

COMPLAINT NUMBER	16/224
COMPLAINANT	D. Anton
ADVERTISER	Kelloggs NZ
ADVERTISEMENT	Kelloggs NZ Television
DATE OF MEETING	26 July 2016
OUTCOME	Not Upheld

SUMMARY

The television advertisement for Kellogg's Nutri-Grain showed nutritionist Nikki Hart talking about the nutritional benefits of the cereal. She said, in part: "it's one of the highest protein cereals and now a source of fibre... has a four health star rating, high in energy."

The Complainant said the advertisement for Kelloggs Nutri-Grain was misleading and irresponsible as the use of the nutritionist and the promotion of the four-star rating implied the product was beneficial to a consumer's health which was an exaggeration as it was high in sugar.

The majority of the Complaints Board said the use of the nutritionist and the health star rating did not exaggerate the nutritional content or benefits of the cereal and the advertisement was not misleading. It said the nutrition content claims made in the advertisement were substantiated by the Advertiser and were not misleading.

In accordance with the majority, the Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the complaint with reference to Principle 1 and Guidelines 1(a) and 1(e) and Principle 2 and Guideline 2(b) of the Code for Advertising Food.

Guideline 1(a) and 1(e) required the Complaints Board to consider whether the nutrient, nutrition and health claims complied with Food Standards Code and were likely to mislead or deceive and whether the benefits of foods for were exaggerated or implied a single food should replace a healthy diet or undermined the importance of consuming a variety of foods.

Principle 2 required advertisement for food should not by implication, omission, ambiguity or exaggerated claim, mislead or deceive consumers, abuse the trust or exploit the lack of

knowledge of consumers, exploit the superstitious or without justifiable reason play on fear. Guideline 2(b) said care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

The Complaints Board noted advertisements for food making nutrition or health claims were required to observe a high standard of social responsibility to consumers and society.

The Complaints Board ruled the complaint was Not Upheld.

The Complainant raised a number of concerns about the advertisement for Kelloggs Nutri-Grain. The Complainant said the advertisement was misleading and irresponsible as the use of the nutritionist and the promotion of the four-star rating implied the product was beneficial to a consumer's health which was an exaggeration as it did not state the sugar content.

The Advertiser addressed the Complainant's concerns stating all the claims made in the advertisement were accurate and complied with the Food Standards Code and were supported by substantiation.

Considering the Complainant's concern the advertisement exaggerated the benefits of the product through the nutritionist and health star rating, the Advertiser said, in part: "the Health Star Ratings of all Kellogg's cereals have been calculated pursuant to the Health Star Rating (HSR) algorithm developed and endorsed by the New Zealand Government and Australian Government, in collaboration with industry, public health and consumer groups. Whilst the HSR system is voluntary, Kellogg has elected to adopt and support this Government initiative in respect of all its cereal products in New Zealand and Australia. To this end, Kellogg complies with the HSR System Style Guide and Guide for Industry.

Pursuant to the HSR Calculator, which takes into account all the nutritional properties of the food including kJ, protein, fibre, sugar, sodium and more, Nutri-Grain cereal has a 4 HSR. This fact is simply stated by Nikki Hart in the advertisement as an accurate output of the HSR Calculator.

The Ministry of Primary Industries on its website and in its official HSR materials, states that the HSR Calculator "uses star ratings of ½ to 5 stars to measure the overall nutritional content and healthiness of packaged foods... the more stars means the healthier the food".

The Complaints Board noted the response from the Commercial Approvals Bureau which stated, in part: "it is reasonable for an advertiser to emphasise the positive attributes of its product. Indeed, emphasising the selling features of a product or service is the very essence of advertising. The claims made by the nutritionist in this advertisement are all factually correct and are not contested by the complainant. Kelloggs Nutri Grain is 'one of the highest protein cereals around', it is 'now a source of fibre', and it does have 'a four health star rating'. The claims are not exaggerated and are reasonable claims for a nutritionist to make."

The Complaints Board turned to consider the likely takeout of the advertisement. It noted the advertisement was targeted at the weekly household shopper, not children, and made nutrient content claims about the cereal.

The majority of the Complaints Board said the Advertiser was entitled to promote their product on its benefits, which included the nutritional content and health star rating. The majority took into account the health star rating was a government initiative which aimed at allowing consumers to make healthier choices from a range of packaged foods, and noted the Advertiser had reformulated their product to ensure more stars. It said the use of the

nutritionist to promote the nutrient content claims did not exaggerate the benefits of the product as the statements she made were accurate and had been substantiated. It took into account the advertisement included an on-screen qualifier which explained the product should be consumed as part of a balanced diet, as well as providing relevant information relating to the nutrition claims in the advertisement.

Overall, the majority said the use of the health star rating and the nutritionist did not exaggerate the benefits or nutritional content of the product, and the advertisement was not misleading.

A minority of the Complaints Board was of the view the advertisement was misleading as it portrayed the product as beneficial to an individual's health when the nutritional content of the product, overall, was not clear. While it noted the advertisement promoted the nutritional benefits of the cereal, in its view it was comparatively high in sugar and was therefore in breach of Guideline 2(b) of the Code for Advertising Food as it portrayed the cereal as beneficial to health.

However, in accordance with the majority, the Complaints Board said the advertisement was unlikely to mislead consumers and the claims had been substantiated by the Advertiser. The Complaints Board said the use of the nutritionist and the health star rating did not exaggerate the nutritional content or benefits of the cereal and the advertisement was not in breach of Guidelines 1(a) and 1(e) and Principle 2 and Guideline 2(b) of the Code for Advertising Food. The Complaints Board said the advertisement had been prepared with a high standard of social responsibility to consumers and society and was not in breach of Principle 1 of the Code for Advertising Food.

In accordance with the majority, the Complaints Board ruled the advertisement was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Kellogg's Nutri-Grain showed nutritionist Nikki Hart talking about the nutritional benefits of the cereal. She said, in part: "it's one of the highest protein cereals and now a source of fibre... has a four health star rating, high in energy."

COMPLAINT FROM D. ANTON

I have checked the codes and principles for both the ethics and food advertising and I believe that this ad is in breach of these codes. There are crossovers in these codes but they are rule of truthful representation with the basic principles of 3 and 4 and the codes for advertising ethics and the food advertising codes, Principle 1a) and 1e) and Principle 2b) and 2d).

Ads should NOT by implication/ambiguity or by exaggerated claims mislead/deceive or be likely to mislead or deceive the consumer. They must NOT mislead the nutritional value: a quote from the code 2b) "do not mislead as to the nutritive value of any food. Foods high in (sugar)..... should not be portrayed in (any way) that suggests they are beneficial to health." Nutrigrain uses a nutritionist in this ad to advertise this product and uses a four star rating it has gained to make this product sound good, but when you view the products nutritional panel and the information from the world health organisation, there is absolutely a discrepancy as to this product's nutritional value.

The codes clearly state that products high in sugar should not be promoted as beneficial to health and yet this advert does do that and the use of a nutritionist is misleading, or at least has the potential to mislead to consumers to the truth of the nutritional value of this product. If it should not mislead, deceive (or be likely to) by implication (the use of a nutritionist is an implication), ambiguity (highlighting only a positive component-that of the grain content without stating the sugar content) and exaggerating the benefits (by using the nutritionist, the grain content but not the sugar content and the highlighting the stars based on the grain) then this ad does mislead, deceive and is likely to mislead and deceive consumers. I would also argue that this ad has NOT been prepared with a "due sense of social responsibility to consumers and to society".

CODE FOR ADVERTISING FOOD

Principle 1 – All food advertisements should be prepared with a due sense of social responsibility to consumers and society. However food advertisements containing nutrient, nutrition or health claims*, should observe a high standard.

Guideline 1(a) – Nutrient, nutrition and health claims (when permitted) should comply with the requirements of the Food Standards Code*. Such claims should not mislead or deceive the consumer.

Guideline 1(e) – Benefits of foods for a nutritious diet should not be exaggerated and should not imply that a single food should replace a healthy diet or undermine the importance of consuming a variety of foods.

Principle 2 – Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive consumers, abuse the trust or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Guideline 2(b) – Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

Guideline 2(d) – Claims in an advertisement should not be inconsistent with information on the label or packaging of the food

RESPONSE FROM ADVERTISER, KELLOGGS NZ

We refer to your letter dated 27 June 2016 regarding the above complaint received by the ASA in relation to a Kellogg's Nutri-Grain television advertisement. We **attach** as an Exhibit to these submissions the requested details of the advertisement, including advertisement description, media placement and contact details.

Prior to addressing the substantive issues, Kellogg would like to confirm its support for the ASA and its commitment to uphold the relevant Codes of Practice together with its own internal guidelines. Kellogg approaches the advertising of its products with a strong commitment to social responsibility and an overriding duty to comply with all applicable laws and regulations.

In summary, the complaint:

- states that the advertisement displays “the four star rating it has gained to make this product sound good”;
- alleges that the advertisement exaggerates the benefits of the product; and

- alleges that by using a nutritionist in the advertisement and displaying the four star rating, the advertisement is misleading to consumers.

This raises issues under Guideline 1(a), Guideline 1(e), Guideline 2(b), Guideline 2(d), Principle 1 and Principle 2.

Guideline 1(a) - Nutrient, nutrition and health claims (when permitted) should comply with the requirements of the Food Standards Code*. Such claims should not mislead or deceive the consumer.

All claims made in this advertisement, both on screen and via voice over, are accurate, substantiated and comply with the requirements of the Food Standards Code.

- “One of the highest protein cereals”
Our substantiation is based on a systematic comparison of the protein per 100g of the top selling SKUs by volume over a 12 month period in the New Zealand breakfast cereals category.

Attachment 1 demonstrates that for the 12 month period immediately prior to the launch of the advertisement carrying this claim, Nutri-Grain was in fact the highest protein cereal of the top 30 SKUs in the category, containing 21.2g of protein per 100g. In addition, Kellogg regularly reviews all claims, particularly comparison claims, to ensure they continue to be accurate at all times. As at the date of this letter, the claim continues to hold true.

- “Now a source of fibre”

Nutri-Grain original cereal contains 2g dietary fibre per serve, which meets the conditions for a “source of fibre” nutrient content claim under Standard 1.2.7 of the Food Standards Code.

The word “now” refers to the renovation of Nutri-Grain cereal, which occurred in 2015 to improve the nutritional profile of the food (reduce the sodium and sugar content and increase the fibre content), whilst maintaining the taste and texture valued by consumers of this cereal.

- “Source of protein and fibre”

Viewers can see these claims on the pack shot. Nutri-Grain original cereal contains 8.5g of protein per serve, which meets the conditions for a “source of protein” nutrient content claim under Standard 1.2.7 of the Food Standards Code. In respect of fibre, please see above.

- “High in energy”

Nutri-Grain original cereal provides 620kJ per 40g serve, or 1550kJ per 100g. Whilst there is no prescribed measure for a “high in energy” nutrient content claim under Standard 1.2.7, clause 11(8) of Standard 1.2.7 permits descriptors not mentioned in Column 3 of Schedule 1 to be used in conjunction with the corresponding property of food mentioned in Column 1, so long as general conditions in Column 2 are met (none stipulated for energy). This is supported by Standard 1.2.7 Explanatory Statement, which in relation to clause 11(8), provides the example that “high energy” claims are permitted even though the descriptor ‘high’ is not listed in Column 3 adjacent to energy.

The issue then turns on whether the ‘high in energy’ claim is consistent with reasonable consumer expectations. We consider that at 1550kJ per 100g, the product is very energy dense, and has been formulated with this intent, appealing to people with high energy needs, including teenagers and very active people, and that this energy density is consistent with reasonable consumer expectations of a high energy food. Accordingly, we consider that the nutrient content claim “high in energy” is substantiated.

- “It tastes as great as ever”

Whilst this is not a nutrient content claim, for completeness we would like to address all claims stated in the advertisement. The basis for this taste claim is the renovation of the food, where Kellogg has endeavoured to maintain the taste and texture of Nutri-Grain valued by consumers of the product, whilst at the same time improving its nutritional profile (reducing the sodium and sugar content and increasing the dietary fibre content).

- “Kellogg’s Nutri-Grain has a 4 Health Star Rating”

We address this statement in respect of Guideline 1(e) – please see below.

Guideline 1(e) - Benefits of foods for a nutritious diet should not be exaggerated and should not imply that a single food should replace a healthy diet or undermine the importance of consuming a variety of foods.

All claims made in this advertisement are factual, comply with the applicable provisions of the Food Standards Code and have supporting substantiation. At no point does the advertisement exaggerate these claims, nor imply that this food should replace a healthy diet. Further, the on screen super in the final scenes of the advertisement prominently states that the product should be enjoyed as part of a balanced diet and active lifestyle.

In respect of the statement, “Kellogg’s Nutri-Grain has a 4 Health Star Rating”, we respectfully submit that the Health Star Ratings of all Kellogg’s cereals have been calculated pursuant to the Health Star Rating (**HSR**) algorithm developed and endorsed by the New Zealand Government and Australian Government, in collaboration with industry, public health and consumer groups. Whilst the HSR system is voluntary, Kellogg has elected to adopt and support this Government initiative in respect of all its cereal products in New Zealand and Australia. To this end, Kellogg complies with the HSR System Style Guide and Guide for Industry.

Pursuant to the HSR Calculator, which takes into account all the nutritional properties of the food including kJ, protein, fibre, sugar, sodium and more, Nutri-Grain cereal has a 4 HSR. This fact is simply stated by Nikki Hart in the advertisement as an accurate output of the HSR Calculator.

The Ministry of Primary Industries on its website and in its official HSR materials, states that the HSR Calculator “uses star ratings of ½ to 5 stars to measure the overall nutritional content and healthiness of packaged foods... the more stars means the healthier the food” (page 10, HSR Industry Kit, November 2015, NZ Government and Ministry for Primary Industries, enclosed for reference as **Attachment 2**).

We respectfully note that in this advertisement, all statements made are statements of fact, very specific and supported by clear substantiation. The advertisement does not make any statements in respect of the improved sugar content of the food post renovation, nor does it

make any broad or general statements regarding healthiness, despite that the food has a 4 HSR. The statements do not exaggerate the benefits of the product.

Guideline 2(b) - Care should be taken to ensure advertisements do not mislead as to the nutritive value of any food. Foods high in sugar, fat and / or salt should not be portrayed in any way that suggests they are beneficial to health.

The complainant states that the advertisement displays “the four star rating it has gained to make this product sound good”, and is therefore misleading to consumers. We respectfully submit that the claims made in the advertisement are statements of fact and do not mislead as to the nutritive value of the food. As contended above, the 4 HSR attributable to the food has been calculated using the HSR scheme publicly endorsed and administered by the New Zealand Government and Ministry of Primary Industries, and the HSR of Nutri-Grain has been labelled and advertised in accordance with Government guidelines.

In addition, one of the public health objectives of the HSR initiative was to encourage manufacturers to reformulate products to improve nutritional content, achieving a higher HSR. Nutri-Grain is an excellent example of this process, whereby Kellogg has invested significant resources and time in reformulation to reduce the sodium and sugar content, and improve the dietary fibre of the popular base food. Whilst not expressly publicised in this advertisement, with the intent to limit the relatively short 30 second commercial to simple nutrition content claims, it is worth noting the improved nutritional profile of the food.

We note also that the Nutri-Grain product shown in the advertisement contains 10.7g sugar per serve which is equivalent to 12% of the recommended daily intake for sugar. The daily intake guide or % DI is a set of reference values for an acceptable intake of nutrients (including sugar), set out in Standard 1.2.8 of the Food Standards Code, and derived from the Nutrient Reference Values (NRVs) for Australia and New Zealand. The NRVs is a joint initiative of the Australian National Health and Medical Research Council and the New Zealand Ministry of Health.

Guideline 2(d) - Claims in an advertisement should not be inconsistent with information on the label or packaging of the food.

The claims made in this advertisement are consistent with the information on the packaging of the food. In fact, all claims made in this advertisement have been made in respect of this food previously, either on pack or in accompanying advertising materials, so such statements are not new to consumers of the food.

Principle 1- All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However food advertisements containing nutrient, nutrition or health claims*, should observe a high standard of social responsibility.

Kellogg approaches the advertising of its products with a strong commitment to social responsibility and an overriding duty to comply with all applicable laws and regulations. All consumer facing materials, including claims, are subject to a rigorous internal review process, to ensure that the materials comply with, amongst other things, the Food Standards Code and consumer laws, and are consistent with the company's values. As demonstrated above, the claims made have been limited to specific statements of fact, to which substantiation applies. Further, general statements regarding health, nutritive benefits and product renovation, though arguably would be able to be supported, have not been included in this relatively short 30” commercial. We respectfully contend that this advertisement upholds Principle 1.

Principle 2 – Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

We respectfully submit that this advertisement does not mislead or deceive consumers by implication, omission, ambiguity or exaggerated claim. All claims are factual in nature and the use of nutritionist Nikki Hart, who works with the NZ Food and Grocery Council to help explain the HSR scheme to consumers, in and of itself does not amount to a representation regarding the product that cannot be substantiated.

Further, the advertisement does not exploit the lack of knowledge of consumers. We note that whilst the product tends to appeal to teenagers and very active people, the advertisement is directly addressed to parents. For example, the language used, tone adopted and scenes depicted (eg. “With the great taste and crunch they love, you won’t have a problem getting them to the table”), plus the media buy, is clearly directed at the primary household/family shopper with children. We confirm that the advertisement and media buy complied with the PGX CAB rating. At all times the product is consumed in the advertisement, a healthy balanced breakfast is also depicted (eg. accompanied by fruit and milk). Whilst this can be a challenge in a short 30” commercial, physical activity is also shown, with the aim of encouraging a balanced lifestyle. We contend that this advertisement upholds Principle 2.

Conclusion

For the reasons stated above the complaint should be dismissed in its entirety.

We thank you for the opportunity to respond to this complaint and to confirm Kellogg’s support for the ASA and the Advertising Codes of Practice.

EXHIBIT

Name and contact at creative agency	The advertisement was developed in New Zealand by Brand World New Zealand, Level 1, 33 College Hill, Ponsonby, Auckland. Please direct all enquiries to Kellogg in the first instance.
Name and contact at media agency	The media buyer is Mindshare New Zealand, Level 12, 22 Fanshawe Street, Auckland Central, Auckland. Please direct all enquiries to Kellogg in the first instance.
A basic, neutral description of the advertisement	<p>The advertisement opens with scenes from the kitchen table, with Nikki Hart stating, “Kellogg’s Nutri-Grain. With the great taste and crunch they love, you won’t have a problem getting them to the table”. The accompanying images show Nutri-Grain cereal being poured into a bowl, followed by a mum in the kitchen with her son eating Nutri-Grain. The table is set with fruit, toast, juice and milk.</p> <p>The advertisement follows with Nikki stating, “It’s also one of the highest protein cereals, and now a source of fibre”, accompanied by a clear on screen super, “Based on protein per 100g of the breakfast cereals category. Nutri-Grain provides 21.2g of protein per 100g”.</p> <p>The advertisement then shows the Nutri-Grain pack, displaying the 4 Health Star Rating and “source of protein and fibre” claims. The 4 Health Star Rating is then enlarged, with the accompanying VO, “Kellogg’s Nutri-Grain has a 4 Health Star Rating”.</p> <p>The advertisement then shows scenes from an outdoor sporting field, with a soccer ball being dribbled in and out of cones, someone riding a skateboard and playing basketball. The accompanying VO is, “high in energy”, with the on screen super, “A 40g serve provides 620kJ of energy”.</p> <p>The following scene is Nikki stating, “it tastes as great as ever – that’s good news for the family”, and the advertisement shifts back to the complete breakfast scene at the kitchen, with the mum preparing food and son eating breakfast. The advertisement then shows a close up of the mum, with the VO, “so fuel ‘em up, with 4 Health Star food they love to eat”. Nikki is shown, with an on-screen super, “Enjoy as part of a balanced diet and active lifestyle”. The advertisement finishes with a table shot showing the Nutri-Grain pack, a serve of cereal in a bowl, milk and fruit. The 4 Health Star Rating device is displayed, with the accompanying VO, “Nutri-Grain from Kellogg’s”.</p>
Date advertisement began	18 January 2016.
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	<p>Television: TV 1, TV1+1, TV 2, TV2+1, TV 3, TV3+1, MTV, The Box, Choice TV, FOUR, FOUR+1, Vibe, Prime, Sky Movies Greats, Sky Movies Extra, Crime & Investigation, Prime Northern, The Zone and Jones!</p> <p>Video On Demand: TVNZ On Demand</p> <p>Digital: Facebook Nutri-Grain New Zealand</p>
Is the advertisement still accessible –	Yes, the advertisement is being broadcast on television. This is scheduled to conclude 24 September 2016.

where and until when?	
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	See digital media file attached to submission email (Attachment 3).
Who is the product / brand target audience? Please provide a copy of the media schedule.	The target audience, reflected in the media buy, is Household Shoppers with children. From a media buying perspective, the 'Household Shopper' is defined as the 'primary shopper in the household'. A copy of the media schedule is attached to the submission email (Attachment 4).
Pre-vetting Approval number if applicable	N/A (see CAB number below).
Clear substantiation on claims that are challenged by the complainant. Please see the Guidance Note.	See submissions.
A copy of the script	See description of advertisement.
CAB key number and rating	51222066 (for the 30 seconds advertisement copy) 60331048 (for the 15 seconds advertisement copy) The CAB rating for the advertisement is "PGX". We confirm that at all times, the advertisement was broadcast in "PGX" appropriate broadcasting times, in compliance with the CAB rating.

RESPONSE FROM COMMERCIAL APPROVALS BUREAU ON BEHALF OF THE MEDIA

Re: Kelloggs NZ Television - Complaint 16/224
Key number: KEL 015 NGHS506; Classification: GXC

Thank you for the opportunity to comment on the complaint that the above commercial is in breach of principles 1 and 2 of the ASA's Code for Advertising Food.

I can confirm that this commercial is running with a GXC (General Except Children) classification, that is, this advertisement cannot be used in programming aimed specifically at children under 14 years old. The complainant's concern with this advertisement is that, in her opinion, it strongly implies that Kelloggs Nutri Grain is a healthy choice. The Complainant's argument is that it is misleading and socially irresponsible to imply that a product with 26.7g/100 of sugar is a healthy choice. The World Health Organisation's guidelines on sugar intake are provided in support of this view.

In CAB's opinion, it is reasonable for an advertiser to emphasise the positive attributes of its product. Indeed, emphasising the selling features of a product or service is the very essence of advertising. The claims made by the nutritionist in this advertisement are all factually correct and are not contested by the complainant. Kelloggs Nutri Grain is "one of the highest protein cereals around", it is "now a source of fibre", and it does have "a four health star rating". The claims are not exaggerated and are reasonable claims for a nutritionist to make.

I look forward to hearing the Board's decision.