



Ad Standards Community Panel
PO Box 5110, Braddon ACT 2612
P (02) 6173 1500 | F (02) 6262 9833

AdStandards.com.au

Ad Standards Limited
ACN 084 452 666

Case Report

1. Case Number :	0288-20
2. Advertiser :	Chemist Warehouse
3. Product :	Slimming
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	7-Oct-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.8 False Meal substitute

DESCRIPTION OF ADVERTISEMENT

This television advertisement features various scenes of a woman interspersed with a spokesman. The voiceover states "If, like Sabine, you're looking to lose weight for your health and wellbeing ask about the OPTIFAST Program at Chemist Warehouse. Because it's flexible you can work it into your lifestyle by replacing three, two or one meal a day to meet your weight loss goals. OPTIFAST VLCD Shake 18 Packs are just \$47.99 at Chemist Warehouse. Lose weight for your health. Find an OPTIFAST plan that works for you. Live, Look, Feel Wellat Chemist Warehouse."

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

The ad states that to lose weight, up to three meals a day can be replaced with this product.

I was under the impression that products such as these cannot be thought of as meal replacements, as they do not meet appropriate dietary standards



THE ADVERTISER'S RESPONSE

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

Discrimination or vilification

We contend that the advertisement is neither discriminatory nor does it vilify any person or group of people.

Exploitative or degrading

We contend that the advertisement is neither exploitative nor degrading

Violence

We contend that the advertisement is not violent and the actions objected to are not excessively violent but are a simple parody of popular culture movies and video clips.

Sex, sexuality and nudity

We contend that the advertisement contains no overt sex, nudity or sexuality.

Language

We contend that the advertisement contains no offensive language

Health and Safety

We contend that the advertisement is consistent with societal norms in regards to health and safety,

To directly respond to position put in the complaints, we have requested the product sponsor provide a response. The response provided is below.

We have received a copy of the Complaint Notification letter from Ad Standards (Case Reference number 0288-20), relating to Chemist Warehouse's Healthy Break and OPTIFAST Program advertisement (Advertisement). We have reviewed the details of this complaint and thank you for the opportunity to respond to the issues raised in the complaint relating to OPTIFAST.

In preparing this response, Nestlé has considered the Advertisement under the AANA Food & Beverage Advertising & Marketing Communications Code (Food & Beverage Code) and the AANA Advertiser Code of Ethics (Code of Ethics).

Our strong view is that the Advertisement does not breach either the Food & Beverage Code or the Code of Ethics for the reasons detailed in this letter. We are happy for this letter to be provided to Ad Standards as part of Chemist Warehouse's response to this complaint.

1. OPTIFAST VLCD products and the OPTIFAST Program



In the Complaint, the listed reason for concern is that the complainant “was under the impression that products such as these cannot be thought of as meal replacements, as they do not meet appropriate dietary standards.”

We respectively disagree with the concern raised by the complainant. The Advertisement refers to Nestlé’s OPTIFAST Program and our OPTIFAST VLCD products, which have been advertised and sold in Australia for more than 20 years.

The OPTIFAST Program is a nutritionally complete, very low energy diet (VLED) program for the dietary management of obesity. VLEDs have been widely researched and proven safe and effective in numerous clinical studies (1).

The OPTIFAST Program involves replacing meals throughout the day with products from Nestlé’s OPTIFAST VLCD range. It is a flexible program and has four different levels. With the advice of their healthcare professional, consumers can choose to replace either 3 daily meals with OPTIFAST VLCD products for fast weight loss (known as the Intensive Level), or 2 or 1 daily meals with OPTIFAST VLCD products for more gradual weight loss. Two or more cups of selected non-starchy vegetables, a small amount of oil and 2 litres of water are also recommended to be consumed on these levels. The final level of the Program is known as the Maintenance Level, where all OPTIFAST VLCD products are eliminated and replaced by a balanced diet from ordinary foods.

The Intensive Level of the program is a very low calorie diet (also known as a very low energy diet or VLED). It is indicated for adults who are obese (BMI = 30) or those with a BMI > 27 who also have risk factors, poor mobility, or have been advised by their doctor to lose weight prior to surgery. The Intensive Level provides 800 calories or less per day, whilst consisting of sufficient protein, fatty acids, carbohydrates, vitamins and minerals for safe and fast weight loss. It has been shown to be effective in the management of obesity, with weekly weight losses averaging approximately 1-2.5kg per week (2, 3)

2. Nutritionally complete program

The OPTIFAST Program is nutritionally complete, meaning that consumers receive all essential micro and macro nutrients to stay healthy and adequately nourished throughout the OPTIFAST Program.

Following the Intensive Level meets the dietary guidelines for protein and all vitamins and minerals, as listed by the National Health and Medical Research Council (NHMRC) Nutrient Reference Values for Australia and New Zealand (4)

3. Clinical guidelines and healthcare professional supervision

Nestlé recommends that the OPTIFAST Program be followed under the supervision of a healthcare professional. This is clear on the label of OPTIFAST VLCD products and on our website at www.optifast.com.au. The Advertisement contains the super: “Must



be used under medical supervision” (in connection with OPTIFAST VLCD products) and also contains a banner directing consumers to “Consult your healthcare professional to see if the Program is suitable for you”.

We work closely with healthcare professionals with expertise in obesity in Australia, to provide guidance on clinical guidelines and program development, as well as training and accreditation on the use of the OPTIFAST Program. This includes the development of clinical protocols for the use of the OPTIFAST Program in different patient groups and medical conditions (5).

VLEDs are also included as an intensive intervention option in the Department of Health NHMRC Clinical Practice Guidelines (6).

4. Other considerations

We have reviewed the Advertisement for compliance with the Food & Beverage Code and Code of Ethics and are confident the OPTIFAST claims in the Advertisement comply in all respects. In particular:

(a) The Advertisement features Sabine, an OPTIFAST ambassador who has followed the OPTIFAST Program. The Advertisement truthfully and accurately represents Sabine’s weight loss with the Program, following a recommendation from her healthcare professional to lose weight for her health;

(b) The Advertisement is not directed at, and does not have a strong or evident appeal to people under the age of 18;

(c) The OPTIFAST Program is promoted in the Advertisement in a responsible and appropriate manner, with an emphasis on weight loss for health;

(d) Consumers are advised to consult their healthcare professional to see if the OPTIFAST program is suitable for them; and

(e) the OPTIFAST claims in the Advertisement are truthful and honest and do not contravene any prevailing community standard.

Nestlé takes our responsibilities in developing and marketing our products very seriously. We respectfully disagree that the Advertisement is in contravention of the Food & Beverages Code and can see no basis for the Complaint. For these reasons, we submit that the complaint should be dismissed.

Please let me know if require any further information or wish to discuss our response.

1 Eg: Parretti HM et al. Obesity Rev 2016;17:225-234

2 Delbridge, E. & Proietto, J. Asia Pacific Journal of Clinical Nutrition, 2006;15(Suppl): 49-54.

3 Mustajoki, P. & Pekkarinen, T. Obesity Reviews, 2001;(2):61-72.

4 Estimated Average Requirement (EAR) for nutrients – see www.nrv.gov.au/



5 See the Healthcare Professional tab at www.optifast.com.au

6 National Health and Medical Research Council (NHMRC) Clinical Practice Guidelines for the Management of Overweight & Obesity in Adults, Adolescents and Children in Australia, 2013 at section 6.2.

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 complainant's concern that the advertisement promotes a product as a meal replacement when it does not meet appropriate dietary standards.

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 2.8 of the Food Code which provides:

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

In relation to section 2.8 of the Food Code the Panel considered the Practice Note to the Food code which provides that:

"In its determination of whether any advertising or marketing communication portrays a product as suitable as a substitute for a meal when it is not intended or suitable for such use, the Community Panel will consider whether an average consumer, acting reasonably, would consider that the communication presents the product as suitable as a meal replacement. In determining whether such meal is intended or suitable for use as a meal replacement the [Panel] will apply its view of what a reasonable consumer might think."

The Panel noted that the advertisement includes a disclaimer that the product is for the dietary management of obesity and must be used under medical supervision.

The Panel noted the advertiser's response that the OPTIFAST program is nutritionally complete, meaning that consumers receive all essential micro and macro nutrients to stay healthy and adequately nourished throughout the OPTIFAST program.

The Panel noted the advertiser's response and the references provided and considered that an average consumer would find that the advertised product is intended and suitable as a substitute for meals under appropriate circumstances, and the Panel considered that the advertisement did not breach Section 2.8 of the Food Code.



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