



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
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Case Report

1	Case Number	0154/18
2	Advertiser	Vitaco Health Australia Pty Ltd
3	Product	Health Products
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/04/2018
6	DETERMINATION	Upheld - Modified or Discontinued

ISSUES RAISED

2.7 - Native Advertising Advertising not clearly distinguishable

DESCRIPTION OF THE ADVERTISEMENT

This advertorial was an in-program health segment in Studio 10 for Nutra-Life. Studio 10 is a morning talk on Network Ten, filmed live in Sydney every week day. This segment was part of a fully integrated paid media campaign for Nutra-Life.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

There is an increasingly common trend of ads appearing as news segments. Buying the news is wrong: ethically, democratically and financially. It distorts the truth, exploits trust in journalism and simultaneously undermines that trust moving forward. For health products especially, dubious claims which go unquestioned exposes the sheer malevolence of this profitable practice.

This specific example on Ten is analysed by Media Watch in a segment I have linked during the form. I have done so as I cannot find a link to the full segment on Ten.





Media Watch story also alludes to an example of Office Works doing the same thing on channel 9 however I do not see this. There have been other instances I have seen though, one I recall was about the launch of Qantas' new plane.

In this Ten case, the Dr claims the product is "scientifically backed." As outlined by Media Watch, the "science" is 1 study, involving only 88 people already in poor health, and it was paid for by the company. A dodgy study with a conflict of interest is hardly scientific backing. But the claim is not questioned or challenged by the reporters who lavishly praise the product. This is the heart of the problem. Any company can make any dubious claim in their own ads, and it would still be dubious. It is still misleading and wrong. But when it's presented on a news show as news, and goes without challenge, it gains credibility and the seriousness is elevated. It is no longer questionable self-promotion, it earns some approval.

This trend of paid advertising masquerading as "news" is by definition misleading. Viewers expect news segments, insofar as it's possible, to be impartial. To present multiple sides. They expect the journalists to question and research claims. Yet during these paid "news" stories, the "journalist" hold hands and skip while belting out whatever song they've been paid to sing. They're not being journalists but rather puppets. But viewers still trust them as if they're doing journalism. This is the source of the deception.

Surely news shows and their TV stations have a moral, if not legal, obligation to report the whole story. People place trust in news. When advertisers exploit that trust by, in essence, paying to manufacture or manipulate a story, that is unacceptable. It is different to normal advertising for this reason. Commercial breaks and lead-ins (e.g. "This segment is brought to you by...") are obvious and disclosed. The viewer can tell this is the company's position on itself. But when it is recommended and praised, under the false guise of objective journalism, in return for payment, that is by definition misleading.

It could be said that this practice is analogic to obstruction of justice or witness tampering in legal proceedings. Comparable because someone (journalist) has given testimony (the news) in which they - deliberately - omitted or manipulated truth because a third party (company) has compelled (paid) them to do so. In both the example of legal proceedings and the news, the expectation is the whole truth. Yet in witness tampering as in paid news, that expectation is unmet as a result of the deliberate deceptive behaviour of a third party.

In-content advertising is a grey area, but it's legality and ethics are less sinister in most other cases. For example, cooking for Qantas' in-flight meals during Masterchef, or wearing Nike gear on the Footy Show. This is simple product placement. But without doubt, news is different. The standards are higher. It's different because people expect shows like Masterchef or the Footy Show to be commercial. Yet people, rightfully,



expect that news stories are NOT for sale. People, rightfully, expect that journalists or programs are NOT paid to change their tune or turn a blind eye. For news, the standards are higher.

Buying the news is wrong: ethically, democratically and financially. Ethically, by definition it defeats the entire purpose of news. It's propaganda masquerading as fact. It's a purposeful deception. Democratically, it's Orwellian. It skews information by allowing truth to be written by the rich and powerful. Economically, this kind of distortion of information undermines the operation of the free market by artificially tampering with buying behaviour. Frankly, the fact that the clients, TV channels and "journalists" can't recognise this themselves, is deeply concerning.

THE ADVERTISER'S RESPONSE

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

- *This segment was part of a fully integrated paid media campaign*
- *Paid segments are a regular format on Studio 10, and other morning television programs*
- *Viewers were advised of the paid segment via a play-off after the segment.*
- *It was also highlighted in the end credits, where Studio 10 lists its commercial arrangements.*
- *That disclosure adheres to the Commercial Television Industry Code of Practice in relation to the disclosure of commercial arrangements*

THE DETERMINATION

The Ad Standards Community Panel ("Panel") considered whether this advertisement breaches the AANA Code of Ethics (the Code).

The Panel noted the complainant's concerns that the advertisement is not clearly distinguishable as an advertisement.

The Panel considered whether the advertisement complied with Section 2.7 of the Code which requires that "Advertising or Marketing Communications shall be clearly distinguishable as such to the relevant audience."

The Panel noted the advertisement was an in-program promotion for Nutra-Life Kyolic Aged Garlic as part of the morning talk show Studio 10. The segment starts with one of the hosts listing statistics relating to heart and cardiovascular disease. She then welcomes a guest cardiologist to speak about ways to reduce risks. He speaks about



the main risk factors for heart disease and the '5 keys to good health' before recommending the natural product Nutra-Life Kyolic Aged Garlic and referencing the studies that support it as a natural way to reduce heart disease risk. The Panel noted that the cardiologist is embedded with the hosts and there is no indication through the introduction or during the segment that indicates in any way that the advice and opinions offered by the medical profession were part of a specific product promotion.

The Panel noted the advertiser's response that prior to the next ad break in Studio 10 a 'play-off' featuring the NutraLife logo was shown on screen and one of the hosts states 'proudly brought to you by NutraLife Kyolic Aged Garlic – helping to support healthy blood pressure'.

The Panel noted the complainant's concerns that this advertisement is masquerading as a news story and this would be misleading as people expect the news to be impartial.

The Panel noted the advice provided in the Practice Note to Section 2.7: "If it is clear to the relevant audience that the content is commercial in nature (for example by the nature of the content, where the content is placed, how consumers are directed to the content, the theme, visuals and language used, or the use of brand names or logos), then no further disclosure or distinguishing element is needed."

The Panel first considered the nature of the content, where the content was placed and how consumers are directed to the content.

The Panel noted the content appeared as a segment on the television show Studio 10.

The Panel noted the advertiser's response that the advertisement included the play-off which states the segment is 'brought to you by NutraLife' and that the media arrangement was also disclosed in the final credits.

The Panel noted the advertiser's response that the advertisement and disclaimer adheres to the Commercial Television Industry Code of Practice in relation to the disclosure of commercial arrangements.

The Panel considered that the relevant audience for this advertisement would be Studio 10 viewers and that much of the audience would be familiar with the concept of in-program promotions of products and services.

The Panel considered that this advertisement did seem to differ slightly to the usual format of in-program promotions in that it was discussed by the hosts as though it were a news story. The Panel considered by linking the story to current events and statistics the segment appeared more like a news story on cardiovascular health than an advertisement.



The Panel then considered the overall theme of the content.

The Panel considered the overall theme of the content was that it was a news segment promoting cardiovascular health. The Panel considered that the advertisement included the message that the Kyolic Aged Garlic would benefit cardiovascular health, but considered that this was included as part of the overall news-story theme.

The Panel then considered the visuals and language used in the advertisement.

The Panel considered that there was no mention in the segment of the cardiologist appearing to promote a product within the segment itself, rather the impression was he was there to provide broad medical advice in his specialist field of cardiology on an important health issue.

The Panel considered that when the product was mentioned the hosts reacted as though they had not heard of the product before, and there was no mention in the segment that there was a sponsorship arrangement between NutraLife and Studio 10.

The Panel considered that some of the wording and questions in the segment may have indicated to some viewers familiar with in-content promotion that a product was being promoted, however considered that this was not clear that the content was commercial in nature. The Panel noted that the brand name is mentioned in the context of broad health factors and a range of actions that can improve heart health. The Panel considered that the mention of the product name in this context did not make it clear that the segment was a promotion for that product.

The Panel considered that while the advertisement met the requirements of the Commercial Television Industry Code of Practice through the disclosure in the play-off and the credits, the segment itself did not contain any indication through visual or audio statements or any other action that the content was commercial in nature and was a promotion for a specific product. The Panel noted that it was not evident from the material provided that the play-off was viewed immediately after the segment ended.

Overall, the Panel considered that the nature of the content, where the content was placed, how consumers were directed to the content, the theme, visuals and language used in the advertisement did not make it clear to the relevant audience that the content was commercial in nature.

The Panel considered that people who only watched the segment, even if they were aware that Studio 10 does sometimes contain in-program promotions, may not be able to identify that the entire segment was an advertisement.



The Panel considered that this advertisement was not clearly distinguishable as advertising material to the relevant audience and determined that the advertisement did breach Section 2.7 of the Code.

Finding that the advertisement breached Section 2.7 of the Code the Panel upheld the complaint.

THE ADVERTISER'S RESPONSE TO DETERMINATION

The advertising has been withdrawn and discontinued.