



Case Report

1	Case Number	0212/12
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	13/06/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code false meal substitute

DESCRIPTION OF THE ADVERTISEMENT

Open on a rubbish bin, with a child standing behind it. The bin lid flips open multiple times, covering our view of the child each time, and a female hand scrapes food out of a plate into the bin.

Each time the food falls into the bin, the nutrients being lost appear on the inside of the lid (for example vitamins and minerals, carbs for energy and protein for growth) and then fall in as well. Each time the bin lid closes the child becomes increasing small and further away.

A can of Sustagen Kid Essentials is placed on a countertop. As hands pour Sustagen Kid Essentials into a glass of water and stir, the powder turns into typography and the words swirl into the water and dissolve, one by one, as the voiceover mentions them. The child zooms back towards the foreground until he is next to the counter. He smiles, picks up the glass and starts drinking it.

THE COMPLAINT

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

Throwing away perfectly good food and replacing it with a can because the child is a ridiculously fussy eater is just wrong. For starters it's hideously wasteful...the food being thrown in the bin is literally good enough to eat. What sort of message is that ? Second teaching our children about a balanced diet is part of responsible parenting. Saying it's OK

to throw something away and substitute some lab-produced matter is an epic fail on that valuable life lesson.

It's supposed to be a dietary supplement at best yet this ad gives the impression it's a legitimate substitute for real food. That is grossly inaccurate and sending the wrong message on healthy diet to our kids. With the focus on health and nutrition in these days it's completely inappropriate to tell kids a milkshake is good enough...

THE ADVERTISER'S RESPONSE

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

We refer to your letter concerning the Sustagen Kid Essentials television commercial (Advertisement). Thank you for the opportunity to comment on the issues raised in the complaint.

Set out below are the details of the advertising agency and media buyer for the Advertisement:

Nestlé has considered the Advertisement under the AANA Advertiser Code of Ethics (Code of Ethics) and specifically Section 2.6 which provides that "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety."

Nestlé has also considered the Advertisement under the AANA Food and Beverages Marketing and Communications Code (Food and Beverage Code) and specifically the following Sections:

Section 2.2 which provides that "Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets...";

Section 2.4 which provides that "Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non misleading and non deceptive manner clearly understandable by an Average Consumer"; and

Section 2.8 which provides that "Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such".

The Advertisement is not directed primarily to children. Nestlé has therefore not considered the Advertisement under the AANA Code for Advertising and Marketing Communications to Children as that Code is not applicable to the Advertisement.

The Complaint

In summary, the concerns raised by the Complainant about the Advertisement are as follows:

- *Throwing away food because a child is a fussy eater is wasteful.*
- *Replacing food with a formulated product because a child is a fussy eater is inconsistent with teaching kids about the importance of a balanced diet.*
- *The Advertisement gives the impression that the product is a substitute for real food when it is only a supplement.*

Background and the Advertisement

The product being advertised is Sustagen Kid Essentials. Sustagen Kid Essentials is a Food for Special Medical Purposes (FSMP) under the Food Standards Australia and New Zealand (FSANZ) draft Standard 2.9.5 Food for Special Medical Purposes dated 2 May 2012 (Draft FSMP Standard) and is specifically formulated for the dietary management of malnutrition in children aged 1 to 10 years. Sustagen Kid Essentials contains the essential macronutrients and micronutrients malnourished children aged 1 to 10 years need for optimal health and growth.

FSMPs are tightly controlled under the Food Standards Code, with specific requirements that the products are sold only through the pharmacy channel. This ensures healthcare professional intervention at the point of sale. The product and associated advertising also specify that the product is to be used under the supervision of a healthcare professional. The Advertisement focuses on demonstrating the benefits of the product for malnourished children and was created to show that Sustagen Kid Essentials helps support their energy requirements, growth and recovery. Importantly, the Advertisement does not depict a fussy eater. The context of the Advertisement is to show a scenario where a malnourished child who is not eating misses out on essential nutrition. To highlight the loss of nutrients, the Advertisement depicts food being discarded, together with messaging and voiceover indicating the specific nutrients that are lost. We consider this a powerful message about the importance of nutrition and how Sustagen Kid Essentials might help malnourished children under the supervision of a healthcare professional.

We consider the Advertisement to be in accordance with the requirements of the Draft FSMP Standard.

Code of Ethics

The only provision of the Code of Ethics that may be considered relevant is Section 2.6. This section requires specifically that any advertising or marketing materials “shall not depict material contrary to Prevailing Community Standards on health and safety”.

In considering what the relevant “prevailing Community Standards” are with regards to health and safety, and whether the Advertisement is within those standards, we have considered the AANA 2012 Code of Ethics Practice Note (Ethics Practice Note), the Draft FSMP Standard and reviewed available resources on the topic.

As is highlighted in the Advertisement, Sustagen Kid Essentials is an FSMP that has been specifically formulated for the dietary management of malnutrition in children aged 1-10. As an FSMP under the Food Standards Code, Sustagen Kid Essentials must be used under the supervision of a healthcare professional and is only sold in pharmacies. It contains a range of ingredients including essential vitamins and minerals, protein for growth and recovery, and carbohydrates for energy. Those ingredients help provide complete nutrition to children with medical conditions where nutritional needs cannot be met through diet modification alone, such as malnutrition.

Nutritional needs may not be met for a variety of reasons, including where children aren't eating and drinking as much as they would normally, help is needed with weight gain or to slow down weight loss, growth is suboptimal, nutritional intake is reduced due to illness, appetite is poor as a result of medical treatment, energy requirements increase due to a medical condition, including cerebral palsy, cystic fibrosis, gastrointestinal disorders, autism and many others, and surgery is required (i.e., before and after an operation). Poor nutritional intake may lead to deficiencies in a variety of nutrients which are essential for optimal growth and development and which may also lead to disease in the long-term.

We have tried to depict a malnourished child in the most appropriate way possible without endorsing or promoting throwing food away. In those circumstances, Sustagen Kid Essentials is a product that, used under the supervision of a healthcare professional, is a valuable

nutritional alternative for parents to consider. Having to throw away food is a very real issue faced by parents and this depiction in the Advertisement encourages parents to seek the advice of a healthcare professional where this may be prevalent in their home. Ultimately, we are promoting a proactive approach to malnutrition and its prevention. We consider medically supervised consumption of Sustagen Kid Essentials by malnourished children to be wholly within prevailing community standards with regards to health and safety.

Section 2.2 of the Food and Beverage Code

We believe that the Advertisement complies with Section 2.2 of the Food and Beverage Code. This section requires that “Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of... the promotion of healthy balanced diets...” The Advertisement does not promote Sustagen Kid Essentials as a replacement for a normal diet of healthy food or food choices. Nor does it disparage healthy foods or food choices either explicitly or by implication. Rather than undermining the importance of healthy balanced diets, the Advertisement promotes a healthy balanced diet by providing parents of malnourished children with a medically supervised alternative to a normal diet where their child is not eating.

Section 2.4 of the Food and Beverage Code

We believe that the Advertisement complies with Section 2.4 of the Food and Beverage Code. This section requires specifically that “Advertising or Marketing Communications for Food or Beverage Products which include nutritional or health related comparisons shall be represented in a non-misleading and non-deceptive manner clearly understandable by an Average Consumer.”

The Advertisement does not compare the benefits of ‘real food’ with Sustagen Kid Essentials either explicitly or by implication. The key message in the Advertisement is that Sustagen Kid Essentials is an alternative source of complete nutrition for parents of malnourished children to consider together with their healthcare professional. In any event, we consider this message is represented in a non-misleading and non-deceptive manner clearly understandable by the Average Consumer.

Section 2.8 of the Food and Beverage Code

The Advertisement complies with Section 2.8 of the Food and Beverage Code. This section requires specifically that “Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such”. As noted above, Sustagen Kid Essentials is an FSMP under the Draft FSMP Standard, is formulated to provide complete nutrition and is suitable as a substitute for meals, so may be portrayed as such.

Conclusion

We can assure you that Nestle carefully reviews all of its advertising to ensure it complies with all relevant laws and regulations and carefully considers whether they meet prevailing community standards. It is relevant to note that we have not received any complaints of a similar nature through our consumer care line in Australia since the Advertisement was aired. For the reasons outlined above, we submit that the Advertisement complies with the Code of Ethics and the Food and Beverage Code. We respectfully request that the complaint be dismissed.

THE DETERMINATION

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

The Board noted the complainants’ concerns that the advertisement is encouraging wasting of food and giving the wrong message to children about healthy diets.

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

The Board considered 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 2.8 of the Food Code. Section 2.8 of the Code states that:

“Advertising or Marketing Communications for Food and/or Beverage Products not intended or suitable as substitutes for meals shall not portray them as such.”

The Board considered that the advertisement features images of food items being scraped from plates and emptied from lunch boxes into a bin. The voiceover describes how it also means throwing away essential vitamins and minerals that children need for growth and development.

The Board noted that the child depicted in the advertisement is not seen to be happy about the food being thrown away and that this is a broader reflection of the feeling of the community about wasting food and about the importance of providing a healthy balanced diet but is not an issue covered by the Code.

The Board considered the complainants’ concerns that the advertisement encourages the use of ‘sustagen kid essentials’ as a replacement or substitute for meals made at home. The Board noted that the voiceover suggests that consultation is made with a health care professional before giving the product to children.

The Board considered that the advertisement did not condone or encourage the use of the product as a meal replacement and noted that the advertisement includes a disclaimer about the use of the product for special medical purposes, for the dietary management of malnutrition as opposed to a suggested capture all for every child in every environment.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.

