



# Case Report

1	Case Number	0504/17
2	Advertiser	GK Gluten Free Foods
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet-Social-FB
5	Date of Determination	22/11/2017
6	DETERMINATION	Dismissed

## ISSUES RAISED

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

## DESCRIPTION OF THE ADVERTISEMENT

The business owner talks to the camera about the Oat product making reference to the Coeliac Society and health practitioners.

## THE COMPLAINT

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

*AANA Code states:*

### **2. ADVERTISING OR MARKETING COMMUNICATIONS FOR FOOD OR BEVERAGE PRODUCTS**

*2.1 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.*

*It is my assertion that this company does not take adequate measures to ensure that all web-based advertisements/information re: the risk of consuming ANY oat products if suffering*

*from coeliac disease is made apparent to the consumer. Not only that, it appears that the company is wilfully attempting to mislead coeliac disease sufferers to believe that these oats are safe for their consumption in order to secure their purchase of the product.*

*The potential health risks to coeliac disease sufferers is extremely high, both in the short and long term. The use of the GF acronym in the name of the product (which in this instance, stands for Gloriously Free) is obviously problematic given that GF usually denotes Gluten Free food. I understand that the ASB has no jurisdiction when it comes to this, however this points to an apparent objective of misleading the consumer.*

*In regards to the specific aforementioned web page, please refer (for instance) to the following statement: "These oats are grown and produced by the Smith family in Wyoming who are a family of Coeliacs, so the (sic) understand the disease, its complications and the need for a pure uncontaminated oats products (sic) that customers can trust. Please refer to the statement released by the Coeliac Society."*

*This is highly misleading, given:*

*1) In the US (where the oats are produced), oats are not considered to be of risk to Coeliacs, with governance of gluten-free foods being less stringent*

*2) Clearance to eat oats in Australia requires an oat challenge followed by small bowel biopsy to ensure they are not causing intestinal damage*

*3) The link to the Coeliac Society (old name for Coeliac Australia) position statement link is a dead link. This could mislead potential consumers into thinking that (the very much-trusted) Coeliac Australia supports the consumption of this product by those with coeliac disease, when in fact the opposite is true:*

*From Coeliac Australia's FAQs page (<https://www.coeliac.org.au/faqs/>)*

*"Are gluten free oats ok to eat if I have coeliac disease?*

*FSANZ defines wheat, rye, barley and oats as gluten containing grains, as all four grains have been shown to trigger a reaction in those with coeliac disease.*

*Many gluten free or pure oat products are now being imported to Australia. It is important to note that this means that the product is only free of contamination from wheat, rye or barley crops during the harvesting, processing or packaging of the product. The product has not had the gluten extracted or been genetically modified to be gluten free.*

*It is recommended by the Medical Advisory Committee (MAC) for Coeliac Australia that despite the extensive medical research done in relation to oats and coeliac disease, oats should be excluded from a gluten free diet until the research is more conclusive and definitive."*

*I assert that these misleading statements and omission of truthful disclaimers to the contrary would have the effect of manipulating coeliac disease sufferers to believe that this product is also appropriate for their consumption, with potentially serious consequences for their health. Again, this is only one of several examples found both on the website and on their Facebook page. I believe that warnings need to be apparent each and every time the 'gluten free' nature of these oats is suggested. I believe that it is not adequate to have this warning made apparent only in some areas of the website or on the package itself, especially following an online purchase, given the potentially serious health consequences.*

## **THE ADVERTISER'S RESPONSE**

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

*Please find the response to the complaint made regarding a Facebook video we presented online.*

*We are suppliers/importers of Gluten Free Oats in Australia. Unfortunately, at this time there is still a sub clause in the Food Standards pertaining to gluten 1.2.7 Schedule 4 Nutrition, Health and Related Claims that prohibits and Oats being called gluten free in Australia. We comply with these standards and have worked closely with this Queensland Health Department to ensure that the wording that we use to communicate our brand to our customers is effective yet still complies with the code. It is a tricky one but one that we have been complying with since 2009. Unfortunately, customers that have Coeliac disease are drawn to oats as they are advertised and referred to openly on the internet due as gluten free as gluten free oats is certified in many other countries. They are searching for oats because of the health benefits in a diet that is very restrictive. This of course causes much confusion with these customers and they are not eating oats due to the contamination and advice from the Coeliac Australia. However, with regards to Coeliac disease the protocol both here and in ALL the other parts of the world is that research shows that 1 in 5 may have a gluten type reaction to oats, so that effectively means 4 from this group the oats may be fine for. Therefore, to support the answering of our FAQ's, this being one of them, we designed some videos that we could send customers to explain the issue, particularly online questions as it is difficult to type the full answer each time and we field on average 6 of these questions a week. The videos also allow my staff to comply with delivering the same message and not misinforming customers if they are answering this delicate question.*

*As per requested please see below I have answered the requested questions that apply to me.*

*Notes and comments with regards to the complaint.*

- The post referred to in this complaint was to the written version answering the question <https://gfoats.com.au/faqs/> where the full list of FAQ's are listed however they are referring specifically to the one which as referenced above Are these oats safe for coeliacs.*
- The wording that I have in this advertisement has been closely scrutinised, crafted and revised regularly with consultants and Qld Health Department. We therefore use the same script throughout our website, marketing and packaging. It is very difficult to communicate the true benefits and features of a product when you cannot explain all the content required.*
- We go to great lengths on our website (HOME PAGE) and on our packaging (all content once again approved by Qld Health) to give as much information as possible and always referring Coeliac customers to Coeliac Australia, the customer noted I referred to the Coeliac Society, I have since changed this and we have updated the link as we weren't aware that Coeliac Australia had moved the link to their statement on oats on their website. I don't believe it is my position to give details on the medical requirements and procedures of a Coeliac to undergo as I am not a health practitioner and as information updates regularly I don't want to be in a position to give this advice. I am open to advice on what more the customer thinks I should do other than give medical advice. Keep in mind I don't advertise or promote this brand to this group of people at all, I place a warning on all packaging stating that if you are a Coeliac considering consuming this product please seek advice from your medical practitioner of Coeliac Australia. So, I do disagree whole heartedly that we are wilfully misleading the Coeliac customer. We are in fact conveying the facts.*
- With regards to our brand Gloriously Free Oats or "GF Oats". This acronym actually developed over time as the words Gloriously Free was very long. The suggestion is that "GF" applies to the term "Gluten Free" however this is NOT food industry standards and practice. This consumer obviously refers to GF as gluten free, as they are a Coeliac, GF can in fact*

*relate to anything not just gluten free, I receive text messages with GF referring to the word 'Girlfriend'. So, I believe this is not relative. GF is not trademarked. Gluten free consumers are advised to only eat gluten free products that have a gluten free claim clearly labelled on the packaging. This product does not contain that claim. There are in fact no manufacturing companies that I'm aware of that put "GF" on their packing as opposed to the label "gluten free" to communicate that their product is gluten free. So, I would argue that this the claim I am using to imply gluten free is not in fact valid as it is not an industry practise to do this.*

- With regards to the suggestion that I inform people that the family suffer from Coeliac disease, well, they do. BUT, I follow this up by referring Coeliac suffers here in Australia to the Society. I am not an expert on this disease so I believe the correct protocol is to refer them to those who do.*
  - The consumer refers to a generalisation that there are many pure oat products being imported. Where did they get their information as I know this is not true as we keep a close eye on products that are displayed in stores along with our all our distributors, wholesalers and customers in each state of Australia. We only have one competitor in Australia to date which is also a well know brand.*
  - The customer implies that I should be proclaiming warnings on every page of my website and where ever the gluten free nature of oats is suggested. I think that the front page of the website is fairly prominent. As well as in the video. I'd also like to point out these oats are not going to kill anyone if they eat them, in my experience from the feedback they get pains in the stomach, feel sick and then they don't eat it again, like many other foods.*
- In closing I would like to re iterate that it is definitely not our intention to upset this group of people. If we don't bring this product in then somebody will and I doubt they would go the lengths that we do to comply and communicate the features, benefits and outline the health problems with a product that is we are restricted with communicating effectively. The fact that we are selling 50 tonne a year shows that the Australian community are looking for an uncontaminated.*

## **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).

The Board noted the complainants' concerns that the advertisement is misleading in its representation of information regarding the safety of consumption of oats for people with Coeliac disease.

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 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 the compilation of information on the website and Facebook.

The Board noted that the website logo and range of products are called 'GF Oats' which are defined in various places, including in the logo as 'Gloriously Free Oats.' The Board considered that the company is clearly marketing its product in a way to appeal to people seeking gluten free foods. However, the Board noted that the website does not use the term 'Gluten free oats' in any place on the website, and in fact on the Homepage states '...Since then customers in Australia have been eager to source uncontaminated oats. However, it is important to note that here in Australia, a product that contains oats cannot claim to be 'gluten free' due to current food labelling laws.'

And goes on to state: 'The Coeliac Society of Australia advises that 1 in 5 of those suffering from Coeliac Disease may still react to the protein component in these oats. If you have Coeliac Disease please refer to your state support group or seek medical advice prior to the consumption of this product.

Ingredients: Pure Uncontaminated Rolled Oats.'

The Board noted the advertiser's response that the product complies with the relevant standards with the Food Standards Code and the Queensland Health Department.

The Board noted that the Food Standards Code standard 1.2.3 specify current requirements for 'gluten free' claims which include the condition that the food must not contain detectable gluten, or oats or oat products; or cereals containing gluten that have been malted, or products of such cereals.

The Board considered whether the information on the website is communicated in a manner that is appropriate to the level of understanding of the target audience. The Board considered that in this case, the target audience would be people with Coeliac disease or those avoiding gluten for medical and/or personal reasons and that this audience would likely have a greater level of understanding about the condition and the information before them.

The Board noted that the website and Facebook pages overall included information about the product, compliance and other information with several references to the Coeliac society, coeliac disease and gluten free status.

The Board considered that the overall tone and theme of the marketing communication was to promote a product that may be suitable for some people seeking to avoid gluten. The Board considered that the use of the term 'Gloriously Free Oats' does not state that the product is Gluten Free and there is adequate information on the website to indicate to the target audience that the product is not gluten free and will not suit all individuals seeking Gluten Free oats.

The Board considered that the information about the composition of the product in the video and additional website and Facebook pages overall were communicated in a manner appropriate to the level of understanding of the target audience and did not breach Section 2.1 of the Food Code.

The Board then considered the specific video response to FAQ number 4 – "are these oats safe for Coeliacs?"

The Board noted the video response features Kylie from GF Oats Australia speaking to the camera about the safety of the oats for Coeliacs. The video commences with Kylie stating that she would always refer people back to the Coeliac society and the studies they have done regarding the consumption of Oats for people with Coeliac disease.

The Board noted that complainant's concern that the advertisement is misleading and a potential health risk. The Board noted there is genuine community concern regarding the truthful representations of products and in particular food products for people with sensitivities.

The Board considered that the provision of information in the video is very clear. The Board noted that Kylie explains the statistics around the consumption of oats and that "1 in 5 Coeliacs may have a reaction to the Oats" supported by the referral to the Coeliac society and medical practitioners for each individual.

The Board noted that the information provided in the video is clear about it not being gluten free and that it does not make any specific health related claims for oats or the product GF Oats.

The Board considered section 2.3 of the food Code. Section 2.3 states that 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 Board noted that the inclusion of information about the gluten content of oats is not a health or nutrition claim as per the Food Standards Code and the requirement to declare the presence of gluten is within the Food Standards Code specifically within the standard covering warning statements, advisory statements and declarations.

The Board noted that although the advertisement is referring to the gluten free status of the product, it considered that most members of the community who have a sensitivity to gluten or are interested in the gluten content of foods would recognise that the advertisement is not making a health or nutrition claim per se and in the Board's view, the advertisement did not breach section 2.3 of the Food Code.

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

