



## Case Report

1	Case Number	0128/15
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	15/04/2015
6	DETERMINATION	Dismissed

### ISSUES RAISED

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

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement depicts various households showing children waking up and MILO with milk being prepared and consumed and children participating in various sporting activities. The closing shot is a glass of MILO with milk sitting next to a can of MILO powder. V/O "Start the day with a MILO. Because it's low GI, rich in protein and contains essential vitamins and minerals it gives them the nourishing energy to take in the day's most important lessons."

### THE COMPLAINT

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

*The voice over said that "milo is low GI and high in protein".  
That is not the case. One serve (20g) of Milo contain only 2.4 g of protein. According to the "Australia New Zealand Food Standards Code - Standard 1.2.7 - Nutrition, Health and Related Claims" the food must contain at least 5g of proteins to claims it's high in protein.  
The advertisement should state that it's Milo WITH ADDED MILK that is low GI and high in proteins and not the Milo by itself.*

### THE ADVERTISER'S RESPONSE

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

*In making its submission, Nestlé has considered:*

*1. The Food & Beverage Advertising & Marketing Communications Code (Food Code):*

*(a) specifically under section 2.1 which 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 reference to the nutritional values or health benefits.”*

*(b) specifically under section 2.3 which states:*

*“Advertising or Marketing Communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code”*

*2. Section 2 of the AANA Advertiser Code of Ethics (Code of Ethics), as requested.*

*3. The AANA Code for Advertising and Marketing Communications to Children (Children’s Code) or the Australian Food and Grocery Council Responsible Children’s Marketing Initiative (RCMI).*

*We wish to state from the outset that Nestlé does not consider the Advertisement to be in breach of the Food Code, Code of Ethics, Children’s Code, the RCMI or any other Codes which the ASB administers.*

*The Complaint*

*The Complainant states that she is concerned the Advertisement is inaccurate because the voice over states that “MILO is low GI and high in protein”. The Complainant asserts that the voice over should be that “MILO with added milk is low GI and high in protein”.*

*The Complainant’s asserts that:*

*(a) According to the “Australia New Zealand Food Standards Code – Standard 1.2.7 – Nutrition, Health and Related Claims” the food must contain at least 5g of protein to make a “high in protein” claim;*

*(b) One serve (20g) of MILO contains only 2.4g of protein; and*

*(c) The advertisement should therefore state that it is MILO “with added milk” that is low GI and high in protein, and not “MILO is low GI and high in protein”.*

*The implication of the complaint is that viewers will assume that “MILO” is a reference to the powder only, not as a beverage as is intended to be consumed and as shown visually*

*throughout the Advertisement.*

*Nestlé has considered in detail the Complainant's concerns and respectfully submits that the Advertisement is not misleading and deceptive or inaccurate but is truthful and honest. It has been communicated in a manner appropriate to the level of understanding of the target audience. Further, as a nutrition claim, it is supportable by appropriate scientific evidence meeting the requirements of the Food Standards Code.*

#### *Overview of the Advertisement*

*The Advertisement depicts various households showing children waking up and MILO with milk being prepared and consumed and children participating in various sporting activities. The closing shot is a glass of MILO with milk sitting next to a can of MILO powder.*

*V/O "Start the day with a MILO. Because it's low GI, rich in protein and contains essential vitamins and minerals it gives them the nourishing energy to take in the day's most important lessons."*

#### *Substantiation of the Nutrition Claims in the Advertisement*

*The Advertisement contains three nutrition claims, namely to the Glycemic Index (GI), protein content and vitamins and minerals. Accompanying the images of the MILO with milk is the voice over:*

*"Start the day with a MILO. Because it's low GI, rich in protein and contains essential vitamins and minerals it gives them the nourishing energy to take in the day's most important lessons."*

*Although the Complainant does not appear to have an issue with the claims concerning GI or vitamins and minerals, for completeness we have addressed these below.*

*We also note the Complainant refers to "high in protein" while the actual words used in the Advertisement are "rich in protein".*

#### *Applicable Standard*

*While the Complainant has referred to Standard 1.2.7, it should be noted that we are currently within the 3 year transitional period during which time a supplier has the right to choose to comply with either (but not both) Standard 1.2.7 and 1.1A.2. For this product and Advertisement, Nestlé relies on Standard 1.1A.2 as the appropriate Standard.*

*As we are still within this transitional period, we have not addressed the Complainant's comments under Standard 1.2.7 and have instead referenced the appropriate Standard 1.1A.2 of the Food Standards Code as the relevant Standard governing the claims at this time.*

#### *MILO to be prepared and consumed with milk*

*MILO is regulated as a formulated supplementary food, as regulated under Standard 2.9.3 – Formulated Meal Replacements and Formulated Supplementary Foods of the Australia New Zealand Food Standards Code (Standard 2.9.3). 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.*

*By way of additional background, under Division 3 of this Standard, a Formulated Supplementary Food must contain in a serving no less than –*

*(a) 8 g protein; and*

*(b) 550 kJ; and*

*(c) 20% of the RDI of no less than one of those vitamins or minerals listed in column 1 of Table 3 in the Schedule.*

*It should be noted that a “serve” is defined as a quantity of the food which constitutes one normal serving when prepared according to manufacturer’s directions or when the food requires no further preparation before consumption and in the case of a formulated meal replacement is equivalent to one meal.*

*MILO powder is specially formulated to be added to milk and consumed as a beverage as is highlighted in the preparation instructions on pack. Assessing the nutritional composition on a dry weight basis of the powder alone is therefore inappropriate and it is more appropriate to assess the product on an ‘as consumed’ basis, as a beverage which meets those specific compositional requirements of a formulated supplementary food.*

*Within the context of this Advertisement, this is further highlighted visually as the product is clearly demonstrated as being prepared and consumed with milk.*

#### *MILO is Low GI*

*The Glycemic Index (GI) is a ranking of carbohydrates according to their effect on blood glucose levels.*

*According to Standards Australia’s ‘Australian Standard. Glycemic Index of Foods’, there are three classifications for GI, namely Low, Medium and High. Low is classified as a GI value of 55 or below.*

*The accredited laboratory of The University of Sydney’s Glycemic Index Research Service, as recommended by the Glycemic Index Foundation, have tested the GI of a glass of MILO prepared as a beverage with milk. The GI value of MILO made up in reduced fat milk is 36, in skim milk is 39 and in full fat milk is 33. For comparison sake, the GI value of MILO made up in water is 55.*

*MILO is therefore classified as Low GI, regardless of whether MILO is made up with either reduced fat milk, skim milk or full fat milk. For this reason, a glass of MILO is listed as a Low GI beverage product on the Glycemic Index Foundation’s website and MILO product packaging features the Low GI Symbol which is approved by the Glycemic Index Foundation.*

#### *MILO is Rich in Protein*

*As is appropriate, the protein content claim is substantiated with reference to the protein content of 20g MILO powder combined with 200mL of milk as per the preparation instructions. We have set out below our reasons that the advertisement should be taken as referring to MILO powder combined with milk.*

*As explained above, Nestlé relies on Standard 1.1A.2 of the Food Standards Code for this product and Advertisement. Therefore:*

*(a) The applicable Standard does not specify any requirements for making a “source”, “high” or “rich” in protein claim.*

*(b) In the absence of any specific requirements in the Food Standards Code for a nutrition claim, it is common industry practice to refer to the voluntary Code of Practice on Nutrient Claims in Food Labels and in Advertisements (CoPoNC). CoPoNC is administered by the Australian Food and Grocery Council and applies to all Australian food industry firms which are signatories which includes Nestlé. Under CoPoNC there is also no specific requirement for making a “source”, “high” or “rich” in protein claim.*

*(c) In the absence of such a specific requirement in either the Food Standards Code or CoPoNC, industry practice would be to refer to a prior version of the Food Standards Code. Under this version, the guidance for a protein claim was 5 grams per serve and at least 12% of the total energy value is derived from protein. There is no differentiation between making a “source”, “high” or “rich” in protein claim.*

*A MILO beverage prepared in accordance with the on pack directions of 20g MILO powder combined with 200mL of milk has between 9.4g – 10.4g of protein (depending on the type of milk) and meets the requirement of at least 12% of the total energy value is derived from protein.*

*We also note that the protein content of a MILO beverage provides 20 - 25% of RDI of protein based on the NHMRC Nutrient Reference Values 9-13 years (depending on the type of milk and whether the Reference Value is for boys or girls).*

*While, the new Standard 1.2.7 is not currently applicable to this product and Advertisement (as explained above), we note the requirement for a claim of to be ‘high in protein’ is 10g of protein. This requirement is also assessed on the food as prepared and consumed according to the instructions provided. The preparation instructions recommend making up the product with milk. We note that in consideration of when the new Standard 1.2.7 will later apply to the product and other factors not related to this complaint, Nestlé proposes in due course to change the protein claim to “source of protein”.*

*In the meantime, under the current requirements, as the amount of protein in a MILO beverage as prepared with milk is significantly greater than both the 5g previously referenced in Food Standards Code and the 8g per serve as required under the compositional requirements to meet the definition of a formulated supplementary food under Standard 2.9.3 plus it provides 20 - 30% of RDI of protein based on the NHMRC Nutrient Reference Values 9-13 years, Nestlé considers the claim of “rich in protein” to be appropriate.*

*MILO contains essential vitamins and minerals*

*The claim of MILO containing essential vitamins and minerals is substantiated by inclusion of the following vitamins and minerals at the level specified below. "RDI" refers to the Recommended Dietary Intake for that vitamin or mineral as defined by the Food Standards Code.*

*20g serve of MILO powder*

*Iron: 6.0 mg*

*Calcium: 160 mg*

*Magnesium: 36 mg*

*Vitamin A: 110 mcg*

*Vitamin B1: 0.5 mg*

*Vitamin B2: 0.3 mg*

*Vitamin C: 19 mg*

*20g serve of MILO powder with 200ml reduced fat (1.4%) milk*

*Iron: 6.0 mg (50% RDI)*

*Calcium: 400 mg (50% RDI)*

*Magnesium: 62 mg (19% RDI)*

*Vitamin A: 140 mcg (18% RDI)*

*Vitamin B1: 0.55 mg (50% RDI)*

*Vitamin B2: 0.66 mg (39% RDI)*

*Vitamin C: 20 mg (50% RDI)*

*20g serve of MILO powder with 200ml skim (0.1%) milk*

*Iron: 6.0 mg (50% RDI)*

*Calcium: 400 mg (50% RDI)*

*Magnesium: 60 mg (18% RDI)*

*Vitamin A: 110 mcg (14% RDI)*

*Vitamin B1: 0.55 mg (50% RDI)*

*Vitamin B2: 0.66 mg (39% RDI)*

*Vitamin C: 20 mg (50% RDI)*

*MILO seen as to be consumed with milk*

*While the complainant has recommended that the Advertisement should make reference to “MILO with added milk”, we respectfully submit that this additional wording is not required for any or a combination of the following reasons:*

*1. Television is a visual medium. Throughout the Advertisement MILO beverages are shown either being prepared or served with milk. There are neither images nor any recommendation of MILO powder being consumed in the absence of milk. In this context, it is unmistakable that the reference to MILO (being low GI and rich protein) corresponds to the images in the Advertisement of MILO powder being mixed and consumed with milk.*

*2. MILO is a well-known product amongst every day Australians, having been sold in Australia since 1934. It is understood amongst consumers that a glass of MILO is prepared as a beverage with milk.*

*3. MILO is consistently advertised in all media as a beverage to be consumed by mixing it with milk. It is not promoted on pack or in any advertising that the MILO powder should be consumed on its own. This positioning is further clearly communicated through the information website found at [www.milo.com.au](http://www.milo.com.au)*

*4. The on pack preparation instructions specifically refer to adding the MILO powder to milk.*

*5. MILO is a product that has been designed to be consumed with milk. As explained above, MILO is a formulated supplementary food governed under Standard 2.9.3 of the Food Standards Code. As such it is specifically formulated to meet certain nutritional requirements, based on it being prepared with milk according to the instructions on pack.*

*Based on any or a combination of those circumstances, Nestlé is firmly of the view that it is not necessary to include in the voice over the specific words ‘and added milk’. The Average Consumer as defined under the Food Code and the target audience of a grocery buyer with children would already be aware that the product is to be consumed after adding to milk and this understanding would be reinforced by the images in the Advertisement of MILO beverages being prepared and served with milk.*

*Section 2 of the Code of Ethics*

*As requested by the ASB, we have reviewed the Advertisements in line with the relevant sections 2 of the Code of Ethics, and we feel the advertisement complies in all respects.*

*Children’s Code and the RCMI*

*The Advertisement is not directed to children or predominantly directed to children. The audience of the programs in which the Advertisement appears is not predominantly children. Therefore, the Children’s Code and the RCMI are not applicable to this Advertisement.*

### *Other relevant information*

*We confirm that we have had no similar complaints about the Advertisements or the MILO advertising campaign in general.*

### *Final Comments*

*The Advertisement clearly depicts the preparation and consumption of a MILO beverage made with milk, and makes truthful and honest nutritional claims in relation to such. The claims are not misleading or deceptive. The claims satisfy the requirements of the applicable Food Standards Code and are supported by appropriate scientific evidence. For any and all of the reasons set out above, the target audience and the "Average Consumer" understands that MILO is a product to be consumed with milk and therefore the product consumed as it is intended, understood and shown to be consumed will meet the nutritional claims referred to in the Advertisement.*

*We are firmly of the view that the Advertisement does not breach the Food Code, Ethics Code, the RCMI or any other Codes which the ASB administers. 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 complainant's concerns that the advertisement is misleading in its suggestion that Milo is high in protein.

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

The Board noted that the advertiser is a signatory of the AFGC RCMI but that the complaint does not raise any issues under that Industry Initiative.

The Board noted that the product advertised is food and therefore the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code) apply.

In particular the Board considered Section 2.1 of the Food Code which provides: '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 the advertisement features scenes of different children waking up in the morning and drinking Milo mixed with milk beverages before participating in sporting activities.

The Board noted the complainant's concern that the advertisement refers to Milo as 'high in protein'. The Board noted that the actual content of the advertisement features a voiceover saying that a Milo is 'rich in protein'.

The Board noted the advertiser's response that the advertisement makes reference to 'a Milo' and not just 'Milo' and that the product is shown being made with milk according to the serving suggestion on the product's packaging. The Board noted that the advertisement features numerous scenes of Milo being prepared with milk and considered that most members of the community would be aware that Milo is a product intended to be mixed with milk.

The Board noted it had previously dismissed a similar complaint against the same advertiser in case 0280/12 where:

"The Board noted the complainant's concerns that the advertisement implies that Milo is a product high in calcium but with no evidence of how much calcium children need.

The Board noted the advertiser's response that the advertisement is encouraging both the consumption of enough calcium in conjunction with active play as positive and important measures to build strong bones, particularly in children.

The Board accepted the advertiser's response that the advertisement reflects an accurate representation of the increased calcium content of a beverage that consists of milo mixed with milk.

The Board noted that the information provided, and subsequently displayed as the super states that Milo will "Boost the Calcium of Milk by nearly 70%." The Board considered that although the addition of Milo to the milk may increase the calcium content of the complete beverage to nearly 70%, there is some ambiguity around the statement that the calcium content of the milk itself is increased by the addition of Milo. The Board considered that the statement was not designed to be misleading or deceptive but identified that some consumers may be led to believe that the calcium content of the milk itself was heightened, whereas it is the combination of the Milo and the milk that equates to the "increase by nearly 70%" of calcium."

A minority of the Board noted that the advertised product is a powder and considered that the reference to 'a Milo' is not a clear reference to 'a Milo drink made with milk'. The Board noted that some consumers will add Milo to foods other than milk products and considered

that the advertisement may mislead consumers into thinking it is the product itself which is being described as ‘rich in protein’.

Overall the majority of the Board considered that notwithstanding the potential to use the product with foods other than milk, most members of the community would associate Milo with milk and the visuals of the advertisement support this interpretation by showing many different scenes of the Milo product being prepared with milk. The majority of the Board considered that the most likely interpretation of the advertisement by a reasonable consumer would be that a Milo drink made according to the serving suggestion on the product’s packaging would be a beverage that is rich in protein and, in the Board’s view, this message is not misleading or deceptive.

A majority of the Board considered that the advertisement was not misleading or deceptive and determined that the advertisement did not breach Section 2.1 of the Food Code.

The Board then considered Section 2.3 of the Food Code which provides: ‘Advertising or marketing communications for Food or Beverage Products that include what an Average Consumer, acting reasonably, might interpret as health or nutrition claims shall be supportable by appropriate scientific evidence meeting the requirements of the Australia New Zealand Food Standards Code.’

The Board noted that the Practice Note for Section 2.3 provides that the “Board will rely on substantiation provided by the advertiser”. The Board considered the advertiser’s response including the nutritional content of a serve of Milo mixed with milk and noted that Milo is specially formulated to be added to milk and consumed as a beverage and that the addition of milk to the Milo will increase the protein content. The Board noted that the claimed content of between 9.4g and 10.4g of protein would satisfy the criteria of containing no less than 8g of protein in the ANZFS Code for a rich in protein claim.

A minority of the Board acknowledged that Milo is traditionally made with milk but considered that the advertisement is ambiguous in its description of a Milo being rich in protein and in their view this gives the misleading suggestion the product in its original state contains a high level of protein, rather than after milk is added to it.

The majority of the Board noted that most members of the community are familiar with Milo as a powder to be added to milk and considered that this knowledge in conjunction with the numerous images of Milo being added to milk in the advertisement means that the most likely interpretation of the advertisement is that ‘a Milo’ is Milo powder added to milk which is rich in protein.

The Board noted that the advertisement also states that Milo is ‘low GI’ and contains essential vitamins and minerals. The Board noted the advertiser’s response that Milo is a formulated supplementary food and that it is required to meet the Australia New Zealand

Food Standards Code with regards to its formulation and that independent testing had confirmed that the Glycemic Index (GI) meets the criteria for Low GI classification. The Board also noted the advertiser's response with regards to the vitamins and minerals which are listed on the labelling of the advertised product. The Board considered that the advertisement's claims with regards to being 'low GI' and containing essential minerals and vitamins are supported by the evidence provided by the advertiser.

The Board considered that the advertisement did not breach Section 2.3 of the Food Code.

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