

## Case Report

1. Case Number :	0035-24
2. Advertiser :	Pepsico Australia Holdings Pty Ltd
3. Product :	Food/Beverages
4. Type of Advertisement/Media :	Radio/Audio Streaming
5. Date of Decision:	7-Feb-2024
6. Decision:	Upheld – Modified or Discontinued

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

There are multiple versions of this audio streaming advertisement where some aspects change (eg the scenario), however all contain the phrase "when you sweat you lose more than water. Losses in fluids and electrolytes make it that much harder to get through your day".

One example script includes:

"Whether you're running on a treadmill or on a late night walk you've gotta stay hydrated because when you sweat you lose more than water. Losses in fluids and electrolytes make it that much harder to get through your day. Gatorade No Sugar is scientifically formulated to help replace essential electrolytes you lose in sweat without the unwanted sugar. Because you need a drink that gets you from A to B and a little bit further. Try Gatorade No Sugar today, tap the banner to learn more."

### THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*At the beginning of the ad Gatorade mention that sweating makes you lose essential electrolytes. Whilst this might be true for extreme cases of exercise (such as with professional athletes, or longer periods of exercise) it isn't usually the case. Therefore, they are in breach of section 2.1 of The Food and Beverage Advertising Code by being likely to mislead potential consumers into drinking more of the product than necessary. Furthermore, some versions of the ad mention examples where drinking an electrolyte heavy product would in fact not have anywhere near the advertised effect such as 'running to the bus stop' or 'on a late night walk'. The ad being on Spotify*

*makes it available to a wide audience who would not benefit from this product but may believe that they will because of the phrasing or content that this advertisement contains.*

## **THE ADVERTISER'S RESPONSE**

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

*PepsiCo is committed to adhering to the Advertising Codes, and while it does not consider a contravention has occurred, PepsiCo wishes to advise that the Spotify Ad was broadcasted on the Spotify platform for a limited time from 2 October 2023 to 31 December 2023. The Spotify Ad in its current form is no longer being broadcasted and will not be re-broadcasted again.*

*PepsiCo further wishes to clarify the following:*

- *Gatorade No Sugar and Gatorade Active meet the criteria of a "formulated beverage" under the Australia New Zealand Food Standards Code and therefore can make general level health claims according to conditions in Standard 1.2.7 relating to minerals (electrolytes) and hydration.*
- *It is scientifically accepted that when a person engages in any physical activity resulting in sweat, the human body expels electrolytes.*
- *The amount of sweat released by a person during any physical activity depends on several factors including the intensity and duration of the activity, body composition, age, gender and environmental conditions such as heat and humidity. Accordingly, a person's fluid requirements will vary and replacing fluid losses is important to maintain hydration.*

## **THE DECISION**

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

The Panel noted the complainant's concern that the advertisement is misleading by implying that drinking the product after light exercise or physical activity is necessary to replace electrolytes lost through sweat during such activities.

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

The Panel noted that the product advertised is a beverage product and that therefore the provisions of the Food Code apply.

**Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.**

The Panel Noted the Practice Note to this section of the Food Code which provides:

*“In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the Community Panel will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The Community Panel will consider whether or not an Average Consumer within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement.”*

The Panel noted that the target audience for this advertisement would be anyone streaming music or podcasts. The Panel noted that activities listed in the various versions of the advertisement included:

- Running on a treadmill
- Running for a bus
- Doing the school pick-up
- Going for a late night walk

The Panel noted the advertiser’s response that the amount of sweat released by a person during any physical activity depends on several factors.

A minority of the Panel considered that electrolytes are lost through all forms of sweating, and this product was being marketed as one way to replenish them. The minority considered that the claim being made in the advertisement was that the product helps to replace essential electrolytes that may be lost when you sweat. They considered that the average consumer expects some degree of puffery in advertising and would not be misled or deceived into thinking that this product was essential to replenish electrolytes following light exercise.

However, a majority of the Panel considered that by listing everyday activities and using the phrase “you need a drink...” created the overall suggestion that this drink is necessary to replace essential electrolytes lost through sweat. The majority of the Panel therefore considered that the claim being made in the advertisement was that the product is necessary to replace the amount of electrolytes that may be lost whenever you sweat, regardless of the intensity of the activity.

The Panel considered that most people would not lose a large amount of electrolytes when undertaking activities like walking and doing school pick-up, and in such cases the benefits of drinking the product would not be any greater than hydrating with water.

The Panel considered that the suggestion that the product was needed to replace essential electrolytes lost in everyday activities overstated the benefit of the product and was misleading or deceptive or likely to mislead or deceive the target consumer.

## **Section 2.1 Conclusion**

The Panel considered that the advertisement was misleading or deceptive or likely to mislead or deceive and did breach Section 2.1 of the Food Code.

## **Conclusion**

Finding that the advertisement was in breach of Section 2.1 of the Food Code, the Panel upheld the complaint.

## **THE ADVERTISER'S RESPONSE TO DECISION**

We acknowledge receipt of your letter, advising PepsiCo Australia Holdings Pty Ltd (PepsiCo) of the decision by the Ad Standards Community Panel to uphold the complaint in relation to the above case reference number.

PepsiCo reiterates that it is committed to adhering to the Advertising Codes and confirms the Spotify Ad (as defined in PepsiCo's letter) has been removed and will not be broadcasted again.