



## Case Report

1	Case Number	0356/11
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	28/09/2011
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code      untruthful/dishonest

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement is to promote the Uncle Tobys Oats Cholesterol Challenge and the importance of eating oat beta-glucan as part of a healthy diet. The tagline at the end of the advertisement introduces the new "Uncle Tobys Oats Multigrain" variant.

### THE COMPLAINT

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

*At the end of the ad the spokesman in the ad said "Uncle Toby's Oats now in Multi-Grain" which is wrong. Oats are Oats i.e. a single grain and when there is more than one grain (i.e. Multi-Grain) it can't be called Oats. It can be called "Porridge now in Multi-Grain) because Porridge is a breakfast preparation of grains. This is just plain wrong and is therefore misleading the public. There are competitive products in the marketplace - eg Kellogg's with Be Natural brand - which correctly label their products as "Multi-Grain Porridge" or "Porridge - Multi-Grain". Uncle Toby's appears to ignore the facts and misleads the public so as to leverage "Uncle Toby's Oats" brand.*

### THE ADVERTISER'S RESPONSE

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

*I refer to your letter of 2 September 2011 regarding a complaint received from a member of the public concerning the statement “Uncle Tobys Oats now in Multigrain” (Tagline) appearing at the end of the Uncle Tobys Oats Cholesterol Challenge television commercial (Advertisement). Thank you for the opportunity to comment on the issue raised in the complaint.*

*I confirm that Uncle Tobys Oats Multigrain is manufactured, distributed and marketed in Australia by Cereal Partners Australia Pty Ltd (CPA).*

*In relation to the codes administered by the Advertising Standards Board, the complaint refers to section 2 of the AANA Food and Beverage Advertising and Marketing Communications Code (Code) and specifically section 2.1 of the Code, which provides, relevantly, that “Advertising or Marketing Communications for food and beverage products shall be truthful and honest, shall not be or be designed to be misleading or deceptive”. The complainant considers that the Tagline, and by implication the product name “Uncle Tobys Oats Multigrain” (Product), is misleading as the Product contains more than one grain and therefore cannot be called Oats.*

*CPA rejects this interpretation on the basis that it markets all of its hot oats products under the same master brand name “Uncle Tobys Oats”. Under that master brand name, each different variant is marketed under a sub-brand name. For example, Uncle Tobys Oats Traditional, Uncle Tobys Oats Quick Sachets, Uncle Tobys Oats Gourmet Selections and its new sub-brand Uncle Tobys Oats Multigrain.*

*Uncle Tobys Oats have been marketed under this master brand name since 1893 and are well known by consumers to be hot oat products.*

*The Advertisement, in its last frame, introduces the Product as a new multigrain variant in the Uncle Tobys Oats product range. Consumers at the point of purchase can clearly see from the Product packaging that the Product is made predominately of oats with the remainder of the Product comprising 4 grains. The packaging for the Product clearly shows a picture of the mixed grains with the statements “made with 5 grains” and “the goodness of 5 grains” on front of pack, side of pack and back of pack. CPA does not consider that any consumer would be misled into thinking the Product is an oats product only.*

*As to whether the Product should be called “Multigrain Porridge” as suggested by the complainant, we are required under Standard 1.2.2 of the Australia New Zealand Food Standards Code, as well as general requirements under the Competition and Consumer Act, to include a name or description of the food sufficient to indicate the true nature of the food. Definitions of porridge include “soft food of oatmeal or other meal or cereal boiled in water or milk” – The Concise Oxford Dictionary and “a breakfast dish, originating in Scotland, consisting of oatmeal or the like with hot water or milk” – Macquarie Dictionary. These definitions describe the finished product, being the combination of cereal/oats and milk or water, rather than an accurate description of the food as sold.*

*On this basis, CPA is firmly of the view that the Advertisement is not misleading, untruthful or dishonest.*

*Finally, CPA has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA Advertiser Code of Ethics and considers that the Advertisement complies with those codes in all relevant aspects.*

## **THE DETERMINATION**

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

The Board noted the complainant’s concerns that the advertisement is misleading because it is advertising a multigrain cereal as an Oat cereal.

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

The Board considered whether the advertisement was in breach of Section 2.1 of the AANA Food and Beverages Advertising and Marketing Communications Code. Section 2.1 of the Code states:

"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 Board noted the advertisement is for "Uncle Tobys Oats Multigrain" cereal and that Uncle Tobys Oats is the brand name.

The Board noted the complainant’s concern that the product should not be called ‘oats’. The Board considered that the advertisement clearly showed the pack with a variety of grains and the term “multigrain” is clear on the pack and in the voiceover. The Board considered that most people would clearly see this as a product comprising oats and other grains and would not be misled.

The Board considered that the advertisement does not make any claims which are misleading.

Based on the above, the Board determined that the advertisement did not breach Section 2.1 of the Food and Beverages Code.

Finding that the advertisement did not breach the Code or the Food and Beverages Code on any other grounds, the Board dismissed the complaint.

