



Case Report

1	Case Number	0563/14
2	Advertiser	Pharmabrand Labs
3	Product	Slimming
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	28/01/2015
6	DETERMINATION	Dismissed

ISSUES RAISED

- Other Other - miscellaneous
- 2.1 - Discrimination or Vilification Gender
- 2.2 - Objectification Exploitative and degrading - women
- 2.4 - Sex/sexuality/nudity S/S/N - general
- 2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This is the summer advertisement for the Rapid Loss product range set around the concepts of summer, wearing a bikini this summer and the beach. The advertisement features women at the beach wearing bikinis, before and after photos of users of the Rapid Products wearing bikinis, photos of the Rapid Products and audio from the presenters of the advertisement, users of the Rapid Products and a narrator.

THE COMPLAINT

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

This is an example of body-shaming by using the word disgusting to describe people bodies. Their choice of words is poor, and there would have been so many different options for their post-Christmas target campaign, but for some reason Body-shaming was how they decided that they were going to market their product.

It is a very sexist ad, and there is no need especially at all times of the day to have two girls in bikinis whose breasts are barely covered on television and then running and jumping around in the water in tiny bikinis about to pop out advertising anything. The advert is

degrading, sexist, and of similar lines of a pornographic ad

And the women are also suggesting that if you use the rapid loss products you will look like them!! They have clearly had breast augmentations and face fillers! This should not be allowed.

THE ADVERTISER'S RESPONSE

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

This is the summer advertisement for the Rapid Loss product range set around the concepts of summer, wearing a bikini this summer and the beach. The advertisement features women at the beach wearing bikinis, before and after photos of users of the Rapid Products wearing bikinis, photos of the Rapid Products and audio from the presenters of the advertisement, users of the Rapid Products and a narrator.

Rapid Loss is a product marketed and promoted by Pharmabrand Labs Pty Ltd ACN: 142 867 169 (Pharmabrand Labs) and therefore Pharmabrand Labs is the advertiser of the product not Rapid Loss.

Pharmabrand Labs is surprised at the nature of the complaints as it alleges inter alia that Pharmabrand Labs has discriminated against and vilified its target audience. While appreciating that members of the community hold and are entitled to hold differing views, Pharmabrand Labs denies any breach of the AANA Advertiser Code of Ethics (the Code) as alleged or at all.

The Complainants allege that Pharmabrand Labs has breached sections 2.1, 2.2 and 2.4 of the Code. Notwithstanding this, the ASB has requested that this response address all parts of Section 2 of the Code. We will address each section in turn.

Section 2.1 of the Code provides as follows:

“Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.”

The AANA Code of Ethics Practice Note (Practice Note) states that:

“- This section [being section 2.1] describes types of behaviour and restricts depictions of those types of behaviour against people within certain groups.

- The types of behaviour are:

Discrimination – unfair or less favourable treatment

Vilification – humiliates, intimidates, incites hatred, contempt or ridicule”

With respect to the complainants, the complaints lack specificity and we are unable to discern the precise nature of how they assert that the advertisement has breached section 2.1 of the Code. Based on the text of the complaints we can only assume that they are of the view that the advertisement either discriminates on the basis that its target audience is women or vilifies women by humiliating, ridiculing or holding them in contempt. Pharmabrand Labs denies that the advertisement presents women in a manner that is vilifying or discriminatory.

Positive imagery and messages are used in this advertisement to focus the advertisement to women. The ASB has noted in the past that advertising a product to women does not of itself amount to discrimination or vilification of a person based on their gender (see: Cat Media Pty Ltd Case Number 0436/12).

As the advertisement utilizes positive imagery and messages, women in the advertisement are specifically presented as healthy, confident, strong powerful women who are in control and having fun. In addition to the depiction of women wearing bikini's, which is appropriate in the context of the advertisement [as discussed below], the depiction of actual users of the Rapid Products in bikini's is intended to strengthen the impression of healthy, confident, strong powerful women who are in control and having fun. At no time during the advertisement are comparisons made between women of differing weight [save for the testimony and before and after shots of users] nor is it implied that overweight women are in any way inferior [see Jenny Craig Weight Loss Centres, case number 372/06].

Pharmabrand Labs denies that the depiction of persons in the advertisement would be considered to be vilifying or discriminatory by prevailing community standards.

Section 2.2 of the Code provides as follows:

“Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The AANA Code of Ethics Practice Note (Practice Note) states that:

“- ...The new wording restricts the use of images which employ sexual appeal which is exploitative and degrading of any individual or group of people....

- Not all images of people who are scantily clad will be unacceptable under this section. This section restricts the use of such images only if they are exploitative and degrading.

Exploitative means clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values.

Degrading means lowering in character or quality a person or group of persons.”

Pharmabrand Labs denies that the advertisement employed sexual appeal (save to the extent that the persons depicted in the advertisement are attractive and photogenic) and further denies that it employed sexual appeal in a manner that is exploitative or degrading. As discussed below, the use of women wearing bikinis is appropriate given the context of the advertisement and is not employed to achieve sexual appeal. At no time does the advertisement seek to debase or abuse a person or group of persons nor does it seek to lower in character or quality a person or group of persons. The advertisement seeks to enable

women, as the focus of the advertisement, to relate with the images and messages which include healthy, confident, strong powerful women who are in control and having fun. That is, the advertisement seeks to empower women to create a positive association and recollection with the Rapid Products.

Pharmabrand Labs denies that the depiction of persons in the advertisement would be considered to be exploitative or degrading by prevailing community standards.

Section 2.3 of the Code Provides as follows:

“Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.”

Pharmabrand Labs is of the view that the advertisement does not depict or include audio presenting or portraying violence, aggression or menace and as such denies that the advertisement would be considered to contain the presentation or portrayal of violence by prevailing community standards.

Section 2.4 of the Code provides as follows:

“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.”

The Practice Note states that:

“Images of women in bikinis are permitted, however, unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”

Any allegation that the advertisement depicts “half naked women”, “is almost pornographic” or contains girls with their “boobs out” is denied. We note that all women depicted in the advertisement are at all times clearly clothed in at least a bikini and there is at no time so much as a suggestion, implication or illusion of nudity given.

The context of the advertisement is that it is the summer advertisement for Rapid Products which links wearing a bikini this summer with the Rapid Products (being products for weight management and good health) and therefore the setting for the advertisement is the beach. There is a clear association between the content of the advertisement and the products being advertised. The women depicted in the advertisement are well covered by at least a bikini, the images do not include any sexualized or suggestively sexual poses or physical contact, do not contain any sexual innuendo and do not include ANY nudity nor does the advertisement adopt a sexual tone. The image that is sought to be portrayed by the commercial is that of healthy, confident, strong powerful women who are in control and having fun.

Notwithstanding that it is denied that the advertisement is sexualised, the ASB has found in the past that an image [of women in bikini’s] that was not “...overtly sexualised...”, would be considered “...relatively mild” and “unlikely to be considered sexualised by most members of the community...” (see Vitaco Health Australia Pty Ltd, case number 0237/11) and therefore did not breach the Code (see also: Cat Media Pty Ltd Case Number 0436/12).

Pharmabrand Labs denies that the advertisement fails to treat sex, sexuality and nudity with sensitivity to the relevant audience in accordance with prevailing community standards.

Section 2.5 of the Code provides as follows:

“Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.”

Pharmabrand Labs is of the view that the advertisement does not contain language that is inappropriate for any audience (notwithstanding that the target audience for the advertisement is adult women) and as such denies that the advertisement would be considered to contain inappropriate language by prevailing community standards.

Section 2.6 of the Code provides as follows:

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.”

Pharmabrand Labs is aware of and is sensitive to the issues surrounding body image and health and safety. The advertisement depicts women who are healthy and confident with their appearance and includes actual users of the Rapid Products as well as presenters. The advertisement seeks to depict an active lifestyle (as represented by women playing in the surf) and the advertisement includes the display of the text “In conjunction with a healthy diet and regular exercise routine. Individual results may vary.” The advertised products include access to and support from the rapid team.

Pharmabrand Labs is of the view that the advertisement does not present material which would be contrary to prevailing community standards on health and safety around body image.

The ASB has also asked us to address other relevant issues that arise from the complaints in respect to the AANA Food & Beverages Code (FBC) or AANA Code for Advertising & Marketing Communications to Children (MCC).

In respect to the MCC, we respectfully submit that the MCC does not apply to this product. We note that the MCC defines “Advertising or Marketing Communications to Children” as follows:

“Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition. ” [see section 1 MCC]

And Product is defined as:

“Product means goods, services and/or facilities which are targeted toward and have principal appeal to Children.”

AANA Practice Note: Advertising Communications to Children (MCC Practice Note) provides as follows:

“It is not the intent of the AANA for this Code to apply to advertising or marketing communication which is directed at adults or older children, or advertising or marketing communication that may be seen by children, but is not directed primarily to them.”

Pharmabrand Labs is of the view that, having regard to the nature of the product, theme, storyline, visuals, language and the age of the persons depicted in the advertisement, that the advertisement and the Rapid Products could not in any way be considered to be Advertising or Marketing Communications to Children or a Product as defined in the MCC. This is consistent with the ASB findings in Vitaco Health Australia Pty Ltd, case number 0237/11, Cat Media Pty Ltd Case Number 0436/12. The advertisement is broadcast in accordance with its rating classification and the mere fact that the advertisement is seen by children does not in and of itself result in the advertisement becoming subject to the MCC [See: Yum Restaurants International case number 0087/11].

Pharmabrand Labs denies that the MCC applies to the advertisement and therefore denies that it has breached the MCC.

In respect to the AANA Food & Beverages Code (FBC) Pharmabrand Labs denies that it has breached the FBC as alleged or at all. Specifically, it has been alleged by a complainant that:

“The girls in the bikinis, who are telling the audience about the product, Rapid Loss, say that by using the product, you can look like them. I believe this is false, as no matter how well a slimming product works, a person cannot look like the bikini models if their body shape, age, or gender is different to that of the models in the ad”

and another complainant writes:

“I’m no prude but this is just ridiculous! Where do you draw the line? And the women are also suggesting that if you use the rapid loss products you will look like them!! They have clearly had breast augmentations and face fillers! This should not be allowed”

Section 2.1 of the FBC provides as follows:

“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”

In the decision Boost Juice Bars Australia case number 0453/12 the ASB noted that:

“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.”

The complaint seems to be in respect to the presenters representation “if you want to look like this, this or even us” as two photos of users of Rapid Loss Products are shown on screen followed by the presenters. With respect to the complainants, we submit that members of the community would appreciate that everybody is different, including in respect to their age, gender, height etc. and that using the Rapid Products cannot change this. Pharmabrand Labs uses, presenters and users of the Rapid Products in the advertisement to provide a variety of images of healthy, confident, strong powerful women who are in control and having fun. The message sought to be conveyed by the advertisement is that using the Rapid Loss Products can result in you looking like a healthy, confident, strong, powerful woman who is in control and having fun.

The ASB has noted in the past that it is appropriate for an advertiser to use models that it thinks appropriate to represent users of the products [or people who looked like they had undergone the program] being advertised [see Cat Media Pty Ltd Case Number 0436/12; Simon de Winter case number 475/09]. Pharmabrand Labs goes further, using presenters in combination with actual users of the Rapid Products in the advertisement.

Pharmabrand Labs submits that 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 and therefore denies that they have breached the FBC.

We do not believe that other sections of the Code, FBC or MCC have any application. However, in light of the above submissions and in the absence of specific allegations, Pharmabrand Labs denies that it has breached the FBC or MCC. All rights in respect to specific allegations are reserved.

Notwithstanding, the assertion in your letter that receipt by you of material from us is a deemed license, for the avoidance of doubt, Pharmabrand Labs does not grant the Advertising Standards Bureau a license to the material provided on the terms asserted in your letter and forwards you material and information for the purposes of determining this complaint only.

Rapid Loss is a product marketed and promoted by Pharmabrand Labs Pty Ltd ACN: 142 867 169 (Pharmabrand Labs) and therefore Pharmabrand Labs is the advertiser of the product not Rapid Loss.

Pharamabrand Labs is surprised at the nature of the complaints as it alleges inter alia that Pharmabrand Labs has discriminated against and vilified its target audience. While appreciating that members of the community hold and are entitled to hold differing views, Pharmabrand Labs denies any breach of the AANA Advertiser Code of Ethics (the Code) as alleged or at all.

The Complainants allege that Pharmabrand Labs has breached sections 2.1, 2.2 and 2.4 of the Code. Notwithstanding this, the ASB has requested that this response address all parts of Section 2 of the Code. We will address each section in turn.

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way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.”

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With respect to the complainants, the complaints lack specificity and we are unable to discern the precise nature of how they assert that the advertisement has breached section 2.1 of the Code. Based on the text of the complaints we can only assume that they are of the view that the advertisement either discriminates on the basis that its target audience is women or vilifies women by humiliating, ridiculing or holding them in contempt. Pharmabrand Labs denies that the advertisement presents women in a manner that is vilifying or discriminatory.

Positive imagery and messages are used in this advertisement to focus the advertisement to women. The ASB has noted in the past that advertising a product to women does not of itself amount to discrimination or vilification of a person based on their gender (see: Cat Media Pty Ltd Case Number 0436/12).

As the advertisement utilizes positive imagery and messages, women in the advertisement are specifically presented as healthy, confident, strong powerful women who are in control and having fun. In addition to the depiction of women wearing bikini's, which is appropriate in the context of the advertisement [as discussed below], the depiction of actual users of the Rapid Products in bikini's is intended to strengthen the impression of healthy, confident, strong powerful women who are in control and having fun. At no time during the advertisement are comparisons made between women of differing weight [save for the testimony and before and after shots of users] nor is it implied that overweight women are in any way inferior [see Jenny Craig Weight Loss Centres, case number 372/06].

Pharmabrand Labs denies that the depiction of persons in the advertisement would be considered to be vilifying or discriminatory by prevailing community standards.

Section 2.2 of the Code provides as follows:

“Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The AANA Code of Ethics Practice Note (Practice Note) states that:

“- ...The new wording restricts the use of images which employ sexual appeal which is exploitative and degrading of any individual or group of people....

- Not all images of people who are scantily clad will be unacceptable under this section. This section restricts the use of such images only if they are exploitative and degrading.

Exploitative means clearly appearing to purposefully debase or abuse a person, or group of person, for the enjoyment of others, and lacking moral, artistic or other values.

Degrading means lowering in character or quality a person or group of persons.”

Pharmabrand Labs denies that the advertisement employed sexual appeal (save to the extent that the persons depicted in the advertisement are attractive and photogenic) and further denies that it employed sexual appeal in a manner that is exploitative or degrading. As discussed below, the use of women wearing bikinis is appropriate given the context of the advertisement and is not employed to achieve sexual appeal. At no time does the advertisement seek to debase or abuse a person or group of persons nor does it seek to lower in character or quality a person or group of persons. The advertisement seeks to enable women, as the focus of the advertisement, to relate with the images and messages which include healthy, confident, strong powerful women who are in control and having fun. That is, the advertisement seeks to empower women to create a positive association and recollection with the Rapid Products.

Pharmabrand Labs denies that the depiction of persons in the advertisement would be considered to be exploitative or degrading by prevailing community standards.

Section 2.3 of the Code Provides as follows:

“Advertising or Marketing Communications shall not present or portray violence unless it is justifiable in the context of the product or service advertised.”

Pharmabrand Labs is of the view that the advertisement does not depict or include audio presenting or portraying violence, aggression or menace and as such denies that the advertisement would be considered to contain the presentation or portrayal of violence by prevailing community standards.

Section 2.4 of the Code provides as follows:

“Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.”

The Practice Note states that:

“Images of women in bikinis are permitted, however, unacceptable images could include those where a woman (or man) is in a suggestively sexual pose, where underwear is being pulled up or down (by the model or another person), or where there is clear sexual innuendo from the ad (e.g. depicting women as sexual objects).”

Any allegation that the advertisement depicts “half naked women”, “is almost pornographic” or contains girls with their “boobs out” is denied. We note that all women depicted in the advertisement are at all times clearly clothed in at least a bikini and there is at no time so much as a suggestion, implication or illusion of nudity given.

The context of the advertisement is that it is the summer advertisement for Rapid Products which links wearing a bikini this summer with the Rapid Products (being products for weight management and good health) and therefore the setting for the advertisement is the beach. There is a clear association between the content of the advertisement and the products being advertised. The women depicted in the advertisement are well covered by at least a bikini, the images do not include any sexualized or suggestively sexual poses or physical contact, do not contain any sexual innuendo and do not include ANY nudity nor does the advertisement adopt a sexual tone. The image that is sought to be portrayed by the commercial is that of healthy, confident, strong powerful women who are in control and having fun.

Notwithstanding that it is denied that the advertisement is sexualised, the ASB has found in the past that an image [of women in bikini's] that was not "...overtly sexualised...", would be considered "...relatively mild" and "unlikely to be considered sexualised by most members of the community..." (see Vitaco Health Australia Pty Ltd, case number 0237/11) and therefore did not breach the Code (see also: Cat Media Pty Ltd Case Number 0436/12).

Pharmabrand Labs denies that the advertisement fails to treat sex, sexuality and nudity with sensitivity to the relevant audience in accordance with prevailing community standards.

Section 2.5 of the Code provides as follows:

"Advertising or Marketing Communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided."

Pharmabrand Labs is of the view that the advertisement does not contain language that is inappropriate for any audience (notwithstanding that the target audience for the advertisement is adult women) and as such denies that the advertisement would be considered to contain inappropriate language by prevailing community standards.

Section 2.6 of the Code provides as follows:

"Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety."

Pharmabrand Labs is aware of and is sensitive to the issues surrounding body image and health and safety. The advertisement depicts women who are healthy and confident with their appearance and includes actual users of the Rapid Products as well as presenters. The advertisement seeks to depict an active lifestyle (as represented by women playing in the surf) and the advertisement includes the display of the text "In conjunction with a healthy diet and regular exercise routine. Individual results may vary." The advertised products include access to and support from the rapid team.

Pharmabrand Labs is of the view that the advertisement does not present material which would be contrary to prevailing community standards on health and safety around body image.

The ASB has also asked us to address other relevant issues that arise from the complaints in respect to the AANA Food & Beverages Code (FBC) or AANA Code for Advertising & Marketing Communications to Children (MCC).

In respect to the MCC, we respectfully submit that the MCC does not apply to this product. We note that the MCC defines “Advertising or Marketing Communications to Children” as follows:

“Advertising or Marketing Communications to Children means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition. ” [see section 1 MCC]

And Product is defined as:

“Product means goods, services and/or facilities which are targeted toward and have principal appeal to Children.”

AANA Practice Note: Advertising Communications to Children (MCC Practice Note) provides as follows:

“It is not the intent of the AANA for this Code to apply to advertising or marketing communication which is directed at adults or older children, or advertising or marketing communication that may be seen by children, but is not directed primarily to them.”

Pharmabrand Labs is of the view that, having regard to the nature of the product, theme, storyline, visuals, language and the age of the persons depicted in the advertisement, that the advertisement and the Rapid Products could not in any way be considered to be Advertising or Marketing Communications to Children or a Product as defined in the MCC. This is consistent with the ASB findings in Vitaco Health Australia Pty Ltd, case number 0237/11, Cat Media Pty Ltd Case Number 0436/12. The advertisement is broadcast in accordance with its rating classification and the mere fact that the advertisement is seen by children does not in and of itself result in the advertisement becoming subject to the MCC [See: Yum Restaurants International case number 0087/11].

Pharmabrand Labs denies that the MCC applies to the advertisement and therefore denies that it has breached the MCC.

In respect to the AANA Food & Beverages Code (FBC) Pharmabrand Labs denies that it has breached the FBC as alleged or at all. Specifically, it has been alleged by a complainant that:

“The girls in the bikinis, who are telling the audience about the product, Rapid Loss, say that by using the product, you can look like them. I believe this is false, as no matter how well a slimming product works, a person cannot look like the bikini models if their body shape, age, or gender is different to that of the models in the ad”

and another complainant writes:

“I’m no prude but this is just ridiculous! Where do you draw the line? And the women are also suggesting that if you use the rapid loss products you will look like them!! They have clearly had breast augmentations and face fillers! This should not be allowed”

Section 2.1 of the FBC provides as follows:

“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”

In the decision Boost Juice Bars Australia case number 0453/12 the ASB noted that:

“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.”

The complaint seems to be in respect to the presenters representation “if you want to look like this, this or even us” as two photos of users of Rapid Loss Products are shown on screen followed by the presenters. With respect to the complainants, we submit that members of the community would appreciate that everybody is different, including in respect to their age, gender, height etc. and that using the Rapid Products cannot change this. Pharmabrand Labs uses, presenters and users of the Rapid Products in the advertisement to provide a variety of images of healthy, confident, strong powerful women who are in control and having fun. The message sought to be conveyed by the advertisement is that using the Rapid Loss Products can result in you looking like a healthy, confident, strong, powerful woman who is in control and having fun.

The ASB has noted in the past that it is appropriate for an advertiser to use models that it thinks appropriate to represent users of the products [or people who looked like they had undergone the program] being advertised [see Cat Media Pty Ltd Case Number 0436/12; Simon de Winter case number 475/09]. Pharmabrand Labs goes further, using presenters in combination with actual users of the Rapid Products in the advertisement.

Pharmabrand Labs submits that 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 and therefore denies that they have breached the FBC.

We do not believe that other sections of the Code, FBC or MCC have any application. However, in light of the above submissions and in the absence of specific allegations, Pharmabrand Labs denies that it has breached the FBC or MCC. All rights in respect to specific allegations are reserved.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants' concerns that the advertisement depicts women in bikinis in a manner which is sexist, objectifying and inappropriate and suggests women should look like this which is contrary to prevailing community standards on body image.

The Board noted the complainants' concerns that the advertisement is misleading. The Board noted the issue of misleading advertising falls under Section 1 of the Code and concerns around truth and accuracy in advertising is a matter for the Australian Competition and Consumer Commission (ACCC).

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

The Board considered whether the advertisement complied with Section 2.1 of the Code which requires that 'advertisements shall not portray or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.'

The Board noted the advertisement features two female presenters describing the results you can get from following the Rapid Loss program and there are before and after images and testimonials from other women who have successfully lost weight.

The Board noted the complainants' concerns that it is sexist to show women in bikinis promoting a product in this manner. The Board noted that the product advertised is a weight loss aid and considered that in the context of two women on a beach talking about losing weight for summer the depiction of the women in bikinis is relevant rather than gratuitous. The Board noted that the advertisement only features women and considered that the advertiser has the right to target their advertising material to whatever target market it prefers.

Consistent with a previous determination against a similar complaint for a coconut detox program (0436/12) the Board considered that advertising a product to women is not of itself discriminatory. The Board noted that the women in the advertisement are depicted as confident and empowered and considered that the advertisement does not portray or depict material in a manner which discriminates against or vilifies a person or section of the community on account of gender.

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

The Board considered whether the advertisement was in breach of Section 2.2 of the Code. Section 2.2 of the Code states: "Advertising or marketing communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people."

The Board noted the complainants' concerns that the advertisement focuses on the bodies of the women wearing bikinis.

The Board noted that theme of the advertisement is feeling confident in a bikini during summer and considered that showing women in bikinis on a beach is appropriate in this context and is not exploitative. The Board noted that the women in bikinis are the presenters of the advertisement and so provide verbal information as well as being visual

demonstrations of the results you can achieve with the advertised product. The Board considered that there is no unnecessary or inappropriate focussing on the women's bodies and the behaviour of the women on the beach and the manner in which they are presented is not degrading.

The Board considered that the advertisement did not employ sexual appeal in a manner which is exploitative and degrading towards women.

The Board determined that the advertisement did not breach Section 2.2 of the Code.

The Board considered whether the advertisement was in breach of Section 2.4 of the Code. Section 2.4 of the Code states: "Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience".

The Board noted the complainants' concerns about the level of nudity in the advertisement. The Board noted the beach setting of the advertisement and considered that women in bikinis are a common sight in Australia. The Board noted the bikinis of the women in the advertisement and considered that they were appropriate for the beach and the level of exposed skin was not inappropriate in the circumstances. The Board noted the behaviour of the women and considered that whilst they are presented as confident and in control they are not sexualised or engaging in any sexualised or inappropriate behaviour.

The Board considered that the advertisement did treat the issue of sex, sexuality and nudity with sensitivity to the relevant audience.

The Board determined that the advertisement did not breach Section 2.4 of the Code.

The Board 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 the complainants' concerns that the advertisement suggests that women should be thin. The Board noted that the women in the advertisement are presented as healthy and active and considered that the on-screen disclaimers regarding healthy diet and exercise in conjunction with the images of the women is suggestive of being healthy rather than thin. The Board noted that the advertised product is a weight loss aid and considered that it is appropriate to depict women who appear to have successfully used the product. The Board acknowledged that there is significant community concern about the promotion or encouragement of unhealthy body weights but considered in this instance the advertisement does not depict, promote or encourage women, or men, to be underweight.

The Board considered that the advertisement did not present material which would be contrary to prevailing community standards on health and safety around body image.

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 other grounds, the Board dismissed the complaints.

