

COMPLAINT NUMBER	19/032
COMPLAINANT	A Maxwell
ADVERTISER	Eden Orchards
ADVERTISEMENT	Eden Orchards brochure
DATE OF MEETING	4 March 2019
OUTCOME	Settled

Advertisement: The brochure for Eden Orchards said cherries can have health benefits, including being a sleep aid, having inflammatory and pain relief properties and helping with gout and osteoarthritis.

The Chair ruled the complaint was Settled.

Complainant, A Maxwell, said: This company is selling cherry juice. The attached advertising appears to violate the Therapeutic and Health Advertising Code. Principle 2 of the code requires any "statements and claims shall be valid and shall be able to be substantiated," and specifically addresses advertising that makes therapeutic claims. The advertising from Eden Orchard makes several therapeutic claims. Eden orchards specifically claim that their cherry juice (1) works as a "sleep aid", (2) provides "pain relief" (specifically insinuated to "help relieve pain more effectively than aspirin"), (3) reduces gout and (4) arthritis.

Let me start with the claim about pain relief. Eden Orchards claims that cherries contain "anthocyanins" (the particular molecules are not specified), and that anthocyanins "have powerful anti-oxidant and anti-inflammatory properties." The advert then alludes to an unnamed study from Michigan State University, without specifying the name of the study, which supposedly found that anthocyanins "could" relieve pain.

Even if anthocyanins have the therapeutic effect claimed in the unnamed study, the mere presence of anthocyanins in cherry juice does not prove evidence of a therapeutic effect. To be beneficial, a therapeutic substance must be absorbed by the body. The European Union's food safety authority has studied the effect of several anthocyanins (which are actually widely used as a food colouring), and found, in the words of a 2013 study, that "only a small portion of orally ingested anthocyanins was absorbed (<1 %)." (see "Re-evaluation of anthocyanins (E 163) as a food additive," European Food Safety Authority Journal 2013;11(4), page 32, available online at

URL: <https://efsa.onlinelibrary.wiley.com/doi/abs/10.2903/j.efsa.2013.3145>).

The advert does not provide evidence that their product is absorbed in a therapeutic way, it merely insinuates a therapeutic effect. The overall effect is misleading: an unwary consumer would receive the impression that the product has medicinal value. Since the advert is confusing, it appears a violation of the Advertising Standards Act code, specifically rule 2(a) "advertisements shall be accurate ... claims shall be valid and shall be able to be substantiated

The paragraph on "sleep aid" provides a similarly misleading justification. The advert notes the presence of melatonin in their product, and claims the chemical is beneficial. As with the anthocyanins, however, the advert does not claim the product will deliver the chemical to the body in a therapeutic way. Since the advert misleadingly insinuates a therapeutic effect on the "health benefits" side, and under "testimonials" asserts several unnamed individuals explicitly asserting a therapeutic effect, the advert is confusing, and thus a breach of the ASA

code rule 2(a), as described above. I further question whether the testimonials can be verified and are typical, as demanded in rule 2(f).

Eden Orchards also suggests that their product "may" reduce gout and osteoarthritis. The advert cites another unnamed study from "Boston University Medical Center." I suspect Eden Orchard of inventing this study, not least because there is no such thing as a "Boston University Medical Center" (only a "Boston University Medical Campus"). Even if a misattributed study exists, however, the advert asserts only evidence of a lower risk of gout: there is no evidence of a therapeutic effect for sufferers of arthritis. So, the advert again violates rule 2(a) "Statements and claims shall be valid and shall be able to be substantiated."

Eden Orchards, finally, recommends their product for people with "severe conditions." It is irresponsible and immoral for a cherry juice manufacturer without medical certifications to make medical recommendations for people with severe conditions. It also apparently violates rule 1(c), "Advertisements should not portray unrealistic outcomes or prey on or misrepresent vulnerable audiences."

The relevant provisions were Therapeutic and Health Advertising Code - Principle 2, Rule 2(a).

The Chair noted the Complainant's concerns the brochure was making unsubstantiated therapeutic claims about cherry juice

The Chair acknowledged the Advertiser had removed the brochure which was the subject of the complaint, and produced a new version.

Given the Advertiser's co-operative engagement with the process and the self-regulatory action taken in removing the brochure, the Chair said that it would serve no further purpose to place the matter before the Complaints Board. The Chair ruled that the matter was settled.

Chair's Ruling: Complaint **Settled**

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.