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Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0244/18
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	23/05/2018
6	DETERMINATION	Dismissed

## ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

## DESCRIPTION OF THE ADVERTISEMENT

The television advertisement begins with a shot of wheat and the statement “this is our power plant” followed by an image of wind turbines. The voice over states “over the last year Uncle Toby’s oats created the same amount of energy as 7 wind turbines. That’s enough power to light over 140,000 homes.” An image of lights turning on across a city is shown, followed by a man and woman running through a field of grass, people swimming, people eating oats, a man surfing and a field of wheat. The voice over states “And it’s 100% natural. What would you do with all that energy? How far would you go? Because the fuel you put in, equals the energy you put out. So what powers you? Uncle Toby’s Oats”.

## THE COMPLAINT

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

*The visuals and the content of this ad are misleading in that there is an implication that Uncle Toby’s is producing actual, green energy (that powers homes). The ad concludes that it is actually the energy provided by oats “that is equivalent to” green*





*energy, but the visuals remain incongruous. The ad caught my eye on first viewing, as I though Uncle Toby's had entered the energy market, or had some green offset program running. They don't.*

## **THE ADVERTISER'S RESPONSE**

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

*Advertisement Complaint – Reference 0244/18*

*I refer to your letter of 9 May 2018 advising of a complaint (Complaint) received in relation to a television commercial for UNCLE TOBYS Oats (Advertisement).*

*UNCLE TOBYS Oats are distributed and marketed in Australia by Cereal Partners Australia Pty Ltd (CPA). CPA is the local division of Cereal Partners Worldwide, an international partnership between Nestlé and General Mills.*

*Thank you for the opportunity to comment on the issues raised in the Complaint. I have uploaded the following:*

- a copy of the script;*
- details of the CAD reference number and CAD rating;*
- a digital copy of the Advertisement;*
- details of the programs in which the Advertisement appears (Annexure 1 to this response); and*
- substantiation of any health, nutrition or ingredient claims or statements made in the Advertisement (Annexure 2 to this response).*

### **1. The Complaint**

*1.1 The Complaint alleges that the visuals and content of the Advertisement are misleading in that "there is an implication that Uncle Toby's is producing actual, green energy (that powers homes)."*

*1.2 CPA understands the term 'green energy' to be a commonly-used/colloquial name for electricity generated by non-coal fired means, examples of which include hydro, solar and wind power. CPA will address the Complaint made on this understanding of the term "green energy".*

### **2. Codes Considered**

*2.1 In considering the Complaint and its response, CPA has reviewed the Advertisement in the context of all of the Codes the ASB administers, including the Food & Beverage Advertising & Marketing Communications Code (Food Code) and the*



*AANA Advertiser Code of Ethics (Code of Ethics). As directed we have given particular consideration to section 2.1 of the Food Code which is set out below:*

*2.1: “Advertising or Marketing Communications 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 reference to the nutritional values or health benefits.”*

*2.2 We respond to the Complaint in detail below, but can assure you that CPA considers that the Advertisement complies in all respects with the Food Code and the Code of Ethics, and does not consider the Complaint to be a reasonable interpretation of the Advertisement.*

### *3. Overview of the Advertisement*

*3.1 The Advertisement is one of a series that looks at the energy our bodies need to get through the day, using different forms of energy such as the energy needed to light homes, ride a bike, play a game console, charge a mobile phone or surf as ways to talk about UNCLE TOBYS oats as a breakfast food that helps fuel an active life.*

*3.2 The advertisement is not intended to, nor does it in our opinion, suggest or imply that UNCLE TOBYS oats “has entered the energy market” in the way in which the complainant asserts. The overarching theme of the Advertisement is clear throughout, from the voiceover, to the visual imagery used and in the superimposed text on screen. For example, the superimposed text “This is our Power Plant” on the opening screen showing a field of oats sets the tone for the Advertisement. The reference to a field of oats as UNCLE TOBYS’ “Power Plant” represents a clever twist on what a consumer would ordinarily think of when hearing the words “power plant”. In the same way that wind turbines are capable of producing energy to power the lighting in homes, UNCLE TOBYS oats (which are made from oats which is a “plant”) can “power” the physical activities of its consumers.*

*3.3. The use of wind turbine imagery works on another level, as described below, in that the use of images of wind turbines in the Advertisement as an example of a ‘natural’ energy source is an analogy for oats as a natural source of energy for consumers of UNCLE TOBYS oats.*

### *4. Detailed description of Advertisement*

*4.1 The Advertisement is a 30 second advertisement for UNCLE TOBYS oats. It was aired on free-to-air television stations between 15 and 29 April this year. The Advertisement is no longer on air, however CPA presently intends to again air the*



*Advertisement (subject to Ad Standards' determination) later this year.*

*4.2 As noted above, the Advertisement opens with an image of a field of oats with the superimposed text "Our Power Plant" on screen and the words "This is our power plant" in voiceover. As noted above this sets the tone and theme for the Advertisement which is that UNCLE TOBYS oats are 'fuel for your body'.*

*4.3 The Advertisement then shows an image of wind turbines turning as the voiceover continues "Over the last year UNCLE TOBYS oats created the same amount of energy as 7 wind turbines". Superimposed text then appears on screen - the number 7.39 together with illustrations of miniature wind turbines adjacent to the number 49,953,200 kwh. A statement also appears at the bottom of the screen – "Based on a turbine producing 6,756,756.6 kwh per year".*

*4.4 The voiceover continues "That's enough power to light over 140,000 homes. And it's 100% natural". Superimposed text then appears on screen as follows - "Based on homes where lighting is 6% of energy use". The number 143,118 appears on screen, which is the precise number of homes powered by the wind turbine calculation. The substantiation for these calculations is dealt with below at paragraph 7.*

*4.4 The Advertisement then segues to showing consumers engaging in vigorous physical activity (running and competitively swimming), with an image of a bowl of oats appearing on screen together with the equation "40g = 640KJ". The voiceover continues "What would you do with all that energy? How far would you go? Because the fuel you put in creates the energy you put out. So, what powers you? UNCLE TOBYS oats." The Advertisement closes with images of consumption of oats by consumers and the final frame shows the tag line "Powered by Oats" against an image of a field of oats and an image of a pack of UNCLE TOBYS Traditional Oats.*

*4.5 The overarching message conveyed by the Advertisement is simple: - UNCLE TOBYS oats are fuel for your body in the same way that energy sources (such as wind turbines) can provide power to light homes (for example).*

*5. The implied claim that UNCLE TOBYS is producing green energy*

*5.1 CPA does not agree that the Advertisement implies that UNCLE TOBYS produces green energy that powers homes for the reasons set out in this paragraph 5.1.*

*(a) The Advertisement is clearly an advertisement to promote the consumption of UNCLE TOBYS oats. This is apparent from the closing frame of the Advertisement which shows a pack shot of UNCLE TOBYS Traditional Oats.*

*(b) The voiceover at the commencement of the Advertisement clearly states that*



*“Over the last year UNCLE TOBYS oats created the same amount of energy as 7 wind turbines” (emphasis added). This statement makes it clear that the example of energy generated by the turning of wind turbines is analogous to the energy created by UNCLE TOBYS oats sold in the last year.*

*(c) The opening visual of the Advertisement, which shows a field of oats with the voiceover “this is our power plant” makes it clear to consumers that the Advertisement is about UNCLE TOBYS oats as a source of energy using a play on what consumers would ordinarily think of when they hear the term “power plant”.*

*(d) This theme is continued as the Advertisement progresses and the voiceover “what would you do with all that energy? How far would you go?” is heard while images of consumers engaging in vigorous physical activity are shown, together with the superimposed image of a bowl of oats and its kilojoule content which conveys to consumers the amount of energy provided by a bowl of UNCLE TOBYS oats.*

*(e) This combination of visual cues and voiceovers makes the message of the Advertisement abundantly clear, which is that UNCLE TOBYS oats is a source of energy which can “power” consumers.*

*(f) Oats as an energy source for people is analogous to wind turbines as an example of an energy source that can light homes, that is, oats provide energy to “power” your day in the same way that wind turbines can produce energy to “power” homes.*

*5.2 For the reasons set out above, CPA respectfully rejects the assertion that the Advertisement is misleading or deceptive. The suggestion that the Advertisement implies that UNCLE TOBYS is producing green energy is not one that an ordinary or reasonable consumer would take away after viewing the Advertisement. It is submitted that the Advertisement is not, and was not designed to be misleading or deceptive and does not contravene any Prevailing Community Standards as that term is used in the Food Code.*

## *6. The target audience and the RCMI*

*6.1 The audience for the Advertisement is people aged 24-54. This is supported by the schedules set out at Annexure 1 to this response provided by CPA’s media agency. The schedules at Annexure 1 set out the programs during which the Advertisement was aired which are demonstrably targeted towards the demographic of 24-54 years.*

*6.2 CPA submits that the Advertisement is not directed to children and the audience of the programs in which the Advertisement appears is not predominantly children. While the Complainant appears to have provided information that the Advertisement was viewed during the 6pm news on a Sunday night on a regional free-*



*to-air television station, we submit that a news program is not directed primarily to children and secondly that the substance of the Advertisement on its face demonstrates that the themes, visuals, language and concepts of the Advertisement are not those that are attractive to children under 12 as per the RCMI Guideline requirement.*

*6.3 The Children’s Code and the RCMI are therefore not applicable to the Advertisement.*

## *7. Substantiation*

*7.1. There are two categories of statements in the Advertisement for which we provide substantiation, as requested. The first category is the set of statements made by way of voiceover, visual images and on-screen text as to the energy generated by the example of wind turbines as an energy source (“the Energy Statements”). At Annexure 2 to this response we provide a table which sets out the calculations that substantiate these statements.*

*7.2 The second category of statements for which we provide substantiation are those about UNCLE TOBYS oats themselves which are as follows:*

*(a) That UNCLE TOBYS oats provide energy which is 100% natural  
It is well known that oats are a natural source of energy, being a minimally processed whole grain. UNCLE TOBYS Traditional Oats are made from 100% whole grain rolled oats. UNCLE TOBYS Oats achieve a Health Star Rating of 5, the highest rating that can be achieved. As you are aware, the Health Star Rating is a front-of-pack labelling system that rates the overall nutritional profile of packaged food and assigns it a rating from ½ a star to 5 stars.*

*(b) That a 40g bowl of oats equates to 640kJ of energy (on-screen equation)  
This information is taken directly from the nutritional information panel (NIP) on the packaging of UNCLE TOBYS Traditional Oats which advises consumers that the average quantity of energy in a 40g serve of UNCLE TOBYS oats is 640kJ (kilojoules).*

## *10. Summary*

*10.1 CPA prides itself on selling products which are nutritious and contribute to a balanced diet.*

*10.2 CPA considers that the Advertisement is not misleading or deceptive and that it is clear to viewers that the use of images of wind turbines as an example of a natural energy source that can power homes is an analogy for oats as a natural source of energy for consumers of UNCLE TOBYS oats. The Advertisement cleverly plays on the phrase “power plant” to convey the message that UNCLE TOBYS oats are a “plant”*



*source of “power/energy”, an alternate source of energy comparable to energy produced by wind power (for example).*

*10.3 CPA respectfully submits that a reasonable consumer would not understand the Advertisement to imply that UNCLE TOBYS is a producer of green energy for the reasons set out above.*

*10.4 In light of all of the information set out above, CPA is firmly of the view that the Advertisement complies with the relevant Codes including the Food Code and Code of Ethics, and respectfully requests that the Complaint is dismissed.*

*Please do not hesitate to contact me if you require any further information or wish to discuss this 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 concerns that the advertisement is misleading.

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

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.'*

The Panel noted the television advertisement begins with a shot of wheat and the statement “this is our power plant” followed by an image of wind turbines. The voice over goes on to describe how over the last year Uncle Toby’s oats created the same amount of energy as seven wind turbines which is enough power to light over 140,000 homes. The advertisement then shows people eating oats and participating in outdoor activities.

The Panel noted the complainant’s concern that the advertisement is misleading and





suggests that Uncle Toby's is producing actual, green energy.

The Panel noted the advertiser's response that the message of the advertisement is abundantly clear, which is that Uncle Toby's oats are a source of energy which can 'power' consumers.

The Panel considered that the advertisement does initially give the impression that Uncle Toby's is involved in green energy. The Panel considered that this impression is given by the image of the wind turbines immediately after the phrase 'this is our power plant' and the reference to power and lighting homes.

However, the Panel considered the last 10 seconds of the advertisement clearly depicts people eating oats and performing energetic activities such as eating, and considered that this section of the advertisement makes it clear that Uncle Toby's oats are the product being advertised, and the energy provided by the oats powers people – not lights.

The Panel considered that the overall impression of the advertisement is that oats are a natural source of energy for people, the same way that wind turbines are a natural source of energy to power homes.

The Panel acknowledged that the initial impression is confusing, however considered that the overall message of oats equaling natural energy for people would be understood by most members of the community.

The Panel considered that the advertisement as a whole was unlikely to mislead people and was communicated in a manner appropriate to the level of understanding of the target audience.

In the Panel's view the advertisement was not misleading or deceptive or otherwise contravenes prevailing community standards, and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code on any other grounds the Panel dismissed the complaint.



