



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

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0243-19</b>
<b>2. Advertiser :</b>	<b>Soul Press</b>
<b>3. Product :</b>	<b>Health Products</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet - Social - Instagram</b>
<b>5. Date of Determination</b>	<b>7-Aug-2019</b>
<b>6. DETERMINATION :</b>	<b>Upheld - Modified or Discontinued</b>

### 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 Instagram advertisement appeared as part of an Instagram story and featured an image of bottles of orange liquid with the text "These babies are your key to a healthy flu free winter" and "All stores fully stocked up on our immunity shots".

### THE COMPLAINT

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

*Soul Press failed to respond to my request for evidence supporting their claim that this product prevented/healed people from the flu.*

*Given that numerous Victorians have died from the flu this year, I think that this is incredible irresponsible. It does not acknowledge the importance of vaccines and seeking medical assistance.*

*I would like this advertising to be removed and retracted.*

### 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 makes a claim that the product prevented/healed people from the flu and that this claim was not substantiated.

The Panel viewed the advertisement and noted the advertiser had not provided a response.

The Panel noted that the advertisement appeared on the advertiser's Instagram account as an Instagram Stories Highlight titled 'heal me'. The advertisement was the first story to appear and featured an image of bottles of orange liquid with the text "these babies are your key to a healthy flu free winter" and "All stores fully stocked up on immunity shots".

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 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 complainant’s concern that the advertisement is making a claim about the product being able to prevent people from getting the flu which is irresponsible.

The Panel considered the words “these babies are your key to a healthy flu free winter”. The Panel considered that this was a clear statement that the advertised product is an important part of preventing the flu. .

The Panel noted the advertisement was part of an Instagram Story Highlight called ‘heal me’ and this in combination with the name of the product, ‘immunity shots’, added to the overall impression that this product would provide a specific health benefit of preventing the flu.

The Panel noted that the advertisement was on the advertiser’s own Instagram page and that people viewing the advertisement would be those following the venue on Instagram.

A minority of the Panel considered that there is a common theme in juice names of implying health benefits and that this would be understood as puffery by the average consumer.

The majority of the Panel considered that the advertisement was making a clear claim about the health benefits of the product, that it could prevent people from getting the flu. The Panel noted that while a healthy diet can assist in boosting the immune system, it does not prevent a person from developing influenza, and the best prevention for influenza is vaccination (<https://healthengine.com.au/info/cold-and-flu-prevention#c4>). The Panel noted that the consumption of a fruit and vegetable drink was not of itself ‘a key’ to immunity or preventing the flu, and that the statement on the advertisement therefore was misleading. The majority of the Panel considered that the audience of the advertisement may believe the product was able to provide immunity to the flu.

The Panel considered that the advertisement did make a claim about the health benefits of the product which was misleading and did breach Section 2.1 of the Food Code.

The Panel then considered section 2.3 of the Food Code which provides:



“Advertising or Marketing Communications 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 the complainant’s concern that the advertiser had not provided substantiation that the product could prevent the flu.

The Panel considered that the statement “these babies are your key to a healthy, flu free winter” was a health claim.

The Panel noted that Standard 1.2.7- 8 of the Australian New Zealand Food Standards Code states:

“A claim must not:

- (a) refer to the prevention, diagnosis, cure or alleviation of a disease, disorder or condition; or
- (b) compare a food with a good that is:
  - (i) represented in any way to be for therapeutic use; or
  - (ii) likely to be taken to be for therapeutic use, whether because of the way in which the good is presented or for any other reason.”

The Panel also noted that Standards 1.2.7 – 18 outlines the requirements for health claims allowed to be made by products and considered that this product does not meet these requirements. (<https://www.legislation.gov.au/Details/F2018C00942>)

The Panel considered that this is not a health claim permitted under the Australian New Zealand Food Standards Code.

The Panel considered that the statement made in the advertisement were not supported by appropriate scientific evidence and did not meet any requirements as defined in the Food Standards Code and considered that the advertisement did breach Section 2.3 of the Food Code.

Finding that the advertisement did breach Sections 2.1 and 2.3 of the AANA Food Code the Panel upheld the complaint.

#### **THE ADVERTISER’S RESPONSE TO DETERMINATION**

The advertiser has advised that the advertisement has been removed from the Instagram page.