

## COMPLAINTS RESOLUTION PANEL DETERMINATION

**Complaints** 2012-08-010 Nurofen  
2012-10-024 Nurofen

**Meeting held 17 January 2013**

### Complaint summary^

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Complainants	2012-08-010 - Dr Ken Harvey 2012-10-024 - Requested anonymity
Advertiser	Reckitt Benckiser (Australia) Pty Ltd
Subject matter of complaint	Internet advertisements
Type of determination	Final
Sections of the Code, Regulations or Act found to have been <u>breached</u> *	Code sections 4(1)(b), 4(2)(a), 4(2)(c), 4(2)(f)
Sections of the Code, Regulations or Act found <u>not to have been breached</u> *	None
Sanctions	Withdrawal of representations Withdrawal of advertisements

\* only sections of the Code, Act, or Regulations that were part of the complaint or were raised by the Panel are listed

## Preliminary matters<sup>^</sup>

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1. Two complaints were received by the Panel concerning advertisements published at the website *www.nurofen.com.au* and viewed by the complainants in August 2012.
2. The complaints were submitted by two different complainants but raised similar concerns. The Panel therefore considered it appropriate to make this determination concerning both of the complaints together.
3. Complaint 2012-08-010 also made reference to a number of other websites – primarily, websites of online retail pharmacies promoting the same products. The Panel decided not to consider these aspects of the complaint for the present, pending a response from the relevant advertisers to the present determination.
4. Complaint 2012-08-010 also referred to television advertisements. Copies of video advertisements were included with the complaint but appeared to have been obtained from the *www.nurofen.com.au* website. The Panel therefore reviewed these on the basis that they were internet advertisements. The Panel noted, however, that if they were also advertisements that had been broadcast on television then they would generally be subject to the same considerations as internet advertisements, while also requiring advertising approval pursuant to section 42C of the Act.

## The advertisement(s)<sup>^</sup>

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5. The advertisements that were the subject of the complaints were published at the website *www.nurofen.com.au* and viewed by the complainants in August 2012.
6. Complaint 2012-08-010 included two advertisements in video form accessible via the *www.nurofen.com.au* website, and several web pages containing text and images.
7. Complaint 2012-10-024 included several web pages containing text and images.
8. The first video advertisement included an arrangement of the music from the children’s song “Head, Shoulders, Knees and Toes” and was described on the website as the “Heads, Shoulders, Knees and Toes” advertisement. It included the spoken words:

*When you need pain relief you know exactly where you need it. Nurofen knows this. That’s why it’s designed to work with your body, and act at the site of the pain, giving you smart relief, right where you need it. Nurofen. Targeted relief. Smart relief.*
9. It included video images showing people preparing for physical activity and rubbing areas that appeared to be experiencing pain, such as the neck, forehead, and lower back. When the words “you know exactly where you need it” were spoken, a graphical animation was shown overlaid on a man’s body. The man was rubbing or massaging his forehead and appeared to be experiencing headache pain. A glowing red dot or ball was shown pulsating at the same part of his forehead that he was rubbing with his hand. The overlay took the form of a stylised maze, and showed a gold-coloured ball leaving a gold-coloured trail as it travelled from the man’s stomach area to his forehead, where it pulsated as the voiceover said, “and act at the site of the pain, giving you smart relief.” The video then showed the individuals who had earlier been shown preparing for activity or experiencing pain to be apparently pain-free.
10. The second video advertisement was described on the website as the “Live Well” advertisement. It included the spoken words:

*As an athlete, I often suffered from back pain. And it can happen to all of us every now and again. Experts recommend gentle exercise, heat and cold packs, and stretching. And when you need fast relief, combine these treatments with Nurofen Zavance. Nurofen Zavance is absorbed faster than standard Nurofen to target the source of pain. So you can put back pain behind you, do the things you love, and live well.*

11. It primarily showed the athlete Hayley Lewis speaking directly to the camera, but also showed a man experiencing apparent back pain.
12. The webpages from *www.nurofen.com.au* provided with complaint 2012-08-010 included:
  - a) A page headed “New Dual Action Formula”, showing the product Nurofen Cold & Flu PE;
  - b) A page showing the two video advertisements; and,
  - c) A page showing the products Nurofen Zavance Liquid Capsules, Nurofen Zavance Tablets, and Nurofen Zavance Caplets, with claims such as “fast targeted relief from pain” and “absorbed up to TWICE AS FAST as standard Nurofen”.
13. The webpages from *www.nurofen.com.au* provided with complaint 2012-10-024 included a page showing a number of Nurofen products including packaging and associated claims as follows:
  - a) Nurofen Zavance Liquid Capsules, accompanied by the words “FAST targeted relief from pain. Absorbed up to TWICE AS FAST as standard Nurofen”;
  - b) Nurofen Zavance Caplets, accompanied by the words “FAST targeted relief from pain. Absorbed up to TWICE AS FAST as standard Nurofen. Easy to swallow capsule shaped tablet”;
  - c) Nurofen Zavance Tablets, accompanied by the words “FAST targeted relief from pain. Absorbed up to TWICE AS FAST as standard Nurofen”;
  - d) Nurofen Tablets, accompanied by the words “targeted relief of pain”;
  - e) Nurofen Caplets, accompanied by the words “easy to swallow oval shaped caplets. Targeted relief of pain”;
  - f) Nurofen Liquid Capsules, accompanied by the words “easy-to-take capsules. Targeted relief of pain”;
  - g) Nurofen Migraine Pain, accompanied by the words “at the first sign of migraine pain, you need fast help from Nurofen Migraine Pain”;
  - h) Nurofen Tension Headache, accompanied by the words “for fast targeted relief from tension headaches”;
  - i) Nurofen Back Pain Caplets, accompanied by the words “for fast, targeted relief from back pain”; and,
  - j) Nurofen Period Pain Caplets, accompanied by the words “for fast, targeted relief from period pain”.
14. An excerpt of the advertisements can be viewed in the relevant Appendix to this determination.

## The product(s)

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15. The advertisements promoted the products Nurofen Cold & Flu PE, Nurofen Zavance Liquid Capsules, Nurofen Zavance Tablets, Nurofen Zavance Caplets, Nurofen Tablets, Nurofen Caplets, Nurofen Liquid Capsules, Nurofen Migraine Pain, Nurofen Tension Headache, Nurofen Back Pain Caplets, and Nurofen Period Pain Caplets.

## The advertiser(s)

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16. The advertiser was Reckitt Benckiser (Australia) Pty Ltd.

## The complaint^

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17. The complainant for complaint 2012-08-010 was Dr Ken Harvey.
18. Dr Harvey made reference to a previous complaint and determination of the Panel (2011-06-001). This was a matter in relation to which the advertiser declined to comply with the requests made in the Panel's determination, and became the subject of an order under regulation 9 ("the Order") to comply with some, but not all, of the Panel's requests. The complainant expressed some dissatisfaction with the Order and stated that "this case shows up major defects in the current complaint handling system".
19. Dr Harvey stated that, "regardless... the following claims (and the targeted imagery) on the pack, the sponsors web site and numerous others breach the specific wording of the CRP determination and also the meaning that the average consumer would attribute to the delegate's determination", and cited the claims: "targeted symptomatic relief", "when you need pain relief, you know exactly where your [sic] need it. Nurofen knows this. That's why it's designed to work with your body and act at the site of the pain. Giving you smart relief right where you need it. Nurofen targeted relief; smart relief" noting the animated imagery in the video advertisement, "targeted relief. Smart relief", "targets the source of the pain", "fast targeted relief from pain", "provides relief by targeting the source of pain", "for back pain sufferers comes an effective solution to help give targeted relief", "there is an effective solution to target the source of period pain", "targeted relief from pain", and "targeting the site of pain".
20. As noted above, the Panel confined its consideration for the present determination to material that appeared at the website [www.nurofen.com.au](http://www.nurofen.com.au). Therefore, some of the representations noted above were not considered. It should be noted, however, that the representations that were considered generally conveyed a similar meaning to those from other websites that were not considered.
21. Dr Harvey alleged that the advertisements breached sections 4(1)(b), 4(2)(a), 4(2)(c), and 4(2)(f) of the Code. He also alleged breaches of some other legislation. These allegations were not considered by the Panel as their subject matter appeared to be covered by the alleged breaches of the Code.
22. The complainant for complaint 2012-10-024 requested anonymity.
23. The complainant for complaint 2012-10-024 stated that:

*Reckitt Benckiser sell at least four different Nurofen-branded products containing the exact same active pharmaceutical ingredient, namely ibuprofen. These products merely differ in their tradename, e.g. Nurofen Tension headache versus Nurofen Migraine pain. Given that these products all contain the same ingredient, I consider this misleading and deceptive, and promotes overpurchasing of their products. This marketing strategy is also underpinned by their slogan, "Target relief", which is similarly misleading given than [sic] ibuprofen does not exert a targeted action at*

*one area of the body and not another (assuming this is what targeted means, given the existence of different products for different types of pain).*

*If a consumer has a headache and backache on the same day, it is possible that they will purchase and take tablets from Nurofen migraine and Nurofen back pain. Given that ibuprofen carries a risk of GI bleeding (especially at higher doses), I feel this misleading marketing strategy may increase this risk by encouraging overuse of ibuprofen. This is just one example where I feel this misleading marketing strategy by the makers of Nurofen is a real safety concern for the Australian public.*

24. The Panel interpreted the complaint as alleging breaches of sections 4(2)(c) and 4(2)(f) of the Code, and advised the advertiser of this interpretation.

### **The advertiser's response to the complaints<sup>^</sup>**

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25. In relation to complaint 2012-08-010, the advertiser referred to an order made by a Delegate of the Secretary to the Department of Health and Ageing ("the Order") in relation to a determination made by the Panel for complaint 2011-06-001, which concerned advertising that promoted Nurofen tablets (AUST R 144202) and not the Zavance or other Nurofen products. The Order is discussed below.
26. The advertiser also argued that "it is accepted by the OTC Medicines Evaluation Section and the TGA Delegate that the mechanism of action of ibuprofen involves sufficient concentration of an oral ibuprofen dose to be distributed to sites of pain/inflammation and the exertion of therapeutic effects there" and that "ibuprofen which is well established to relieve pain by inhibiting the production of pain causing chemicals, called prostaglandins which are released at the site of pain... Pain originates when locally-elevated concentrations of these prostaglandins sensitise the nerve endings found in tissue and trigger pain signals to the central nervous system (the spine and brain). By blocking the production of prostaglandins, ibuprofen inhibits the sensitisation of nerve endings and prevents the transmission of signals, thereby providing relief at the site of pain."
27. The advertiser also argued that the complaint was misconceived, as it was "an attempt to re-run, in the guise of a fresh complaint, the original complaint because the complainant does not agree with the TGA Delegate's ruling."
28. The advertiser argued that claims about targeting pain were "reasonable to inform consumers in simple language about how Nurofen works and its benefits", and that the claim "targeted pain relief" had been in use for a very long time, and that "for each of the 'targets pain' claims depicted in the advertisements identified in the complaint, the message conveyed is the simple message of relief from pain at the site of the pain or inflammation."
29. The advertiser argued that the complaint was a complaint about "umbrella branding", and stated that this was "the subject of consideration by the TGA".
30. In relation to complaint 2012-10-024, the advertiser made some additional comments but primarily referred the Panel to their prior response to complaint 2012-08-010.

### **Findings of the Panel**

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31. As noted above, the Panel decided to consider the two complaints together, as they raised similar issues and concerned related advertisements.

32. The Panel was satisfied that the complaints could be summarised as concerning three primary issues, together with some subordinate issues. These were, in the context of the advertisements that were the subject of the complaint:
- a) Whether the claims conveyed by words such as “targets pain”, “targeted relief” or “targeted pain relief”, and other words along similar lines, were misleading, unverified, likely to arouse unwarranted and unrealistic expectations, or were not correct and balanced:
    - i) When used in a context that referred to the Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain products; and/or,
    - ii) When used in a context that referred only to the Nurofen Zavance or Nurofen products (that is, products that were not stated to be for a specific part of the body or type of pain);
  - b) Whether the use in advertising of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain was misleading when the products so named all contain the same amount of the same active ingredient; and,
  - c) Whether the advertisements promoting the Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain products were likely to “encourage inappropriate or excessive use” of the advertised products.
33. The Panel noted that the answers to these questions would depend in each case on the particular context in which the claims appeared.

*complaints not misconceived*

34. The advertiser argued that the complaints were misconceived, as they were “an attempt to re-run, in the guise of a fresh complaint, the original complaint because the complainant does not agree with the TGA Delegate’s ruling.”
35. The Panel noted that the complaints related to additional products in different advertisements that used different words, and did not appear to be mere attempts to revisit a prior matter. The Panel was satisfied that they were not misconceived as alleged by the advertiser.

*umbrella branding*

36. The advertiser argued that complaint 2012-08-010 was a complaint about “umbrella branding”, and stated that this was “the subject of consideration by the TGA”. It should be noted that the advertiser also stated that they did “not address to the Panel submissions on this issue [ie, of ‘umbrella branding’] but if the Panel believes that the issue properly arises, we ask, again in the interests of natural justice and due process, that we be given an opportunity to make additional submissions.” The advertiser did not explain what they meant by the term “umbrella branding.” The Panel understood the term to be a reference to “the marketing of two or more medicines under the same ‘brand’ name”, noting that this is a definition given to the term at the website of the TGA.
37. The Panel did not give specific consideration to the practice of “umbrella marketing” or general principles that might be raised by the practice, and did not consider the complaint to raise “umbrella marketing” issues *per se*. Rather, the Panel considered whether the advertisements breached relevant provisions of the Code, Regulations, and Act, for example by being misleading or by encouraging inappropriate or excessive consumption of the advertised therapeutic goods.
38. It may be that the practice of “umbrella marketing” increases the risk of such breaches, but the Panel’s consideration was confined to the advertisements that were the subject of the complaints.

### *the Order*

39. Both Dr Harvey and the advertiser referred to an order made by a Delegate of the Secretary to the Department of Health and Ageing in relation to a determination made by the Panel for complaint 2011-06-001, which concerned advertising that promoted Nurofen tablets (AUST R 144202) and not the Zavance or other Nurofen products.
40. In the determination, the Panel requested that the advertiser “withdraw any representations, in the context of headaches, that the advertised product goes straight to the source of pain or targets pain”. The advertiser declined to comply with all of the Panel’s requests. The Panel’s requests then became the subject of a recommendation by the Panel to the Secretary, resulting in the Order.
41. The Order differed from the Panel’s determination in that it required the advertiser to “withdraw any representations, in the context of headaches, that the advertised therapeutic good ‘Nurofen’ goes “straight” to the source of the pain”, but did not impose any requirement in relation to the claim that the product “targets” pain.
42. The Panel noted that the Order was of only limited relevance to the present complaints. It related to a different advertisement, and to only one product among the wider Nurofen range. Although the words “targeted relief” appeared in the advertisement to which the Order related, they were not given emphasis or great prominence and were visible only as part of the product packaging. Moreover, the words used in the present advertisements (eg “targets the source of pain”) were not always precisely the same as the words used in the advertisement (eg “targeted relief from pain”) to which the Order related, although in some instances a similar meaning was conveyed.
43. Although it was of limited relevance, the Panel was satisfied that the Order was of value in relation to the present complaints, in that:
  - a) it supported a view that at least in some senses, products containing ibuprofen could be regarded as in fact providing targeted relief from pain;
  - b) a claim that the advertised product “goes straight to the source of pain” would, however, not be acceptable as it would be misleading; and,
  - c) it supported a view that the appropriateness of such claims would need, as the Delegate put it, to “take into account the effect of [the] claim when combined with” other elements of an advertisement.

### *the “targeting” claims*

44. Various claims about “targeting” appeared throughout the advertisements, and will be referred to collectively in this determination as ‘the “targeting” claims.’ They included:
  - a) In the first video advertisement, the words “targeted relief”;
  - b) In the second video advertisement, the words “Nurofen Zavance is absorbed faster than standard Nurofen to target the source of pain”;
  - c) In the web pages which showed several products together, the words “fast targeted relief from pain”, “targeted relief of pain”, “for fast targeted relief from tension headaches” (in relation to the Nurofen Tension Headache product), “for fast, targeted relief from back pain” (in relation to the Nurofen Back Pain Caplets product), “for fast, targeted relief from period pain” (in relation to the Nurofen Period Pain Caplets product); and,

- d) Graphical imagery in the video advertisements.
45. There was also material in the wider context of the advertisements that the Panel considered highly relevant to the complaint, such as, in the first video advertisement, the words “when you need pain relief you know *exactly where you need it*. Nurofen knows this. That’s why it’s designed to work with your body, and act at the site of the pain. Giving you *smart relief, right where you need it*. Nurofen. Targeted relief. Smart relief.”
46. Section 4(1)(b) of the Code requires that advertisements for therapeutic goods “contain correct and balanced statements only and claims which the sponsor has already verified.” Section 4(2)(a) of the Code prohibits representations that are “likely to arouse unwarranted and unrealistic expectations of product effectiveness”. Section 4(2)(c) of the Code prohibits representations that “mislead directly or by implication or through emphasis, comparisons, contrasts or omissions”.
47. Taken together, the complaints alleged that the advertisements breached these provisions because of the “targeting” claims.
48. The individual advertisements are discussed in some detail below. However, by way of general observation, the Panel noted that:
- a) claims conveying that a product could target pain in a general sense were quite different to claims conveying that a product could target pain in a specific area of the body;
  - b) claims about targeting were likely in some contexts to convey to consumers that a product actively or intelligently targets an area or site of pain – that is, targeting was an active property of the product itself. This was particularly (but not only) so where the “targeting” was a targeting of a specific area of the body.
49. The Panel accepted, for the purposes of the present complaints, that there was a narrow, technical sense in which the ibuprofen ingredient could be said to “target” pain, in that (as the advertiser put it), “ibuprofen exerts its main effect by inhibiting the activity of cyclooxygenase (COX) that catalyses the production of prostaglandins responsible for pain and inflammation”, “pain originates when locally-elevated concentrations of these prostaglandins sensitise the nerve endings found in tissue and trigger pain signals to the central nervous system (the spine and brain)”, and “by blocking the production of prostaglandins, ibuprofen inhibits the sensitisation of nerve endings and prevents the transmission of signals, thereby providing relief at the site of pain.” The Panel also noted that, as the advertiser put it, the “inhibition [by ibuprofen] of prostaglandin production occurs at both peripheral sites in the body and in the central nervous system.” The Panel also accepted, for the purposes of determining the complaint, that for some (but not all) categories of pain, the ibuprofen ingredient would to some degree concentrate at sites of inflammation, and noted that the advertiser had provided some evidence on this point in relation to a previous complaint.
50. The Panel therefore accepted that there could, at least in principle, be circumstances in which advertising claims about ibuprofen targeting pain could be accurate, balanced, and not misleading.
51. The Panel noted that the factual position adopted by the advertiser supported a view that, to the extent that relief might be “targeted”, the targeting was driven by the presence of inflammation at the site of pain, and not by the design or nature of the advertised product, since “the mechanism of action of ibuprofen involves sufficient concentration of an oral ibuprofen dose to be distributed to sites of pain/inflammation and the exertion of therapeutic effects there.” As the Panel understood it, this essentially amounted to an argument that the products would “target” pain because they would have a therapeutic effect primarily at sites of inflammation and not (or to a substantially lesser degree) at other sites.



52. The Panel noted, however, this would be the case with any oral product containing ibuprofen at an appropriate dose, and the degree of concentration for, say, the Back Pain product at the site of back pain would not be any greater than the degree of concentration for the Migraine Pain product at the site of back pain. This indiscriminate (as to body area) action was also reflected in the indications in the Register for the products, which referred to different categories of pain irrespective of the body area nominally “targeted” by the product. For example, the indications in the Register for the Nurofen Tension Headache product included “temporary relief of pain and/or inflammation associated with headache (including migraine and tension headache), dental pain, period pain, arthritis, aches and pains associated with the common cold or flu, backache, sinus pain, muscular and rheumatic pain”, and were not confined to tension headache pain.
53. The Panel was satisfied that such a factual situation would not correspond to the interpretation of the “targeting” claims that would be adopted by a reasonable consumer. A reasonable consumer viewing the advertisements would, in the Panel’s view, conclude that the Back Pain, Migraine Pain, Tension Headache, and Period Pain products were different from one another and would each act differently in the body even in identical circumstances. The Panel was satisfied that such a consumer would conclude from the advertisements that the Back Pain product would primarily or exclusively “target” back pain even in circumstances where pain was present elsewhere in the body. The Panel was also satisfied that such a consumer would form a similar view in relation to the Migraine Pain, Tension Headache, and Period Pain products. In other words, a reasonable consumer would conclude that the “targeting” effects of these products were properties of the products themselves, due to some difference in product design or formulation, and not merely a consequence of the presence of inflammation in a particular area.
54. The Panel was therefore satisfied that the “targeting” claims would not always be misleading, but were more likely to be misleading in circumstances where:
- a) the claims occurred in a context where particular regions of the body or particular types of pain, such as the back, migraine pain, period pain, or tension headache pain, were described as being targeted by the advertised product(s);
  - b) clarifying information was not also prominently included, to the effect that:
    - i) ibuprofen exerts its activity (through inhibition of prostaglandin synthesis) in areas where there is presently inflammation, but it is not confined to those areas and is distributed throughout the body after being taken;
    - ii) the advertised products do not concentrate at or target a particular named area of the body, but rather exert their pharmacological activity at areas where there is presently inflammation;
    - iii) the advertised products may concentrate or have an effect at all areas where inflammation is present, and are not confined to those areas named on the packaging;
    - iv) ibuprofen does not concentrate at the site of, or “target”, all types of pain;
  - c) the targeting claims were unduly emphasised;
  - d) the targeting claims conveyed that the products would have effects other than symptomatic relief of pain, such as a treatment effect in relation to the source or cause of the pain; and,
  - e) other contextual elements in the advertisement strengthened the implication that the advertised product actively targeted a particular region of the body, for example words such as “smart” or “Nurofen knows”.

*“targeting” claims in relation to the Head, Shoulders, Knees and Toes advertisement*

55. The Head, Shoulders, Knees and Toes video advertisement included the spoken words:

*When you need pain relief you know exactly where you need it. Nurofen knows this. That’s why it’s designed to work with your body, and act at the site of the pain. Giving you smart relief, right where you need it. Nurofen. Targeted relief. Smart relief.*

56. The Panel was satisfied that this advertisement, in its total context, conveyed that the advertised product would provide pain relief “exactly where you need it” or “right where you need it”, because it “knows this” and is “smart”. In the context of the advertisement, “targeted relief” was also “smart relief”. The clear implication, in the Panel’s view, was that the advertised product would intelligently and actively target an area where pain was being experienced.

57. Moreover, during the advertisement, a graphical animation was shown overlaid on a man’s body. The man was rubbing his forehead and appeared to be experiencing headache pain. The overlay took the form of a stylised maze, and showed a gold-coloured ball leaving a gold-coloured trail as it travelled from the man’s stomach area to his forehead, where it pulsated soon before the voiceover said, “giving you smart relief.” The animation clearly suggested that the advertised product (or its active ingredient) would travel from the stomach to the forehead in a direct manner. It also suggested that the advertised product or its active ingredient would not travel elsewhere in the body.

58. The Panel also noted that the “targeting” and “smart” properties of the advertised product were heavily emphasised in this advertisement, and that for this reason it differed substantially from the advertisement that was considered in the Order. The Panel was therefore satisfied that its finding in relation to the present Head, Shoulders, Knees and Toes video advertisement was not materially inconsistent with the Order.

59. The advertisement also lacked qualifying information such as that set out in paragraph 54 above.

60. The Panel was satisfied that the Head, Shoulders, Knees and Toes video advertisement contained representations that had not been verified, were not correct and balanced, were likely to arouse unwarranted and unrealistic expectations, and were misleading, in breach of sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code.

61. These aspects of the complaint were therefore justified.

*“targeting” claims in relation to the Live Well advertisement*

62. The Live Well video advertisement included the spoken words:

*As an athlete, I often suffered from back pain. And it can happen to all of us every now and again. Experts recommend gentle exercise, heat and cold packs, and stretching. And when you need fast relief, combine these treatments with Nurofen Zavance. Nurofen Zavance is absorbed faster than standard Nurofen to target the source of pain. So you can put back pain behind you, do the things you love, and live well.*

63. It included graphical imagery that showed a golden disc or ball that appeared to symbolise the advertised product. The ball was shown glowing in the region of a man’s lower back (which was reddened) and apparently providing him with relief from back pain.

64. The Panel was satisfied that the golden ball would convey to an ordinary and reasonable consumer a representation that the advertised product acted only in the area of the lower back, and not throughout the body. In reaching this view the Panel noted that the advertisement did not include qualifying information, such as indicating that the active ingredient of the advertised product could also act elsewhere in the body. The Panel was satisfied that this representation was not correct and balanced, was likely to arouse unwarranted and unrealistic expectations, and was misleading, in breach of sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code.
65. Moreover, the Panel was satisfied that the words “target the source of pain” conveyed a representation that the advertised product would not only provide relief of pain, but would have a direct effect on the source or cause of the pain, such as an injury of which the pain was a symptom, and not merely on the symptom of pain itself. This was particularly so in the absence of any clear qualifying information explaining what was meant by the term “the source of pain”.
66. The Panel also noted that the words “target the source of pain” were similar to the words “goes straight to the source of pain”, which were found unacceptable in the Order, and differed from the words “targeted relief of pain”, about which the Order was largely silent. The Panel noted that the words “targeted relief of pain” were more self-evidently a reference to symptomatic relief than the words “target the source of pain”, which were likely to be taken to refer to the treatment of the cause of symptoms.
67. The advertisement also lacked qualifying information such as that set out in paragraph 54 above.
68. The Panel was therefore satisfied that the representation conveyed by the words “target the source of pain” was not correct and balanced, was likely to arouse unwarranted and unrealistic expectations, and was misleading, in breach of sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code.

*“targeting” claims in relation to the web page advertisements*

69. Other than the video advertisements, the pages at *www.nurofen.com.au* that were before the Panel included:
- a) Pages showing the products Nurofen Zavance Liquid Capsules, Nurofen Zavance Tablets, and Nurofen Zavance Caplets, with the claim “fast targeted relief from pain” for each of the products;
  - b) Pages showing the products Nurofen Tablets, Nurofen Caplets, and Nurofen Liquid Capsules, accompanied by the words “targeted relief of pain”;
  - c) Pages showing the product Nurofen Migraine Pain, accompanied by the words “at the first sign of migraine pain, you need fast help from Nurofen Migraine Pain”;
  - d) Pages showing the product Nurofen Tension Headache, accompanied by the words “for fast targeted relief from tension headaches”;
  - e) Pages showing the product Nurofen Back Pain Caplets, accompanied by the words “for fast, targeted relief from back pain”; and,
  - f) Pages showing the product Nurofen Period Pain Caplets, accompanied by the words “for fast, targeted relief from period pain”..
70. A further page headed “New Dual Action Formula”, showing the product Nurofen Cold & Flu PE, was provided with complaint 2012-08-010. This did not appear to be relevant to the present complaint and was not considered by the Panel.

71. The Panel was satisfied that the “fast targeted relief from pain” and “targeted relief of pain” claims about the Zavance Liquid Capsules, Zavance Tablets, Zavance Caplets, Nurofen Tablets, Nurofen Caplets, and Nurofen Liquid Capsules in the web pages were not, in their immediate context, misleading, unverified, or otherwise in breach of sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code. In reaching this conclusion the Panel noted that they appeared, in their context, to be confined to claims of symptomatic relief of pain, and did not appear to convey that the advertised products would exclusively target a particular area of the body or site of pain. In relation to these claims, therefore, this aspect of the complaint was not justified.
72. The Panel was satisfied that the claims about the Nurofen Period Pain Caplets, Nurofen Back Pain Caplets, Nurofen Tension Headache, and Nurofen Migraine Pain products were clearly misleading, had not been verified, were not correct and balanced, and were likely to arouse unwarranted expectations about the products. The Panel was satisfied that a reasonable consumer viewing these parts of the advertisement would infer that the advertised products would target the relevant areas of the body – the lower abdomen, the back, or head – and would *not* target other areas of the body. It was not sufficient, in the Panel’s view, that each of the advertised products would concentrate to some degree or have its primary effect in areas affected by inflammation; a consumer experiencing both headache and lower back pain would reasonably conclude that the Nurofen Back Pain product would provide “targeted” relief from back pain and would not target pain elsewhere.
73. These claims therefore caused the website advertisement to breach sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code, and this aspect of the complaint was justified.

*the use in the advertisement of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain*

74. The Panel was satisfied that, in the absence of clear and prominent statements to the contrary, the use of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain in the advertisement would convey to an ordinary and reasonable consumer that:
- a) The products so named were different in their ingredients or effects, and did not differ solely because of the consumer to which advertisements about them were directed;
  - b) The advertised products would have an effect in the named area or site of pain, and would not have an effect on other pain or act elsewhere in the body other than in the named area.
75. The Panel was therefore satisfied that the use in the advertisement of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain in the advertisement was misleading, had not been verified, was not correct and balanced, and was likely to arouse unwarranted or unrealistic expectations about the advertised products, in breach of sections 4(1)(b), 4(2)(a), and 4(2)(c) of the Code. This aspect of the complaint was therefore justified.

*inappropriate or excessive use*

76. Section 4(2)(f) of the Code prohibits representations that “encourage inappropriate or excessive use” of therapeutic goods.
77. In relation to this alleged breach, the complainant stated that:

*If a consumer has a headache and backache on the same day, it is possible that they will purchase and take tablets from Nurofen migraine and Nurofen back pain. Given that ibuprofen carries a risk of GI bleeding (especially at higher doses), I feel this misleading marketing strategy may increase this*

*risk by encouraging overuse of ibuprofen. This is just one example where I feel this misleading marketing strategy by the makers of Nurofen is a real safety concern for the Australian public.*

78. The Panel agreed with the complainant and was satisfied that the use of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain in the advertisement was likely to encourage inappropriate or excessive use of the advertised products, particularly in the case of a consumer experiencing more than one type of pain, in breach of section 4(2)(f) of the Code. The Panel was satisfied that this was the case despite the presence of warnings on product packaging relating to other medicines containing ibuprofen, and noted that such warnings were likely to be confusing to consumers when considering the “targeted” Nurofen products.

79. This aspect of the complaint was therefore justified.

## **Sanctions**

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80. The Panel requests Reckitt Benckiser (Australia) Pty Ltd, in accordance with subregulation 42ZCAI(1) of the *Therapeutic Goods Regulations 1990*:

- a) to withdraw the advertisements from further publication;
- b) to withdraw:
  - i) any representations that the advertised products target the source of pain or cause of pain;
  - ii) the representations conveyed by the words “at the first sign of migraine pain, you need fast help from Nurofen Migraine Pain”, “for fast targeted relief from tension headaches”, “for fast, targeted relief from back pain”, and “for fast, targeted relief from period pain”;
  - iii) the representations that the advertised products or their active ingredients target, travel directly to, or act only on specific sites of the body, such as those conveyed by graphical images of a ball travelling through a maze to the head and a ball acting on a man’s lower back;
  - iv) the representations conveyed by the use of the descriptive names Nurofen Back Pain, Nurofen Migraine Pain, Nurofen Period Pain, and Nurofen Tension Headache Pain; and,
  - v) the representations that the products actively or intelligently target sites or areas of pain, such as those conveyed by the use of the words “smart”, “exactly where you need it”, “right where you need it”, and “Nurofen knows this”, in the context of targeting pain or the site of pain;
- c) not to use the representations in (b) above in any other advertisement\*;
- d) where the representation has been provided to other parties such as retailers or website publishers, and where there is a reasonable likelihood that the representation has been published or is intended to be published by such parties, to advise those parties that the representation(s) should be withdrawn; and,
- e) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance, including a response in writing that they will comply with the Panel’s sanctions, and where appropriate, supporting material such as copies of instructions to advertising agents or publishers, or correspondence with retailers and other third party advertisers.

81. The advertiser's attention is drawn to the provisions of sub-regulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request.

**Retail website material**

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82. For the present, the Panel opted not to proceed with the complaint as it related to retailer website material provided in the complaint. This material carried similar claims, but was not published directly by Reckitt Benckiser (Australia) Pty Ltd.

83. Provided that they do not prefer to proceed with the Panel's formal complaints process, the Panel seeks the cooperation of those website publishers in removing the claims noted above from the websites, where they are used in relation to the relevant Nurofen products. However, the Panel invites those website publishers to respond formally to the complaint if they wish to do so.

Dated 12 June 2013

For the Panel

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jason Korke  
Chairman

## Appendix A: Definitions and footnotes

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In this determination, unless otherwise specified:

- a) “the Act” means the Therapeutic Goods Act 1989;
- b) “the Regulations” means the Therapeutic Goods Regulations 1990;
- c) “the Code” means the Therapeutic Goods Advertising Code;
- d) “the Register” means the Australian Register of Therapeutic Goods;
- e) “any other advertisement” appearing in sub-regulation 42ZCA1(1)(d) is not confined to advertisements in specified or broadcast media (in relation to which complaints may be made to the Panel under Regulation 42ZCAB). It should be noted that HTML metatags and other information which can be retrieved by internet search engines, whether or not it is ordinarily viewed directly by consumers, constitutes advertisement material.

*^Readers of the determination should note that the sections “complaint summary”, “the advertisement(s)”, “the complaint”, and “[a party]’s response to the complaint”, are summaries that are intended to aid readers of this document. In reaching its decision, the Panel considered all of the material before it, including material that may not be mentioned specifically in the summaries. The summaries do not form part of the Panel’s reasoning.*

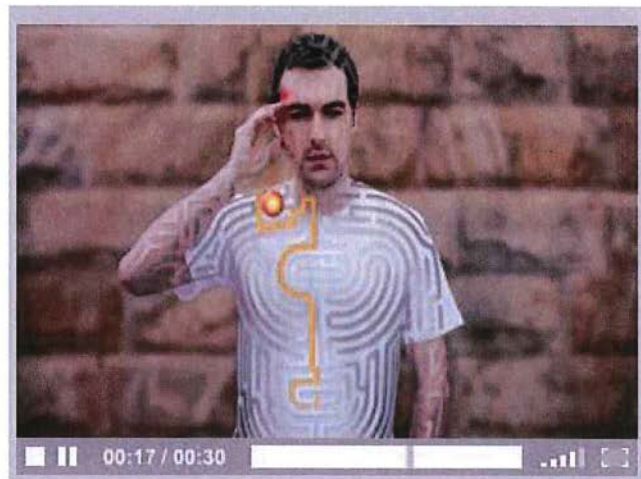
*\*Under regulation 42ZCA1 of the Regulations, the Panel may request that a representation not be used in any other advertisement unless the advertiser satisfies the Panel that the use of the representation would not result in a contravention of the Therapeutic Goods Act 1989, the Therapeutic Goods Regulations 1990 or the Therapeutic Goods Advertising Code. Under the Panel’s procedures, the Panel will not ordinarily give additional consideration to such a matter unless significant new material that was not available at the time of the Panel’s determination has become available, or until at least 12 months have passed since the Panel’s request was made.*

## Appendix B: An Excerpt from the Advertisements



The screenshot shows the Nurofen website's 'TV Adverts' section. At the top, the Nurofen logo is displayed. Below it is a navigation bar with links for Home, Send to a Friend, Register, Sitemap, Contact Us, and Careers, along with a search bar. A secondary navigation bar contains links for About Nurofen, Product Range, Treatment Advisor, Types of Pain, and Your Wellbeing. The main content area is titled 'TV Adverts' and includes the text 'See them again' and 'To watch some of our past and present TV adverts, please choose from below.' Under the year '2011', there are two video thumbnails: 'Heads, Shoulders, Knees and Toes' with the tagline 'Nurofen - Targeted relief. Smart relief' and 'Live Well' for 'Back Pain' with the tagline 'Live Well, with Nurofen for Back Pain'. To the right, there is a 'The Nurofen Treatment Advisor' section featuring a human figure with a 'Body Ache' button and a 'FIND YOUR NUROFEN' call to action.

<http://www.nurofen.com.au/pain-relief/tv-adverts.php>



Transcript

"When you need pain relief, you know exactly where your need it. Nurofen knows this. That's why it's designed to work with your body and act at the site of the pain. Giving you smart relief right where you need it. Nurofen targeted relief; smart relief."