



**ADVERTISING
STANDARDS
BUREAU**

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Case Report

1	Case Number	0321/13
2	Advertiser	Goodman Fielder Limited
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	25/09/2013
6	DETERMINATION	Dismissed
7	IR Recommendation	Reconfirm original decision

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

We see a family in their kitchen and learn that Mum has bought her family new MeadowLea Buttery so that her family eats healthier as MeadowLea Buttery saves 2.5 kg of saturated animal fat every year. We see her kids throw a fake fat blob into the bin. The end frame shows entire buttery range with 'It's the buttery taste that's better for you' tag line.

THE COMPLAINT

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

The research they are using to claim that margarine is better for you than butter I has been discredited. See <http://advances.nutrition.org/content/4/3/294>. And

THE ADVERTISER'S RESPONSE

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

We write in response to your letter dated 29 August 2013, compliant with the deadline of today's date. The advertisement which forms the subject of this complaint relates to the MeadowLea Buttery 30 second television commercial, which is also shown in a cut down

version of 15 seconds (the Advertisement).

Details of the programs in which the Advertisement appears and duration of the campaign. The Advertisement appears during a large variety of comedy, drama, soap opera, cooking, news, movie and health/lifestyle programs including Today Show, Sunrise, Morning Show, News, X Factor, Underbelly, 60 Minutes, Big Bang Theory.

The campaign commenced on Sunday 18th August 2013 and is currently scheduled to run until the end of October 2013.

Whether the audience of the program is predominantly children.

In our view the audience of these programs is not predominantly made up of children, a conclusion supported by the TARPs (Target Audience Rating Points) falling to 1,100-1,200 when adjusted for children aged 2-9 and 5-12. Our media buyer bought timeslots in these programs at 3,800 TARPs for “mothers with children” and “grocery buyers”. As can be seen, the TARPs falls by 50% when adjusted for children.

Substantiation of any health, nutrition or ingredient claims or statements made in the Advertisement

The Advertisement contains a nutrition claim relating to how much saturated animal fat can be saved by switching from butter to MeadowLea Buttery in one year. This claim is substantiated as follows:

The claim of saving of 2.5kg is based on average consumption (by butter users) of butter per day of 20g (1 tablespoon) and the fact that typical butter has 10.76g of saturated fat in that tablespoon while margarine spread has 2.78g saturated fat in 20g (1 tablespoon). This is taken from the Australian food composition tables (NUTTAB 2010), as maintained by Food Standards Australia New Zealand. Hence the reduction in saturated fat per day if a consumer switches from butter to margarine is 7.98g per day (10.76 – 2.78), 7.98g x 365 days in one year = 2912.7g saturated fat which is more than 2.5kg.

The Advertisement also contains the tag line ‘It’s the buttery taste that’s better for you’.

Details of the substantiation of that claim is set out in the section of this letter titled “Our comments in relation to the complaint”.

Our comments in relation to the complaint

We reject the complainant’s assertion that ‘the research they are using to claim that margarine is better for you than butter has been discredited’ for the reasons set out over. We also note that same issue of margarine being better for you than butter was raised in Complaint 0425/12 in October 2012, which was dismissed by the ASB.

a. National Dietary Guidelines recommends replacing butter with margarine/spreads to reduce saturated fat intake

In February this year the Federal Department of Health and Ageing, in conjunction with the National Health and Medical Research Council, released the revised Australian Dietary Guidelines¹ and published the scientific review that underpins these updated guidelines. It is under this research base and health authority guidance that we base our claim that the MeadowLea spread product the subject of the Advertisement is “better for you” than butter. Guideline 3 encourages Australians to limit their intake of foods containing saturated fat, added salt, added sugars and alcohol. In relation to saturated fat it provides the following specific advice:

“Replace high fat foods which contain predominantly saturated fat such as butter, cream, cooking margarine, coconut and palm oil with foods which contain predominantly polyunsaturated and monounsaturated fats, such as oils, spreads, nut butters/pastes and avocado”

These clearly communicates to the Australian public that spreads, such as MeadowLea Buttery, are a healthier option compared to butter and are therefore “better for you”.

b. National Heart Foundation of Australian (NHFA) recommends replacing butter with

margarine/spreads to reduce saturated fat intake

The NHFA's Summary of Evidence² and Position Statement³ on Dietary fats and dietary sterols for cardiovascular health has as one of its key findings:

"Replacing saturated fat (SFA) with omega-6 polyunsaturated fats (PUFA) to achieve a ratio of PUFA to SFA greater than 1 will reduce the risk of coronary heart disease"

The NHFA Position Statement then outlines practical ways to replace SFA with PUFA, citing the replacement of butter with spreads and margarines made from canola, sunflower or olive oils, and dairy blends (see Q&A Key Messages). The base oil for MeadowLea Buttery is canola oil.

The position that people should replace SFA with PUFA to reduce the risk of coronary heart disease is a position held by many authoritative nutrition organisation, including the World Health Organisation, the American Heart Association, the New Zealand Heart Foundation, the Dietary Guidelines for Americans and our local CSIRO.

Further, there are PUFAs that are essential to the diet, as the body cannot produce these (unlike saturated and monounsaturated fats). The NHFA Position Statement makes the following specific recommendation for all Australians in relation to the essential fatty acid alpha-linolenic acid (ALA, a plant source of omega-3):

"Consume at least 2g per day of ALA by including foods, such as canola or soy bean based oils and margarine spreads, seeds (especially linseeds), nuts (particularly walnuts), legumes (including soy beans), eggs and green leafy vegetables"

Again, the base oil for the MeadowLea range is canola oil and 2 serves (20g) of MeadowLea Buttery provides 40% of the 2g/day target of ALA. Butter contains much lower levels (less than 4% of the target), so again MeadowLea Buttery presents as "better for you" option.

c. Superior essential nutrients than butter

Butter and margarine both contain five essential nutrients – vitamin A, vitamin D, vitamin E and the two essential fatty acids – linoleic and alpha-linolenic acid. The vitamin A contents of butter and margarine are comparable (margarine is slightly higher). The other four nutrients are present in much higher quantities in margarine than butter⁴. Shrapnel and Baghurst (2006)⁵ modelled the effects of including butter and different margarines on the content of most of these nutrients in theoretical diets and found margarines to be superior. We therefore contend there are no scientific grounds on which to argue that butter is healthier than margarine.

For the reasons set out above, we believe the complaint does not establish any breach of the AANA Advertiser Code of Ethics and submit that it should be dismissed.

References cited:

- 1. National Health & Medical Research Council (2013) Australian Dietary Guidelines. Canberra*
- 2. National Heart Foundation of Australia (2009) Summary of Evidence. Dietary fats and dietary cholesterol for cardiovascular health. Melbourne*
- 3. National Heart Foundation of Australia (2009) Position Statement. Dietary fats and dietary sterols for cardiovascular health. Melbourne.*
- 4. National Health & Medical Research Council (2006) Nutrient Reference Values for Australia and New Zealand. Canberra*
- 5. Shrapnel B, Baghurst K (2007) Adequacy of essential fatty acid, vitamin D and vitamin E intake; implications for the 'core' and 'extras' food group concept in the Australian Guide to Healthy Eating. NutrDiet 2007;64:78-85*

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 complainant’s concern that the advertisement is misleading in its claim that margarine is better for you than butter and that this claim has been discredited.

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

The Board noted 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 2.1 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 Board noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide:

“The Board 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 advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board 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, advertising and/or marketing communications may make reference to one or more of the nutritional values and/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 Board noted that the advertisement features a child talking about their mum saving them from 2.5kg of saturated animal fat each year by switching to Meadow Lea and that “it’s the buttery taste that is better for you”.

The Board noted the advertiser’s response that as per the on-screen disclaimer, the average person who uses 20g of butter on three to four slices of bread each day could save themselves up to 2.5kg of saturated animal fat by switching to Meadow Lea. The Board considered that the message that a consumer will take from this advertisement is that Meadow Lea does not contain saturated animal fat. The Board noted the advertiser’s response stating that this is true and considered that this aspect of the advertisement is not misleading or deceptive.

The Board noted it had previously dismissed an advertisement for Goodman Fielder which contained a similar claim regarding saving fat by switching from butter to Meadow Lea (0425/12) where it found that “the advertisement is very clearly about reducing consumption of saturated animal fat and that advertisers are not obliged to point out every ingredient of their product in their advertising provided that the advertisement overall does not create a misleading impression about the product.

The Board considered that the fact the advertiser does not state which fats their product does contain does not make the advertisement deceptive or misleading. The contents of the product are clearly labelled and the advertisement is only making claims about saturated animal fats.”

The Board noted that in this instance the complainant is concerned that the research which suggests margarine is better than butter has been discredited therefore the advertisement is misleading in its suggestion that Meadow Lea is better for you than butter.

The Board noted that whilst there might be research available which suggests that butter is preferable to margarine, in the Board’s view the current Australian Dietary Guidelines (revised in 2012), which suggest that butter should be replaced with margarine, are the guidelines which should be used to underpin prevailing community standards as these guidelines are backed by scientific research, approved by the Australian Government, and they were revised in 2012. The Board considered that as the Australian Dietary Guidelines recommend that consumers replace butter with margarine, in the Board’s view the advertisement is not misleading in its claim that Meadow Lea margarine is better for you because it has no saturated fat.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Code on any grounds, the Board dismissed the complaint.

INDEPENDENT REVIEWER'S RECOMMENDATION

This is an application for review of the decision of the Advertising Standards Board (the Board) dated 25 September 2013 Case Report 03221/13 dismissing a complaint against a television advertisement by Goodman Fielder Limited. The advertisement is described in the Case Report as follows:

We see a family in their kitchen and learn that Mum has bought her family new MeadowLea Buttery so that her family eats healthier as MeadowLea Buttery saves 2.5 kg of saturated animal fat every year. We see her kids throw a fake fat blob into the bin. The end frame shows entire buttery range with "It's the buttery taste that's better for you" tag line.

The grounds on which a decision of the Board may be reviewed are:

Where new or additional relevant evidence which could have a significant bearing on the determination becomes available. An explanation of why this information was not submitted previously must be provided.

Where there was a substantial flaw in the Board's determination (determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence).

Where there was a substantial flaw in the process by which the determination was made.

The appellant's appeal was based on ground (2) above.

In its original complaint, the appellant said only:

The research they are using to claim that margarine is better for you than butter has been discredited. See <http://advances.nutrition.org/content/4/3/294>.

The complaint appeared to be based on an alleged breach of 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 Food Code provides:

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 references to nutritional values or health benefits.

The advertiser responded to this complaint by furnishing the Board with a statement denying the inaccuracy of the information conveyed by the advertisement.

The Board dismissed the complaint. The main basis for so doing was that:

...current Australian Dietary Guidelines (revised in 2012) which suggest that butter should be replaced with margarine, are the guidelines which should be used to underpin prevailing community standards as these guidelines are backed by scientific research, approved by the

Australian Government, and they were revised in 2012. The Board considered that as the Australian Dietary Guidelines recommend that consumers replace butter with margarine, in the Board's view the advertisement is not misleading in its claim that Meadow Lea margarine is better for you because it has no saturated fat.

The appellant claims that this finding fails to take account of a February 2013 article in the British Medical Journal (BMJ) which the appellant says shows that the results of a study which has been used to justify the use of margarine over a number of years was misreported. It asserts that the advertiser would have been aware of this article and that the information it gave to the Board was therefore inaccurate. It concludes that "the ASB relied solely on the biased and deliberately confusing input from the advertiser for its determination, without looking at the latest research themselves".

On the invitation of the ASB the advertiser responded to the BMJ article, claiming that its results, while interesting, were not supported by 'the current strong evidence base'. The advertiser also said that the complainant was basing its argument on the content of margarine that was not the same as the product to which the advertisement related.

The appellant subsequently submitted a transcript of an ABC 'Catalyst' program broadcast on 24 October 2013 that questioned the claimed relationship between fat and cholesterol and heart disease. This transcript was not submitted to the advertiser for comment. However, what is relevant for present purposes are the comments that the program attracted which are included on the ABC website. These varied between praising the ABC for taking on the topic and scathing criticism of the program as being unscientific and using commentators who were biased.

I reject the first contention of the appellant that the Board failed to conduct a proper inquiry following its complaint to the Board. There is no obligation on the Board to conduct independent research in relation to a complaint made to it. The onus is on the complainant to make out its case. It therefore did not fall to the Board to conduct research into the accuracy of the claims made by the advertiser. If the complainant wished the Board to have regard to certain articles, it should have brought them to the attention of the Board. The website included in the original complaint is a subscription site that sets out only the abstract of an article. The abstract does not conclude the issue of the accuracy of the advertisement one way or the other. It would be necessary to be a subscriber to the site to see the article to which the abstract relates.

As to the principal basis for the appellant's case, it is apparent from the material provided to the Board and on the appeal that this is a highly contentious issue. There are clearly differing and strongly held views in the scientific community about the effect of fat on cholesterol build up in the body and on the impact that cholesterol might have on heart disease. The Board relied in its Determination on the Australian Dietary Guidelines revised in 2012. It acted reasonably in doing so. If there is later evidence to suggest that the Guidelines are no longer accurate, it is not for the Board to, in effect, set them aside and reach a new conclusion on a matter on which experts cannot agree. The Guidelines may represent an outdated or conservative viewpoint but that is not something that the Board can or should determine. It is appropriate that the Board rely upon the Guidelines until they are amended by those with the relevant scientific expertise.

I cannot find that there has been 'a substantial flaw in the Board's determination

(determination clearly in error having regard to the provisions of the Code, or clearly made against the weight of evidence)' when there is no commonly agreed view in the scientific community as to the accuracy of the claims made in the advertisement. The Board based its decision on appropriate evidence. Its decision was not flawed. The appeal is dismissed.