



Ad Standards Community Panel
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AdStandards.com.au

Advertising Standards Bureau Limited
ACN 084 452 666

Case Report

1	Case Number	0032/19
2	Advertiser	A2 Milk
3	Product	Food and Beverages
4	Type of Advertisement / media	Billboard
5	Date of Determination	06/02/2019
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The advertisement is a billboard poster which depicts, from left to right:

(a) The top half of a tin of a2 Platinum Toddler Milk with the words “Premium toddler milk drink” visible above the bottom of the poster.

(b) The tagline “Believe in better.®” in bold white font.

(c) A toddler wearing a yellow cardigan and looking down at an orange butterfly balanced on her finger, with leafy green bushes in the background.

THE COMPLAINT

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

It suggests that formula is better than breastfeeding. Keeping it very unclear that it could also be suggesting it's a 'better formula' in the category. But this double meaning is what is misleading as WHO (world health organisation) would say otherwise. This therefore is a dangerous headline.

This should also be put forward from the WHO. It is their THE INTERNATIONAL CODE



OF MARKETING OF BREAST-MILK SUBSTITUTES Document.

<https://apps.who.int/iris/bitstream/handle/10665/254911/WHO-NMH-NHD-17.1-eng.pdf?ua=1>

THE ADVERTISER'S RESPONSE

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

AANA Code of Ethics

We believe that the Advertisement complies with all sections of the AANA Code of Ethics.

Specifically with respect to section 2 of the AANA Code of Ethics, the Advertisement:

(a) does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief;

(b) does not employ sexual appeal:

(i) where images of persons under 18 years of age (Minors), or people who appear to be Minors, are used; or

(ii) in a manner which is exploitative or degrading of any individual or group of people;

(c) does not present or portray violence;

(d) treats sex, sexuality and nudity with sensitivity to the relevant audience;

(e) uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium) and avoids strong or obscene language;

(f) does not depict material contrary to Prevailing Community Standards on health and safety; and

(g) is clearly distinguishable as such to the relevant audience.

We note further that the Advertisement complies with Prevailing Community Standards in respect of its treatment of each of the areas outlined from paragraphs (a) to (f) above.

Prevailing Community Standards around breast milk substitutes

In relation to Prevailing Community Standards around breast milk substitutes, we refer



to the principles and obligations set out in the Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement 1992 (MAIF Agreement). By way of background, the MAIF Agreement gives effect in Australia to the World Health Organization's International Code of Marketing of Breast Milk Substitutes, which was developed through extensive discussion between Member States of the World Health Organization, UNICEF and other interested parties, and was adopted by the World Health Assembly in 1981.

We are a proud signatory to the MAIF Agreement.

The MAIF Agreement sets out the view that breastfeeding (and preferably exclusive breastfeeding) is best for babies up to 12 months. In order to encourage breastfeeding for babies, therefore, the MAIF Agreement prohibits manufacturers and importers of infant formulas from advertising or in any other way promoting infant formulas to the general public. Infant formulas are defined in the MAIF Agreement as foods sold as an alternative to human milk for the feeding of infants up to the age of 12 months.

The position taken in the MAIF Agreement is backed by further guidance issued by the World Health Organization, that "exclusive breastfeeding is recommended for babies up to 6 months of age, with continued breastfeeding along with appropriate complementary foods up to two years of age or beyond".

In terms of the application of these principles to the Advertisement, we note that:
(a) Contrary to the view expressed in the complaint lodged with Ad Standards, the Advertisement is for a toddler milk drink, which is designed for children aged 12 months and over, and not an infant formula product. The words "Premium toddler milk drink" appear clearly as part of the photo of the product depicted on the Advertisement.

(b) Contrary to the view expressed in the complaint lodged with Ad Standards, the child depicted in the Advertisement is a toddler, who appears to be around 2 to 3 years of age, and therefore is clearly of an age where exclusive breastfeeding would no longer be required or recommended.

(c) The tagline used ("Believe in better.") is non-specific and does not refer in any way to the replacement of breast milk with breast milk substitutes.

(d) The Advertisement does not refer to infant formula products, whether in a manner that would idealise them over the use of breastfeeding or otherwise, and does not depict babies or infants in any way.

We therefore believe firmly that the Advertisement does not depict material contrary to Prevailing Community Standards around breast milk substitutes. We believe moreover that the Advertisement complies fully with the MAIF Agreement, which is a



leading source of guidance around marketing breast milk substitutes in Australia, as well as with guidance around breastfeeding issued by the World Health Organization.

AANA Code for Advertising & Marketing Communications to Children

Section 3 of the AANA Code of Ethics states that:

“If the Advertising or Marketing Communication is directed primarily to children, the Children’s Advertising Code may also apply”.

The Advertisement is not directed primarily to children, having regard to the theme, visual and language used. While the product may be for children, the demographic at whom the Advertisement is primarily directed is parents or carers of young children.

Therefore, the AANA Code for Advertising & Marketing Communications to Children does not apply to the Advertisement.

Food & Beverages Advertising & Marketing Communications Code

Section 3 of the AANA Code of Ethics also states that:

“Depending on the nature of the product or service being advertised, these other AANA codes may also apply:

- Food & Beverages Advertising Code*
- Environmental Claims Code*
- Wagering Advertising Code”*

The Advertisement is for a food, being a toddler milk drink, and therefore is subject to the AANA Food & Beverages Advertising & Marketing Communications Code.

Relevantly, Section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code states:

“Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits.”

Additionally section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code – Practice Note states that:

“The Community Panel will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.

In testing the requirement that an advertising or marketing communication should be



truthful and honest, the Community Panel will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.”

We accept that the Advertisement must comply with this Code but believe it does for the reasons set out below.

Response to complaint

We note the complainant’s allegation that the statement “Believe in better” is potentially misleading because it suggests that formula is better than breastfeeding and that a photo of a baby has been used.

Our response is as follows:

(a) The product advertised is a toddler milk drink (i.e. for children 12 months and older) and not an infant formula product (i.e. for infants up to 12 months). This is clearly stated on the tin which appears as part of the photo of the product on the billboard. Further, the child depicted in the Advertisement is a toddler and not an infant or baby. We have, moreover, never used photos of infants or babies in any of our advertising communications for our toddler milk drink products at any time. Accordingly, there have been no references made to infant formula in the Advertisement in a manner which would suggest the superiority of infant formula to breastfeeding in a manner which is misleading or deceptive or would otherwise contravene prevailing community standards.

(b) The tagline “Believe in better” is general puffery in advertising. It is a statement that is visionary and non-specific, and does not purport to set out any performance characteristics of the product in relation to nutritional values or health benefits – either on its own or in comparison to breast milk.

(c) We note further that, in line with our obligations as a signatory to the MAIF Agreement, we do not engage in any advertising or marketing in respect of any of our infant formula products. We fully support the values and principles behind the MAIF Agreement in promoting breastfeeding and ensuring the proper use of breast milk substitutes, when they are necessary, by providing information to the public only through appropriate marketing and distribution.

Conclusions

For the reasons set out above, we believe that:

(a) the Advertisement is not misleading or deceptive or otherwise in contravention of prevailing community standards; and

(b) does not contravene the AANA Food & Beverages Advertising & Marketing Communications Code or the AANA Code of Ethics.

Therefore, we believe the complaint should be dismissed.



THE DETERMINATION

The Ad Standards Community Panel (the "Panel") considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code").

The Panel noted the complainant's concern that the advertisement suggests formula is better than breastfeeding, which is misleading and contrary to the World Health Organisation's recommendation.

The Panel viewed the advertisement and noted the advertiser's response.

The Panel noted that the product advertised is a packaged food product and that therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the "Food Code") apply. In particular the Panel considered section 2.1 of the Food Code which provides:

"Advertising or Marketing Communications for Food or Beverage Products shall be truthful and honest, shall not be or be designed to be misleading or deceptive or otherwise contravene Prevailing Community Standards, and shall be communicated in a manner appropriate to the level of understanding of the target audience of the Advertising or Marketing Communication with an accurate presentation of all information including any references to nutritional values or health benefits."

The Panel noted that this billboard advertisement features an image of a toddler, and image of the product which is Toddler formula, and the text "Believe in Better".

The Panel noted the complainant's concern that the advertisement suggests formula is better than breastfeeding.

The Panel noted the advertiser's response that they are a signatory to the Manufacturers and Importers Agreement 1992 which subscribes to the view that breastfeeding is best for babies up to 12 months. The Panel noted the advertiser's response that they therefore do not advertise their infant formula.

The Panel considered that the slogan "Believe in better" does not reference breast feeding, or that formula is better for children.

The Panel considered that most members of the community would read the statement as meaning the A2 brand of toddler milk drink is better than other brands, and considered that this is general puffery.

The Panel noted that there is significant community interest regarding breastfeeding versus formula feeding, and noted that advertisers must use caution when advertising products relating to feeding children.



The Panel noted that the advertisement does not make any claims that formula feeding is better than breastfeeding and considered that the statement in the advertisement is not misleading or deceptive.

The Panel determined that the advertisement did not breach Section 2.1 of the AANA Food Code.

Finding that the advertisement did not breach the Food Code on other grounds, the Panel dismissed the complaint.

