



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0120-22
2. Advertiser :	A2 Milk
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	8-Jun-2022
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive
AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims

DESCRIPTION OF ADVERTISEMENT

This television advertisement for A2 milk features two children in a treehouse and enjoying a picnic with a mix of foods such as fruit, milk, cereal, and breakfast pastries. The advertisement includes the phrase, "enjoy milk as nature intended with all natural A2 protein".

The 15s advertisement closes with the tagline "More good please" shown on screen with an image of the a2 Milk bottle alongside a glass of milk.

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*I object to the factual claims of this advert. The advert claims that A2 milk is "as nature intended" this claim is false, vague and without any scientific backing - naturally cows produce milk with both A1 and A2 beta-casein proteins - both being natural. A2 milk is achieved by selective breeding of cows which only produce A2 milk - arguably making it less natural than milk with a mix of A1 and A2 beta-casein milk. In its vagueness the statement suggests that A1 containing milk is not natural and in fact a report by the EU has shown that there is no natural benefit to A2 milk
<https://doi.org/10.2903%2Fj.efsa.2009.231r>*

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 email of 30 May 2022. Our response is set out below.

1.

Background information requested by Ad Standards

- *Description and copy of advertisement: Based on the description provided in the complaint, we understand that the advertisement the subject of the complaint (Advertisement) is a 15 second TVC in relation to our a2 Milk™ product which was broadcast on Channel 10. We enclose a digital copy of the Advertisement.*
- *Details of the programs in which the advertisement appears: The Advertisement was broadcast during MasterChef on Channel 10, being a program directed at a predominantly adult audience (i.e. 18 years and above) having regard to the screening time and the general themes of the program.*

2.

Applicable Codes

2.1

Compliance with the Code of Ethics

The Advertisement is required to comply, and does in fact comply, with the Code of Ethics.

We refer to Section 2 of the Code of Ethics which regulates consumer complaints and confirm that 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 orientation, religion, disability, mental illness or political belief;*
- (b) does not employ sexual appeal in any manner, including 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 advertising to the relevant audience.*

Further, we confirm 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.

2.2

The Children's Advertising Code, Environmental Claims Code, and Wagering Advertising Code do not apply to the Advertisement



Section 3 of the Code of Ethics states that:

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

While the Advertisement features two children (being a boy and a girl around 10 years of age), the Advertisement is not directed towards children. Rather, the theme, visuals, and language used in the Advertisement establish clearly that the Advertisement is primarily directed towards an adult demographic, being the target market for the product which is the subject of the Advertisement.

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

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*

Neither the Environmental Claims Code nor the Wagering Advertising Code apply having regard to the nature of the product being advertised as well as the nature of the claims being made in the Advertisement.

2.3

Application of Food & Beverages Advertising Code

The Advertisement is required to comply with the Food & Beverages Advertising Code given that the Advertisement is for a beverage, being milk.

We refer to the following key obligation under the Food & Beverages Advertising Code:

Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive [1].

In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the Community Panel will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The Community Panel will consider whether or not an Average Consumer within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement [2].

The Advertisement complies with the Food & Beverages Advertising Code for the reasons set out below.

3.



Our detailed response to the complaint

3.1

Executive summary

We refer to the complainant’s allegations that the tagline “Enjoy milk as nature intended with all natural A2 protein” (Tagline) is misleading and deceptive because:

- (Natural A1/A2 Proteins Argument) The Tagline claims that a2 Milk® is “as nature intended”, when the complainant alleges that “naturally cows produce milk with both A1 and A2 beta-casein proteins – both being natural”;*
- (Selective Breeding Argument) The Tagline claims that a2 Milk® is “as nature intended”, when the complainant alleges that “A2 milk is achieved by selective breeding of cows which only produce A2 milk – arguably making it less natural than milk with a mix of A1 and A2 beta-casein milk”; and*
- (Alleged Implied Representation) The complainant alleges that the Tagline suggests that “A1 containing milk is not natural”, when the complainant alleges that both A1 and A2 beta-casein proteins are natural and “a report by the EU has shown that there is no natural benefit to A2 milk”.*

We reject all of the complainant’s allegations. This is because the grounds on which the complainant alleges that the Tagline is misleading and deceptive are based on a flawed understanding of the facts. Further, the Alleged Implied Representation has not been made, having regard to the wording of the Tagline, the overall themes of the Advertisement and the net takeout for the Average Consumer in the target audience.

Instead, we maintain that the Tagline, taken in the context of the overall Advertisement, makes the following representations, which can be fully substantiated:

- a2 Milk® is natural; and*
- The A2 beta-casein protein type is natural.*

We have set out our detailed response below.

3.2

The history of A1 and A2 protein in dairy cows

Cows’ milk contains a number of different protein types, including beta-casein protein which makes up around a third of the protein in cows’ milk [3]. The two main beta-casein protein types found in most regular cows’ milk today are A1 and A2 beta-casein protein types [4].

Originally, all cows produced milk containing only the A2 beta-casein protein type [5]. One authority states, “It is well-established that A2 beta-casein genetic variant was the original variant found during evolutionary periods”[5]. However, due to selective breeding of dairy cows for reasons such as “improvement of milk production traits”[7], over time a genetic mutation occurred as a result of which the A1 beta-casein emerged and became more common in cows’ milk [8].



The genetic makeup of a particular cow will determine the type of beta-casein proteins contained in the milk which that cow produces. For instance, some cows will naturally produce milk containing only the A1 beta-casein protein type; other cows will naturally produce milk containing both A1 and A2 beta-casein protein types; and other cows will naturally produce milk containing only the A2 beta-casein protein type [9].

All a2 Milk™ is sourced from cows which naturally produce milk containing only the A2 beta-casein Protein type.

The process for building up a herd of cows which naturally produce only the A2 beta-casein protein type is as follows. We require our dairy farmers to submit each cow in their herd to gene testing as administered by a third party agency in order to confirm that cow's genotype. Only those cows which have been verified as having the genotype to naturally produce milk containing only the A2 beta-casein protein may form part of a dairy herd used to supply the raw milk used for producing our a2 Milk®. When breeding these cows, our dairy farmers use semen from bulls which naturally carry only the gene for producing the A2 beta-casein protein type in order to ensure that these genes are carried across into their calves. As discussed above, these genotypes are naturally occurring in dairy cows and the processes applied by our dairy farmers when breeding their cows are simply designed to promote and preserve these original genotypes in their dairy herds.

Accordingly, the complaint is incorrect to the extent to which it alleges that:

- Natural A1/A2 Proteins Argument (i.e. a2 Milk® is not "as nature intended" because "naturally cows produce milk with both A1 and A2 beta-casein proteins"):*
As discussed above, there are a variety of genetic phenotypes which occur naturally amongst cows, with some cows naturally producing only the A2 beta-casein protein type in their milk; some cows naturally producing both the A1 and A2 beta-casein protein types in their milk; and some cows naturally producing only the A1 beta-casein protein type in their milk. All of these milk types are entirely natural and it is incorrect to allege that all cows naturally only produce milk containing both A1 and A2 beta-casein protein types.
- Selective Breeding Argument (i.e. a2 Milk® is "less natural than milk with a mix of A1 and A2 beta-casein" because it is the product of "selective breeding"):*
The supporting authorities which we have referred to above make it clear that a2 Milk® is entirely natural because originally all cows naturally produced milk containing only the A2 beta-casein protein type. In fact, it was the A1 beta-casein protein type which emerged later as a result of selective breeding in dairy cows. The selective breeding processes applied by our dairy farmers today are designed simply to promote and preserve these original genotypes in their dairy herds.

3.3

Interpretation of the Advertisement by an Average Consumer

The Alleged Implied Representation relies on the assumption that the Tagline represents that the product is "Milk as nature intended" either:

- because it contains "all natural A2 protein"; or*



- *because A2 protein provides some sort of health benefit which has been disproved by the report referenced, being the Scientific Report of the European Food Safety Authority dated 29 January 2009.*

However, this interpretation goes against a natural reading of the specific wording of the Tagline when heard in the context of the Advertisement as a whole, as well as the overall impression created by the Advertisement.

First, the Tagline specifically uses the word “with” between the two concepts of “Milk as nature intended” and “all natural A2 protein”. The word “with” is a neutral linking word, which does not carry any connotations of cause and effect. Accordingly, an Average Consumer within the target audience would interpret the Tagline as meaning simply that the product is both “Milk as nature intended” and contains “all natural A2 protein”.

Secondly, neither the wording of the Tagline nor the overall themes of the Advertisement suggest that a2 Milk® or the A2 beta-casein protein provides any kind of specific health benefit either for children specifically or the general population in comparison to regular cows’ milk. Instead, the scene depicted (i.e. two children relaxing in a treehouse and enjoying a picnic with a mix of simple but tasty foods such as fresh fruit, milk, cereal, and breakfast pastries), music and ambient soundtrack (i.e. birds chirping and dreamy music), lighting and colours (i.e. golden morning light), and retro font for the slogan “More good please” is intended to create a sense of nostalgia and evoke memories of childhood, friendships, nature, simple pleasures, and wholesome fun. The children are not portrayed as having any particular intellectual or physical superiority as a result of drinking a2 Milk® – they are simply enjoying their morning together over some wholesome food.

Accordingly, the Tagline effectively summarises the overall message of the Advertisement, which is that:

- *a2 Milk® is natural; and*
- *The A2 beta-casein protein type is natural.*

These references are designed to reassure the consumer that there is in fact nothing unnatural about a2 Milk® and how it is produced. These claims have been included to address the fact that consumers do not necessarily know what the A2 beta-casein protein type is and may wonder if it is an additive or other unnatural ingredient in the product. The Advertisement therefore explains that the A2 beta-casein protein type is natural and that our milk is natural.

3.4

Specific substantiation for Tagline

Our a2 Milk® is natural

We confirm that a2 Milk® is “Milk as nature intended” because it is in fact natural cows’ milk which has not been modified or processed in any manner which would



detract from its “naturalness” in the eyes of an Average Consumer within the target audience. Whilst a2 Milk® has been pasteurised and homogenised, these are very common processes for producing commercial milk and would not affect an Average Consumer’s view of whether or not a product is a natural milk product.

The A2 beta-casein protein type is natural

As discussed above, the A2 beta-casein protein type is a naturally occurring protein in cows’ milk. Moreover, the A2 beta-casein protein type was the original milk protein in the sense that it preceded all other beta-casein protein types in cows’ milk, including the A1 beta-casein protein type. Hence, it is entirely natural for cows to produce milk which contains only the A2 beta-casein protein type.

Alleged Implied Representation

While we believe it is clear that the Alleged Implied Representation is not made, we do note for the avoidance of doubt that the Scientific Report of the European Food Safety Authority Dated 29 January 2009 has been superseded by more recent research about the potential effects of milk containing only the A2 beta-casein protein. A number of clinical trials published in the last six years have produced findings which suggest that some people who have difficulty drinking milk may experience less gastrointestinal symptoms such as digestive discomfort and abdominal pain after switching from regular milk, which contains both the A1 and A2 beta-casein protein types, to milk containing only the A2 beta-casein protein type [10].

4.

Conclusion

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 Code or the AANA Code of Ethics.*

Therefore, we believe the complaint should be dismissed.

If you require any further details about any matters associated with this complaint, we would be happy to assist in providing those.

References:

- 1 Food & Beverages Advertising Code, Section 2.1.*
- 2 Food & Beverages Advertising Code – Practice Note, Section 2.1.*
- 3 Pieter Walstra and Robert Jenness, Dairy Chemistry and Physics (Wiley-Interscience, 1st ed, 1984).*
- 4 Mohammed R Ul Haq, β -Casomorphins: A1 Milk, Milk Peptides and Human Health (Springer, 2020).*
- 5 Patrick F Fox and Paul McSweeney (eds), Advanced Dairy Chemistry (Springer, 3rd ed, 2003).*
- 6 Mohammed R Ul Haq, β -Casomorphins: A1 Milk, Milk Peptides and Human Health (Springer, 2020), p8.*



7 Mohammed R Ul Haq, *β-Casomorphins: A1 Milk, Milk Peptides and Human Health* (Springer, 2020), p9.

8 Mohammed R Ul Haq, *β-Casomorphins: A1 Milk, Milk Peptides and Human Health* (Springer, 2020).

9 Mohammed R Ul Haq, *β-Casomorphins: A1 Milk, Milk Peptides and Human Health* (Springer, 2020).

10 Sun Jianqin et al, 'Effects of milk containing only A2 beta casein versus milk containing both A1 and A2 beta casein proteins on gastrointestinal physiology, symptoms of discomfort, and cognitive behavior of people with self-reported intolerance to traditional cows' milk', *Nutrition Journal* (2016); Mei He et al, 'Effects of cow's milk beta-casein variants on symptoms of milk intolerance in Chinese adults: a multicentre, randomised controlled study', *Nutrition Journal* (2017); Xiaoyang Sheng et al, 'Effects of Conventional Milk Versus Milk Containing Only A2 b-Casein on Digestion in Chinese Children: A Randomized Study', *Journal of Pediatric Gastroenterology and Nutrition* (2019); Monica Ramakrishnan et al, 'Milk Containing A2 β-Casein ONLY, as a Single Meal, Causes Fewer Symptoms of Lactose Intolerance than Milk Containing A1 and A2 β-Caseins in Subjects with Lactose Maldigestion and Intolerance: A Randomized, Double-Blind, Crossover Trial', *Nutrients* (2020); see also systematic review by Davor Daniloski et al, 'Health-related outcomes of genetic polymorphism of bovine β-casein variants: A systematic review of randomised controlled trials', *Trends in Food Science & Technology* (2021).

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 Code).

The Panel noted the complainant's concern that the advertisement is misleading by suggesting that milk with A2 only is more natural than milk that also contains A1.

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

The Panel noted that the product advertised is a beverage and that therefore the provisions of the Food Code apply.

Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.

The Panel Noted the Practice Note to this section of the Food Code which includes:

"In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the Community Panel will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The Community Panel will consider whether or not an Average Consumer



within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement.”

The Panel noted that the target audience for this advertisement would be general consumers including families.

The Panel noted that the advertisement featured the phrase, “enjoy milk as nature intended with all natural A2 protein”. The Panel considered that most members of the community would understand this to be one phrase, and take the meaning that natural milk contains A2 protein.

The Panel acknowledged the complainant’s concern that this statement suggests that milk with A2 protein only is more natural than milk that also has A1 protein. However, the Panel considered that both kinds of milk contain A2 protein, and the statement being made in the advertisement is not that milk with only A2 protein is natural.

The Panel considered that the tone, music and voice-over of the advertisement does create an overall impression that the advertised product is superior to other milk products. However, the Panel considered that it is common practice for advertisers to portray their product in the best possible light. The Panel considered that the advertisement does not contain any claims or statements which are untrue, and that most members of the target audience would understand that the brand would want to present their product as superior.

Overall the Panel considered that the advertisement was not misleading or deceptive and was communicated in a manner appropriate to the understanding of the target audience.

Section 2.1 Conclusion

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

Section 2.3 Advertising for Food or Beverage Products that include what an Average Consumer might interpret as a Health Claim or Nutrition Content Claim must be supportable by appropriate scientific evidence meeting the requirements of the Australian Food Standards Code

The Panel Noted the definitions in the Food Code include:

- Health Claim has the same meaning as defined in the Australian Food Standards Code.
- Nutrition Content Claim has the same meaning as defined in the Australian Food Standards Code.

The Panel noted that the Australian Food Standards Code defines these terms as:



- **health claim** means a claim which states, suggests or implies that a food or a property of food has, or may have, a health effect.
- **health effect** means an effect on the human body, including an effect on one or more of the following:
 - a) a biochemical process or outcome;
 - b) a physiological process or outcome;
 - c) a functional process or outcome;
 - d) growth and development;
 - e) physical performance;
 - f) mental performance;
 - g) a disease, disorder or condition.
- **nutrition content claim** means a claim that:
 - (a) is about:
 - (i) the presence or absence of any of the following:
 - (A) *biologically active substance;
 - (B) *dietary fibre;
 - (C) energy;
 - (D) minerals;
 - (E) potassium;
 - (F) protein;
 - (G) *carbohydrate;
 - (H) 'fat',
 - (I) the components of any one of protein, carbohydrate or ' fat',
 - (J) *salt;
 - (K) sodium;
 - (L) vitamins; or
 - (ii) *glycaemic index or glycaemic load; and
 - (b) does not refer to the presence or absence of alcohol; and
 - (c) is not a *health claim.

The Panel noted that the Practice Note for this section states:

“This provision is intended to be applied by the Community Panel when considering whether an Average Consumer might consider statements made in an advertising or marketing communication as a Health Claim or Nutrition Content Claim. In testing whether this provision is properly applies, the Community Panel will apply its view of what an Average Consumer within the



target market, might reasonably understand from a communication. Having considered that statements made within an advertisement might reasonably be understood by an Average Consumer as a Health Claim or Nutrition Content Claim, the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether the claims can be properly supported by scientific evidence meeting the requirements of the Australian Food Standards Code.”

The Panel considered that the advertisement’s statement that the product includes naturally occurring A2 protein is a nutrition content claim in that it is about the presence of a protein.

Consistent with the determination for Section 2.1 of the Code, the Panel considered that the statement “with all natural A2 protein” has been substantiated by the advertiser and would not be likely to mislead an average consumer in the target market.

Section 2.3 conclusion

The Panel considered that the advertisement did contain a statement which the average consumer may consider a nutrition content claim, and that this claim was supported by appropriate evidence.

Conclusion

Finding that the advertisement did not breach any other section of the Food Code the Panel dismissed the complaint.