

<b>COMPLAINT NUMBER</b>	20/010
<b>ADVERTISER</b>	Fonterra Brands (New Zealand) Limited
<b>ADVERTISEMENT</b>	Fresh'n Fruity Television
<b>DATE OF MEETING</b>	12 May 2020
<b>OUTCOME</b>	Not Upheld No further action required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about a television advertisement for Fresh'n Fruity yoghurt. The Board said the advertisement was not misleading.

### **Description of Advertisement**

The voiceover for the television advertisement for Fresh'n Fruity yoghurt says "Fresh'n Fruity now has 40% less added sugar and it's just as fresh and fruity as ever". The text at the end of the advertisement says "Fresh'n Fruity – taste you love".

### **Summary of the Complaint**

The Complainant was concerned the statement that the yoghurt was "just as fresh and fruity as ever" was misleading because there is less fruit "flavour" in the product now, compared to two years ago.

### **Issues Raised:**

- Truthful Presentation
- Food and Beverage Claims

### **Summary of the Advertiser's Response**

The Advertiser defended the advertisement and said after reducing the sugar level of the yoghurt, they conducted sensory testing in November 2018. The claims in the advertisement were made on the basis of this testing and showed "the overall taste experience provided by the new formulation, is just as Fresh 'n Fruity as ever". The Advertiser said the Complainant has interpreted this claim in a literal way, taking it to mean that the new formulation has the same fruit content as the previous formulation, which is not correct in most cases.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

### ADVERTISING STANDARDS CODE

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(b) Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(g) Food and Beverage Claims:** Food and Beverage claims must be factual and able to be substantiated and must not be misleading.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 16/420 and 19/223, both of which were Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 16/420** concerned a television advertisement for Chanui biscuits where the presenter says Chanui biscuits “taste great because we use traditional recipes and top quality ingredients, and what's more, they are made in New Zealand.” The Complainant was concerned the advertisement stated Chanui biscuits were made to traditional recipes but very high on the ingredients list were “palm oil” and “hydrogenated palm oil”. The Complainant believed palm oil was unheard of in New Zealand until about 15 years ago and hydrogenated palm oil was not a traditional ingredient.

The Complaints Board said the word “traditional” held little meaning as there was no particular earlier era from which “traditional” goods such as biscuits could be said to be derived. The Complaints Board said the use of palm oil did not negate describing the biscuits as from a traditional recipe and that putting aside the ingredients in question, butter and margarine, biscuits could be called traditional because of the way they were made. The Complaints Board said many ingredients routinely used in the production of biscuits involved industrial processes.

**Decision 19/223** concerned a television advertisement for Meadow Fresh Kalo Authentic Greek Yoghurt. The presenter says: “...That’s why we make Meadow Fresh Kalo the authentic way. Only two ingredients strained to create a naturally thick and creamy high protein yoghurt...”. The Complainant was concerned the advertisement is misleading because it says the yoghurt is made from only two ingredients. The Complainant said when they bought the product recently, the honey flavoured one, the list of ingredients indicated that there were more than two ingredients.

The Complaints Board said the advertisement was not misleading because the “Natural” flavour Kalo Authentic Greek Yoghurt is made using only two ingredients, as advertised.

### **Complaints Board Discussion**

#### *Consumer Takeout*

The Complaints Board agreed the consumer takeout of the advertisement was the new Fresh’n Fruity yoghurt has 40% less sugar but tastes just as good as before.

#### *Was the advertisement misleading?*

The Complaints Board said the advertisement was not misleading. The Board said while the phrase “just as fresh and fruity as ever” could be interpreted in different ways, the Advertiser had provided sufficient substantiation to support its use of this phrase.

The Complaints Board noted the Advertiser had conducted sensory testing of the product, after reducing the sugar level of the yoghurt, and the claim in the advertisement was made on the basis of this testing. The test results showed “the overall taste experience provided by the new formulation, is just as Fresh ’n Fruity as ever”. The Board noted that fruit contains sugar, in the form of fructose, and the fruit content of a product has an impact on the overall sugar rating.

The Complaints Board noted the Advertiser disagreed with the way the Complainant interpreted the claim, taking it to mean that the new formulation has the same fruit content as the previous formulation. The Advertiser said this varied between products, but in most cases, this was not correct.

The Complaints Board noted that Fresh’n Fruity is the brand name of the product.

#### *Did the advertisement make any food and beverage claims that were misleading?*

The Complaints Board said the advertisement did claim that Fresh’n Fruity yoghurt is “just as fresh and fruity as ever”, a claim that concerns the taste of the product. The Board said this claim was substantiated by the Advertiser. The Board noted the Advertiser had conducted sensory testing involving regular consumers of yoghurt, before launching the new product. Further details about this testing are contained in Appendix 2.

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2, Rule 2(b) or Rule 2(g) of the Advertising Standards Code.

### **Outcome**

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

#### **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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Response from Media
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### Appendix 1

#### COMPLAINT

My complaint is about the latest tv add for fresh n fruity yoghurt which contains the line "and it's just as fresh and fruity as ever" which is absolutely not true. for example the strawberry flavour now says it contains 5.5% strawberry where as 2 years ago it contained 10% and the apricot flavour now says it contains 3.5% as compared to 6% 2 years ago. Clearly not just as fresh and fruity as ever!

### Appendix 2

#### RESPONSE FROM ADVERTISER, FONTERRA BRANDS NEW ZEALAND

Please find below Fonterra Brands (New Zealand) Limited's ("FBNZ", "us", "our") response to [...] a complaint to the Advertising Standards Authority.

We understand the complaint relates to two television advertisements ("TVCs"), which promote the reduced sugar formulation of Fresh 'n Fruity yoghurt. The script for these TVCs is as follows:

Big news from New Zealand's favourite little yoghurt.

Fresh 'n Fruity now has 40% less added sugar.

And it's just as Fresh 'n Fruity as ever.

SUPER: Fresh 'n Fruity taste you love.

We understand the complaint was made with particular reference to the statement that the reduced sugar formulation of Fresh 'n Fruity yoghurt is "just as Fresh 'n Fruity as ever" (the "Claim")

FBNZ is committed to being a responsible advertiser. We have in place systems and processes to ensure we meet expectations in this regard and comply with all applicable advertising codes, laws, the Food Standards Code, and other regulatory requirements. In this case, our process to launch of the TVCs included critical scrutiny and review of storyboards, scripts, post-production and final assets, for compliance.

In addition, sensory testing was conducted in November 2018. Our sensory testing included a sensory evaluation of flavour intensity, to understand if the Fresh 'n Fruity brand was just as Fresh 'n Fruity as ever. To provide an example, a summary of the tests for Apricot and Strawberry flavoured yoghurt are below.

### **Apricot.**

Testing involved a group of 104 adults and 51 children (aged 10-16 years), who were regular consumers of everyday yoghurt, with Fresh 'n Fruity being one of their main brands. During testing, the adult consumers were advised of the sugar reduced concept, before they tasted and scored the new Fresh 'n Fruity formulation. When asked to describe the flavour intensity of the new sugar reduced Fresh 'n Fruity formulation, and the old formulation, the group's results were as follows:

Adults:

	<b>Too weak</b>	<b>Just right</b>	<b>Too strong</b>
Sugar Reduced	19%	73%	8%
Previous	54%	38%	9%

Children:

	<b>Too weak</b>	<b>Just right</b>	<b>Too strong</b>
Sugar Reduced	27%	55%	18%
Previous	24%	59%	18%

### **Strawberry.**

Testing involved a group of 98 adults and 51 children (aged 10-16 years), who were regular consumers of everyday yoghurt, with Fresh 'n Fruity being one of their main brands. Again, the adult consumers were advised of the sugar reduced concept, before they tasted and scored the new Fresh 'n Fruity formulation. When asked to describe the flavour intensity of the new sugar reduced formulation, and the old formulation, the group's results were as follows:

Adults:

	<b>Too weak</b>	<b>Just right</b>	<b>Too strong</b>
Sugar Reduced	14%	65%	20%
Previous	40%	55%	5%

Children:

	Too weak	Just right	Too strong
Sugar Reduced	20%	49%	31%
Previous	20%	51%	29%

Given these flavour intensity test results, we considered we had a reasonable basis to make the Claim. In this case, the Claim served to convey the message that the overall taste experience provided by the new formulation, is just as Fresh 'n Fruity as ever, in reference to the brand name (not the fruit content – which we further discuss below). We also note that the copy at the end of both TVCs provides: “Fresh 'n Fruity taste you love”, which places emphasis on the yoghurt taste, rather than its fruit content.

We understand that the complainant has interpreted the Claim in a literal way, taking it to mean that the new formulation has the same fruit content as the previous formulation (this is not correct in most cases, and the new fruit content is shown in the nutritional information panel on the back of the pack).

While we are confident that we followed a thorough and balanced process when making the TVCs - we strive to ensure our ads are clear in the messages they convey, and do not lend themselves to unintended interpretations - at the same time, this campaign is being concluded and there are no plans to use these particular TVCs in the future.

A basic, neutral description of the advertisement	An advertisement Fresh 'n Fruity yoghurt, which now has 40% less added sugar
Date advertisement began	27 <sup>th</sup> October 2019
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	TV, Hoyts Cinemas, Fresh 'n Fruity Facebook page, Fresh 'n Fruity yoghurt Instagram, OnDemand, Fresh 'n Fruity website
Is the advertisement still accessible – where and until when?	Use of the TVCs in this campaign has concluded and they are no longer accessible on the platforms referred to above.

A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	File names:  FNF_015_01MUM  FNF_015_03DANC01_TVC
Who is the product / brand target audience?	All yoghurt category buyers
Clear substantiation on claims that are challenged by the complainant.	See in above response
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
<b>For Broadcast advertisements:</b>	
A copy of the script	Big news from New Zealand's favourite little yoghurt.  Fresh 'n Fruity now has 40% less added sugar  And it's just as Fresh 'n Fruity as ever SUPER: Fresh n Fruity taste you love
A copy of the media schedule and spot list (Please remove all financial information)	Provided
CAB key number and rating	TVC Mum:  CAB Key # - FNF 015 MUM 01  CAB Rating – GXC (General excluding Childrens Programming)  TVC Dance:  CAB Key # - FNF 015 DANC 01  CAB Rating – GXC (General excluding Childrens Programming)
<b>For Digital advertisements:</b>	

What platform tools have you used to target your audience?	Programmatic and social – base targeting looked at AP 18-54, AP 25-54, F25-54 (contextual targeting overlaid where appropriate – lifestyle, entertainment etc.)
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### Appendix 3

#### RESPONSE FROM COMMERCIAL APPROVALS BUREAU

**RE: Complaint 20/010 Fonterra, Key number: FNF 015 DANC01, Rating: GXC**

Thank you for the opportunity to comment on the complaint from [...] that the above advertisement is misleading when it claims that the reformulated product is “just as fresh and fruity as ever” as it contains less fruit than previous formulations.

We will defer to the Advertiser to confirm the details of their product’s past and current formulations.

In our opinion the line “just as fresh and fruity as ever” is nonspecific and was not intended by the Advertiser to mean that the product contains the same amount of fruit as previous formulations. Rather, our understanding of the line is that it is wordplay on the taste of the new product (it tastes like the old product), the name of the product and the antics of the animated character (a fresh and fruity little guy).

We look forward to hearing the Board’s decision.