



Case Report

1	Case Number	0094/17
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/03/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

This 15 second advertisement features a teenage boy practising rugby skills. The hero practises goal kicking in isolation, looking to improve and showing determination. The hero takes a break from training to collect himself and re-fuel. He opens a lunchbox, which contains a MILO to Go drink together with a salad sandwich, piece of fruit and vegetable snacks. After re-fuelling, the hero goes back onto the training field. At the conclusion of the advertisement, we see the hero successfully kick a goal and the satisfaction felt after achieving something he has worked hard for.

THE COMPLAINT

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

I have tested this product and yes I failed to kick a goal, and drinking MILO did not improve my ability.

To suggest that this product will improve a physical performance is a outright lie.

THE ADVERTISER'S RESPONSE

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

In this response, Nestlé has considered the advertisement under the AANA Food & Beverage Advertising & Marketing Communications Code (Food Code), specifically section 2.1, and the AANA Advertiser Code of Ethics (Code of Ethics).

1. The Complaint

The complainant's description of the advertisement is:

“The advertising suggests that a young person is failing to kick a ball over a goal but after drinking MILO the person succeeds.”

The complainant asserts that:

“I have tested this product and yes I failed to kick a goal, and drinking MILO did not improve my ability. To suggest that this product will improve physical performance is an outright lie.”

The product in the Advertisement is Nestlé's Milo® to GO. Milo® to Go is a single serve, ready to drink product.

Nestlé has considered the Complaint and submits that the advertisement does not breach the Food Code or the Code of Ethics for the reasons detailed in this letter.

2. Overview of the advertisement

2.1 The advertisement referred to in the Complaint is Nestlé's 15 second advertisement for Milo® to Go, featuring a teenage boy practising rugby kicking skills (Advertisement).

2.2 The teenager shown in the Advertisement is aged between 14-15 years.

2.3 The Advertisement opens with a visual of the hero practising goal kicking in isolation on a rugby field. He takes 3 shots, missing each. He is looking to improve and shows determination.

2.4 The hero is then shown taking a break from practice to collect himself and re-fuel. He opens a lunch box, which contains a Milo® to Go drink together with a salad sandwich, piece of fruit and vegetables snacks, which all form part of a healthy balanced diet.

2.5 After re-fuelling, the hero goes back out on to the training field.

2.6 At the conclusion of the Advertisement, the hero successfully kicks a goal. A visual of the hero's face appears, showing his satisfaction at achieving his goal after his hard work and dedication in training.

2.7 The two voice overs in the Advertisement are:

(a) “Milo® to Go. Packed with 8 essential vitamins and minerals and a source of protein”;
and

(b) “Pack one in their lunch box to help fuel their inner champion”.

2.8 The message conveyed by the Advertisement is the importance of dedication and training in order to succeed in a sporting endeavour, it does not suggest (as alleged by the complainant) that drinking Milo® to Go will improve sporting ability.

3. The Product

3.1 Milo® to Go is a Formulated Supplementary Food under Standard 2.9.3 of the Food Standards Code. As such, it is “specifically designed as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.” Under the Food Standards Code, Formulated Supplementary Foods are required to contain minimum levels of energy, protein, vitamins and minerals.

3.2 Milo® to Go has the following nutrition credentials:

(a) It scores 4.5 stars under the Government’s Health Star Rating;

(b) It is fortified with 8 vitamins and minerals and contributes at least 20% of the RDI of those vitamins and minerals and contributes to the daily dairy intake recommendations;

(c) It is a source of protein;

(d) It is Low Gi; and

(e) It meets various nutrition criteria including Nestlé Nutrition Foundation criteria and the nutrition criteria of the EU Pledge for a dairy product and it is a green item according to the Australian National Healthy School Canteen Guidelines for healthy foods and drinks.

4. Alleged breach under section 2.1 of the Food Code

4.1 Section 2.1 of the Food 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.”

4.2 The Complainant alleges the Advertisement suggests that the consumption of Nestlé’s Milo® to Go will improve physical performance and the ability to kick a goal. Nestlé respectfully disagrees with this allegation, which incorrectly surmises the key message conveyed by the Advertisement. As stated above, the message conveyed by the Advertisement is the importance of dedication and training in order to succeed in a sporting endeavour. We elaborate on this message in the following paragraphs.

4.3 The Advertisement is focused around the physical activity and dedicated training of a typical teenager who plays rugby, interspersed with snacking occasions in which it may be appropriate to consume a Milo® to Go drink.

4.4 The Advertisement opens with the visuals of a teenager practising the skill of kicking a goal again and again. The repetition clearly demonstrates the requirement for training and dedication to achieve sporting goals and improve physical performance.

4.5 Nestlé's Milo® to Go is portrayed in the Advertisement as helping to nutritionally 'fuel' a teenager while they are undertaking physical activity. This is consistent with the recognition that growing teenagers with active lifestyles require additional energy and nutrients to fuel their bodies.

4.6 The snacking occasion portrayed in the Advertisement is appropriate in accordance with the Australian Dietary Guidelines.

4.7 Milo® to Go is consumed by the hero in the Advertisement in association with sporting activity and is shown in the context of a healthy balanced diet. We believe the Advertisement supports and illustrates the importance of a healthy and active lifestyle and promotes a healthy balanced diet.

4.8 The Advertisement was developed to appeal to an adult audience, in particular parents and carers who are heavily involved in their children's development – driving them to training and sporting events and ensuring that their children are provided with a balanced and nutritious diet to support their growth and development.

4.9 The voice over in the Advertisement: "Pack one in their lunch box to help fuel their inner champion" refers to the teenager in the Advertisement in the third person so as to speak directly to the adult viewer.

4.10 For the reasons set out above, we submit that the claims in the Advertisement are truthful and honest and do not contravene any prevailing community standards. We also submit that Nestlé's Milo® to Go is promoted in the Advertisement in a responsible and appropriate manner, having regard to the target audience.

5. Other considerations under the Code of Ethics and other relevant codes

We have reviewed the Advertisement for compliance with section 2 of the Food Code and the Code of Ethics and are confident the Advertisement complies in all respects.

Nestlé has also considered the AANA Code for Advertising and Marketing Communications to Children (Marketing to Children Code) and the Australian Food and Grocery Council's Responsible Children's Marketing Initiative (RCMI), to which we are a signatory. We submit that the Advertisement does not fall within or breach the Marketing to Children Code or the RCMI. We refer to the response lodged by Nestlé in respect of ASB Complaint reference number 0297/16 in support of this submission. The Advertisement contains similar themes and has a similar target audience to the advertisement referred to in complaint reference number 0297/16, which was dismissed.

6. Other relevant information

The Advertisement was on air for approximately 3 weeks from 22 January 2017. We have not received any similar complaints about the Advertisement.

7. Final Comments

The Advertisement is an honest, truthful and reasonable representation of Nestlé's Milo® to Go and the role the product can play in contributing to the nutrition of active teenagers as part of a healthy balanced diet. The Advertisement has an entirely appropriate and positive focus on physical activity.

For the reasons set out above, we disagree with the allegation in the Complaint that the Advertisement is in contravention of the Food Code and see no basis for the Complaint. We respectfully request the Complaint be dismissed.

THE DETERMINATION

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

The Board noted the complainants' concerns that the advertisement is misleading in its suggestion that drinking milo will make you better at things.

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

The Board noted that the product advertised is food and that therefore the provisions of the the Food Code apply. In particular, the Board considered section 2.1 of the Food Code which states:

'Advertising or marketing communications for food ...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 Board noted that the advertisement depicts a teenage boy practicing rugby kicking skills. After a little while he takes a break and has some Milo. When the boy returns to the field, he successfully kicks a goal. The voiceover describes the nutritional content of the drink and at the end says "help fuel their inner champion."

The Board noted the complainant's concern that he has tested the product and it did not improve his ability.

The Board noted that the young male is seen practicing on the rugby field. The Board noted that the boy appears disheartened by his inability to kick a successful goal. The Board noted that after the boy returns from his break where he consumes a Milo drink, he appears energised and ready to continue to practice.

The Board considered that the boy returns with some additional energy after his break and that this extra energy may be the reason why there was a successful kick rather than mere consumption of the product itself.

The Board considered that there is nothing in the advertisement which suggests that Milo itself will make you better at a particular skill. The Board considered that the most likely message taken from the advertisement is that practice is the key to success and that Milo gives you energy.

The Board considered that the target audience for this product is the main grocery buyer, parents and carers who may include this product as part of a school lunch box or snack alternative. The Board considered that the target audience of adults will understand the message in the advertisement regarding the importance of practice.

In the Board's view, the advertisement did not suggest improvement in skill came purely from the consumption of the beverage, and therefore did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.