



Case Report

1	Case Number	0237/16
2	Advertiser	Health World Limited
3	Product	Health Products
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	08/06/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive
2.6 - Health and Safety Within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features a 'Probiotic Nursery' where little blue Probiotic pills are lying in rows of cots as though they were babies while a larger Probiotic Pill dressed in a nurse's uniform looks over them.

A female voice over says that probiotics are "live, good bacteria. It takes a little care to keep them at their best". We see the 'Nurse' pick up one of the 'babies' and place a thermometer in its mouth as the voice over explains that all probiotic pills are kept cool in the fridge. We then see a fridge full of bottles of Inner Health pills with cartoon replicas of the pills dancing and cheering on the bottle lids.

THE COMPLAINT

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

The advert shows healthy babies together in a nursery and an adult character places a thermometer in a baby's mouth and then it shows the word cool. This is suggestive that it is OK to place a thermometer in a baby's mouth. In this day when young mothers don't have the support of extended families to support them, they may think it is OK to place thermometers in a baby's mouth to check their temperature.

The images imply that the product can be used to reduce the fever of a baby and has some therapeutic effect on babies and is therefore also safe for young children. It implies that the product, a food, has some therapeutic usage which it does not.

The image of a baby in its advertising is in contradiction with its directions on the Ethical Nutrient's website, namely: "Adults and children over five years: Take 1 capsule daily or as directed by a healthcare professional" and it also says "This product is not suitable for use in children under the age of 12 months except on professional health advice. Inner Health for Kids is specifically designed for children."

THE ADVERTISER'S RESPONSE

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

Health Worlds response

Thank you for the opportunity to comment on the issues raised in the Complaint.

Inner Health Plus is a Listed complementary medicine registered on the Australian Register of Therapeutic Goods since the year 2000. The product is a medicine for the following applications – maintains a normal healthy immune system, improves general wellbeing and assists in maintaining the balance of good bacteria. As per the Therapeutic Goods Administration (TGA) regulations all claims made must be supported by evidence, meeting the TGA Levels of Evidence Guidelines.

The suggestion by the complainant that the product is a food is incorrect. Inner Health Plus is a medicine only available through Pharmacies and Health Food Shops and is not available through the grocery chains. The marketing of the product is directed exclusively at adults, specifically directed to the demography of women aged between 25 and 54.

The television advertisement which is at the centre of the complaint utilises animated characters to communicate its message. The advertisement is shown on breakfast and primetime television when this adult audience is watching, as this age group are responsible for the prime purchases of inner Health Plus.

I note the Advertising Standards Bureau have stated the Board will review the advert in its entirety against section 2 of the AANA Advertiser Code of Ethics (Code), incorporating the AANA Code of Advertising & Marketing Communications to Children (Children's Advertising Code) and AANA Food and Beverages Marketing and Communications Code (Food and Beverages Code). As a preliminary issue, we note the Food and Beverages Code and Children's Advertising Code do not apply because the TVC does not advertise a food or beverage product and is not directed primarily to children or relate to goods targeted towards, or have principal appeal to, children.

The complainant has suggested the advertisement breaches the Food and Beverage Code

2.1(a). *Health World believes this is in relation to the AANA Food and Beverage Advertising and Marketing Communications code. As Inner Health Plus is a therapeutic good and not a food or beverage the product is not required to meet the Food and Beverage advertising code.*

The ASB has referred us to sections; 2.1 (discrimination / vilification); 2.2 (exploitative / degrading); 2.3 (violence); 2.4 (sex / sexuality / nudity); 2.5 (language) and 2.6 (health / safety) of the Code and to the AMCC. We address each of these sections of the Code and the AMCC below.

a. *Health / safety*

Section 2.6 of the Code states: "Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety." Section 3.1 of the Code provides that: "Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children and section 2.6 of this Code shall not apply to advertisements to which AANA's Code of Advertising & Marketing Communications to Children applies."

We submit the Advertisement is not directed towards children as it is targeted to adults concerned about their inner health. Therefore, in our view, the Advertising or Marketing Communications to Children (AMCC) does not apply in place of section 2.6 of the Code.

The opening scene of the advertisement clearly states the representation is a 'Probiotic Nursery'. The visual and voice over clearly communicates the advertisements message is how the Inner Health professionals cares for its probiotics by providing a cool protected environment. The nursery setting represents how important it is to keep probiotics in a refrigerated environment which is monitored and highly controlled just like a babies nursery in hospital where health professionals strictly control the babies environment. The nursery scene with the animated nursing character conveys the importance of safe, quality and efficacious use of probiotics. The advertisement, visually and voice-over, clearly conveys the purpose of the advertisement and in no way condones unsafe practices of probiotic handling or the looking after of babies health.

As a complementary medicine there are a number of regulatory requirements that must be met prior to the release for sale. All product labelling must meet a specific standard which the Inner Health Plus product conforms too. All advertising on Television must be pre-approved by a delegate of the Secretary of the TGA, which the Inner Health Plus advert obtained. All medicinal products advertised on television are required to have specific safety warnings stated on screen such as 'Always read the label' and 'If symptoms persist consult your healthcare professional'. These are present in the bottom right hand corner of the advertisement.

b. *Discrimination / vilification*

Section 2.1 of the Code states: "Advertising or Marketing Communications shall not portray people or depict material in a way which discriminates against or vilifies a person or section of community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief."

The Complaint does not make any allegations of discrimination or vilification and we submit

that the Advertisement does not discriminate against or vilify any section of the community and is not demeaning or disrespectful to any group of people.

c. Exploitative / degrading

Section 2.2 of the Code states: “Advertising or Marketing Communications should not employ sexual appeal in a manner which is exploitative and degrading of any individual or group of people.”

The Complaint does not make any allegations of exploitation or degradation and we submit that the Advertisement does not exploit or degrade any individual or group of people.

d. Violence

Section 2.3 of the Code states: “Advertising or Marketing Communications shall not present or portray violence unless it is justifiable within the context of the product or service advertised.”

The Complaint does not make any allegations regarding portrayals of violence and we submit that the Advertisement does not portray any form of violence.

e. Sex / sexuality / nudity

Section 2.4 of the Code states: “Advertising or Marketing Communications shall treat sex, sexuality and nudity with sensitivity to the relevant audience.”

The Complaint does not refer to any allegations of insensitive treatment of sex or nudity. We nevertheless submit that the Advertisement does not depict any insensitive nudity or sexuality.

f. Language Section

2.5 of the Code states: “Advertising or marketing communications shall only use language which is appropriate in the circumstances (including appropriate for the relevant audience and medium). Strong or obscene language shall be avoided.”

The Complaint does not make any allegations of use of inappropriate language and we submit that the Advertisement does not contain any inappropriate language.

CONCLUSION

As per the reasons laid out above, Health World believes the Advertisement complies in all respects with the provisions of the Codes in particular Sections 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of the AANA Advertiser Code of Ethics.

Health World asks the Advertising Standards Bureau to set aside the Complaint.

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 this advertisement implies that the product has a therapeutic usage and that the advertisement shows a thermometer in the mouth of a ‘baby’ which is a safety issue.

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

The Board noted that the product advertised is a listed complementary medicine registered on the Australian Register of Therapeutic Goods and therefore the provisions of the AANA Food Code do not apply.

The Board considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainant’s concern that the advertisement depicts a ‘baby’ with a thermometer and this raises a safety issue.

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

The Board considered Section 2.6 of the Code. Section 2.6 of the Code states: “Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.”

The Board noted that the advertisement uses blue animated characters to portray a probiotic nursery. The Board considered that the advertisement uses old fashioned imagery with the matron and the large nursery and the emphasis is on the baby probiotics being cared for in a cool environment, with the thermometer showing ‘cool’.

The Board noted the complainant’s concern that the advertisement suggests that it is ok to place a thermometer in a baby’s mouth to check their temperature. The Board considered that the advertisement did not present any images that could be representative of how one should treat a real baby as both the voiceover and the images showed animated probiotic babies, in an old fashioned nursery environment that is not representative of a real nursery environment. The Board considered that it was unlikely that the message from the advertisement was indicative of how to care for a baby and that the broad community would not take this message from the advertisement.

The Board considered that the advertisement did not condone or encourage people to behave in a manner contrary to prevailing community standards on health and safety did not breach Section 2.6 of the Code.

Finding that the advertisement did not breach the Code of Ethics, the Board dismissed the complaints.

