



**Ad Standards** Community Panel  
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**AdStandards.com.au**

Ad Standards Limited  
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## Case Report

<b>1. Case Number :</b>	<b>0148-22</b>
<b>2. Advertiser :</b>	<b>Made Group</b>
<b>3. Product :</b>	<b>Food/Bev Groceries</b>
<b>4. Type of Advertisement/Media :</b>	<b>Internet</b>
<b>5. Date of Determination</b>	<b>27-Jul-2022</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive  
AANA Food and Beverages Code\2.3 Unsupported nutritional/health claims  
AANA Food and Beverages Code\2.4 Specific claims re:  
taste/size/content/nutrition/health benefits

### DESCRIPTION OF ADVERTISEMENT

This internet advertisement is a video on a webpage (<https://rokebyfarms.com.au/our-method/>) and contains the description "Watch our explainer video to learn more about our proprietary cold filtration process and more"

0:00-0:05 At Rokeby Farms we believe the best way to start your busy day is by fuelling your body with protein. (Boy pouring milk)  
0:06-0:10 Protein is the best source of long lasting sustained energy – and helps keep you full. (Boy pouring milk)  
0:11-0:16 and when it comes to sourcing the best quality protein our journey starts and ends with fresh Australian milk. (Transitioning from city to farm landscape)  
0:17-0:27 A 'whole protein' is the highest quality protein, providing all 9 essential amino acids...which your body needs but can't produce on its own, so it must be sourced daily from food. (Farm landscape)  
0:28-0:35 Milk, nature's original protein drink, is naturally rich in whole protein...and can be consumed in its natural state...(Milk Bottle)  
0:36-0:40 ...or, used to make higher-protein products...such as our very own smoothies. (Transition from milk bottle to products)  
0:41-0:52 But unlike other high-protein products that are made with added protein powders, our strictly fresh process uses only the natural protein already in our milk...so there's no added powders and no chalky texture. (Blob dodging powders)



- 0:53-1:00 We start by sourcing fresh milk from local Gippsland farms... where the cows are free to roam and graze the green pastures (Cow chewing)
- 1:01-1:07 We then pass the milk through a series of filters to remove some of the water and lactose from the milk.....which naturally increases the protein and calcium. (Milk passing through filters)
- 1:08-1:10 It's our unique cold filtration process...(Filters)
- 1:11-1:17 Our fresh cold filtered milk has three times the protein and calcium of regular milk, with nothing added...except a bit of country air. (Filters)
- 1:18-1:21 It's our commitment to making wholesome, nutritious and delicious Australian dairy. (Farm)
- 1:22-1:27 Great days start right here, at Rokeby Farms. (Farm)

### **THE COMPLAINT**

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

*The advertiser is trying to portray its ReMilk product as being a naturally produced product which has had nothing artificial added. These representations are false and misleading because ReMilk is a highly processed product which has a very different nutritional composition to natural milk and also contains added lactase in order to remove the lactose in the product. For example, at 1:13 of the promotional video, the voiceover states, "Our fresh cold filtered milk has three times the protein and calcium of regular milk with nothing added except a bit of country air." The claim "nothing added" is false and misleading because in fact a lactase enzyme has been added to ReMilk in order to artificially remove any naturally occurring lactose in the product.*

### **THE ADVERTISER'S RESPONSE**

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

*Description:*

*The explainer video is talking about the cold filtration process that changes the protein and calcium levels in our milk (without adding anything). This cold filtered milk goes into making our Rokeby Farms Protein Smoothies (it's the first ingredient listed in our Ingredient list on our Protein Smoothies being "filtered low fat milk"). Other ingredients are added to the cold filtered milk (such as cane sugar, cream, dutch cocoa (1%), natural flavours, lactase enzyme, carrageenan) - however the milk itself (which is what the explainer video is referring to) has absolutely nothing added to it. This is an innovative point of difference of Rokeby Farms Protein Smoothies, as often to achieve such elevated levels of protein in milk, manufacturers add protein powder.*

*The complaint relates to an explainer video which features on the Rokeby Farms website. The video refers to the milk in the Rokeby Farms Protein Smoothies (not ReMilk as stated by the complainant), which has 3x the protein and calcium of regular*



*milk. It appears there has been 2 elements of confusion: 1) that this explainer video is talking about 'the benefits of, and process for producing ReMilk' (whereas in fact it is talking about the process used to filter the milk that goes into the Rokeby Farms Protein Smoothies and 2) that the video is claiming that absolutely nothing is added to achieve the end product (whereas in fact it is claiming that absolutely nothing is added to the MILK that goes into the end product). To help strengthen clarity of the message, we have updated the video descriptor on the website as follows, to ensure it is clear that the video relates to the milk component of the Rokeby Farms Protein Smoothies - 'Watch this video for more on our proprietary cold filtration process that we use to rebalance the milk that goes into our delicious Rokeby Farms Protein Smoothies'.*

*We have uploaded the Rokeby Farms Protein Smoothie explainer video in question, and have also uploaded the ReMilk advertising assets and media plan, which make no mention of 'nothing added'. All the claims made across these communication assets have been substantiated and these substantiation docs can be provided if required.*

## **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 nothing is added to the milk products produced by the advertiser.

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

The Panel noted that the products advertised are beverages 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 interested in finding out more information about the available products.



The Panel noted that the advertisement related to the process for producing milk that goes into other products, in particular protein smoothies. The Panel considered that the average consumer within the target markets would understand that the final products produced by the advertiser would contain more than just milk, and the discussion of the initial filtration process would not mislead this audience.

In particular, the Panel considered that consumers looking for lactose free products would understand that something else is added to make the final ReMilk product.

The Panel noted that the advertiser had changed the wording on the website to make it clear that the video was referring to the filtration process for the milk that goes into the smoothies. The Panel considered that this change did make it clearer that the video wasn't specifically referring to the ReMilk product. The Panel considered that, absent the change to the wording, a reasonable person viewing the video in the context of the website as a whole would understand that the 'milk' described in the video and on the website was one ingredient in the final ReMilk products which also contained other added non-milk ingredients. Accordingly, the Panel considered that the existence of other non-milk ingredients such as lactase did not render the advertisement misleading to the Average Consumer as defined under the Food Code and its accompanying Practice Note.

Overall, the Panel considered that the advertisement (whether in its original or amended form) 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 three times the protein and calcium than regular milk would be considered a Nutrition Content Claim, as would the claim that the products are high-protein.

The Panel noted that the FSANZ Code does not specify a reference amount of protein or calcium in whole milk products, however notes that a product can be considered a good source of protein if it includes at least 10g of protein per serve.

The Panel noted that there is information provided on the advertiser’s website which details the protein and calcium contents of the products and substantiates the Nutrition Content Claim.

### **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.

### **Section 2.4 Advertising for Food or Beverage Products including claims relating to material characteristics such as taste, size, content, nutrition and health benefits, must be specific to the promoted product/s.**

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

*“In testing whether any claim is included within advertising, the Community Panel will consider whether an Average Consumer, acting reasonably, would consider a statement to constitute a claim (i.e. an assertion or contention about the component).*

*Once a claim relating to a material characteristic of a promoted product is found, the Community Panel will need to determine whether such a claim can be met by the product alone, or only in combination with other products.*

*The Community Panel will also consider whether the claim is accurate in its representations about the product and will usually do so on the basis of information provided on the packaging or otherwise provided by the advertiser.*

*Advertisers are able to present a product in its best possible light, so long as that representation would be in line with what an Average Consumer would expect from such advertising, and would be unlikely to be considered to be making an explicit claim about the product/s”*



The Panel noted that, since the advertiser does not appear to sell products which are solely composed of the enhanced high-protein and high-calcium “milk” described in the advertisement, there is the possibility for confusion as to which aspects of the final for-sale product should be properly described as “milk” rather than additives. The Panel noted that the video used clear and simple language in describing the process by which the calcium and protein is added. In the absence of evidence to the contrary the Panel concluded that the enhanced “milk” described in the video was a key ingredient in each of the products which were ultimately being promoted by in the advertisement and that the material characteristics of the “milk” described in the advertisement were common and specific to each of the products being advertised.

#### **Section 2.4 conclusion**

Consistent with the reasonings for Sections 2.1 and 2.3, the Panel considered that the claims relating to the material characteristics of the advertised products were specific to those products.

#### **Conclusion**

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