



Case Report

1	Case Number	0097/14
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	Internet
5	Date of Determination	09/04/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

Web site for Nestlé's Milo featuring nutritional information about the product and ideas for games to play.

THE COMPLAINT

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

Breach of the Responsible Children's Marketing Initiative (January 2014) (RCMI)

The website breaches the RCMI because: -

- 1. It is an advertising and marketing communication for food/beverages (Milo) (S1.1);*
- 2. It website is directed primarily to children (S1.1);*
- 3. Milo does not represent a healthier dietary choice consistent with established scientific or Australian government standards (S1.1(a));*
- 4. It does not reference healthy lifestyle through messaging that encourages good dietary habits (S1.1(b)(i)).*

The website is an advertising and marketing communication for food and/or beverages directed primarily to children:

The new RCMI covers "advertising and marketing communications" which include any material published or broadcast in any "medium". The definition of "medium" includes "internet sites". The website promotes games for young and older children on with cartoon sporting equipment depicted and simple, child-friendly layout and language. The site

instructions for the games address a non-participant organiser of the activities (“hide the items, then challenge the players to find as many as possible.”) This language appears directed to parents, however the overall intention and impact of the language, themes and visuals of the site is to engage child participants with the product (Milo), and to associate it with fun, games and active play.

The food products advertised are not healthier dietary choices:

Milo is promoted on the site as beneficial in increasing the nutrient content of milk. However, milk is a nutritious product recommended for children already, and adding Milo introduces added sugars to the milk and increases energy intake. Further, other products advertised on the site have significant levels of sugar, with Milo Energy Snack Bars totalling more than 20% by weight (4.5g in a 21g serve). Milo Snack Bar with Milk products comprise more than 27% total sugar by weight (7.4g in a 27g serve).

The Australian Dietary Guidelines 2013 recommend that essential vitamins and minerals be obtained in the diet through consuming a wide variety of nutritious fresh foods in the diet. Yoghurt, milk and cheese are recommended sources, and the guidelines also recommend limiting consumption of sugar-sweetened drinks and foods containing added sugars. We submit that these products should not be considered a “healthier dietary choice” product.

The advertisement does not promote good dietary habits:

We note the Milo website promotes a range of active games and physical activity. However, advertising communications must represent healthy lifestyles, designed to appeal to the intended audience through messaging that also encourages good dietary habits, consistent with established scientific or government criteria. The website does not reference healthy dietary habits as required under the RCMI. The only food items referred to are Milo, milk and energy bars. When evidence shows that most Australian children’s diets do not contain enough fresh foods such as fruits and vegetables which are needed for good health, yet their diets are often too high in sugar, the website cannot be said to reference healthy diets consistent with established scientific or government criteria.

The Board has previously noted, in its decision 0454/11, that merely omitting any references to unhealthy eating choices is not sufficient to discharge this obligation. It is quite clear that the advertiser is required to positively encourage good dietary habits, which the advertiser has failed to do.

Conclusion:

We submit the website breaches the RCMI and ask that the board require the advertiser to withdraw it.

THE ADVERTISER’S RESPONSE

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

We refer to your letter to Nestlé Australia Ltd (Nestlé) advising of a complaint received (Complainant) in relation to the website www.milo.com.au (Website). Thank you for the opportunity to comment on the issues raised in the complaint.

In making our submission, Nestlé has considered the Website under the Australian Food and Grocery Council Responsible Children’s Marketing Initiative (RCMI) including the Nestlé Australia Company Action Plan (CAP).

In addition to the RCMI, Nestlé has also considered the following AANA Codes;

- the AANA Advertiser Code of Ethics (Code of Ethics),*
- the Food & Beverage Advertising & Marketing Communications Code (Food Code) and*

- *the AANA Code for Advertising & Marketing Communications to Children (Children's Code).*

THE COMPLAINT

The Complainant's primary concern is the Website, and in particular the "Play-o-Pedia" games generator section, breaches the RCMI in that;

(a) it is an advertising and marketing communication for food/beverage products (MILO);

(b) it is directed primarily to children;

(c) MILO does not represent a healthier choice; and

(d) it does not represent a healthy lifestyle through messaging that encourages good dietary habits.

The Complainant also asserts that;

(e) the food products advertised are not healthier dietary choices given the energy and sugar content;

(f) the Website does not promote good dietary habits; and

(g) although the Website promotes a range of active games and physical activity it does not reference healthy dietary habits as required under the RCMI.

Nestlé has considered in detail the Complainant's concerns and respectfully submits that the Website does not breach the RCMI or any of the AANA Codes.

BACKGROUND TO THE MILO PLAY CAMPAIGN

The Website is part of a multi-dimensional campaign - the MILO Play Movement. This Movement was developed as a result of the 'State of Play' study commissioned by Nestlé in 2011. This study found that 'nearly half of all Australian children don't play every day.' The MILO Play Movement encourages and emphasises the benefits of a healthy active lifestyle, primarily through play. It encompasses a number of elements including TVC, radio and experimental elements during school holidays which encouraged kids to get outside and play. This Website was part of this campaign.

We provided an outline of this study as background to a previous complaint the ASB dismissed under case number 0280/12 (case report attached).

While the campaign is MILO branded, the extent to which the product is referenced is in a responsible manner highlighting the nutritional benefits in the context of a balanced diet.

THE WEBSITE

The Website has been developed as a tool for parents and its focus is two-fold.

- *Firstly, to highlight the nutritional aspects of MILO; and*

- *Secondly, to help parents get kids more active.*

The approach taken is based on 'State of Play' research referenced above and consumer insight that showed a lack of inspiration as one of the key barriers to increasing levels of active play. The Website consistently highlights the importance of active play by outlining the fact that kids are not getting enough exercise. It provides nearly 100 examples of activities and games for kids by giving parents ideas on how to get kids active and playing in a fun and socially interactive way.

PLAY-O-PEDIA

The primary focus of the complaint was the games section 'play-o-pedia.' This section of the Website was specifically designed to address the key concern identified in the study that parents "lacked inspiration to encourage their kids to play". It is for this reason that we also ensured the Website was mobile enabled to allow parents to access the 'Play-o-pedia' 'on the go' and quickly come up with ideas on fun and engaging active games for their kids when they are out.

We would encourage the Board to review the Website in its entirety to understand the context in which the 'Play-o-pedia' is positioned;

www.milo.com.au

For ease of reference, relevant screen shots of the Website are also provided as attachments.

Audience of the Website

The intended audience of the Website is parents, carers and those responsible for children aged 8 – 12 years. In line with this intended audience, we have ensured the information provided on the Website is of a level and using language that is of principal appeal to adults. The most recent audience tracking of the website through Google Analytics is provided below. This indicates the age of visitors to the Website. While we understand that ages 18 and under are not tracked by Google Analytics, it is evident from the visitors tracked (over 18) the majority of these visitors are over 25 years old and in the range of our target audience. While the Complainant asserts that “the overall intention and impact of the language, themes and visuals of the site is to engage child participants with the products (MILO) and to associate it with fun, games and active play,” we do not agree that MILO branding on a Website which contains a section on games is sufficient to suggest the Website is directed primarily at children.

The Complainant acknowledges the Website contains “language directed to parents”. This highlights and reflects our intended audience. This can be seen throughout the Website specifically with reference to:

(a) Theme of the Website - References to Play – information on the Website is provided in a way that is clearly directed to an adult audience and details studies that outline the importance of physical activity in the context of “play.” This detail is at a level which is not directed to, nor likely to be understood by a child audience;

(b) Language of the Website – Scientific in Nature - the Website predominantly contains information which references studies and scientific evidence and is of primary interest to adults. It is not written in a way designed to appeal to children.

(c) Language of the Website - Reference to Kids – throughout the Website the assumed audience is Parents – this is clearly reflected in the language used which assumes the audience are parents with kids. Some examples are provided in the screen shots attached and in the following extracts;

(d) Visuals – the Website does not contain many visuals particularly in the ‘Play-o-pedia’ section as this section is instructional in nature and any visuals used are in line with this positioning. An example is set out below;

ALLEGED BREACH OF NESTLÉ’S OBLIGATIONS UNDER THE RCMI AND THE NESTLÉ AUSTRALIA CAP

Nestlé is committed to the RCMI and has a Company Action Plan (CAP), a copy of which has previously been provided to the ASB. We are happy to resubmit if required.

Under the RCMI, Nestlé commits to not advertise food and beverage products to children under 12 unless they represent healthier dietary choices.

We note the RCMI outlines Advertising or Marketing Communications to Children include; “Advertising or Marketing Communications which, having regard the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products”.

We note the Board has previously referenced the dictionary definition of ‘primarily’ as being “in the first place” which would require the Website to be aimed in the first instance at children to be within scope of the RCMI.

As outlined, Nestlé did not create this Website as a way of advertising our products to children. Rather the Website was created with principal appeal and directed to adults – with language and content specifically designed to target an adult audience.

For the reasons outlined above, we respectfully submit that as the Website is clearly directed primarily to an adult audience it is out of scope of the RCMI.

For completion, we also note the requirement of Core Principle 1.3 of the RCMI which

requires that any interactive game which includes the signatory's food and/or beverage products is consistent with Core Principle 1.1 of the RCMI. We have outlined why the RCMI is not applicable to the Website, however we wish to assure the Board that none of the games included within the 'Play-o-pedia' make reference to any MILO or Nestlé products.

In the event the Board does not accept our submission that the Website is out of the scope of the RCMI, we have outlined the way in which we undertake all marketing in a responsible manner.

With reference to the specific requirements under Core Principle 1.1 of the RCMI;

(a) MILO energy food drink and other products mentioned on the Website (MILO branded cereals and snack food products) are all products that represent healthier dietary choices in line with the standards of the Nestlé Nutritional Profiling System, Nutritional Foundation criteria (NF) for children appropriate to the category in which MILO falls as detailed in our CAP;

(b) the Website references, and is in the context of a healthy lifestyle which encourages good dietary habits. This is highlighted through detail provided on the nutritional profile of MILO and the positive contribution it makes to an overall diet. As part of our nutrition, health and wellness focus, we are further working to ensure all our product based websites contain information on the importance of a balanced diet; and

(c) the Website provides a large amount of information as outlined above regarding the importance of physical activity, and is predominantly focused on providing ideas for encouraging children to participate in physical activity.

Please note that in developing the Nestlé CAP, full detail of the Nestlé Nutrition Profiling System was provided and we understand this has been previously assessed by the ASB. In the event this has not been assessed by the Board, we request that we be notified and we are happy to provide additional detail as required. Detail on the Nestlé Nutrition Profiling System is attached.

OTHER RELEVANT CONSIDERATIONS UNDER THE AANA CHILDREN'S CODE

As with the requirements of the RCMI, relevant communications under the Children's Code are those 'directed primarily to children.'

As outlined above, we submit the Website does not fall within the scope of the Children's Code.

In the event the ASB does not accept this submission and does consider the Children's Code is applicable, we do not consider the Website breaches Section 2.15 of the Children's Code. Nestlé submits the Website does not encourage nor promote an inactive lifestyle or unhealthy eating or drinking habits. On the contrary, and as detailed throughout this submission, the Website is primarily dedicated to emphasising the importance of play and encouragement of physical activity. Any product references highlight the nutritional benefits of MILO and milk – an example of this information and how it is presented in the attached.

Further information is provided in the attached infographic on "Lifting the Lid on MILO Goodness" which is found on the Website.

OTHER RELEVANT CONSIDERATIONS UNDER THE AANA FOOD CODE

While we disagree the Website is directed primarily to Children, we note the Complainant has made a number of assertions with regards to the perceived 'unhealthy' nature of the products being advertised in that;

"The promotion of MILO on the site is promoted as increasing the nutrient content of milk however milk is nutritious and addition of MILO increases energy intake. In addition the other products have significant levels of sugar and the Complainant asserts these should not be considered a 'healthier dietary choice.'"

Nestlé disagrees with the Complainant's general claim that MILO should not be promoted through the Website as a 'healthier dietary choice'.

As we have outlined through previous submissions to the ASB, MILO is regulated as a Formulated Supplementary Food under Standard 2.9.3 of the Food Standards Code. A Formulated Supplementary Food 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”.

This type of product is required to be formulated to contain minimum levels of energy and protein and requires the addition and labelling of a number of vitamins and minerals.

The Website meets this positioning entirely in that it highlights the nutritional benefits of MILO in supporting and supplementing a normal diet through the provision of additional nutrients in a responsible manner.

We note that we have dealt with the Complainant’s concerns regarding the nutritional profile of MILO in detail in response to previous ASB Complaints (Advertisement Complaint References 574/09 and 280/12), which were both dismissed. A copy of these case reports are attached for reference.

The dominant focus of the Website is on activity. It builds on the long history MILO has with sport to encourage and facilitate physical activity and ‘play’.

While not raised specifically by the Complainant, we wish to address the relevant sections of the Food Code;

Section 2.1 We note the Website contains extensive information on the nutritional aspects of the product, as well as information regarding “play” and physical activity in children. We note all information provided is appropriately referenced throughout the Website. We have previously addressed the perceived misleading or deceptive nature of the nutritional benefits of MILO and milk under case number 0280/12 and will not set this detail out again. We note this complaint was dismissed, and refer to the case report attached. We are happy to provide additional information should the Board require.

Section 2.2 Nestlé submits that the Website is entirely consistent with the aim of encouraging a healthy active lifestyle incorporating both physical activity and a balanced diet with emphasis given to the appropriate serve of MILO in a way that does not undermine the importance of a healthy or active lifestyle nor encourages inappropriate portion sizes with regards to prevailing community standards.

Section 2.3,

2.4 2.6 As noted above, all nutritional information provided on the Website is appropriately referenced throughout. We are happy to provide further detail on any information provided on the Website and confirm all nutrition claims are in line with the requirements of the Australia New Zealand Food Standards Code.

Section 2.7 MILO is proud to support Michael Clarke and Cricket Australia’s Junior Development Programs – MILO IN2CRICKET and MILO T20 BLAST. This sponsorship is clearly identified on the site and through the MILO branding associated with these programs. As we have outlined, we submit that the Website does not fall within scope of the Section 3 of the Food Code – Advertising and Children.

In the event the ASB considers Section 3 of the Food and Beverages Code applies to the Website, we submit that it does not breach any of the matters set out in Section 3 under the following relevant sub-sections of the Food Code:

3.1 the Website is not primarily directed to children (as outlined) and the content is not intended to be understood or appeal to children;

3.2/3.3 the product (MILO energy drink) is not a “Children’s Food and Beverage Product” (as defined in the Food Code) as it has appeal and is consumed across all ages and could not be said to be targeted towards or have principal appeal to children. We note the ‘serving suggestion’ of the product referenced is entirely appropriate in order to deliver the claimed nutritional benefits;

3.4 the information provided on the website is intended to assist and guide parents and carers in healthy and appropriate lifestyle choices.

In addition to the above, Nestlé submits that all aspects of the Website are consistent with all relevant sections of the Code of Ethics as the Website cannot be construed as infringing prevailing community standards nor contains any statements that are misleading or deceptive. It is for these reasons outlined above, and those raised previously under Advertisement Complaint References 574/09 and 280/12, that we believe the Website is in accordance with all relevant AANA Codes.

In relation to the allegations by the Complainant, Nestlé submits:

(a) the Website is an advertising and marketing communication for food/beverage products (MILO energy food drink);

(b) the Website is not directed primarily to children as while the Website design is attractive, it cannot be said that it is directed primarily to children given the way the website is constructed, the language used and that the content has an emphasis on nutrition and relevant studies,

(c) notwithstanding the Website is not directed primarily to children, MILO does represent a healthier dietary choice in line the standards of the Nestlé Nutritional Profiling System Nutritional Foundation criteria for children;

(d) notwithstanding the Website is not directed primarily to children, the Website references and is in the context of a healthy lifestyle which encourages good dietary habits and physical activity; and

(e) the Website is in line with all relevant AANA Codes.

OTHER RELEVANT INFORMATION

We confirm that we have had no similar complaints about the Website in relation to being directed in an inappropriate way to Children.

FINAL COMMENTS

The Website was developed to support the MILO Play Movement with specific emphasis on the nutritional characteristics of MILO and provides a positive focus on playing and physical activity. It is for the reasons outlined above that we respectfully disagree the Website is in contravention of the RCMI or any of the AANA Codes and we can see no basis for the complaint.

We respectfully request the complaint be dismissed.

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches the AANA Code for Advertising and Marketing Communications to Children (the Kids Code), the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code), and the AFGC Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (AFGC RCMI).

The Board noted the complainant's concern that the advertisement breaches the RCMI because it appeared in media directed primarily to children, is an advertisement directed primarily to children and that the advertisement promotes products that do not represent a healthy dietary choice within the meaning of the RCMI.

The Board noted that it had previously dismissed complaints regarding a television advertisement for Nestle (ref: 0280/12). The Board noted that the specific issues raised in

that case related to the truth and accuracy of the claims being made about the nutritional value of the product when combined with milk.

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

The Board firstly considered whether the advertisement met the requirements of the AFGC RCMI. The Board noted that previously under the AFGC RCMI the advertiser's own website did not fall within the a category that could be considered by the Board. However, changes to the RCMI effective from 1 January 2014 has broadened its coverage to include these sites and therefore the relevant requirement is that the company does not advertise food and beverage products to children under 12 in 'media' unless those products represent healthy dietary choices.

Medium is defined as: 'Television, radio, print, cinema, internet sites'.

The Board noted that the medium being the subject of the complaint includes the entire website, including interactive games, and that this now falls within the scope of the AFGC RCMI.

The Board noted the RCMI Initiative provides that advertising or marketing communication activities are advertising or marketing communications to children and therefore captured under the RCMI Initiative if:

1. the content of the advertisement or marketing communication is, having regard to the theme, visuals and language used, are directed primarily to children (and are for food and/or beverage products; or

2. the placement of the advertisement or marketing communication is in a medium that is directed primarily to children, ie:

a. in relation to television, all C and P rated programs and other rated programs that are directly primarily to children through their themes, visuals and language; and/or

b. where children represent 35 percent or more of the audience of the Medium.

The Board considered the theme, content and visuals of the website and inclusive interactive games. The Board noted the dictionary definition of 'primarily' is 'in the first place' and that to be within the AFGC RCMI the Board must find that the advertisement is aimed in the first instance at children.

The Board considered the theme of the advertisement (the promotion of milo with milk and the beverage being the official drink of play as well as the generation of game and play activities based on selected factors), the visuals (children playing outside with various sporting equipment) and the language used (references to whole grain energy and boost the calcium of milk).

The Board noted that the advertisement is featured on the advertiser's website page for Milo (www.milo.com.au). The Board noted that the website includes suggested games in the play-o-pedia tab that involve different themes such as crazy circuits, changeup races and crazy dancing tag games.

The Board considered that the website contains a significant amount of text and information about the nutritional content of Milo and milk. The Board agreed that there are images and games that would appeal to children but that the overall theme of the website is an informative platform that provides information to parents/carers as well as children in regard to play and game activities in addition to information to the main grocery buyer about the product being promoted. The Board agreed that some elements of the site would be appealing to children, including images and play suggestions. However, the Board determined that this content would also be used by parents and carers equally and is therefore not directed primarily to children under 12.

Based on the above, the Board noted that the provisions of the RCMI do not apply.

The Board then considered whether the advertisement complied with the AANA Code for Advertising and Marketing Communications to Children. The definition of what is 'advertising and marketing communications to children' in the AANA Children's Code is consistent with the RCMI.

For the same reasons noted above, the Board considered that this advertisement is not primarily directed to children and therefore the provisions of the Children's Code do not apply.

The Board lastly noted section 2 of the Food Code.

Section 2.1 of the Code states that: 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 Board noted that the language used throughout the website is simple and clear. The Board noted that the website includes images and checklists identifying nutritional components of the product and includes references to the relevant authorities regarding the data that is provided on the site.

The Board considered that the information is communicated in a manner that is appropriate to the level of understanding of the broad target audience and that it did not breach section 2.1 of the Food Code.

The Board then considered section 2.2 of the Food Code which provides that: ‘advertising or marketing communications for food or beverage product shall not...otherwise contravene Prevailing Community Standards...’

Consistent with previous decisions, the Board considered that the advertisement of a product of a particular nutritional profile is not of itself contrary to prevailing community standards. The Board considered that advertising Milo is not something which is contrary to prevailing community standards and that there is nothing contrary to community standards in the manner in which the product is promoted in this particular advertisement.

The Board also noted section 2.2 which states: “the advertising or marketing communication...shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards.”

The Board noted that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum, the requirements of the Australia New Zealand Food Standards Code, the Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia. In testing whether an advertising or marketing communication encourages excess consumption through representation of products or portion sizes disproportionate to the setting portrayed, or by any other means contrary to prevailing community standards, the Board will consider whether members of the community in the target audience would most likely take a message condoning excess consumption.’

The Board agreed that this website was indicative and supportive of the idea that Milo would best be consumed as part of a balanced diet and not encouraging of excessive consumption of the product.

The Board considered that the advertising or promotion of Milo is not, per se, inconsistent with or undermining of a balanced diet or healthy lifestyles. The Board also considered that there was nothing in the advertisement which suggested or promoted excess consumption.

The Board determined that the advertisement did not undermine the promotion of a healthy balanced diet and did not encourage excess consumption and therefore did not breach Section 2.2 of the Code.

The Board determined that as the marketing material was not directed to children for the reasons mentioned above Part 3 of the Food Code did not apply.

Finding that the advertisement did not breach the advertising messaging requirements of the AFGC RCMI, the Children's Code or the Food Code, the Board dismissed the complaint.