

## Case Report

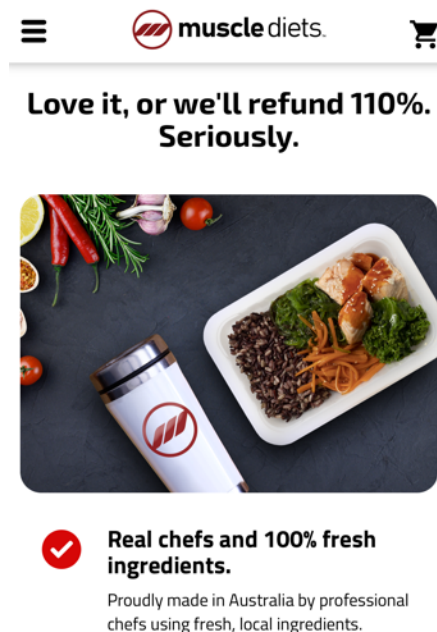
|                                  |                                       |
|----------------------------------|---------------------------------------|
| 1. Case Number :                 | 0145-24                               |
| 2. Advertiser :                  | Muscle Diets                          |
| 3. Product :                     | Food/Beverages                        |
| 4. Type of Advertisement/Media : | Internet                              |
| 5. Date of Decision:             | 5-Jun-2024                            |
| 6. Decision:                     | Upheld – Not modified or discontinued |

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive

### DESCRIPTION OF ADVERTISEMENT

This internet advertisement features the phrase "Love it, or we'll refund 110%. Seriously."



### THE COMPLAINT

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

*The ad states “muscle diets. Love it, or we’ll refund 110%. Seriously.” Clauses 13-16 then go on to represent that the company stands by its 110% refund guarantee behind all of its products, however these clauses are misleading, as clause 21 then goes on to limit the guarantee to the first order only. An ordinary reasonable person would be misled by the representation of a 110% guarantee for unsatisfactory products.*

## **THE ADVERTISER’S RESPONSE**

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

*Our terms dictate the above clause as a reasonable mechanism for protection against abuse of the system as has been attempted by individuals in the past.*

*We sell meal packages of various meals, with a menu rotating over 50 meals, that can vary in price from \$85 to \$600+ on a regular basis. A screenshot has been attached as 'order sample.png' as evidence of a small sample of purchases.*

*Without the above clause mentioned, individuals can place a small order of \$85 to ascertain which products suit them best prior to then placing an order of over \$600+ and then claiming a 110% money back guarantee on the second purchase. In the latter circumstance they would then receive \$700 worth of meals over two orders whilst paying \$25 in total.*

*Our 110% guarantee is aimed at first-time customers who purchase from us with genuine intentions to try our meals but are not satisfied by the product. It is intended to allow a risk free first purchase from the customer - which the above mentioned clause protects. It is not intended to be used as a mechanism for bad actors to access large amounts of food, free of cost, in perpetuity.*

*Please also note that point 1 at [https://muscle diets.com/index.php/terms\\_refund](https://muscle diets.com/index.php/terms_refund) also notes that this protection is provided in addition to any protections provided to the customer as per <https://www.fairtrading.nsw.gov.au/buying-products-and-services/repairs,-replacements-and-refunds> so customers are always protected by the provisions in ACL.*

*In regards to the remaining points below mentioned in your email, noted below, neither our advertisement nor our T&Cs violate the ANNA code of ethics.*

- 2.1 - Discrimination or vilification
- 2.2 - Exploitative and degrading
- 2.3 – Violence
- 2.4 - Sex, sexuality and nudity

- 2.5 – Language
- 2.6 - Health and Safety
- 2.7 - Distinguishable as advertising

## 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 concerns that the advertisement is misleading.

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

### **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 for this Section of the Code includes:

*"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 considered that the terms of the offer were clearly listed in the terms and conditions, however there was nothing in the advertisement itself to indicate that there were terms attached to the deal.

The Panel considered that an average consumer of Muscle Diets would understand that the 110% refund offer may be subject to limitations and that it was not intended to apply repeatedly to multiple orders.

However, the Panel considered the advertisement did not provide any clear information about what those limitations were, and that the takeaway by some consumers would be that they could get a 110% refund for any new products they tried, even if they were an existing customer.

The Panel noted that the advertiser offers over 50 different meal options, and that existing customers may see the deal as a risk-free opportunity or offer to try new meal options. However, the Panel noted that according to the terms and conditions,

the refund offer was only available for first-time customers, not first-time orders of specific meals.

The Panel considered that this discrepancy could mislead existing customers into thinking they could get their money back, when they could not. The Panel therefore concluded that the average consumer of the product would have been misled or deceived or likely to have been misled or deceived by the advertisement and therefore it breached Section 2.1 of the Food Code.

To address this potential confusion, the Panel considered that the advertiser should add a disclaimer to the advertisement, clearly stating that the offer is valid only for first-time orders.

### **Section 2.1 Conclusion**

The Panel concluded that the advertisement did breach Section 2.1 of the Food Code.

### **Conclusion**

Finding that the advertisement breached Section 2.1 the Food Code the Panel upheld the complaint.

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

The advertiser has not provided a response to the Panel's decision.