



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0149-21
2. Advertiser :	Awake Water
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Internet
5. Date of Determination	9-Jun-2021
6. DETERMINATION :	Upheld – Modified or Discontinued

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive
AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims

DESCRIPTION OF ADVERTISEMENT

This website advertisement includes a page with the heading, "What Is Energised (Structured) Water?".

Eleven reported benefits are listed. These are:

- Increased energy levels
- Improved mood and concentration
- Improved digestion
- Weight control
- Enhanced nutrient contractions
- Improved respiration
- Improved joint health
- Improved kidney and liver health
- Enhanced endurance.

THE COMPLAINT

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

"Energised" or "structured" water is a known scam. In this advertising, there are eleven claimed health benefits. As an average consumer, I asked the company for evidence of the claims and received none. I believe this is in contravention of Section



2.3 (health or nutrition claims) of the AANA's Food and Beverages Advertising Code 2020.

THE ADVERTISER'S RESPONSE

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

Advertiser did not provide a response.

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainant's concern that the advertisement is misleading as there is no evidence to show the product actually produces the claimed health benefits.

The Panel viewed the advertisement and noted the advertiser did not respond.

Food Code 2.1 Advertising or Marketing Communication 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.

The Panel noted the Practice Note to this section of the Food Code which states:

"The Panel 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 an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel 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."

The Panel noted that the advertisement made a number of claims in relation to the product. These were that the product had the following health benefits:

- Increased energy levels



- Improved mood and concentration
- Improved digestion
- Weight control
- Enhanced nutrient contractions
- Improved respiration
- Improved joint health
- Improved kidney and liver health
- Enhanced endurance.

The Panel considered that at least some of these benefits, such as improved kidney and liver health, mood and concentration, were generally accepted benefits of drinking water and good hydration.

However, the Panel considered that the positioning of these benefits on the website strongly suggests that the product would be more likely to lead to these health improvements than other kinds of water. The Panel considered that there was no substantiation of these claims on the website, and the advertiser had not provided a response in relation to these claims.

The Panel considered that the suggestion that consuming this product would lead to health benefits in addition to those from drinking regular water is misleading and deceptive to the target audience of the advertised product.

Section 2.1 Conclusion

The Panel determined that the advertisement was misleading and deceptive and did breach Section 2.1 of the Food Code.

Section 2.3 Advertising or Marketing Communication for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.

The Panel noted that the Practice Note for this Section of the Food Code states:

“This provision is intended to be triggered by the Community Panel when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.

In testing whether this provision is properly triggered, the Community Panel will apply its view of what an average consumer within the target market, might reasonably take from a communication.

Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or



professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.”

The Panel noted that the Food Standards Code defines a health claim as “means a claim which states, suggests or implies that a food or a property of food has, or may have, a health effect”.

The Panel considered that an average consumer would understand the advertisement to be stating that consuming the product would have numerous health effects, such as improved joint health, digestion and kidney and liver health.

The Panel noted that no substantiation or references for these claims were available on the website, and the advertiser had not provided a response.

The Panel considered that an average consumer would interpret the advertisement as making several health claims about the product, and that these were not supported by any evidence as was required under the Food Code.

Section 2.3 conclusion

The Panel determined that the advertisement did breach Section 2.3 of the Food Code.

Conclusion

Finding that the advertisement breached Sections 2.1 and 2.3 of the Food Code the Panel upheld the complaint.

THE ADVERTISER’S RESPONSE TO DETERMINATION

We have made the modifications to the alleged benefits. We changed the wording to “we believe”. Meaning we only suggest our subjective belief, rather than objective knowledge.