



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

## Case Report

<b>1. Case Number :</b>	<b>0163-20</b>
<b>2. Advertiser :</b>	<b>Opti-Pharm Pty Ltd</b>
<b>3. Product :</b>	<b>Slimming</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>8-Jul-2020</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Code of Ethics\2.6 Health and Safety  
AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

This television advertisement opens with a black screen and the words “Studies show that being overweight can impair your immune system” followed by a montage of images including:

- A woman stepping on scales;
- a woman sitting cross-legged practising meditation;
- A woman doing a push up with a child on her back;
- A man and a woman practising yoga and laughing;
- A woman drinking an Optislim shake in a kitchen; and
- A woman stepping off scales.

The images are interspersed with images of the Optislim weight loss range and overlaid by a series of visual text messages including the phrases “be healthy”, “be strong” and “be whatever”.

A voiceover says “Studies show that being overweight can impair your immune system so there’s no better time than now to be healthy, be strong, be whatever you want to be” and culminates with the voiceover stating “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better”.

### THE COMPLAINT



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

*This ad incorrectly and abhorrently is preying on people being 'overweight' and linking this to reduced immunity. This is a clear effort to exploit people's fears during the coronavirus pandemic and is disgusting. I have never been more appalled by an advertisement in my life. Eating disorders are significantly on the rise during the pandemic (that is a real scientific fact as opposed to those claimed in the ad) and these products cause eating disorders during normal times let alone during this pandemic.*

*It's exploitative, contains false and intentionally misleading information and abhorrently targets vulnerable people during a global health crisis.*

*Being fat doesn't mean you have a reduced immune system. The ad is taking advantage of corona virus fear*

*They are preying on COVID-19 staging that if you are over weight you immune systems doesn't work and that You are more likely to get sick. This disgusting the way they are preying on current situation and is the facts true...*

*They claim that studies have shown that being Overweight can affect your immune system so you should lose weight now with the use of their diet shake. They don't reference which study and there are no disclaimers that say diet shakes don't work for everyone. The whole premise of the ad is misleading and full of statements not backed up with any data whatsoever!*

*The advert equates health and immunity with weight loss which is misleading and harmful for all who view it, but especially for those with/recovering from eating disorders.*

## **THE ADVERTISER'S RESPONSE**

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

*Opti-Pharm takes its obligations seriously in respect of adherence to the Australian Association of National Advertisers Code of Ethics ("Code") and all other relevant codes of practice administered by Ad Standards, including the Food and Beverages Advertising Code ("Food and Beverages Code"). Opti-Pharm acknowledges the importance of the Code and AANA's self-regulatory system in upholding prevailing community standards and promoting public confidence in advertising and marketing communications. Opti-Pharm welcomes the opportunity afforded to it to open a dialogue in response to the concerns raised by members of the community.*



*The response set out in this letter is offered by way of explanation with regard to the current form of the advertisement in question. Opti-Pharm does not consider that the advertisement contravenes the Code in any way.*

#### *The Advertisement*

*By way of background, the advertisement the subject of this complaint is a television commercial promoting Opti-Pharm's range of weight-loss products known as the "Optislim" product range ("Advertisement"). The Optislim product range is designed to assist weight loss and weight management by providing low calorie diet meal replacements in the form of shakes (i.e. drinks), soups and snack bars.*

*The Advertisement opens with a black screen and the words "Studies show that being overweight can impair your immune system" followed by a montage of images including:*

- A woman stepping on scales;*
- a woman sitting cross-legged practising meditation;*
- A woman doing a push up with a child on her back;*
- A man and a woman practising yoga and laughing;*
- A woman drinking an Optislim shake in a kitchen; and*
- A woman stepping off scales.*

*The images are interspersed with images of the Optislim weight loss range and overlaid by a series of visual text messages including the phrases "be healthy", "be strong" and "be whatever".*

*The advertisement commences with a voiceover that says "Studies show that being overweight can impair your immune system so there's no better time than now to be healthy, be strong, be whatever you want to be" and culminates with the voiceover stating "Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better".*

*While we acknowledge your advice that "the Panel will review the advertisement in its entirety against Section 2 of the Code, the issues raised to date relate to section 2.1 of the Food and Beverage Code and the Advertisement raises no concerns under the Code in respect of:*

- discrimination or vilification (section 2.1);*
- exploitative or degrading material (section 2.2);*
- violence (section 2.3);*
- sex, sexuality and nudity (section 2.4);*
- language (section 2.5);*
- health and Safety (section 2.6); and*
- distinguishable as advertising (section 2.7).*



*Accordingly, this response is focused on issues purportedly arising under section 2.1 of the Food and Beverage Code – “Truthful and honest not misleading or deceptive”.*

### *The Complaints*

*The key issues raised in the two complaints submitted in this matter can be summarised as follows:*

- a) both complaints:*

  - i. relate to the ad’s statements that link being overweight with reduced immunity; and*
  - ii. allege that the ad is taking advantage of people’s fears relating to the current COVID-19 pandemic.*

- b) The first complaint also states that eating disorders are on the rise during the pandemic and that products such as the Optislim range cause eating disorders.*

*The complaints are concerned with the claim that being overweight negatively impacts a person’s immune system and therefore speak to section 2.1 of the Food and Beverage Code which provides that:*

*“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.”*

*We note that, per AANA’s Practice Note for section 2.1 of the Food and Beverage Code the Community Panel will consider:*

- (a) 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; and*
- (b) 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.*

*We address these concerns in turn below.*

*Link between being overweight and reduced Immunity*



*As discussed above, the ad states in both text and voice over that “Studies show that being overweight can impair your immune system”.*

*A multitude of studies over the last decade have demonstrated a link between being overweight and reduced immunity including, inter alia:*

- (a) A 2012 study that showed strong evidence that obesity negatively impacts immune function and host defence and states relevantly in its conclusion “The best solution to improving health of obese individuals is significant weight loss.”<sup>1</sup>*
- (b) A 2016 study that shows obese individuals are at a greater risk for chronic disease and often present with clinical parameters of metabolic syndrome (MetS), insulin resistance and systemic markers of chronic low-grade inflammation. Obesity and MetS parameters have a substantial impact on the immune system. These changes are associated with an overall negative impact on chronic disease progression, immunity from infection and vaccine efficacy.<sup>2</sup>*
- (c) A 2019 study that found that, as a result of the chronic state of meta-inflammation caused by obesity, obese hosts exhibited delayed and blunted antiviral responses to influenza A virus infections and experienced poor recovery from the disease.*

*Further, research has shown that even modest weight loss reverses many of the damaging changes seen in obese people.<sup>3</sup>*

*Accordingly, the statements made by Opti-pharm that studies show that being overweight can impair your immune system are supported by research and are truthful and honest and not designed to mislead or deceive.*

#### *COVID-19*

*Although the ad makes no mention of COVID-19, the complainants appear to have interpreted the inclusion of the phrase “...there’s no better time than now” to refer to the current COVID-19 pandemic.*

*Opti-pharm vigorously rejects any suggestion that it is exploiting the pandemic in order to exploit people’s fears during the global pandemic. The phrase “no better time than now” is an inspirational phrase in common usage, similar to “there’s no time like the present” and encourages people to seize the day and start now, rather than put off things to another day.*

*Further, if the phrase is taken to be a reference to COVID-19, which is denied, new evidence is emerging that suggest that people affected by obesity might be at greater risk from the disease, with the CDC now listing severe obesity as a risk factor that puts people at higher risk for complications from COVID-19.<sup>4</sup>*



*Additionally, data from China, the United Kingdom and New Yew York has revealed that obese and overweight patients are more likely to be admitted to intensive care units and more likely to die as a result of the virus.<sup>5</sup> In particular, Chinese data suggests that obese and overweight patients were five times more prevalent in the number of deaths.<sup>6</sup>*

*Early data suggests that those most vulnerable to infection with COVID-19 have pre-existing illnesses that include diabetes, hypertension, cardiovascular disease and chronic inflammations- conditions that are associated with, or caused by, excess body fat.<sup>7</sup>*

*Further, we note in regards to the timing of the ad that flu season in Australia commences in April and as referred to above, obesity is a risk factor for increased disease severity and mortality in infected individuals. <sup>8</sup>*

#### *Eating Disorders*

*Opti-pharm has been unable to find any evidence that eating disorders are on the rise as a result of COVID-19, or that products such as those in the Optislim range cause eating disorders.*

*At present, the impact of the COVID-19 pandemic on eating disorder sufferers is unknown, although it is acknowledged that negative emotional effects of isolation due to social distancing and quarantine may be accentuated for eating disorder sufferers.<sup>9</sup>*

*Opti-Pharm acknowledges the tragic effects of eating disorders on individuals and the community. The response set out in this paragraph is in no way intended to trivialise eating disorders or disrespect or disparage persons affected by such disorders, but rather, is focussed on the language used in the AANA's Practice Note for the Code and the meaning of the "reasonable person" test used extensively in our legal system.*

*AANA's Practice Note in relation to Section 2 of the Code relevantly provides that, "The Community Panel will consider **reasonable members** of the relevant audience in making its determinations". [emphasis added]*

*Eating disorders are formally recognised amongst health professionals and the community as a form of mental illness<sup>10</sup>. For example, the eating disorder Anorexia nervosa, is defined "by the persistent restriction of energy intake, intense fear of gaining weight and disturbance in self-perceived weight or shape".<sup>11</sup>*

*In the context of an advertisement for weight loss products, "reasonable members" of the relevant audience arguably should not considered to be individuals suffering from the mental illness of an eating disorder (noting also that these individuals constitute a very marginal proportion of the Australian population). Weight-loss products by their very nature are likely to distress persons suffering from an eating disorder, regardless of what is happening in the outside world and irrespective of how sensitively those products are advertised.*



*If such audience members were to be the relevant audience advertisers must have regard to in relation to Code compliance, it would be near impossible for suppliers of weight-loss products to lawfully promote their products through advertising.*

*For similar reasons to those outlined in this letter, Opti-Pharm is not in breach of the Code and the AANA Code for Advertising and Marketing Communications to Children. More importantly, there is no basis to determine the ad is aimed at children. The only image of a child is on the back of its mother who is exercising, with the child laying on her back. That image cannot in any way be interpreted as seeking to sell the products to the child who appears to be a toddler.*

*We trust that the explanations and proposals set out in this letter adequately address all concerns raised in respect of the Advertisement and Code compliance. If Ad Standards requires further information or action, please do not hesitate to contact us.*

#### *References*

- 1. J Milner et al., 'Micronutrients, Immunology and Inflammation: The impact of obesity on the immune response to infection' (2012) Proceedings of the Nutrition Society 71, 298-306.*
- 2. C Anderson et al., 'Impact of Obesity and Metabolic Syndrome on Immunity' (2016) Advance in Nutrition 7(1), 66-75.*
- 3. A Viardot et al., 'The effects of weight loss and gastric banding on the innate and adaptive immune system in type 2 diabetes and pre-diabetes' (2010) Journal of Clinical Endocrinology & Metabolism' (6), 2845-50.*
- 4. United States Centre for Disease Control, <<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>>*
- 5. S Scott, "Overweight people at greater risk from coronavirus, heightened by COVID-19 links to respiratory illness" ABC News 8 May 2020 accessible at <<https://www.abc.net.au/news/2020-05-08/coronavirus-covid-19-obesity-risk-factor-new-research/12213126>>*
- 6. Y Peng at al., 'Zhonghua Xin Xue Guan Bing Za Zhi' [Clinical Characteristics and Outcomes of 112 Cardiovascular Disease Patients Infected by 2019-nCoV] 2020;48(0):E004. doi:10.3760/cma.j.cn112148-20200220-00105*
- 7. P Maffetone and P Laursen, 'The Perfect Storm: Coronavirus (COVID-19) Pandemic Meets Overfat Pandemic' 2020 <<https://www.frontiersin.org/articles/10.3389/fpubh.2020.00135/full>>*
- 8. Health Direct Australia, <<https://www.healthdirect.gov.au/flu-trends-in-australia>>; R Honce and S Schultz-Cherry, "Impact on Obesity on Influenza A Virus Pathogenesis, Immune Response and Evolution" (2019) Frontier Immunology 10, 1071.*
- 9. S Touyz et al., 'Eating Disorders in the time of COVID-19' (2020) Journal of Eating Disorders 8(19) accessible at <<https://jeatdisord.biomedcentral.com/articles/10.1186/s40337-020-00295-3>>.*
- 10. Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*





11. *National Eating Disorders Collaboration, an initiative of the Australian Government Department of Health <<<https://www.nedc.com.au/eating-disorders/eating-disorders-explained/types/anorexia-nervosa/>>>*

#### ***FURTHER RESPONSE RECEIVED***

*Since our previous response, a further three complaints have been received in relation to the Optislim television advertisement (the “Further Complaints”).*

*The key issues raised in the Further Complaints may be summarised as follows. The Further Complaints:*

- (a) question whether the claims made in the Advertisement are true and whether the claims in the Advertisement are backed up with data;*
- (b) allege that the advertisement preys on people’s fear relating to the ongoing COVID-19 pandemic;*
- (c) allege that the advertisement equates health and immunity with weight loss;*
- (d) allege that the advertisement is harmful to those with an eating disorder;*
- (e) allege that the advertisement is aimed at women in isolation; and*
- (f) allege that the ads lack a disclaimer that the diet shakes don’t work for everyone.*

*We consider that our previous response has already addressed many of the issues raised in the Further Complaints and we therefore do not propose to address each of these concerns, however, we provide the following response to be read in conjunction with our previous response.*

#### ***The Facts and Data***

*The Advertisement states that “Studies show that being overweight can impair your immune system”.*

*In our previous response, we addressed the impact being overweight or obese has on a person’s immune system and provided citations for a number of studies that demonstrated the link between obesity and immune system functionality. Accordingly, Opti-Pharm’s claim that “studies show that being overweight can impair your immune system” is truthful and honest and not designed to mislead or deceive.*

*Unfortunately, the 30 second television ad format is not conducive to the inclusion of citations or a full explanation of the scientific research behind statements such as the one made in this advertisement. Even if footnotes were to flash up during the advertisement they would be all but unreadable save to those with the largest of televisions or the ability to pause live television.*





*Information to support Opti-Pharm's claims is readily available online and interested consumers are able to access the abstracts of studies including those cited in our previous response via a simple google search as the Centre for Disease Control is known throughout the world and its recent publication is widely published and available.*

*If health and lifestyle products advertisements such as Optislim were required to meet academic standards in relation to citing the information contained within their advertisements, it would no longer be feasible to advertise such products, particularly in a 30 second television spot. The same would hold true for a large range of other products advertised on television.*

#### *COVID-19*

*As per our previous response, Opti-Pharm continues to reject any suggestion that that it is exploiting people's fears during a global pandemic.*

*Further to our previous response, we note that the advertisement is similar to previous Optislim television advertisements released in previous years prior to the global pandemic. In particular, some of the images, text and voiceover lines used in this advertisement have appeared in previous Optislim advertisements.*

*However, if the advertisement is taken to be referring to COVID-19, which Opti-Pharm continues to deny, we note that since the provision of our previous response, the current Prime Minister of the United Kingdom, Boris Johnson, has reportedly attributed his COVID-19 related stay in intensive care due to his being overweight. As a result of this, the UK government is examining the impact of obesity on COVID-19 and is now looking to lead a public health drive to combat growing obesity rates in the UK. {<https://www.theguardian.com/politics/2020/may/15/labour-welcomes-pms-conversion-on-obesity-after-coronavirus-scare>}*

*The advertisement is aimed at women in isolation*

*Opti-Pharm rejects the suggestion that the Optislim advertisement is specifically aimed at women in isolation. The advertisement is instead aimed at people, particularly women, who are looking to make a positive change to their health and lifestyle through loss of excess weight.*

*The montage of images displayed in the advertisement includes a woman laughing with her male partner, and a woman exercising with her child. The Ad is designed to portray a range of different women in different circumstances and does not specifically refer to women in isolation or suggest in any way that it is focussed on women in such circumstances.*



*There is currently no information available as to how many women (or men) in Australia are presently in isolation due to COVID-19, however according to the Australian Bureau of Statistics, in 2017- 2018, nearly 75% of Australian men and nearly 60% of Australian women were overweight or obese, with the proportion of Australians who are overweight steadily increasing since 1995. {Australian Bureau of Statistics National Health Survey: First Results, 2017-18 4364.0.55.001 accessible at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.001~201718~Main%20Features~Overweight%20and%20obesity~90>}*

*Accordingly, there a large number of women in Australia who may benefit from Optislim's products, regardless of their personal living situation or COVID-19.*

*Further, as per our previous response in relation to sufferers of eating disorders, the Community Panel will consider the advertisement by reference to reasonable members of the relevant audience. The complaint appears to conflate women in isolation with those suffering or recovering from an eating disorder. Accordingly, women who are particularly vulnerable either due to isolation or an eating disorder ought not be considered "reasonable members" of the relevant audience for the purposes of making a determination in relation to the Optislim advertisement.*

#### *Disclaimer as to Efficacy of the Products*

*Opti-Pharm acknowledges that not all of its products are suitable for every person. By way of example, the Optislim range contains a variety of products some of which contain gluten or lactose and therefore would not be suitable for people with allergies. Opti-Pharm believes that individual adults are capable of determining whether products advertised to them suit their individual needs.*

*As the voiceover in the advertisement states:*

*"...the Optislim weight loss range **can help** you take back control of your body, lose weight, improve your immune system and be your version of better." (Emphasis added)*

*Opti-Pharm is not claiming that its diet shakes will result in weight loss for all individuals, or that its products are the only way to lose weight and be healthy. The advertisement merely states that the Optislim range can play a role in helping people achieve their individual health goals, including weight loss.*

*Further, research has shown that meal replacement shakes and nutrition bars similar to those comprising the Optislim range, can be an effective weight loss tool for overweight and obese people. {J Craig, 'Meal Replacement Shakes and Nutrition Bars: Do They Help Individuals With Diabetes Lose Weight?' (2013) Diabetes Spectrum 26(3): 179-182.}*

*Accordingly, the claim made in the advertisement is truthful, honest and not intended to mislead or deceive.*



*Advertisers generally are not required under either under the Code or any other law to include a disclaimer as to the efficacy of the advertised product and it undermines the purpose of advertising if each advertiser is required to highlight the limitations of its own products. This is particularly so in circumstances where the claims made in the advertisement are not overreaching, and are true and not dishonest or misleading.*

*Opti-Pharm has now provided a response in relation to all of the issues raised in the complaints and provided supporting evidence where appropriate. We trust that this allays any concerns Ad Standards may have in relation to the Optislim advertisement.*

### **ADDITIONAL RESPONSE**

*The Optislim weight loss range boosts consumer's immune system in two ways:*

- 1. through weight-loss, and the benefits of losing weight were detailed in our previous correspondence dated 11 May 2020 and 19 May 2020 including the research and articles referred to in that correspondence; and*
- 2. through its nutritious formulas that include vitamins, minerals and nutrients that not only support weight loss, but also support overall health and immune system function. The nutrients in the Optislim range include a range of ingredients with health benefits, as discussed below.*

*Appropriate nutrition is a critical determinant of immune response and malnutrition is the most common cause of immunodeficiency worldwide<sup>1</sup> including in Australia where it is considered a major public health issue affecting 35-43 percent of patients in Australian hospitals.<sup>2</sup>*

*Malnutrition also contributes to the development of chronic diseases such as diabetes, with vitamin deficiencies playing a role in glucose metabolism and insulin signalling pathways that contribute to the development of diabetes.<sup>3</sup>*

*Although malnutrition is traditionally associated with food shortages and low BMI's, research has shown that vitamin and mineral deficiencies are more common than previously thought in overweight and obese individuals despite overconsumption of food, due to the consumption of unhealthy food of low nutritional value.<sup>4</sup>*

*Studies have also found that most vitamins are deficient in obese individuals, especially fat-soluble vitamins, folic acid, Vitamin B12 and Vitamin C;<sup>5</sup> and that deficiency of even a single nutrient can result in altered immune responses, even if the deficiency is relatively mild, with zinc, selenium, iron, copper, vitamins A, C, E and B6 all having important influences on immune response.<sup>6</sup>*

*Many Australians, regardless of their weight, fail to meet the recommended intake for these vitamins including:*



- *an estimated 31% of Australian adults have inadequate vitamin D status, which increases to more than 50% in women during winter-spring and in people residing in southern States;*<sup>7</sup>
- *an estimated 37% of males and 9% of females have inadequate zinc intake;*<sup>8</sup>
- *10.6% of women have depleted iron stores;*<sup>9</sup> and
- *A recent increase in the number of Australians being diagnosed with scurvy- a condition associated with low levels of vitamin C.*<sup>10</sup>

*The Optislim range is comprised of two product ranges:*

- 1. The very low-calorie diet (“VLCD”) range of shakes, bars and soups which are nutritionally complete when used to replace all meals; and*
- 2. The low-calorie diet (“LCD”) range of shakes, bars soups and Optiman shakes are “Formulated Meal Replacements” under Food Standards Australia and New Zealand.*

*Both the VLCD and LCD ranges are not designed to be mere health or protein shakes. They are designed to be nutritious alternatives that provide the individual with the nutrients and vitamins required to live a healthy life, including the following as evidenced in the enclosed nutritional profile:*

- *Vitamins A, C and E;*
- *B group Vitamins, including B6 and B12;*
- *Iron;*
- *Zinc;*
- *Selenium;*
- *Copper; and*
- *Folic acid.*

*As referred to above, these vitamins and minerals are both required for a functioning immune system and often deficient in obese individuals. Accordingly, individuals, and particularly overweight or obese individuals, who presently have an inadequate intake of these vitamins and minerals may not only lose weight whilst following an Optislim program, but may also benefit from the boost to their immune system from receiving appropriate nutrition.*

#### *References*

- 1. K Chandra, Nutrition and the immune system: an introduction, The American Journal of Clinical Nutrition, Volume 66, Issue 2, August 1997, Pages 460S–463S*
- 2. Barker LA, Gout BS, Crowe TC. Hospital malnutrition: prevalence, identification and impact on patients and the healthcare system. Int J Environ Res Public Health. 2011;8(2):514-527. doi:10.3390/ijerph8020514*
- 3. Michael Viva ‘The Malnutrition of Obesity: Micronutrient Deficiencies That Promote Diabetes’ (2012) ISRN Endocrinology.*



4. Kaidar-Person, O., Person, B., Szomstein, S. et al. *Nutritional Deficiencies in Morbidly Obese Patients: A New Form of Malnutrition?*. *OBES SURG* 18, 870–876 (2008).
5. Samanta Thomas-Valdés, Maria das Graças V. Tostes, Pamella C. Anunciação, Bárbara P. da Silva & Helena M. Pinheiro Sant'Ana (2017) *Association between vitamin deficiency and metabolic disorders related to obesity*, *Critical Reviews in Food Science and Nutrition*, 57:15, 3332-3343, DOI: 10.1080/10408398.2015.1117413
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8. Australian Bureau of Statistics, 2014, *Australian Health Survey: Nutrition First Results - Foods and Nutrients, 2011-12*, 'Table 10: Proportion of Nutrients from food groups', data cube: Excel spreadsheet, cat. no. 4364.0.55.007
9. Ahmed F, Coyne T, Dobson A, McClintock C. *Iron status among Australian adults: findings of a population based study in Queensland, Australia*. *Asia Pac J Clin Nutr*. 2008;17(1):40-47.
10. Carr, A.C.; Maggini, S. *Vitamin C and Immune Function*. *Nutrients* 2017, 9, 1211.

## THE DETERMINATION

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

The Panel noted the complainants' concern that the advertisement:

- Is clearly exploiting people's fear about the Coronavirus pandemic.
- Promotes eating disorders
- Falsely suggests that being overweight impacts the immune system
- Doesn't provide references to support statements made in the ad
- Doesn't provide a disclaimer that the product doesn't work for everybody
- Equates health and immunity with weight loss, which is misleading and harmful

The Panel viewed the advertisement and noted the advertiser's response.

The Panel considered whether the advertisement complied with 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 Panel noted the complainants' concern that the advertisement clearly exploits people's fear about the Coronavirus pandemic.

The Panel noted the advertiser's response that the phrase, "there's no better time than now" is a phrase encouraging people not to put things off to another day and is not a reference to COVID-19.

The Panel considered that the COVID-19 pandemic has had a huge impact on the Australian community and that it was reasonable for people to assume that an advertisement which references health and immunity and uses the phrase "there's no better time than now" is a reference to the current pandemic. However, the Panel considered that it is reasonable for an advertiser to reference current events in advertising to best promote their product, and that this advertisement does not use the current situation in a way which would promote or encourage unsafe or unhealthy behaviour.

The Panel noted the complainants' concerns that the advertisement promotes eating disorders.

The Panel noted the advertiser's response that it is not known what effect the COVID-19 pandemic is having on eating disorder sufferers, however the nature of their product itself is likely to distress persons suffering from an eating disorder regardless of what is happening in the world and irrespective of how sensitively those products are advertised.

The Panel acknowledged that people suffering from eating disorders may be negatively impacted by advertisements promoting weight loss. However, the Panel considered that the advertised product is a weight loss product and it is reasonable for the advertiser to discuss weight loss when promoting their product. The Panel considered that there was nothing in the advertisement which targeted people with eating disorders, or which suggested that people should use the product in an unsafe manner.

The Panel considered that the advertisement did not contain material which would be contrary to Prevailing Community Standards on health and safety and determined that it did not breach Section 2.6 of the Code.

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel 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."



In relation to section 2.1 of the Food Code the Panel considered the Practice Note to the Food code which provides that

“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.

Thus, an advertising or marketing communication may make reference to one or more of the nutritional values 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.”

The Panel noted the complainants’ concerns that the advertisement:

- Doesn’t provide references to support statements made in the ad
- Doesn’t provide a disclaimer that the product doesn’t work for everybody

The Panel noted that there is no requirement in the Food Code for advertisers to provide disclaimers or references in their advertising material, provided that any information provided in the advertisement is communicated in away that is appropriate to the understanding of the target audience. The Panel considered that most members of the community would understand that not all weight loss products would work for everybody, and would not need a disclaimer to identify this. Further, the Panel considered that the advertisement depicted people engaging in a range of activities, including yoga and meditation, and considered that most members of the community would understand the product is meant to be used in conjunction with other healthy practices.

The Panel noted the complainants’ concerns that the advertisement:

- Falsely suggests that being overweight impacts the immune system
- Equates health and immunity with weight loss, which is misleading and harmful

The Panel noted the advertiser had provided references to studies showing that being overweight can impair your immune system and research that shows even modest weight loss reverses many of the damaging changes seen in obese people.





The Panel noted that there were two distinct sentences in this advertisement which could be seen to be making a claim. The first statement is “studies show that being overweight can impair your immune system” and the second is “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better”.

The Panel first considered the statement, “Studies show that being overweight can impair your immune system”. The Panel considered that this is not a direct statement about the benefits of the product itself, however the reference to a negative effect of being overweight is directly linked to the benefits of a weight loss product.

The Panel considered that this statement is used in conjunction with images of people exercising, spending time with family and meditating and that the overall message conveyed by the advertisement is that using the product in conjunction with other lifestyle changes can have a positive impact on an individual’s health.

The Panel considered that the phrase “studies show that being overweight can impair your immune system” had been supported by some evidence provided by the advertiser. The Panel considered that there was general acceptance in the community that being overweight or obese can lead to a range of negative health impacts. Overall, the Panel considered that this statement was broad, was not directly referencing health benefits of the product and was supported by some references provided by the advertiser.

The Panel considered that the phrase “studies show that being overweight can impair your immune system” was not misleading or deceptive and was not making a claim about the health or nutritional benefits of the product.

The Panel then considered the phrase “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better”.

The Panel considered that this phrase may be interpreted as a claim that the Optislim weight loss range can help improve a person’s immune system.

The Panel noted that it had sought advice from an Independent expert in relation to the claims made in the advertisement.

The Panel noted that the expert had advised that:

- There is no doubt that obesity is associated with poor immune function as evidenced by susceptibility to infections, including viral infections such as COVID 19 (18). Immune response to vaccination can be also compromised by obesity. In some people with obesity, lower than desirable nutritional intake and status may further exacerbate poor immune responses.
- Current evidence for weight loss improving immune function in overweight or obese individuals is not conclusively supported.



- Current evidence does not support the assertion that nutrients in Very Low Calorie Diets or Low Calorie Diets would in all individuals, necessarily improve nutritional status and thereby immune support during weight loss.
- The lack of clear evidence to support weight loss benefits on immune function does not necessarily suggest there is no benefit to immune function. The immune system is highly complex with many biological markers implicated. Therefore the methods used to date to assess immune function with weight loss have been challenged.

Based on the advice of the expert, a minority of the Panel considered that the statement “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better” would be interpreted by the target audience that using the product can improve the immune system. A minority of the Panel considered that this specific claim was not supported by scientific evidence.

On this basis, a minority of the Panel considered that the information in the advertisement was misleading and not 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 majority of the Panel considered that the statement “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better” would be more reasonably interpreted by a reasonable viewer in the target audience as a broad statement indicating that the Optislim weight loss range can help you lose weight and improve your wellbeing, which in turn can have positive benefits to your overall health, including on the immune system. The majority of the Panel considered that the impact of the statement is mitigated by the use of the word ‘can’, rather than ‘will’ or ‘is shown to’ and noted that there is no claim that the product is guaranteed to be effective.

The majority of the Panel considered that members of the target audience would understand that these benefits were stated in relation to the use of the product by overweight or obese individuals, and was not a claim that use of the product would improve the immune system of anyone who used it.

The majority of the Panel acknowledged the expert advice that there is no conclusive scientific evidence that losing weight through very low calorie diets will be a direct improvement to immune function, however the majority of the Panel also noted that it is generally accepted that individuals who are over weight do have a greater susceptibility to a number of diseases, including COVID-19.

The majority of the Panel considered that the statement “Optislim weight loss range can help you take back control of your body, lose weight, improve your immune system and be your version of better” was a generalised claim about possible health benefits of losing weight and the advertised product may assist in that benefit.



The majority of the Panel considered that it is generally accepted by the community that being overweight or obese has negative health consequences, and that weight loss in these individuals can have positive health benefits. The Panel considered that the claim made in this advertisement was in line with these accepted benefits.

The majority of the Panel considered that the information in the advertisement was communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication and was not misleading or deceptive in presentation of all information including any references to nutritional values or health benefits.

The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach any other sections of the Code or the Food Code the Panel dismissed the complaints.