



Case Report

1	Case Number	0372/11
2	Advertiser	Jalna Dairy Foods
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	12/10/2011
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code untruthful/dishonest

DESCRIPTION OF THE ADVERTISEMENT

Various babies/toddlers are shown putting things in their mouth which they shouldn't - dirt, cat food and so on. We then see a baby in a high chair eating Jalna yoghurt out of a bowl and the voiceover says that Jalna yoghurt contains nothing artificial.

THE COMPLAINT

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

The advert is misleading in its claims that it only puts 'Fresh Milk and some friendly cultures' into when actually 10% of the product is Fructose or sugar derived from fruit. Actually the packaging does not say sugar or fructose it says fruit concentrate. I have never heard of fruit concentrate being called a friendly culture?

I assume this is both false and misleading advertising specifically directed at children via mothers. I'm also not that happy about the phrase 'No cane sugar' although correct it is specifically designed to mislead.

I (MBA + Beng) was misled by the packaging I couldn't where the sugars on the nutrition information were coming from when comparing it to the ingredients. It was vanilla so where why there was the fruit concentrate?

In the final scene when the infant is eating Jalna Yoghurt the voiceover says "...no cane sugar in fact nothing artificial at all". This is a gross distortion of truth. Whatever else you may say about it cane sugar is 100% natural so this statement is incorrect and misleading.

THE ADVERTISER'S RESPONSE

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

We are of the strong belief that what is being stated in this commercial is correct. Moreover, it was never our intention to mislead or deceive.

When the script is read or heard as a whole, which it is intended to be, the meaning behind the statements is clear. The two statements about which the complainant refers are not in respect to each other, but to the way the yoghurt is made, which is the line that immediately precedes them.

"We just put fresh milk and some friendly cultures in a pot and let nature do the rest. No cane sugar. In fact, nothing artificial at all".

-No cane sugar. This is correct. Unlike most yoghourts on the market, Jalna does not add cane sugar to any of its yoghourts. This is a key point for many consumers, especially mothers.

-In fact nothing artificial at all. This is correct. Unlike most yoghourts on the market, Jalna is produced using a pot-set method. This simple method does not require the addition of ingredients, often artificial (such as gelatines, starches, food acids and preservatives) to set or firm the yoghurt. Again this is very important to a significant percentage of consumers.

It was never our intention to suggest that cane sugar is artificial. That would be wrong and to the vast majority of consumers unbelievable as they know cane sugar to be natural.

Furthermore, the strength of the brand's pot-set proposition relates to the process of pot-setting. That is what we are striving to communicate. Frankly, there is no mileage in trying to suggest cane sugar to be artificial.

This commercial was produced to promote the unique features of the Jalna yoghurt brand and not as an advertisement for the strawberry variety.

The thrust of the advertisement is to communicate the pot-set process used by Jalna in the preparation of its yoghurt and which is very different to the "stirred" method employed by most manufacturers. This simple process is as stated. ie fresh milk and friendly cultures (probiotics) are put in an pot and the yoghurt is then formed in that pot. The key advantage of the pot-set process over the "stirred" method is that it does not require the addition of any other ingredients to help the setting and preserving process i.e. preservatives, food acid, gelatines and starches. This explanation is also provided on the product packaging.

Jalna yoghourts are all made using the pot-set method and of these, approx 45 % are "white" yoghourts where nothing whatsoever is added. However, the balance of 55% are fruit or vanilla varieties to which fruit puree or juice or vanilla natural flavour is added. But all use the same simple pot-set process to which the fruit/vanilla is added. We believe the consumer has no trouble understanding that fruit is being added. It is similar we suggest to the chocolate market, where Cadbury uses a method incorporating certain level of milk to create dairy milk chocolate and to that basic product fruit is added to create the other varieties. It is true that the Strawberry variety is used in the Jalna advertisement, however it is never stressed or focussed upon, with the pack more often out of focus. It was chosen for aesthetic reasons as the pink was considered a more appropriate colour. We would add that the pink pack has been used in Jalna's brand television advertising for about 4 years.

The complainant suggests the advertising is targeted at children. This is not so. The primary and secondary target groups are women 35 to 50 and younger mothers, respectively. The

little children featured are all under 2 years of age, and would have no influence over their mother's purchase decisions, other than as result of the product being appropriate for them, which of course is the point being made.

The complainant makes reference to the information provided in the advertisement that the yoghurt contains "No cane sugar", acknowledging that this correct. The complainant is correct as cane sugar has not been added to sweeten the product. There is no intention to mislead nor we submit does it mislead as this is an important piece of information for many consumers who are concerned about the addition of cane sugar and who are trying to balance the total intake of sugar by their family. The pack copy offers further information regarding the No Sugar statement.

"Low GI a good choice for anyone who may benefit from low glycaemic index foods with no added sucrose (cane sugar)".

The nutrition panel does provide the information on total sugar levels and the ingredients list shows the presence of vanilla and fruit concentrate. Which are used to flavour the product. Jalna is extremely open about its products and their nutritional content. While space and time in mainstream advertising don't give sufficient opportunity for much detailed information, this is provided on the website for both consumer and health/nutritional professionals. We encourage people to refer to this. This television commercial, which is targeted at women, especially those young mums is part of a wider campaign. This features articles in leading magazines and on websites inviting consumers to refer to the Jalna site, where their questions will be answered more fully and they will get the nutritional information they might be seeking. In addition we have mailed health professionals nationally providing them access to detailed nutritional information.

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 because it states that the product contains only milk and friendly cultures when it also contains 10% fructose or sugar derived from fruit and that it contains the statement 'no cane sugar' which, as noted by the complainant, is correct but in the complainant's opinion is designed to mislead.

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

The Board determined that the advertisement is not directed to children or likely to appeal to children and that the AANA code for Advertising and Marketing to Children does not apply.

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 states in part ‘we just put fresh milk and some friendly cultures in a pot and let nature do the rest. No cane sugar. In fact nothing artificial at all. Jalna- a little pot of purity.’

The Board considered the statements to be conveying a message to a reasonable consumer that there is nothing artificial in the yoghurts and that there is no cane sugar.

The Board considered that the overall message of the advertisement is that the Jalna product is made in a pot without any artificial ingredients. The Board noted the advertiser's response that the Jalna 'white' yoghurts have nothing added to them and that the Jalna flavoured yoghurts have only fruit puree or juice or vanilla natural flavour added to them.' The Board also noted that, according to the advertiser 'Fructose, a natural sugar in fruit, and lactose, a natural sugar in milk, are the only sugars in Jalna dairy foods.'

The Board considered that, on the basis of the information provided by the advertiser and the assumption that the fruit puree or juices have no sugar added to them, a reasonable consumer would consider that the Jalna products have no cane sugar and nothing artificial. The Board considered that the advertisement does not suggest that the yoghurt is sugar free as most people will realise (and it is stated on the label of the package) that yoghurts have natural sugars from the milk and, if fruit is added, from the fruit. Board considered that the statements in the advertisement are not misleading or deceptive.

The Board noted that the yoghurt depicted throughout the advertisement is the strawberry flavoured yoghurt. The Board noted the comment in the advertisement that suggests that Jalna yoghurts contain only fresh milk and friendly cultures. The Board considered that a reasonable consumer would understand that the strawberry yoghurt would in fact have strawberry fruit or flavour added. The Board considered that the overall impression of the advertisement, that the product is a product with no added cane sugar and nothing artificial, based on the information provided by the advertiser, is not misleading even with the image of the strawberry yoghurt (which contains strawberry puree) throughout the advertisement.

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

The Board noted the images of the toddlers eating a variety of substances including sand and considered whether this is a depiction of material that is contrary to prevailing community standards on health and safety. The Board considered that these images convey the practice that young children and babies have of tasting everything around them and is not a depiction of material that is contrary to prevailing community standards on health and safety. The Board determined that the advertisement did not breach section 2.6 of the Code.

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

