



# Case Report

1	Case Number	0386/17
2	Advertiser	Abbott Australasia Pty Ltd
3	Product	Health Products
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	13/09/2017
6	DETERMINATION	Dismissed

## ISSUES RAISED

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

## DESCRIPTION OF THE ADVERTISEMENT

This 30 second television advertisement for Ensure nutritional supplement drink features a series of vignettes of people over 50 who are enjoying active lives, while providing details of the Ensure drink and its nutrient content. The end line is “Live for today and a healthy tomorrow.”

## THE COMPLAINT

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

*The advertisement claimed that sometimes 'food is not enough' to provide complete nutritional needs. I believe this to be inaccurate and unproven.*

## THE ADVERTISER'S RESPONSE

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

*The complaint states that the advertisement is misleading because it claims that "sometimes 'food is not enough' to provide complete nutritional needs" and that this claim is inaccurate and unproven.*

*The complaint mischaracterises the claim made by the advertisement.*

*The actual copy in the TV spot is “If you’re over 50, food alone may not be enough”. This is not a definitive claim that people cannot meet their nutritional requirements from food alone. Instead, the advertisement claims that persons over 50 may need supplements to meet all of their nutritional requirements.*

*The advertisement is directed to a sub-set of the over-50 population who may be concerned that their diet is insufficient to meet their nutritional requirements. The claim made by the advertisement is reinforced by the use of older actors, the first statement made by the voice over (“If you’re over 50...”), and by the on-screen statements that the product is a Food for Special Medical Purposes and is to be used under medical supervision. The message that the product should be used under medical supervision further reinforced by the statement that the product is available from “Leading Pharmacists” which indicates it is not designed for general, unsupervised use.*

*The claim actually made is supported by evidence that as people age, their nutritional intake requirements change, as well as their actual food intake itself, due to a number of contributing factors.*

*Research undertaken by Colorado State University – Nutrition and Ageing (a copy of which is attached) identifies the following factors as contributing to age-related diet changes in persons over 50:*

- *Changes to muscle mass and bone density*
- *Slowdown of metabolic rate*
- *Slowdown of immune system*
- *Decreased calorific requirements*

*Further, research by Pirlich et al at (a copy of which is attached) identifies the following additional age-related factors that impact on persons over 50 meeting their full nutritional requirements:*

- *Loss of appetite*
- *Chewing or swallowing problems*
- *Difficulties preparing food*
- *Immobility*
- *Chronic pain*
- *Depression*
- *Social isolation*

*In the cases where there is a deficiency of certain macro and micronutrients, supplementation is often recommended by Health Care Professionals, either as a short-term solution or as part of ongoing dietary intake support.*

*On that basis we consider that the advertisement is not misleading and that the claims made in the advertisement are supported.*

*We also consider that the advertisement complies with section 2 of the AANA Food and Beverages Code and section 2 of the AANA Code of Ethics.*

## **THE DETERMINATION**

The Advertising Standards Board (the “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 concerns that the advertisement is misleading in its declaration that food is not enough to provide complete nutritional needs.

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 Food Code apply. In particular, the Board considered section 2.1 of the Food Code which states:

*'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 the advertisement depicts various older people enjoying active lifestyles whilst a voiceover states that “if you’re over 50, food alone may not be enough” before promoting Ensure which contains protein, calcium and 27 vitamins and minerals.

The Board noted the advertiser’s response that the advertised product is a ‘Food for Special Medical Purposes’ and that this statement appears as an on-screen super along with guidance that the product is available from leading pharmacists.

The Board noted the complainant’s concern that the advertisement says food is not enough and considered that the actual content of the advertisement is that it states sometimes food alone may not be enough for the nutritional requirements of over 50s and in the Board’s view this statement is not suggesting that food itself is never enough, but rather that some people may require extra nutritional support.

The Board noted that Ensure is a dietary supplement often prescribed by hospitals for patients who require nutritional support to their everyday diet as well as to elderly people who are

more likely to suffer from malnutrition than younger adults as a consequence of “somatic, psychic or social problems” (Nutrition in the Elderly, 2001, Best Practice & Research Clinical Gastroenterology, Vol 15 (6) p. 869-884) and considered that there is research to back up the claims made by the advertiser (for example: <http://extension.colostate.edu/topic-areas/nutrition-food-safety-health/nutrition-and-aging-9-322/>).

The Board noted that the advertisement depicts older people and explicitly targets the over 50 age group in the voiceover but considered that the people depicted in the advertisement would be unlikely to be the audience for whom the supplement is most likely useful. The Board considered however that overall the suggestion that food alone may not provide nutritional requirements for this age group is not misleading or deceptive as it does not say food will not, or that every person over 50 years of age will need the advertised product.

The Board considered that the target audience of older adults will understand the message in the advertisement regarding a possible need for nutritional support over the age of 50 years and considered that the advertisement was not misleading or deceptive and did not otherwise contravene prevailing community standards.

The Board determined that the advertisement did not breach Section 2.1 of the Food Code.

The Board then considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety”.

The Board noted that in one scene we see a woman driving a convertible vehicle with its roof down raise one arm in the air.

The Board noted the Australian Road Rules ([http://www.legislation.act.gov.au/ni/db\\_37271/current/pdf/db\\_37271.pdf](http://www.legislation.act.gov.au/ni/db_37271/current/pdf/db_37271.pdf)) provide:

“297 Driver to have proper control of a vehicle etc

(1) A driver must not drive a vehicle unless the driver has proper control of the vehicle.”

The Board noted that the scene showing the woman in the car is very brief and not the main focus of the advertisement and considered that she appears in full control of the vehicle and there is no suggestion of dangerous or unsafe driving in this fleeting image.

The Board noted that the woman’s hand is raised upwards as she is driving. The Board noted it had previously upheld complaints about an advertisement where a passenger had parts of her body outside of the moving motor vehicle (0293/17):

“The Board noted the complainants’ concerns that the advertisement depicts Delta with parts of her body outside of the moving vehicle. The Board noted that Section 268, Part (3) of the Australian Road Rules ([http://www.legislation.act.gov.au/ni/db\\_37271/current/pdf/db\\_37271.pdf](http://www.legislation.act.gov.au/ni/db_37271/current/pdf/db_37271.pdf)) provides:

“A person must not travel in or on a motor vehicle with any part of the person’s body outside a window or door of the vehicle, unless the person is the driver of the vehicle and is giving a hand signal...”

The Board noted that in one scene Delta has her head leaning out of the open window with her arm resting just outside the vehicle, and in a later scene Delta has her elbow resting on the open window with her hand resting on the top of the window frame, external to the vehicle. The Board considered that these depictions are a breach of the Road Rules.”

The Board noted in the current advertisement that the woman’s hand is stretched upwards rather than outside of a window or door and considered that this depiction does not meet the Road Rules definition of a body part being outside of the vehicle and in the Board’s view there is no suggestion of the woman’s behaviour being dangerous or contributing to unsafe driving.

Overall the Board considered that the advertisement did not depict material contrary to Prevailing Community Standards on safe driving and determined that the advertisement did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Food Code or the Code of Ethics, the Board dismissed the complaint.