



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0357/12</b>
<b>2</b>	<b>Advertiser</b>	<b>Nestle Australia Ltd</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>12/09/2012</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

A young child is shown in the busy family home getting ready for his school day and emptying a sachet of Uncle Tobys Quick Oats in to a bowl before placing it in the microwave for 90 seconds. He then sits at the table and his mum places the bowl in front of him.

### THE COMPLAINT

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

*Child empties one sachet of oats and makes it ready then sits down with a bowl of oats depicted as being quite sizeable and full of prepared oats. In reality you do not get anywhere near the volume from one sachet as depicted. I believe the ad is quite deceptive in what you actually get from one sachet of the oats advertised is nowhere near what is depicted. I find it misleading that the advertiser shows such a full bowl from one single packet. It simply is not possible unless the bowl is very very tiny.*

### THE ADVERTISER'S RESPONSE

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

*Section 2.1 of the Food Code The complainant states that the Advertisement is misleading and deceptive because the bowl of oats depicted "is quite sizeable and full of prepared oats"*

*and “in reality you do not get anywhere near the volume of oats from one sachet.” Size of bowl in Advertisement In viewing the Advertisement, it is important to take into account the proportions or scale which has been used – especially given the Advertisement features an eight (8) year old child. We refer to the picture below (screen shot from Advertisement) which shows the child alongside the bowl, (PICTURE A) especially noting the size of the bowl against his hand as a point of reference and the second picture which shows the family table (PICTURE B). As the Advertisement is for a breakfast cereal, it was appropriate for Nestlé to use a standard cereal bowl. The bowl used is from Maxwell and Williams and measures 8cm across the base, 15cm across the top and a height of 3cm. The picture below shows the actual cereal bowl used in the Advertisement with its dimensions (PICTURE C). Volume of UNCLE TOBYS QUICK OATS in the bowl At the filming of the Advertisement, the food stylist was specifically instructed to only use one sachet of UNCLE TOBYS QUICK OATS per bowl prepared as Nestlé were very conscious of ensuring that the representation of UNCLE TOBYS QUICK OATS in the Advertisement was accurate - and not misleading or deceptive. Upon receipt of this complaint from the ASB, we have obtained the actual bowl used in the Advertisement and confirmed that, when one sachet of UNCLE TOBYS QUICK OATS is added to the bowl, the quantity of finished product in the bowl is consistent with that depicted in the Advertisement. The picture below shows the bowl containing one sachet of UNCLE TOBYS QUICK OATS as made by Nestlé (PICTURE D). The following picture (screen shot from Advertisement) shows a comparable level of UNCLE TOBYS QUICK OATS in the bowl (taking into account the minimal food styling) (PICTURE E). Nestlé submits that the Advertisement is not misleading and deceptive as the volume of UNCLE TOBYS QUICK OATS depicted in the Advertisement is an accurate representation of the volume provided by one sachet of UNCLE TOBYS QUICK OATS. It is also apparent that Nestlé have used an appropriately sized (and standard) cereal bowl in the Advertisement, the size of which is contextualised when it is viewed alongside the child who is the feature of the Advertisement. For the above reasons, we respectfully submit that we have not contravened the Food Code. Nestlé has also considered the AANA Code for Advertising and Marketing Communications to Children and the AANA 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 the AANA Food and Beverages Advertising and Marketing Communications Code or section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement misrepresents the size of the actual product.

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

The Board noted that the product advertised is food and 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.

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. (complaints about matters such as ‘taste and decency’, language, sex and violence).”

The Board considered Section 2.1 of the Code and noted that Section 2.1 requires it to consider whether an advertisement is truthful and honest or is misleading, or is designed to be, misleading or deceptive.

The Board noted the advertiser's response that the only one sachet of Uncle Tobys Quick Oats was used in the advertisement and that a standard sized cereal bowl was used. The Board also noted the information providing measurements of the bowl used in the advertisement.

The Board accepted the advertiser's response and considered that most consumers accept that the way in which a food product is filmed can sometimes make the product appear larger than it would be in reality. The Board considered that most consumers would not consider such 'styling' of food to be a misrepresentation of the product. The Board noted that the serving size used in the advertisement is 40g and that this is a standard serving size for breakfast oats.

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

The Board also noted section 2.6 of the Code which provides that: 'Advertising or marketing communications for food or beverage products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits shall be specific to the promoted product/s and accurate in all such representations.'

The Board also noted the Practice Note to the Food Code which provides:

'In testing whether any claim is included within an advertising or marketing communication, the Board will consider whether an average consumer, acting reasonably, would consider a statement as constituting a claim (i.e. an assertion or contention about the component, as against a 'claim' as defined under other legislation).

Once a claim relating to a material characteristic of a promoted product is established, the Board will need to determine whether such a claim can be substantiated by the product alone, rather than its consumption in combination with other products.

The Board will also need to consider whether the claim is accurate in its representations about the product, and will usually do so on the basis on information provided on the packaging or otherwise provided by the advertiser.

Visual or textual representation of a 'suggested serving' will not, on its own, represent

grounds for finding a advertisement or marketing communication in breach of the Code. Any taste or nutrition claims relating to the product as consumed with an external ingredient (eg cereal consumed with milk) must be clearly distinguished as being a claim for the product as consumed with such external ingredient/s.’

The Board considered that the depiction of the product was not of itself a claim about the size of the product and that there was no other material in this particular advertisement that amounted to a claim about the size or content of the product that would be inaccurate.

The Board determined that the advertisement did not breach section 2.6 of the Food Code.

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