



CASE REPORT

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| 1. Complaint reference number | 448/08 |
| 2. Advertiser | NSW Health Department |
| 3. Product | Community Awareness |
| 4. Type of advertisement | Radio |
| 5. Nature of complaint | Food and Beverage Code – unscientific nutrition claims
Food and Beverage Code – misleading health comparisons
Food and Beverage Code – inaccurate taste/size/content/nutrition/health claims
Food and Beverage Code (Children) – misleading/deceptive |
| 6. Date of determination | Wednesday, 12 November 2008 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

This radio advertisement from the NSW Health Department begins with a voice stating "This is the sound of three 250ml glasses" and then the sound of a teaspoon tapping the side of glass three times is heard. The voice then states "This is the sound of these glasses filled with cola, apple juice and water" and then the sound of a teaspoon tapping the side of a glass three times is heard (at a lower pitch than the previous taps). The voice then states "This is the average amount of sugar in cola and apple juice" and then the sound of a teaspoon tapping the side of glass six times is heard. The voice then states, "Yes that's right six teaspoonful". The voice then states "This is the amount of sugar in a glass of water", and no taps are heard. The voice then states "Sounds good, doesn't it? No sugar, kilojoules, colours or flavours". The advertisements ends with a jingle that says "Good for Kids, Good for life".

THE COMPLAINT

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

I write on behalf of the Australian Fruit Juice Association (AFJA) to express our deep concern over the inaccurate manner in which fruit juice is being represented in the NSW Health "Live Life Well" campaign.

The AFJA membership is most concerned that the advertisements do not accurately reflect the technical definition of fruit juice and as such, are scientifically inaccurate and therefore misleading. In addition, members challenge the contention made in the campaign that fruit juice is directly implicated in weight gain. The Definition of Fruit Juice! The advertisements in both radio and television are misleading as they clearly depict the sugars content of fruit juice as added sugar - using the visual and audio message of teaspoons of sugar added to a glass. This is not scientifically correct as it a well known scientific fact that the sugars contained in fruit juice is naturally occurring. The accurate distinction between beverages is very important - both for accurate scientific research and public education. To imply the sugars content of fruit juice is based on the addition of sugar is inaccurate and unsustainable.

We refer you to the recently published American beverage guidelines that carefully considered the energy, nutrient and functional contributions of a range of beverages in order to develop a clear set of definitions for the range of beverages available for consumption. The specific definitions developed by the beverage guidance panel (Popkin 2006) include:

Sweetened Beverages: Any beverage to which a caloric sweetener has been added, including carbonated or non carbonated son drinks, fruit punch, fruit drinks, lemonade, sweetened powder drinks, or any other non-artificially sweetened beverages. Excluded from this definition are sugars naturally present in fluids and that are not added in processing, in preparation, or at the table.

Fruit and Vegetable Juices: Beverages that are composed exclusively of an aqueous liquid or liquids extracted from one or more fruits or vegetables with no added caloric sweeteners. Fruit juices are not sweetened drinks and should not be misrepresented as such. The AFJA supports efforts to educate the public on the importance of a healthy diet. However, it is incumbent upon those communicating with the public for the purpose of information that they strictly adhere to the scientific facts. Health authorities are quite right when they point out to excesses in commercial advertising that may mislead consumers. The same rules should therefore apply to their own advertising purporting to educate the public.

THE ADVERTISER'S RESPONSE

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

The NSW Department of Health has previously received a letter of concern from the AFJA on 21 July 2008. A written response was provided to the AFJA on 5 September 2008, which addressed these concerns.

Background

The prevention of childhood overweight and obesity is a key priority of the NSW Government. The NSW Department of Health has the lead responsibility for obesity as part of the NSW State Plan, and is committed to improving the health of the people of NSW by reducing obesity in children, young people and adults.

The NSW Government endorses the National Health and Medical Research Council (NHMRC) Dietary Guidelines for Children and Adolescents in Australia incorporating the Infant Feeding Guidelines for Health Workers¹. These guidelines advocate choosing water as a drink in place of high energy alternatives such as cordial, fruit juices, flavoured mineral waters, sports drinks and soft drinks.

The source of sugar contained within these drinks, natural or added, makes no difference to the energy density. Furthermore, it is recognised that fruit juice is a common alternative to soft drink, especially for younger children.

The over-consumption of energy dense drinks can be a factor contributing to the increasing rates of childhood overweight and obesity. As highlighted by NHMRC Guidelines, excessive consumption of fruit juice and soft drinks should be discouraged. Excessive fruit juice consumption can displace other nutrients in one's diet, contribute to health problems such as dental caries, and provide excess kilojoules contributing to weight gain.

Recent surveys identify clear patterns of over-consumption of energy dense drinks amongst children in NSW. The NSW School Physical Activity and Nutrition Survey (SPANS) in 2004 showed that many students drank excessive quantities of soft drink². In addition, the NSW Population Health Survey 2005-2006 Report on Child Health shows that children commonly consume fruit juice in quantities exceeding the limits recommended by the NHMRC Guidelines³.

The NSW Health Good for Kids, Good for Life Water Campaign

The NSW Health Good for Kids, Good for Life Water Campaign was launched in July 2008 as part of the NSW Health Obesity Strategy. The campaign, which is aimed at parents and carers of children from 0-15 years of age, promotes the importance of water consumption as the preferred drink.

The campaign promotes water as the drink of choice as an alternative to cordial, fruit juices, flavoured mineral waters, sports drinks and soft drinks. The key message of the campaign is 'When it comes to thirst, drink water first'.

The key message of the campaign is supported by the NHMRC Guidelines, which emphasise that water and milk should be the preferred options for addressing children's fluid needs, with fruit juice, in limited quantities, another option. Unlike many other popular drinks, water contains no kilojoules, sugars, colours or flavours.

The NSW Department of Health acknowledges that fruit juice can be a source of some nutrients. The NHMRC Guidelines however recommend that fruit juice should be consumed in moderation and preference should be given to fresh fruit due to the higher levels of dietary fibre.

The aim of the campaign is to raise awareness in the community that cordial, fruit juices, flavoured mineral waters, sports drinks and soft drinks contain an average of six teaspoons of sugar⁴ and that children should be encouraged to drink more water in place of these sugary drinks.

Complaints under sections 2.1 and 2.4 of the AANA Food and Beverages Advertising and Marketing Communications Code

The complaint made by the AFJA alleges that the Good for Kids, Good for Life Water Campaign is misleading in that the advertisements:

- “do not accurately reflect the technical definition of fruit juice and as such, are scientifically inaccurate and therefore misleading”; and*
- contain “the contention .. that fruit juice is directly implicated in weight gain.”*

Technical definition of fruit juice

In support of its complaint that the advertisements do not accurately reflect the technical definition of fruit juice the AFJA asserts that the advertisements “clearly depict the sugars content of fruit juice as added sugar – using the visual and audio image of teaspoons of sugar added to a glass.”

The television and radio advertisements make no verbal reference to sugar being added to juice (Refer to Attachment 1 and 2). Rather, the advertisements highlight that apple juice, lemonade or cola all contain the equivalent of approximately six teaspoons of sugar per glass.

The television advertisement uses a creative visual representation to demonstrate the difference between the sugar content of a glass of water (none), as opposed to the sugar content of a glass of apple juice, lemonade or cola (six teaspoons). More specifically in relation to apple juice, the advertisement does not infer that the six teaspoons of sugar are added to the glass; the sugar is actually being extracted from the glass.

Again, it must be acknowledged that the energy derived from those drinks is the same irrespective of whether the sugar is intrinsic or extrinsic.

Contention that fruit juice is directly implicated in weight gain

The AFJA in its complaint has provided no basis for or evidence to support the assertion that the advertisements include the contention that fruit juice is directly implicated in weight gain. The Department is of the view that the advertisements complained of contain no suggestion, either express or implied, that fruit juice is directly implicated in weight gain.

For your information, the campaign was a short term strategy and finished in September 2008. There are no current plans to extend the length of this campaign.

THE DETERMINATION

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

The Board noted that this was a radio advertisement similar in nature to a television advertisement (447/08) that the Board has also considered. The Board noted the complainants' concerns that the advertisement's description of the number of teaspoons of sugar present in a glass of fruit juice is misleading and inaccurate, and implies that the sugar content of fruit juice is based on the addition of sugar.

The Board noted that the depiction of the spoonfuls of sugar had less impact in the radio version than in the television advertisement, because it did not include the visual image of a glass filled with spoonfuls of sugar. The Board noted that the advertisement did not show sugar being added to juice, and that the voice over in the advertisement at no point said that the sugar is added. The Board considered that the advertisement did not state or suggest that sugar is added to fruit juice. The Board considered the sound and description of how many spoonfuls of sugar are found in various drinks was illustrative of the equivalent amounts of sugar found in the different drinks. The Board did not consider this representation was misleading nor otherwise in breach of prevailing community standards. The Board therefore found no breach of section 2.1 of the F&B Code.

Finding that the advertisement did not breach the F & B Code, or the Code, on other grounds, the

Board dismissed the complaint.