



CASE REPORT

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| 1. Complaint reference number | 399/09 |
| 2. Advertiser | Goodman Fielder |
| 3. Product | Food & Beverages |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Food and Beverage Code – untruthful/dishonest
Food and Beverage Code – unscientific nutrition claims
Food and Beverage Code – misleading health comparisons |
| 6. Date of determination | Wednesday, 9 September 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

The television advertisement has Dr Andrew Wilson - Cardiologist, saying that he knows what saturated fat can do to your child's health. He shows how a little bit each day, on a few pieces of toast (he shows a portion) can mount up (shows a culmination of one year's intake of a portion of butter each day) - butter contains 50% saturated animal fat. The advertisement then shows a picture of the saturated fat going through an artery and the Dr is commenting to the viewers that they should think about the effects that this much saturated fat is having on their children's health. Dr Wilson then says that margarine is a healthier option switch to a margarine spread made from plant seeds because most margarine spreads contain 65% less saturated fat than butter. (It is not clear at this point in time whose product he is promoting as the picture of the margarine does not state the brand name). At the end of the ad a promo for Goodman Fielder is flashed onto the screen and then the logo for the Heart Foundation is depicted for the remainder of the advertisement.

THE COMPLAINT

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

Extremely duplicitous:

Insufficient identification of advertiser - Goodman Fielder logo to identify that this is a company advert. It flashes for under a second compared to several seconds for the Heart Foundation logo, making it appear to be an advert by the Heart Foundation.

Also uses the image of a doctor to suggest that this is a 'health' message sponsored by a quasi-government agency.

The ad is unprofessional in tone and content.

It's absurdly sensationalist.

It implies that butter is not a healthful food for which there is no evidence whatsoever.

It implies that all margarines are healthful foods.

My main objection is that at the end of the advertisement the Heart Foundation "Healthy Heart" tick is shown implying that all margarine is approved by the Heart Foundation, when in fact the only margarines that appear on the "Tick" list are the "Lite" varieties of some brands.

On first watching the ad I thought it was a Heart Foundation ad but was surprised that they would be pushing margarine specifically in a television ad.

It was only when I recorded it and paused the ad in places that it was obvious it was a Goodman Fielder ad.

My objection is that most viewers would believe it was a "Heart Foundation" ad, and it would appear that this was the intention to create this perception.

Note: I tested this assumption by playing the ad to another person who had not seen it before and

they thought it was a Heart Foundation ad.

The ad shows a tiny amount of butter on toast, (I once measured how much butter you need on toast and it's little more than 1 gram) then claims that the child will consume each year a mountain of butter which seems to be several feet long and 18" high. There are no numbers anywhere in the advert but it looks like about 10 kg of butter and is visually frightening.

However 365 x 2 grams (for example) is 730 grams of butter, which is the weight of a few steaks. Eat less steak and it compensates for the whole year's butter intake. Further, the ad doesn't show the pile of margarine which would be exactly the same size, assuming the same heavy hand was used on each slice.

Finally, to suggest that parents should "imagine" (assuming I remember it correctly) that butter is flowing into the child's arteries is reprehensible.

Consultant in Ergonomics and Occupational Psychology, (I was CEO of a vision organisation in 2004 when the butter vs margarine argument was raging. I have no financial interest either way, I am simply offended by this ad.)

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

One complainant alleges that approximately 1g of butter per slice of bread is a sufficient serving size, but in our experience 1g of butter does not cover one piece of toast and more importantly, does not reflect average butter consumption.

The butter portions in the "mountain" of butter shown are representative of actual servings that are currently available in the market i.e. the individual portion packs sold by butter manufacturers (which weigh 7g – 8g each).

This amount (7g) is extremely conservative in view of the amount used by the National Heart Foundation Australia in its calculations and advice [Heart Foundation assumes minimum consumption of butter is 14g per person daily and average consumption is 19.2g daily].

The calculation for the amount of butter shown is based on a person consuming 2 pieces of bread/toast each day, each spread with approximately 7g of butter. The amount of butter is thus based on the calculation $7g \times 2 \times 365 \text{ days} = 5.11kg$

The total amount of butter, not margarine, is shown because it is meant to illustrate the point about the total amount of saturated fat which consumption of the butter would entail in one year, i.e. half the amount of butter depicted.

Fats consumed in food naturally enter the body and a significant proportion will ultimately enter the blood stream. The piece merely states a well-known scientific fact. The advertisement does not suggest parents imagine butter is flowing through a child's arteries; it encourages viewers to think about saturated fat flowing through their child's arteries.

Saturated fat is one of the three major classes of fatty acids, the building blocks of all dietary fats. Butter is rich in saturated fat. When butter is consumed, the fat it contains is digested, absorbed into the body and ultimately reaches the bloodstream. Thus saturated fat is transferred into the bloodstream after every butter-containing meal. The level of saturated fat in the bloodstream will remain elevated after the meal for between 2-12 hours, largely depending on the total amount of fat in the meal and the response of the individual. Rather than being "reprehensible", asking viewers to think about saturated fat flowing through arteries is simply encouraging them to consider a process that occurs in the human body every time saturated fat is consumed.

The piece featuring cardiologist Dr Andrew Wilson is intended as a public health announcement jointly presented by Goodman Fielder and the National Heart Foundation Australia. Consequently, it features both the Goodman Fielder name and the logo of the National Heart Foundation Australia, and it is difficult to see how this is misleading. It is also worth noting that the Heart Foundation approved the piece in its current format.

All information presented is factually correct. There is no mention of premature death or dying in the piece, which merely asks people to think about what they are consuming.

The only representation made about butter is that its composition is 50% saturated fat. It is a well-accepted fact within the general scientific community that saturated fat is not “healthful”.

The representations made in relation to margarine all relate to its comparatively lower saturated fat content. As mentioned above, the information presented is true and accurate.

The Heart Foundation’s “Healthy Heart tick” is not shown at the end of the piece – the National Heart Foundation Australia’s corporate logo is displayed. The National Heart Foundation Australia reviewed the piece and gave its approval, which covered the depiction of its corporate logo. Goodman Fielder submits that this approval indicates that the Heart Foundation itself did not consider the piece contained any misrepresentation or misleading impression relating to the Heart Foundation’s Healthy Heart tick program.

As discussed the piece featuring cardiologist Dr Andrew Wilson is intended as a public health announcement jointly presented by Goodman Fielder and the National Heart Foundation Australia. Consequently, it features both the Goodman Fielder name and the logo of the National Heart Foundation Australia, and it is difficult to see how this is misleading.

1. Information about what saturated fat can do to a child’s health.

[Following section relates not only to children's health, but is also relevant to people's health generally]

Lower saturated fat intake is recommended by leading health authorities in Australia and overseas, for example the National Heart Foundation of Australia (NHF 2009), the National Health and Medical Research Council (NHMRC 2003), the American Heart Association (AHA 2005) and the World Health Organisation (2003). Advice to eat less saturated fat is generally intended for the whole population, including children over two years of age. Two of the above references pertain specifically to children (NHMRC 2003, AHA 2005). The American Heart Association’s advice, which has also been endorsed by the American Academy of Pediatrics, is as follows.

Use vegetable oils and soft margarines low in saturated fat and trans fatty acids instead of butter or most other animal fats in the diet (AHA 2005).

No authoritative nutrition organisation anywhere in the world recommends that high dietary saturated fat intakes be retained or increased. Hence the statements in the advertisement are consistent with Australian and overseas healthy eating advice.

The Dietary Guidelines for Children and Adolescents in Australia (2003) states that for children and adolescents care should be taken to limit saturated fat and moderate total fat intake.

Fats are an important part of a healthy balanced diet and provide essential fatty acids and should not be excluded. However, the type of fats we include in our diet is important. Choosing the healthier unsaturated fats instead of the saturated and trans fats will reduce the risk of heart disease.

Replacing products containing saturated fat with those containing unsaturated fat will similarly reduce the risk of heart diseases

Blood cholesterol levels are more influenced by the saturated and trans fat we eat than the cholesterol in foods.

Saturated fats can increase the level of bad cholesterol in the blood, which increases the risk of heart disease

In its May 2009 review "Dietary fats and dietary cholesterol for cardiovascular health: Summary of evidence" and position statement on "Dietary fats and dietary oils for cardiovascular health", the Heart Foundation updated their 1999 Dietary fats and cardiovascular disease paper and incorporated statements from two recent Heart Foundation papers - Fish, fish oils and n-3 polyunsaturated fatty acids (2008) and Phytosterols/sterol enriched foods (2007). The 1999 findings are largely upheld, with advances in nutritional science leading to stronger evidence for the negative impact of trans fatty acids (tFA) on cardiovascular health (CVH).

Some findings from this new review include:

- **Saturated fatty acid (SFA) is associated with coronary heart disease (CHD).**
- Replacing SFA with cis unsaturated fatty acids has a greater positive influence on CHD risk than replacing SFA with carbohydrate
- Lowering dietary SFA to <7% of energy intake with restricted dietary cholesterol, results in a further decrease in low density lipoprotein cholesterol (LDL-C) than diets containing <10% energy intake from SFA.
- Trans fatty acids (tFA) intake increases LDL-C, decreases high density lipoprotein cholesterol (HDL-C), increases lipoprotein-a and increases fasting triglyceride concentration.

- *n-6 polyunsaturated fat lowers LDL-C.*
- *Dietary cholesterol increases total cholesterol and LDL-C, but substantially less so than SFA and tFA.*

2. Substantiation that ‘Butter contains 50% saturated animal fat’

The standard definition of “butter” according to the Australia New Zealand Food Standards Code (the Code) [Standard 2.5.5] is that butter must contain no less than 80.0% m/m milkfat. If a product does not meet this criterion i.e. is "reduced fat" then it cannot be called “butter” anymore due to the Code definition. Not all of this animal fat in butter is saturated, but the amount of saturated fat in butter is at least 50%. This is not disputed by the butter industry. For information from actual butter nutrition information panels, please also refer to the response to 5 below.

3. Information about how much saturated fat from butter is absorbed into a child’s arteries once consumed

Saturated fat is one of the three major classes of fatty acids, the building blocks of all dietary fats. Butter is rich in saturated fat. When butter is consumed, the fat it contains is digested, absorbed into the body and ultimately reaches the bloodstream. Thus saturated fat is transferred into the bloodstream after every butter-containing meal. The level of saturated fat in the bloodstream will remain elevated after the meal for between 2-12 hours, largely depending on the total amount of fat in the meal and the response of the individual. It is not possible to say with any precision how much saturated fat will be absorbed into the arteries as this depends on the aforementioned variables including what else is consumed.

4. Substantiation as to why a margarine spread made from plant seeds is ‘a healthier option’ and compared to what?

This is based on the fact that plant seed-based spreads contain less saturated fat (and trans fat) than butter and therefore that the exchange of a seed-based spread for butter lowers saturated fat intake. Lower saturated fat intake is recommended by leading health authorities in Australia and overseas, for example the National Heart Foundation of Australia (NHF 2009), the National Health and Medical Research Council (NHMRC 2003), the American Heart Association (AHA 2005) and the World Health Organisation (2003). Advice to eat less saturated fat is generally intended for the whole population, including children over two years of age. Two of the above references pertain specifically to children (NHMRC 2003, AHA 2005). The American Heart Association’s advice, which has also been endorsed by the American Academy of Pediatrics, is as follows. Use vegetable oils and soft margarines low in saturated fat and trans fatty acids instead of butter or most other animal fats in the diet (AHA 2005).

No authoritative nutrition organisation anywhere in the world recommends that high dietary saturated fat intakes be retained or increased. Hence the statements in the advertisement are consistent with Australian and overseas healthy eating advice.

Other comments:

- *Both butter & margarine contain useful amounts of Vitamins A & D, many margarines also contains essential fatty acids in the form of omega-3 alpha-linolenic acid (ALA).*
- *Butter contains large amounts of saturated fat and is also a source of trans fats. In comparison, margarine contains significantly lower amounts of saturated fats, is virtually free of trans fats and is high in mono- or polyunsaturated fats.*
- *The Heart Foundation recommends swapping butter for a margarine spread, and states that just by doing this with your daily toast you will save 2.85kg of saturated fat from your diet in one year.*
- *Consumer research conducted by GF has shown that many consumers do not understand that butter is high in saturated fat content.*

5. Substantiation that most margarine spreads made from plant seeds available in the Australian market contain at least 65% less saturated fat than butter

The table below shows the nutritional composition of typical butter and Meadow Lea Original spread per 100g.

Nutrients per 100g	Butter*	MeadowLea Original Spread
Energy	3013kJ / 721kcal	2420kJ / 579kcal
Total fat	80.8g	65.0g

- saturated fat	52.5g	16.5g
- trans fat	3.2g	0.5g
- monounsaturated fat	21.1g	31.8g
- polyunsaturated fat	2.4g	16.2g
- omega-3 ALA fat	0.1g	4.5g
Sodium	700mg	590mg
Vitamin A	1000µg Vitamin A	1000µg Vitamin A
Vitamin D	56µg Vitamin D	10µg Vitamin D

** Butter based on standard (salted) butter*

The category audit table below shows the leading brands of margarine/table spreads (8 top-selling brands); The brands that are in line with the 65% less saturated fat claim represent 81% + of the category; Nuttalex is the only key brand that does not meet this claim but is not included in the 81.6% share of market.

	Fat Level	Saturated Fat Content (by Margarine Spread Brand)	Saturated Fat in Butter (ANZ Food Standards Code Definition)	% Less Saturated Fat than Butter (By Margarine Spread Brand)	Share of Market (Tonnes) MAT 10/5/09
MeadowLea	65	16.5	50	67.0%	21.5
Flora	65	17	50	66.0%	22.6
Homebrand (Woolworths private label)	65	15.9	50	68.2%	12.4
Eta	49	11.5	50	77.0%	5.2
Tablelands	49	12	50	76.0%	6.2
Gold 'n Canola	65	16.5	50	67.0%	6.1
Smart Buy	50	13.6	50	72.8%	7.6
Nuttalex	70	18.2	50	63.6%	7.3
Share of key brands Excluding Nuttalex		81.6			

THE DETERMINATION

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

The Board noted the complainants' concerns that the advertisement does not adequately identify which brand or who's product is being promoted and that it implies that all margarines are healthful foods.

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

The Board considered the requirements of the Food Code. The Board noted key elements of the Code in particular:

that the advertisements shall be truthful and honest, not be or be designed to be misleading or deceptive (section 2.1),

that any health or nutrition claims must be supportable by appropriate scientific evidence meeting the requirements of the Australia & New Zealand Food Standards Code (section 2.3)

any claims relating to material characteristics such as nutrition and health benefits shall be specific to the promoted product and accurate in all such representations (section 2.6);

not otherwise contravene community standards (section 2.1); and

be communicated in a manner appropriate to the level of understanding of the target audience with an accurate representation of all information including any references to nutritional values or health benefits (section 2.1)

The Board noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to section 2.1, provide:

Section 2.1

The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product.

Thus, advertising and/or marketing communications may make reference to one or more of the nutritional values and/or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product

Some complaints made under this Code that the Board is better able to determine under the broader aspects of the AANA Code of Ethics will be considered under that Code e.g. (complaints about matters such as 'taste and decency', language, sex and violence).

The Board then considered section 2.1 of the Code and noted that section 2.1 requires it to consider whether an advertisement is truthful and honest or is misleading, or is designed to be, misleading or deceptive.

The Board noted that its role is different from the role of the court or the ACCC and that it is not for the Board to see itself in the position of the court. The Board has a special role given the broad principles in the various Codes and its role as set out in the provisions of the Codes and other sources such as the Food and Beverage Practice Note. The Board reflects community standards and expectations and these necessarily change over time. Its task is to deal with complaints. By upholding or rejecting a complaint, it determines whether the community considers an advertisement acceptable or not. In this way, it provides guidance to advertisers and assists in maintenance of confidence in advertising. The Board's task, as properly understood, is not to reflect on or speculate about what a court would do if the advertisements were the subject of an allegation of Trade Practices Act breach nor to reach a legal opinion. Rather, the task is to reflect the community's attitude - to assess whether the advertisements meet current community expectations for truthfulness given what the advertisements convey to ordinary consumers and in light of the relevant circumstances and given the grounds of the complaint.

The Board noted that this advertisement refers to a comparison between the saturated fat content in

butter, compared to that of 'plant seed' based margarines. The advertisement suggests that margarine is a better choice (in terms of saturated fat content) than butter and that this statement is also endorsed by the Heart Foundation. The Board noted that the Heart Foundation's website contains similar sentiments identifying margarine made from plant seeds as a healthier food choice (in terms of saturated fat content) than butter, and determined that this statement was not misleading. The Board considered that a reasonable consumer would take from the advertisement that most margarines from plant seeds contain less saturated fat than butter and are therefore a more suitable dietary choice for those for whom fat is a concern. The Board considered that this is not misleading and that the advertisement did not breach sections 2.1, 2.3, 2.4, 2.6

In relation to the complainant's concerns regarding untruthful and dishonest nutrition claims, the Board considered the information supplied by the advertiser which supported statements made about the saturated fat content of butter and the fact that saturated fat is not healthful. On the basis of the information provided by the advertiser, the Board considered that the statements about the nutrition content of butter and most margarines made from plant seeds were correct and did not breach the Food Code. On this basis the Board determined that the advertisement did not breach sections 2.1, 2.3, 2.4 or 2.6 in relation to the representations and health claims in the advertisement.

The Board also considered that the advertisement represented the nutrition information about the product in a manner which was appropriate for the target audience of grocery buyers and adults.

The Board further noted the complainants' concerns that the advertiser was insufficiently identified. The Advertiser advised that the advertisement is a joint advertisement from Goodman Fielder and the National Heart Foundation. The Board noted that both the Goodman Fielder and Heart Foundation had displayed corporate logos at the end of the advertisement. The Board considered that the advertisers were appropriately identified and that it was clear that the material is a paid advertisement.

The Board noted complainant concerns that the advertisement implied that margarine has a National Heart Foundation 'Tick'. The Board noted that there is no identified margarine product in the advertisement and that the National Heart Foundation logo in the advertisement is clearly shown and is different to the Heart Foundation 'Tick' logo which indicates that a product meets certain nutritional criteria set out by the Heart Foundation and has paid to use the logo. The Board considered that there was insufficient detail in the advertisement to enable a consumer to conclude that all margarine is approved by the Heart Foundation. The Board considered that the advertisement was not misleading in this respect and did not breach section 2.1 of the Food Code.

The Board considered that the advertisement did not breach the AANA Food and Beverages Advertising and Marketing Communication Code.

The Board were slightly concerned that the reference in the advertisement asking parents to imagine the effect that the saturated fat could be having on their children might unnecessarily invoke guilt and fear in parents but that the reference was not presented in a manner that would amount to a breach of the Code or the Food Code.

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