



Case Report

1	Case Number	0201/10
2	Advertiser	Well Naturally
3	Product	Health Products
4	Type of Advertisement / media	Internet
5	Date of Determination	26/05/2010
6	DETERMINATION	Dismissed

ISSUES RAISED

2.8 - Food and Beverage Code unscientific nutrition claims

DESCRIPTION OF THE ADVERTISEMENT

AntiOx branded fruit juices, snack bars and block chocolate products advertised on the "Our Products" section of the Well Naturally website (www.wellnaturally.com.au).

THE COMPLAINT

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

This website is in breach of a number of the codes including the AANA code of ethics (section 1.2) and the Food & Beverages Advertising and Marketing Communications code (section 2.1 2.3 2.4 2.5 and 2.6)

The website makes a number of unsubstantiated health and wellbeing claims including statements such as "AntiOx Shots contain superfruits such as Mangosteen Goji berries and Pomegranate that are valued for their very high concentration of natural plant antioxidants that may help boost and protect the body's immune system. These superfruits have been carefully blended into a conveniently packaged shot bottle of delicious refreshing premium fruit juice to be enjoyed daily for optimal health'. The claimed benefits of these products are unsubstantiated and there is no scientific evidence for claims which are seriously misleading to the average consumer.

THE ADVERTISER'S RESPONSE

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

We do not consider that the information contained in our website is misleading in its portrayal of the health and well being benefits of our products, and specifically, in its' use of the ORAC measure, and outline our reasons below.

It has been widely accepted by consumers, governments and health professionals that a diet with a high intake of fruits and vegetables will assist with lowering the chances of degenerative diseases. This is because these foods are considered to be a good source of antioxidants.

In response to the increased consumer demand for 'antioxidant inside' foods and drinks, the promotion of these type of products has grown dramatically. For example, figures from Mintel's Global New Products Database (www.gnpd.com) indicate that in 2009, the market for antioxidant laden products totalled more than US\$12 billion and is growing. Mintel also noted that there were over 2,057 antioxidant labelled food and drink products launched, compared with 1,339 in 2007. The US had the highest number of launches(593) followed by Australia(132), India (91), UK (87) and Canada(83). This growth trend appears to be continuing and recent Mintel research shows that one new antioxidant product is being presented to the market every day.

The word 'antioxidant' clearly resonates with the average, health conscious consumer. The implied natural, health benefits of a wide range of phytochemicals and polyphenols found in fruit juices and other foods with antioxidant benefits, has been embraced by the consumer and this is continuing apace.

To assist the consumer to better understand the total antioxidant activity of certain foods and thereby make more informed, comparative purchase and consumption decisions, independent researchers in both the US and Europe established an 'in vitro' test to measure the antioxidant capacity of various foods. Known as the ORAC (Oxygen Radical Absorbance Capacity) assay, it has become known as the 'standard bearer' of antioxidant measurement. Using the ORAC assay, scientists then catalogued over 3,000 foods. This database was developed to be the league table of antioxidant potency of foods, and sees spices and herbs at the top of the list, with various berry fruits next on the list followed by nuts, cocoa, other fruits and vegetables, etc. This table has been (and continues to be) widely used by the food industry around the world, including in Australia.

Since that time, attempts to develop other forms of antioxidant testing methods have also taken place. These include FRAP (ferric reducing ability of plasma), TEAC (trolox equivalent antioxidant capacity), CUPRAC (cupric reducing antioxidant capacity), and TRAP (total radical-trapping antioxidant parameter), amongst others! All such assays have advantages and disadvantages and work according to the same principle – i.e. measuring the scope of a chemical reaction between an antioxidant and a free radical. Even within ORAC, there are other forms of this original test, including that which assesses the radical scavenging activity against peroxynitrate (NORAC), and hydroxol HORAC. There have even been attempts to combine the use of all, or some, of these assays to come up with antioxidant capacity measurements, without scientific or commercial acceptance.

ORAC has still remained the most commonly used measure as it is still the most simple for the consumer to understand. Consumers can assess the comparative activity between foods and choose which ones offer the greatest potency potential.

We note that food scientists are continuing to explore ways of measuring the 'in vivo' bioavailability of various types of antioxidant compounds found in various foods, but at this

stage, there is evidence to suggest that this is only serving to increase the confusion within the scientific community, as well as the food industry itself. All stakeholders appear to be in 'heated agreement' regarding the need to continue to promote to the consumer that antioxidant rich diets are helpful, but until science helps clarify which antioxidant, in what form, and in what combination is best, and for whom, all attempts to develop obstacles for consumers to be able to make comparisons between certain foods, are unhelpful and misguided.

As such, Vitality Brands has elected to continue to promote the ORAC measure for several reasons:

- *our consumers can easily understand how the antioxidant capacity of certain ingredients used in our products compare to those contained in other foods and drinks eg, one 90ml bottle of our antioxidant fruit juice has the same antioxidant capacity as a certain quantity of other fruits and vegetable juices (as measured by ORAC);*
- *the process encourages us internally to ensure that we actually put sufficient fruit content into our products to ensure that their independent ORAC test scores reach appropriate levels to make a potential difference;*
- *as a result of ORAC measurement, consumers can also compare the total antioxidant capacity of our product with other competitive products with a claimed ORAC score – see www.sunhealthfoods.com.au (Click On 'Products' and 'Bars' then 'Oxi') and www.purpleberry.com.au (Click on 'Acai Nutrition')*
- *we have also noticed that a number of our competitors make very broad, generalised claims about antioxidants (without claiming an ORAC score), because, in fact, the amount of ingredients with antioxidant capacity are so negligible that they are unlikely to be able to stand up to ORAC measurement comparisons . A few examples of these can be viewed at www.charlies.co.nz (Click on 'Made By Charlies' and then 'Vitamin Water' then Pomegranate Antioxidant – Ingredients), www.berrijuice.com.au/immune and www.nutrientwater.com.au (Click on 'Green Tea Antioxidant').*

Since we launched the website in 2008 we have not received one consumer complaint (we average over 45,000 hits to our website, with over 1,500 visits to the AntiOx section per month).

When we engage with our loyal consumer base via newsletters, help line phone contact or during sampling activities, we encourage a moderate approach to wellness and that our products are not a 'silver bullet' to their health needs. We encourage a balanced approach to diet and exercise, as well as the consumption of our products.

Whilst we recognize that the antioxidant capacity of various forms of fruits and vegetables may, depending on an individual needs, offer varying protection for cells against the oxidative stress caused by free radicals, which are produced during normal metabolism and cell function as well as by pollutants in our air, food and water, there is, in fact, no current scientific evidence that categorically proves that total antioxidant capacity, as measured by ORAC, does NOT correlate with bioavailability.

We await the progression of a number of current research programs which are attempting to 'crack this code'. In order to maintain our leadership in this area, we will be following this research progress closely and commit to discontinuing the use of ORAC as a comparative antioxidant measure, when food science provides us with a superior tool to help our consumers make an informed decision.

We also have close ties with the local ANZFA food standards authorities in Australia, and commit to follow their direction in terms of food claims on our products. At this stage, we have been advised that the legal scope of any guidelines from the FDA and European Food Safety Authority do not have any relevance to the Australian jurisdiction.

Conclusion

We reiterate, that we treat all complaints about our products with the greatest of respect. However, in this case, we do not believe that the information contained in the AntiOx page of the 'Our Products' website intends to mislead, provides misleading information or does, in fact, mislead consumers who have, or will in the future, read our website. As such, we believe that the complaint should not be upheld.

THE DETERMINATION

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

The Board noted the complainant's concern that the website makes a number of unsubstantiated health and wellbeing claims regarding the superfruits containing high concentration of natural plant antioxidants that may help boost and protect the body’s immune system.

The Board sought the advice of its independent scientific advisor on the truthfulness of the claims made on the website, noting that much of the information on the website is vague claims designed to make the product attractive to the target market. The Board's advisor stated: '... the manufacturer stated that the named fruits are higher in natural antioxidants than most other fruits when tested using a test tube assay of total antioxidants (the ORAC test). This is true, supporting the website claim “very high concentration of natural plant antioxidants”. The manufacturers did not explicitly address the claim “may help boost and protect the body's immune system”. There has been a recent publication using cells in test tubes and 2 by the same authors, where mangosteen concentrate has been given acutely and chronically in small human trials. In each case the results are consistent with a beneficial effect on the immune system. While this is not strong evidence of an effect and is not directly related to the manufacturer’s product, it is consistent with emerging evidence that mangosteen antioxidants may help the immune system. Pomegranate juice has been reviewed somewhat more extensively and there have been recent publications, both in animals and in young and older adults supporting a role an anti inflammatory role. While this is not strong evidence of an effect and is not directly related to the manufacturer’s product, it is consistent with emerging evidence that pomegranate antioxidants may help the immune system.

Conclusion

In this reviewers opinion there is sufficient evidence to substantiate the manufacturers claimed benefits for pomegranate and mangosteen antioxidants.'

Noting the Independent Advisor's advice, the Board considered that the information on the website did not amount to misleading or incorrect information. The Board determined that the advertisement did not breach sections 2.1 or 2.6 of the Food and Beverages Code.

The Board determined that the advertisement did not breach the Food and Beverages Code in any manner. Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.