than a reduction of “up to 15%” would be considered misleading based on the evidence that we currently have.

Remainder of the advertisement

As shown in the attached substantiation letter sent to CAD before the release of the advertisement, the remaining claims in the advertisement are all fully substantiated.

Approvals

Unilever is a responsible advertiser and has numerous internal review processes, including review by Unilever’s Legal and Corporate Relations Departments to critique all advertisements to ensure compliance with legal and ethical considerations.

Conclusion

We submit that we are not in breach of the sections 2.2 of the Food Code as the TVC is advertising a promotion in connection with the Product.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the numbers quoted in the advertisement relating to the lowering of cholesterol do not add up.

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

The Board noted that the issue raised did not relate to the efficacy of the product and whether or not the product did actually contribute to cholesterol reduction. The Board made no examination of this issue and assumed that there is substantiation for this issue.

The Board considered only the statistical information provided in the advertisement.

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 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide: The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, advertising and/or marketing communications may make reference to one or more of the nutritional values and/or health benefits of a product but such references must be accurate

and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. (complaints about matters such as ‘taste and decency’, language, sex and violence).

The Board then considered Section 2.1 of the Code and noted that Section 2.1 requires it to consider whether an advertisement is truthful and honest or is misleading, or is designed to be, misleading or deceptive.

The Board noted that the advertisement depicts a woman talking about how using Flora pro-activ has helped her to lower her cholesterol levels from 6.9 to 5.4. The Board noted that this depiction is accompanied by the following text on screen, “Combined with a healthy diet and lifestyle. Individual results may vary.”

The Board noted the complainant’s concerns that the numbers do not match up because at the end of the advertisement it says that Flora pro-activ can help reduce cholesterol by up to 15% in three weeks. The Board noted that the woman in the advertisement is shown to have lowered her cholesterol by 22%.

The Board noted that no time frame is given for the woman’s cholesterol reduction and that the reference to 15% is specifically referenced to being achievable within 3 weeks.

The Board considered that the advertisement depicts the woman’s cholesterol reduction as being a depiction of that particular woman’s cholesterol reduction. The Board noted that this reduction is higher than the reduction of 15% referred to in the advertisement.

The Board considered that the overarching message of the advertisement, which comes across clearly through the voiceover and text, is that usual results are 15% - 10% from the product and 5% from improved diet and activity.

The Board considered that a reasonable consumer would consider that the advertisement is suggesting a 15% cholesterol reduction is achievable and that the woman’s 22% reduction was relevant to her only and would not necessarily apply to other consumers.

The Board considered that the overall impact of the advertisement indicates the likely results as close to 15% and is not misleadingly suggesting a 22% cholesterol reduction.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Code.

Based on the above, the Board determined that the advertisement presented information regarding the effects of Flora pro-activ on cholesterol levels in a factual and informative manner and did not breach Section 2.1 of the Food and Beverages Code. On this basis the Board dismissed the complaint.

