



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Advertising Standards Bureau Limited  
ACN 084 452 666

# Case Report

1	Case Number	0456/18
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	24/10/2018
6	DETERMINATION	Dismissed

## ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive  
Food and Beverage Code 2.3 - unsupported nutritional/health claims  
Food and Beverage Code 2.6 inaccurate taste/size/content/nutrition/health claim

## DESCRIPTION OF THE ADVERTISEMENT

This television advertisement for Optifast features a woman, Sabine, speaking about her weightloss and the benefits of the Optifast product.

## THE COMPLAINT

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

*This is a misleading claim about the product and its effects. Ketosis cannot be induced by simply switching to Optifast products (on the intensive level as the fine print reads). Quite simply, Ketosis is a metabolic process that burns fat for energy when there is not enough carbohydrates to burn. The Optifast products all contain higher carbohydrate content than fat content - to induce ketosis, you need to eat a lot more fat than carbohydrates, something that the Optifast replacements and plans do not provide. It is a misleading claim about how ketosis is induced, when in reality people will only be*



*eating less and not really be burning fat for energy.*

*Furthermore, few people these days go to medical professionals before trying a new diet.*

*The ad provides incorrect (false) information about the Optifast program. It is NOT true that this product can ever induce ketosis due to the following facts:*

*1. Three servings of Optifast deliver 54.6 g of carbohydrates (carbs). The required portion of vegetables per day in addition to Optifast will deliver on average 8-15 g of carbs. This in total brings the amount of carbs to 60-70 g per day.*

*2. In order to induce ketosis, one must consume LESS than 50 g of carbs per day for 3-4 days, with the recommended amount of 20-30 g per day. Only then the body will switch from burning carbs to fats for energy. This is a medical fact which can be easily verified.*

*3. Consequently, it is NOT possible to induce ketosis on 60-70 g of carbs per day. This is simply too much.*

*4. Furthermore, three servings of Optifast deliver 60g of protein and only 13.5 g of fat. In order to induce ketosis in the body instead of starvation mode, the diet must be high in fat which replaces carbs as fuel. The recommended ratio for the energy derived from food is 75% from fat, 20% from protein and 5% from carbs. The Optifast program does not deliver sufficient level of fat to allow ketosis. Instead, a very low calories diet which still supplies a lot of carbs, will switch the body into starvation mode which is not healthy.*

*The company says on their website that this product induces “only a mild ketosis”.*

*There is no such a thing as “mild” or “strong” ketosis. It’s like with being pregnant – you are either pregnant or you are not. There is nothing in between. You are either in ketosis or you are not (which can be established by a urine, saliva or blood test).*

*The company is clearly using the concept of ketosis as a marketing magnet, given its popularity and high effectiveness in weight loss. The wording “only a mild ketosis” indicates a gateway in case of a lawsuit.*

*The claims on the company’s website are of course not the subject of the Ad Standards investigation. I have quoted them here as a context.*

*The ad however they run on TV is misleading with the false claims of how the product works, and as such it needs to be taken off the air, or the advertiser needs to be asked to remove the false claims from it immediately.*

*The outcome is that many people who want to induce ketosis and see this ad will buy this product only to be disappointed.*

*I urge Ad Standards to stop this intentionally misleading commercial immediately.*

*We are shown a small plate full of food and the 12 second mark of the ad: there is a shake, a soup, a health bar, a cup of vegetables and a glass of water. No problems with a glass of water but if you are following the Optifast diet then you cannot have everything on this plate at once. You can have either the shake OR the soup OR the health bar, not all three. And you can't have the vegetables at each meal. So when we*



*are told that to replicate Sabine's weight loss we have to follow her program and replace the three meals in the day with the three Optifast products consumers may be being misled into believing there is a lot of food that can be eaten at each meal (the tray with the four items) which is not the case. Nestle will say they are just showing what customers can choose from but I believe this is misleading.*

## **THE ADVERTISER'S RESPONSE**

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

*The Advertisement is a 30 second television commercial for Nestlé's OPTIFAST VLCD product range and OPTIFAST VLCD Program (the Program). The Advertisement features Sabine, an OPTIFAST VLCD ambassador, who has followed the Program after receiving a recommendation from her GP to lose weight for her health. Sabine states that she has her health and confidence back and the Advertisement shows that she has lost 28kg\* with the Program. Sabine explains that she lost most of her weight by replacing 3 daily meals with OPTIFAST VLCD products, which induces ketosis for fast weight loss. An example of 3 OPTIFAST VLCD products is shown, together with low starch vegetables and water, which also need to be consumed on the Program. The Advertisement informs consumers that they can personalise the Program by choosing to replace 3 meals with OPTIFAST VLCD products (for fast weight loss) or only 2 or 1 daily meals (for more gradual weight loss) to enable consumers to follow the Program in a way that works for them, after consulting with their healthcare professional. The Advertisement is targeted at adults who need to lose weight for health reasons and emphasises the recommendation that consumers should consult their healthcare professional. Consumers are referred to the website at [www.optifast.com.au](http://www.optifast.com.au) to find out more information.*

*In preparing this response, Nestlé has considered the Advertisement under the AANA Food & Beverage Advertising & Marketing Communications Code (Food & Beverage Code), specifically section 2.1, 2.3 and 2.6, and the AANA Advertiser Code of Ethics (Code of Ethics).*

*Nestlé is of the strong view, and submits that, the Advertisement does not breach either the Food & Beverage Code or the Code of Ethics for the reasons detailed in this letter.*

### *1. Prior complaint dismissed – reference 0068/17*

*A similar complaint regarding ketosis claims in a prior OPTIFAST VLCD advertisement was dismissed by Ad Standards (then known as Advertising Standards Bureau) on 22 February 2017. This letter contains some of the material used in our response to Complaint Reference 0068/17 and we also refer to Case Report reference 0068/17.*



## 2. Overview of the Advertisement

*The Advertisement is a 30 second television commercial for Nestlé’s OPTIFAST VLCD product range and OPTIFAST VLCD Program (the Program). A digital copy of the Advertisement and script have been uploaded using the online lodgement facility.*

*The Advertisement features Sabine, an OPTIFAST VLCD ambassador who has followed the Program. The Advertisement truthfully and accurately represents Sabine’s weight loss with the Program, following a recommendation from her GP to lose weight for her health. Sabine is an adult and was within the indication for the Program prior to commencing her weight loss journey.*

*The Advertisement states that Sabine has lost 28kg with the Program and has her health and confidence back. Sabine explains that she lost most of her weight by replacing 3 daily meals on the Intensive Level of the OPTIFAST VLCD Program, which induces ketosis for fast weight loss. The Advertisement also contains the following super: “Ketosis occurs when you replace all 3 meals per day on the Intensive Level and can be used for up to 12 weeks. In conjunction with exercise and a structured meal plan. Individual results may vary”.*

*The statements in the Advertisement about ketosis are factually correct. Ketosis is a metabolic process that occurs in our body when carbohydrate/total calorie intake is low and it has been clinically shown that ketosis is induced when all 3 daily meals are replaced with OPTIFAST VLCD products, plus 2 cups of vegetables on the Program. Further information about ketosis and some references are set out below.*

*The Advertisement informs consumers that they can personalise the Program by choosing to replace 3 meals with OPTIFAST VLCD (for fast weight loss) or only 2 or 1 daily meals (for more gradual weight loss) to enable consumers to follow the Program in a way that works for them, after consulting with their healthcare professional.*

*The number of daily meals that can be replaced on different levels of the program are shown in circular icons in the Advertisement.*

*When Sabine taps the “Replace 3 meals” circular icon, the Advertisement shows a scene containing an example of the food that can be consumed in a day on the Intensive Level, when all 3 daily meals are replaced. 3 OPTIFAST VLCD products are shown (representing 3 daily meals), together with low-starch vegetables and water, which are also recommended to be consumed on the Program. The “Replace 3 meals” icon is prominently displayed at all times during this scene.*

*In the following scene, Sabine selects the “Replace 2 meals” circular icon. When 2 daily meals are replaced with OPTIFAST VLCD products on the Program, the third meal*



*is recommended to be a healthy, calorie-controlled meal. This scene shows Sabine in the kitchen and then sitting down for a meal with friends, with a bowl showing an appropriate and healthy calorie-controlled meal.*

*The Advertisement is targeted at adults who need to lose weight for health reasons. The Advertisement is responsible in that it focuses on health reasons for losing weight, features a person (Sabine) who was within the indication for the program prior to commencing the Program and it emphasises the recommendation that consumers should consult their healthcare professional. This includes the prominent closing line from Sabine to “be sure to check with your healthcare professional if it’s right for you”.*

*The messages in the Advertisement are positive and informative and aimed at assisting consumers make an informed choice regarding the Program.*

*Consumers are referred to the website at [www.optifast.com.au](http://www.optifast.com.au) to find out more information. The website contains detailed information about the Program, including online support for consumers.*

### *3. Background –An overview of the OPTIFAST VLCD Program*

*In order to respond to the Complaints, it is necessary to first provide an overview of the OPTIFAST VLCD Program and Nestlé’s OPTIFAST VLCD products in the Advertisement.*

*The OPTIFAST VLCD Program is a very low calorie diet, also known as a very low energy diet or VLED, specifically formulated for the dietary management of obesity. The Program has been widely researched over many years and has proven safe and effective in numerous clinical studies. (Eg: Parretti HM et al. Obesity Rev 2016;17:225-234)*

*OPTIFAST VLCD products used in the Program are special purpose food products (not therapeutic goods) and the label on all OPTIFAST VLCD products contain the statement “OPTIFAST VLCD is a food for special medical purposes for the dietary management of obesity and must be used under the supervision of a healthcare professional”. We recommend that consumers use OPTIFAST VLCD products under the supervision of their healthcare professional and in conjunction with an exercise plan and structured meal plan.*

*OPTIFAST VLCD products are sold by pharmacies or by selected healthcare professionals/institutions in Australia. The products are not available in supermarkets or other retailers.*

*The Program is indicated for adults who are obese, that is those with a body mass index (BMI) greater than 30, or those with a BMI greater than 27 who also have risk*



*factors, poor mobility, or a need for weight reduction prior to surgery. The program is not indicated for certain individuals, including those under the age of 18 or over the age of 65 or women who are pregnant or breastfeeding.*

*The Program contains four different levels. With the advice of their healthcare professional, consumers can choose to replace 3 daily meals with OPTIFAST VLCD products for fast weight loss (known as the Intensive Level), or 2 or 1 daily meals with OPTIFAST VLCD products for more gradual weight loss. In the final level of the Program (known as the Maintenance Level), all OPTIFAST VLCD products are eliminated and replaced by a balanced diet from ordinary foods.*

*Two or more cups of selected non-starchy vegetables, a small amount of oil and 2 litres of water are also recommended to be consumed each day as part of the Program.*

*The Intensive Level of the Program, where all 3 meals per day are replaced with OPTIFAST VLCD products, can be followed for a period of up to 12 weeks. While individual results vary, studies have shown that weekly weight loss when following the Intensive Level can average 1 to 2.5kg per week (Mustajoki, P and T Pekkarinen, Very low energy diets in the treatment of obesity. Obesity Reviews, 2001 2: p 61-72).*

*The restricted carbohydrate intake when following the Intensive Level of the Program is designed to induce ketosis. Ketosis is a metabolic process that occurs in the body whereby the body shifts from using primarily carbohydrates consumed in the diet to fats stored on the body as an energy source.*

*There have been numerous clinical studies which have shown that mild ketosis is induced when 3 daily meals are replaced with OPTIFAST VLCD products or with a very low energy diet (VLED) including:*

*(a) Chearskul S et al. Effect of weight loss and ketosis on postprandial cholecystokinin and free fatty acid concentrations. Am J Clin Nutr 2008;87:1238-46.*

*This study found that:*

*- 8 weeks of OPTIFAST VLCD resulted in increased biochemical markers of ketosis*

*- 8 weeks of OPTIFAST VLCD also resulted in increased circulating free fatty acids (indicator of fat store oxidation)*

*(b) Sumithran P et al. Ketosis and appetite-mediating nutrients and hormones after weight loss. European J Clin Nutr 2013;67:759-764, which found that:*

*- 8 weeks of OPTIFAST VLCD resulted in increased biochemical markers of ketosis*



- 8 weeks of OPTIFAST VLCD also resulted in increased circulating non-esterified fatty acids due to adipocyte lipolysis (fat breakdown)

(c) Delbridge E, Prioetto J. State of the science: VLED for obesity. *Asia Pacific J Clin Nutr* 2006;15(Suppl):49-54. Review of VLED, stating that “VLED is low in carbohydrate and the patients become mildly ketotic and mild ketosis results in reduced hunger”

(d) Baker S et al. Effects and clinical potential of very low calorie diets in type 2 diabetes. *Diab Res Clin Prac* 2009;85:235-242: “VLCDs are associated with ketosis via the production of acetoacetate and beta-hydroxybutyrate from the breakdown of circulating fatty acids.”

Mild ketosis is a physiologically normal state of the body during fasting, where blood ketone levels range between 0.3-0.7mmol/l (Paoli A et al. *European J Clin Nutr* 2013;67:789-796). The Program is a very low energy diet and not a “ketogenic diet” - the Advertisement does not make any claims about the Program being a “ketogenic diet”. A “ketogenic diet” is usually considered to contain <math>\leq 50\text{g}</math> carbohydrate but is usually higher in fat and not necessarily low in energy. Blood ketone levels achieved while following the Intensive Level of the Program are lower than that achieved while on a “ketogenic diet” or in the case of diabetic ketoacidosis.

Burning excess body fat via ketosis while following the Intensive Level is a clinically proven and safe way to lose weight for an obese person who needs to lose excess fat for his or her health. There is no element of starvation on the Program since consumers receive adequate nutrition from a combination of both a nutritionally complete intake and excess body fat reserves.

4. Response to the First Complaint (ketosis claims- Complaint notified to Ad Standards on 16 September 2018)

The first complaint identified in Ad Standard’s notification dated 10 October 2018 was received by Ad Standards on 16 September 2018 (First Complaint). In the First Complaint, we believe the complainant’s assertions can be summarised as follows:

The OPTIFAST VLCD program cannot ever induce ketosis as there are too many carbohydrates in 3 servings of OPTIFAST VLCD products;

A person must consume less than 50g of carbohydrates per day for 3-4 days to induce ketosis and this is “a medical fact which can be easily verified”;

There is insufficient fat in OPTIFAST VLCD products to induce ketosis;

A low calorie diet which includes a lot of carbohydrates will switch the body into



*starvation mode which is not healthy*

*There is no such thing as “mild ketosis”*

*The Advertisement is misleading because it contains false claims about how the product works.*

*Nestlé respectfully disagrees with the complainant’s assertions and understanding of the process of ketosis and how the Intensive Level of the Program works. With a proper understanding of ketosis and the Program, the complainant’s allegations cannot be sustained.*

*As outlined in paragraph 3.10 above, it has been shown in numerous clinical studies that following a VLED, such as replacing 3 daily meals with OPTIFAST VLCD products, induces ketosis, which is assessed by measuring blood ketone levels.*

*The NHMRC has stated in its Clinical Practice Guidelines for the management of overweight and obesity (National Health and Medical Research Council Australia – Clinical practice guidelines for the management of overweight and obesity in adults, adolescents and children in Australia (2013) at p48. ) that one of the advantages of a very low energy diet/VLED is “the motivating effect of rapid weight loss and a mild ketosis which may suppress hunger”.*

*We recognise that there are wildly divergent sources of health information available to consumers, not all of them accurate. This can result in confusion for some consumers. We are committed to communicating openly and transparently with consumers about our products.*

*As the ketosis claims in the Advertisement are true and supported by clinical evidence, we maintain that the ketosis claims in the Advertisement:*

*(a) are not, and are not designed to be, misleading to consumers (Food & Beverage Code 2.1);*

*(b) are responsible and do not contravene any prevailing community standards (Food & Beverage Code 2.1)*

*(c) contain claims that are supported by appropriate scientific evidence (Food & Beverage Code 2.3);*

*(d) contain claims relating to content, nutrition and health benefits that are accurate (Food & Beverage Code 2.6)*

*We maintain that the Advertisement encourages weight loss for people who need to*





*lose weight for their health in a legally compliant, safe, clinically proven manner, whilst under the supervision of healthcare professionals.*

*For the reasons set out above, we strongly reject First Complaint.*

*5. Response to the Second Complaint (scene showing example of food that can be consumed when 3 daily meals are replaced on the Program) – Complaint received by Ad Standards on 10 September 2018*

*The second complaint listed in Ad Standard’s notification dated 10 October 2018 was received by Ad Standards on 10 September 2018. The second complaint relates to a scene in the Advertisement representing an example of the products and low-starch vegetables that can be consumed in a day on the Intensive Level of the Program, when all 3 daily meals are replaced with Optifast® products. The second complainant asserts that this scene is misleading because consumers may believe there is a lot of food that can be eaten at each meal.*

*We believe the second complainant is referring to the scene copied in the still below, which shows 3 OPTIFAST VLCD products (a Shake, a soup and a bar) representing the 3 daily meals to be replaced when on the Intensive Level, alongside a glass of water and a bowl of low-starch vegetables.*

*The above scene appears immediately after Sabine states that: “I lost most of my weight by replacing 3 meals a day on the Program, which induces ketosis for fast weight loss”*

*The scene clearly contains the “Replace 3 meals” icon, which is prominently displayed for the duration of this scene. The scene also contains a super relating to ketosis occurring when all 3 meals per day are replaced on the Intensive Level.*

*The viewer’s attention is drawn to the “Replace 3 meals” icon as the icon is large and visually dominant due to the red colour and the movement of the red circular ribbons in the icon throughout the scene.*

*In the context of Sabine’s lead-in statement and the Advertisement as a whole about the Program and weight loss, we believe that the ordinary and reasonable consumer viewing this scene would interpret this scene as showing food intake when 3 daily meals are replaced, and not the amount of food that can be eaten in a single meal on the Intensive Level.*

*We believe that this scene responsibly and accurately shows a typical daily intake of 3 OPTIFAST VLCD products, low-starch vegetables and water when following the Intensive Level.*



*In addition, in the Advertisement, we direct consumers to our website for more information and we also recommend that consumers first speak to their healthcare professional to see if the Program is right for them. The intake requirements while following the Intensive Level of the Program are clearly reinforced for consumers on the OPTIFAST VLCD website and can also be confirmed for consumers by checking with their healthcare professional.*

*It is clear from the Second Complaint that the complainant understood that the 3 OPTIFAST VLCD products shown do not represent a single meal. The complainant's concern was that others may be misled. We are not aware of any consumers having been confused by this scene.*

*We maintain that the scene referred to in the Second Complaint (and the Advertisement as a whole):*

- (a) is not, and is not designed to be, misleading to consumers (Food & Beverage Code 2.1);*
- (b) is responsible and does not contravene any prevailing community standards (Food & Beverage Code 2.1);*
- (c) contains claims that are supported by appropriate scientific evidence (Food & Beverage Code 2.3);*
- (d) contains claims relating to content, nutrition and health benefits that are accurate (Food & Beverage Code 2.6)*

*For these reasons, we strongly reject the Second Complaint and we maintain that the Second Complaint should be dismissed.*

#### *6. Response to the Third Complaint (ketosis claims) – Complaint notified to Ad Standards on 13 October 2018*

*The third complaint is contained in Ad Standard's notification dated 15 October 2018 and was received by Ad Standards on 13 October 2018 (Third Complaint).*

*The Third Complaint is very similar to the First Complaint. It is based on the same misunderstanding of the process of ketosis and how the Program works and, like the First Complaint, cannot be sustained.*

*For the same reasons set out above, we strongly reject the Third Complaint and maintain that the Third Complaint should also be dismissed.*

#### *7. Other considerations under the Code of Ethics*



*We have reviewed the Advertisement for compliance with the Code of Ethics and are confident the Advertisement complies in all respects. In particular:*

*The Advertisement is not directed at, and does not have a strong or evident appeal to people under the age of 18. Sabine is clearly over the age of 18 years and her stated motivating factor for weight loss is for health reasons, not for any image or cosmetic reason that might be more appealing to a person under the age of 18 years.*

*Sabine was within the indication for the Program prior to commencing with the Program and her journey with the Program is portrayed responsibly.*

*The recommendation to consult with a healthcare professional is made in both voice and text in the Advertisement and the emphasis in the Advertisement is on weight loss for health. This communicates several important messages to the consumer relating to the Program, which include:*

*that consumers should consult a healthcare professional if they need to lose weight for their health;*

*that healthcare professional supervision is advised for participants on the Program; and*

*that the key motivation for losing weight is health related, as opposed to image or purely cosmetic reasons (this is reinforced at the end of the Advertisement where consumers are invited to "Discover your way to a healthier future").*

*The Advertisement contains a statement that the Program is to be followed in conjunction with an exercise plan and structured meal plan.*

*The Advertisement also refers consumers to the Program website at [www.optifast.com.au](http://www.optifast.com.au), which contains further information about the Program, ketosis, our OPTIFAST product range and on-line support for consumers (including support by healthcare professionals).*

*The intention of the Advertisement and the Program is to encourage weight loss for people who need to lose weight for their health in a legally compliant, safe, clinically proven, healthcare professional-supervised manner.*

*We submit that the claims in the Advertisement are truthful and honest and do not contravene any prevailing community standards. We also submit that the Program is promoted in the Advertisement in a responsible and appropriate manner, having regard to the target audience.*



*Nestlé takes its legal, ethical and social responsibilities in developing and marketing its products very seriously. For the above reasons, we respectfully submit that the Advertisement complies with the Food & Beverage Code and the Code of Ethics request that all of the Complaints be dismissed.*

## **THE DETERMINATION**

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Panel noted the complainants' concerns that the advertisement is misleading in its suggestion of portion sizing and of the product's ability to induce ketosis.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the product advertised is food and that therefore the provisions of the Food Code apply. In particular the Panel 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.'

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that

"The Panel 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 an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel 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, an advertising or marketing communication may make reference to one or more of the nutritional values 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 Panel noted the complainants’ concern that the advertisement is misleading in its depiction of the available foods as it appears to suggest you can have the bar, soup and shake as one meal when it is actually three.

The Panel noted the advertiser’s response that this scene in the advertisement contains an example of what you can eat in a day when all three meals are replaced and the ‘replace 3 meals’ icon is visible when this food is shown.

The Panel considered that the depiction of the bar, soup, vegetables and water appear on the screen at the same time as the words ‘replace 3 meals’ appears on screen.

The Panel considered that most members of the community would see this as an example of three meals from the program, and not a suggestion that all three products would be consumed together for a single meal.

The Panel considered that the advertisement was not designed to mislead or deceive in relation to the meal portion sizes shown in the advertisement.

The Panel noted the complainants’ concern that while the advertisement suggests that people should contact their health professional before starting the diet, people are unlikely to do so.

The Panel considered that the advertisement contains clear disclaimers and messaging that the product should be used after consulting a medical professional. The Panel considered that most members of the community would understand this messaging and that the advertiser had communicated this information in a truthful and honest way.

The Panel then noted the complainants’ concern that the advertisement is misleading in its suggestion that use of the product will induce ketosis.

In particular, the Panel noted the complainants’ concern that the advertisement could not ever induce ketosis due to the products containing too many carbohydrates and not enough fat, and that use of the products could switch a body into starvation mode which is unhealthy.

The Panel noted that advice from an Independent Expert had been sought on this issue, and that he had advised that, “Ketosis occurs when the body increases fat metabolism to higher than normal levels, leading to over-production of acetyl-



coenzyme...This process can be induced through excess consumption of fat compared to carbohydrate...but can also be induced when people consume a very low energy diet, such as when they replace three meals per day with the OPTIFAST program...In my opinion these complaints cannot be upheld because it is well established that VLEDs can induce ketosis... It has also been established that VLEDs are safe, and that one can be mildly ketotic, with mild ketosis occurring when blood ketone concentrations are elevated up to 7 mmol/L [5, 6].”

Taking into account the advice from the Independent Expert, the Panel considered that the advertisement correctly represented the product’s ability to assist with weight loss, and its triggering of ketosis and that the ad was not misleading or deceptive and did not breach Section 2.1 of the Food Code.

The Panel then considered section 2.3 of the Food Code which provides:

“Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.”

The Panel noted the complainant’s concern that the advertisement contains incorrect implied health claims.

The Panel considered that claims made in the advertisement include:

- replacing 3 meals per day with the product will induce ketosis and fast weight loss

The Panel also considered that the advertisement super states ‘Ketosis occurs when you replace all 3 meals per day on the Intensive level and can be used for up to 12 weeks. In conjunction with exercise and a structured mealplan. Individual results may vary.’ And ‘Optifast VLCD (Very Low Calorie Diet) is a Food for Special Medical Purposes for the dietary management of obesity. Must be used under medical supervision’ and Sabine states at the end of the ad ‘be sure to consult with your health care professional’.

As mentioned above, the Panel considered that on the advice of the Independent Expert, the claim made in the advertisement that the product could induce ketosis was truthful, and supported by appropriate scientific evidence.

The Panel noted that statements made in the advertisement are all statements that would be required by the Standard 2.9.5 Food for special medical purposes, Division 4 – Labelling of the Australia and New Zealand Food Standards Code (<https://www.legislation.gov.au/Details/F2017C00715>) including 2.9.5 – 10 (a) a statement to the effect that the food must be used under medical supervision and 2.9.5 – 10 (c) a statement indicating the medical purpose of the food.



The Panel considered that the statements made in the advertisement were supported by appropriate scientific evidence and met the requirements as defined in the Food Standards Code and considered that the advertisement did not breach Section 2.3 of the Food Code.

The Panel then considered section 2.6 of the Food Code which provides:

“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 Panel noted the complainants’ concerns that the advertisement is misleading in its suggestion of portion sizing and of the products ability to induce ketosis.

Similar to discussions above, the Panel considered that the meals displayed are clearly in the context of an example of ‘3 meals’ and that this representation was accurate.

The Panel determined that the claims relating to the health benefits of the product made in the advertisement were accurate and determined that the advertisement did not breach Section 2.6 of the Food Code.

Finding that the advertisement did not breach the AANA Food Code the Panel dismissed the complaints.

