



Case Report

1	Case Number	0105/12
2	Advertiser	Swisse Vitamins Pty Ltd
3	Product	Health Products
4	Type of Advertisement / media	TV
5	Date of Determination	28/03/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This advertisement is for Swisse Children's Ultivite and features an eight year old girl stating she doesn't always eat all of her vegetables, hence her mum buys her Swisse Children's Ultivite - to help keep her healthy and maintain healthy energy levels. She then goes on to display what she can do when she is feeling healthy ie. bouncing around energetically, mimicking martial arts moves.

THE COMPLAINT

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

This is an inaccurate and dangerous message aimed at children and has the very real potential to damage children's diets and information about nutrition.

I am particularly concerned that it is aimed at children during a children's show and particularly during dinner time. While we were watching it my children aged 7 and 4 immediately asked for it so they could stop eating vegetables and wanted extra powers.

Children do not have the additional information about nutrition that adults have and believe information seen on TV immediately. There was no disclaimer that a healthy diet including vegetables is the best alternative for children.

This is a show aimed at children and in a time where children are eating unhealthy food and making bad food choices we should not discourage them from eating healthy food. This ad tells kids it is okay not to eat good food because a pill will fix it. It also sends a message that parents say it is okay not to eat good food as he says his mother gives him the vitamins.

Vitamins are no substitute for eating healthy nutritious food. This ad in this time slot pretty much tells kids not to bother eating the food they should.

THE ADVERTISER'S RESPONSE

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

The broadcasting of this advertisement was granted pre-approval by ASMI based on the advertisement's compliance with applicable advertising requirements contained in the Therapeutic Goods Act (the Act) and the Therapeutic Goods Advertising Code 2007 (The Code). We attach a copy of the approval documentation for your reference.

The requirements and restrictions imposed on advertisements of therapeutic goods in Australia are far more onerous than the requirements relating to all advertisements contained in the Advertiser Code of Ethics and Code for Advertising and Marketing Communications to Children. Therefore, the fact that the advertisement received approval by the ASMI should satisfy the Advertising Services Board that the advertisement is not in breach of any applicable codes.

Despite this, for the purposes of addressing the complainant's concerns, we respond to the complaint in two parts:

1. First, we respond to each aspect of the complainant's concern in reference to the relevant sections of the Act and The Code;

2. Second, we address Section 2 of the Advertiser Code of Ethics and Code for Advertising and Marketing Communications to Children, administered by the ASB

We have separated the complainant's reasons for concern into five distinct issues, so that we can address each aspect of the complaint:

1. This is an inaccurate and dangerous message aimed at children, and has the very real potential to damage children's diets and information about nutrition.

2. I am particularly concerned that it is aimed at children during a children's show and particularly during dinner time.

3. While we were watching it my children aged 7 and 4, immediately asked for it so they could stop eating vegetables and wanted extra powers.

4. Children do not have the additional information about nutrition that adults have, and believe information seen on TV immediately.

5. There was no disclaimer that a healthy diet including vegetables is the best alternative for children.

Compliance with The Code

We address each of the complainant's reasons for the complaint in reference to the relevant sections of the Therapeutic Goods Act (the Act) and The Code that impose requirements on advertisements for therapeutic goods as follows:

1. This is an inaccurate and dangerous message aimed at children, and has the very real potential to damage children's diets and information about nutrition.

Section 4(2)(j) of The Code states: an advertisement for therapeutic goods must not be directed to minors.

We confirm the message in this advertisement is not aimed at children, it is aimed at adults (parents). Maintaining a child's health is a priority for parents, it is not a concept that is a

priority for an eight year old child. This is clearly conveyed by the wording "my mum chooses Swisse Children's Ultivite for me", "That's why my mum chooses Swisse". Section 7(2)(a) of The Code states: An advertisement for vitamins shall not imply that vitamin supplements are a substitute for good nutrition or a balanced diet or are in any way superior to or more beneficial than dietary nutrients or that normal health may be affected by not taking vitamin supplements.

Swisse Children's Ultivite is clearly positioned as an addition to a healthy diet, "I don't always eat all of my veggies", ie. the child consumes a healthy diet including vegetables. A healthy diet is encouraged while, again, Swisse Children's Ultivite is positioned correctly in addition to this, "to help keep me healthy...". The information is given in a responsible manner and refers the viewer to "use only as directed", which reflects the mandatory warning that appears on the label of Swisse Children's Ultivite, "Vitamin supplements should not replace a balanced diet" (Label attached). It is a condition for listed medicines that they are only appropriate for healthy individuals, therefore as Swisse Children's Ultivite is recommended for healthy children there is no implication that normal healthy children may be affected by not taking the product.

Please find attached documentation to support the indications of general health and energy.

2. I am particularly concerned that it is aimed at children during a children's show and particularly during dinner time.

Section 4(2)(j) of The Code states: an advertisement for therapeutic goods must not be directed to minors.

We confirm the message in this advertisement is not aimed at children, it is aimed at adults (parents). Maintaining a child's health is a priority for parents, it is not a concept that is a priority for an eight year old child. This is clearly conveyed by the wording "my mum chooses Swisse Children's Ultivite for me", "That's why my mum chooses Swisse". Since the commencement of Young Talent Time on January 22nd 2012, this advertisement has appeared twice during the Sunday night 6.30-7.30pm timeslot. Please refer to the documentation attached that verifies that more than 70% of viewers are over the age of 18 years.

Swisse does not expect children to be watching TV while eating dinner, additionally each child's 'dinner time' varies greatly, we believe this part of the complaint to be unwarranted. The advertisement was also on during Channel 7's The Morning Show (once in Melbourne and twice in Adelaide). As shown in a graph by Seven Media Group (attached), the Morning Show attracts a broad range of demographics though over 60% of the audience are Women 18+ and a similar percentage are Grocery Buyers. The program deliberately appeals to stay at home Mum's as post 9am is considered to be 'their time'; the television is left on whilst they carry out household duties (ironing, cleaning) in front of the television.

3. While we were watching it my children aged 7 and 4, immediately asked for it so they could stop eating vegetables and wanted extra powers.

Section 7(2)(a) of The Code states: An advertisement for vitamins shall not imply that vitamin supplements are a substitute for good nutrition or a balanced diet or are in any way superior to or more beneficial than dietary nutrients or that normal health may be affected by not taking vitamin supplements.

Swisse Children's Ultivite is clearly positioned as an addition to a healthy diet, "I don't always eat all of my veggies", i.e. the child consumes a healthy diet including vegetables. A healthy diet is encouraged while, again, Swisse Children's Ultivite is positioned correctly in addition to this, "to help keep me healthy...". The information is given in a responsible manner and refers the viewer to "use only as directed", which reflects the mandatory warning that appears on the label of Swisse Children's Ultivite, "Vitamin supplements should not replace a balanced diet" (Label attached). It is a condition for listed medicines

that they are only appropriate for healthy individuals, therefore as Swisse Children's Ultivite is recommended for healthy children there is no implication that normal healthy children may be affected by not taking the product.

We reiterate that the child in the advertisement states that she does eat vegetables. She goes on to jump around like a normal healthy, excitable and energetic eight year old. There is no reference to, or demonstration of 'special powers'.

4. *Children do not have the additional information about nutrition that adults have, and believe information seen on TV immediately.*

The information in this advertisement is presented in an accurate and balanced way to adults. It has been granted approval by ASMI, reflecting compliance with The Code.

5. *There was no disclaimer that a healthy diet including vegetables is the best alternative for children.*

This advertisement displays the necessary and mandatory warnings required by the Code, including the words "Always read the label" and "Use only as directed", as required by sections 6(3)(c) and 6(3)(d) of The Code.

Furthermore, as demonstrated below, Swisse Children's Ultivite is positioned as an addition to a healthy diet.

Section 7(2)(a) of The Code states: An advertisement for vitamins shall not imply vitamin supplements are a substitute for good nutrition or a balanced diet or are in any way superior to or more beneficial than dietary nutrients or that normal health may be affected by not taking vitamin supplements.

Swisse Children's Ultivite is clearly positioned as an addition to a healthy diet, "I don't always eat all of my veggies", ie. the child consumes a healthy diet including vegetables. A healthy diet is encouraged while, again, Swisse Children's Ultivite is positioned correctly in addition to this, "to help keep me healthy...". The information is given in a responsible manner and refers the viewer to "use only as directed", which reflects the mandatory warning that appears on the label of Swisse Children's Ultivite, "Vitamin supplements should not replace a balanced diet" (Label attached). It is a condition for listed medicines that they are only appropriate for healthy individuals, therefore as Swisse Children's Ultivite is recommended for healthy children there is no implication that normal healthy may be affected by not taking the product.

Compliance with Section 2 of the Advertiser Code of Ethics

We address below each requirement contained in section 2 of the Advertiser Code of Ethics.

2.1 *Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.*

We are confident the advertisement is in compliance with this section of the code. No discrimination is depicted.

2.2 *Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.*

We are confident the advertisement is in compliance with this section of the code. There is no 'sexual appeal' depicted in relation to the advertisement of the product.

2.3 *Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.*

We are confident the advertisement is in compliance with this section of the code. No violence is depicted.

2.4 *Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.*

We are confident the advertisement is in compliance with this section of the code. None of these references are included or alluded to in the advertisement.

2.5 Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.

We are confident the advertisement is in compliance with this section of the code. Language is appropriate for adults (parents). Obscene language is not used.

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

We are confident the advertisement is in compliance with the current prevailing community standards.

Section 2 of the Code for Advertising and Marketing Communications to Children

We address below each requirement contained in section 2 of the Code for Advertising and Marketing Communications to Children.

2.1 Prevailing Community Standards Advertising or Marketing Communications to Children must not contravene Prevailing Community Standards.

We are confident the advertisement is in compliance with the current prevailing community standards.

2.2 Factual Presentation Advertising or Marketing Communications to Children:

(a) must not mislead or deceive Children;

(b) must not be ambiguous; and

(c) must fairly represent, in a manner that is clearly understood by Children:

(i) the advertised Product;

(ii) any features which are described or depicted or demonstrated in the Advertising or Marketing Communication;

(iii) the need for any accessory parts;

(iv) that the Advertising or Marketing Communication is in fact a commercial communication rather than program content, editorial comment or other non commercial communication.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). In any case, we confirm that the advertisement is not misleading, is not ambiguous and is presented in a way that is clearly a commercial communication.

2.3 Placement Advertising or Marketing Communications to Children must not be placed in Media where editorial comment or program content, in close proximity to that communication, or directly accessible by Children as a result of the communication, is unsuitable for Children according to prevailing community standards.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults).

Since the commencement of Young Talent Time on January 22nd 2012, this advertisement has appeared twice during the Sunday night 6.30-7.30pm timeslot. Please refer to the documentation attached that verifies that more than 70% of viewers are over the age of 18 years.

Swisse does not expect children to be watching TV while eating dinner, additionally each child's 'dinner time' varies greatly, we believe this part of the complaint to be unwarranted. The advertisement was also on during Channel 7's The Morning Show (once in Melbourne and twice in Adelaide). As shown in a graph by Seven Media Group (attached), the Morning Show attracts a broad range of demographics though over 60% of the audience are Women 18+ and a similar percentage are Grocery Buyers. The program deliberately appeals to stay at home Mum's as post 9am is considered to be 'their time'; the television is left on whilst they carry out household duties (ironing, cleaning) in front of the television.

2.4 Sexualisation

Advertising or Marketing Communications to Children:

- (a) must not include sexual imagery in contravention of Prevailing Community Standards;*
- (b) must not state or imply that Children are sexual beings and that ownership or enjoyment of a Product will enhance their sexuality.*

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Further, there is no sexualisation in this advertisement.

2.5 Safety

Advertising or Marketing Communications to Children:

- (a) must not portray images or events which depict unsafe uses of a Product or unsafe situations which may encourage Children to engage in dangerous activities or create an unrealistic impression in the minds of Children or their parents or carers about safety;*
- (b) must not advertise Products which have been officially declared unsafe or dangerous by an authorised Australian government authority.*

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, the advertisement does not contain any images or events that depict unsafe uses of the product and the product has not been declared unsafe.

2.6 Social Values Advertising or Marketing Communications to Children:

- (a) must not portray images or events in a way that is unduly frightening or distressing to Children;*
- (b) must not demean any person or group on the basis of ethnicity, nationality, race, gender, age, sexual preference, religion or mental or physical disability.*

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). In any case, the advertisement does not contain any images or events that are frightening or distressing nor that demean any person.

2.7 Parental Authority Advertising or Marketing Communications to Children:

- (a) must not undermine the authority, responsibility or judgment of parents or carers;*
- (b) must not contain an appeal to Children to urge their parents or carers to buy a Product for them;*
- (c) must not state or imply that a Product makes Children who own or enjoy it superior to their peers;*

- (d) must not state or imply that persons who buy the Product the subject of the Advertising or Marketing Communication are more generous than those who do not.*

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). It is the choice of the parents/carers to purchase a product to give to their children after judging whether their child's diet requires additional nutritional support. We also point out that the label and packing of this product is consistent with all other products within the Swisse vitamin range, it has not been designed to enhance appeal for children.

2.8 Price

- (a) Prices, if mentioned in Advertising or Marketing Communications to Children, must be accurately presented in a way which can be clearly understood by Children and must not be minimised by words such as "only" or "just".*

- (b) Advertising or Marketing Communications to Children must not imply that the Product being promoted is immediately within the reach of every family budget.*

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, recommended retail price is not referred to in the advertisement.

2.9 Qualifying Statements

Any disclaimers, qualifiers or asterisked or footnoted information used in Advertising or Marketing Communications to Children must be conspicuously displayed and clearly explained to Children.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, the mandatory warnings are footnoted and clearly visible to parents (adults).

2.10 Competitions

An Advertising or Marketing Communication to Children which includes a competition must:

(a) contain a summary of the basic rules for the competition;

(b) clearly include the closing date for entries;

(c) make any statements about the chance of winning clear, fair and accurate.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no reference to a competition is made.

2.11 Popular Personalities Advertising or Marketing Communications to Children must not use popular personalities or celebrities (live or animated) to advertise or market Products or Premiums in a manner that obscures the distinction between commercial promotions and program or editorial content.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no popular personality/celebrity is used in the advertisement.

2.12 Premiums

Advertising or Marketing Communications to Children, which include or refer to or involve an offer of a Premium:

(a) should not create a false or misleading impression in the minds of Children about the nature or content of the Product;

(b) should not create a false or misleading impression in the minds of Children that the product being advertised or marketed is the Premium rather than the Product;

(c) must make the terms of the offer clear as well as any conditions or limitations;

(d) must not use Premiums in a way that promotes irresponsible use or excessive consumption of the Product.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no references of this nature are made.

2.13 Alcohol

Advertising or Marketing Communications to Children must not be for, or relate in any way to, Alcohol Products or draw any association with companies that supply Alcohol Products.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no references of this nature are made.

2.14 Privacy

If an Advertising or Marketing Communication indicates that personal information in relation to a Child will be collected, or if as a result of an Advertising and Marketing Communication, personal information of a Child will or is likely to be collected, then the Advertising or Marketing Communication must include a statement that the Child must obtain parental consent prior to engaging in any activity that will result in the disclosure of such personal information.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no references of this nature are made.

2.15 Food and Beverages

(a) Advertising or Marketing Communications to Children for food or beverages must neither encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits.

(b) Advertising or Marketing Communications to Children must comply with the AANA Food & Beverages Advertising & Marketing Communications Code.

We are confident the advertisement is in compliance with this section of the code as it is not aimed at children, rather at parents (adults). Additionally, no references to the promotion of a food or beverage product are made.

Summary

We trust that this response addresses the issues raised by the Complainant and look forward to the Advertising Standards Board confirming that no further action is required by Swisse.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants’ concerns that the advertisement suggests to children that they don’t need to eat healthily as they can have a pill instead.

The Board reviewed the advertisement and noted the advertiser’s response which included comprehensive information regarding the approval granted by the Therapeutic Goods Administration.

The Board considered whether the advertisement was in breach of Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that the advertisement shows a child saying they don’t always eat all of their vegetables and so their mum buys Swisse Ultivite vitamins pills.

The Board noted the complainants’ concerns that the advertisement suggests that children don’t need to eat healthy food because the vitamin pills are a substitute. The Board considered that the advertisement does not suggest that the children do not eat any vegetables or other healthy foods but rather they don’t always eat all of their vegetables. In the Board’s view most members of the community would agree that the advertisement suggests that the vitamins can be used to supplement a child’s healthy diet and does not suggest that they should be used to replace a healthy diet.

The Board noted the complainant's concerns that the advertisement suggests that the child has extra powers from taking the vitamins. The Board considered that the children are shown dancing or performing martial arts moves and such actions are undertaken by children as part of a typical childhood activity and not activities which would be considered as extra powers obtained through the consumption of the product.

The Board considered that the advertisement did not depict material contrary to prevailing community standards on health and safety and did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.