



## Case Report

1	Case Number	0241/16
2	Advertiser	A2 Milk
3	Product	Food and Beverages
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

### DESCRIPTION OF THE ADVERTISEMENT

This television advertisement features toddlers exploring and touching various objects - a flower, a turtle, the ocean, a tree and a kitten. A female voice over says, "Exploring their world for the first time. Is there anything better? We believe naturally curious toddlers should get all the support they need." We then see a toddler drinking out of a sippy cup and the voice over continues to say, "a2 Platinum Toddler Milk is formulated for tiny tummies...Because when it comes to nutrition, we know some toddlers could use a little backup".

The advertisement concludes with a product shot of a2 Platinum Toddler Milk whilst the voiceover states "a2 Platinum Toddler. Believe in better" with a final shot depicting a woman holding and kissing a toddler.

### THE COMPLAINT

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

*Rigorous trials have studied the health effects of A2 versus combined A1/A2 milk. No trials have demonstrated any superior features of A2 milk. Further, no evidence exists to suggest that the A1 protein is detrimental to health.*

*The above advertisement grossly distorts this evidence, as demonstrated by these direct quotes:*

*- [the advertised product]...contains the all natural A2 protein, not A1, because when it*

*comes to nutrition, we know some toddlers could use a little back up' - this implies that A2 milk, as opposed to A1/A2 milk, provides some nebulous 'nutritional back up'. This is not supported by the scientific literature. Further, the phrase 'the natural A2 protein' implies that the A1 protein is not natural, and thus somehow adversely affects a child's health. These vague claims are intentionally misleading and appeal to the naturalistic fallacy.*

*- '...believe in better.' Again, there is no evidence that A2 milk confers any health benefits. This slogan is grossly misleading, implying that A2 milk products are 'better' than A1/A2 combined products.*

*Certainly, consumers have the right to engage in health practices not supported by the scientific literature. However, they should be fully informed of the evidence - or lack thereof - surrounding the grandiose claims made in any advertising. This advertisement deliberately uses misleading language to distort the dearth of evidence surrounding its claims.*

## **THE ADVERTISER'S RESPONSE**

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

*Complaint reference number 0241/16*

### *1. Information requested by Advertising Standards Bureau*

#### *Description of advertisement*

*The television commercial the subject of the complaint depicts various screen grabs of toddlers exploring and touching various objects - a flower, a turtle, the ocean, a tree and a kitten. The toddlers are often accompanied or being held by an adult carer. A female voiceover states, "Exploring their world for the first time. Is there anything better? We believe naturally curious toddlers should get all the support they need."*

*1.1 The screen then cuts to a toddler drinking milk out of a sippy cup, fading to show a2 Platinum Toddler Milk in the foreground. The female voiceover continues with, "a2 Platinum Toddler Milk is formulated for tiny tummies" whilst showing video of a toddler showing their tummy with a super appearing for approximately 3 seconds in size 10 [?] font "as part of a healthy diet" with the voiceover then continuing with "...and contains all natural A2 protein, not A1."*

*1.2 The screen shot then shows a different toddler drinking more milk out of a sippy cup as the voiceover then states "Because when it comes to nutrition, we know some toddlers could use a little backup". The screen shot changes to show a toddler feeding a slice of watermelon to a dog.*

*1.3 The advertisement concludes with a product shot of a2 Platinum Toddler Milk whilst the voiceover states "a2 Platinum Toddler. Believe in better" with a final shot depicting a woman holding and kissing a toddler.*

### *2. Comprehensive comments in relation to the complaint*

*AANA Code of Ethics*

2.1 *We believe that the advertisement complies with all of the sections of the AANA Code of Ethics. Specifically with respect to section 2 of the Code, the advertisement:*

- *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, sex, age, sexual preference, religion, disability or political belief;*
- *is not exploitative or degrading;*
- *does not depict any form of violence;*
- *does not portray sex, sexuality and nudity;*
- *does not use strong or obscene language;*
- *does not depict material contrary to Prevailing Community Standards on health and safety.*

#### *AANA Code for Advertising & Marketing Communications to Children*

2.2 *Section 2.4 of the AANA Code of Ethics states that:*

*“Advertising or Marketing Communications to Children shall comply with the AANA’s Code of Advertising & Marketing Communications to Children”.*

2.3 *Although our advertisement is for a product to be consumed by children, the relevant advertisement, having regard to the theme, visuals and language used, is not directed to children. The demographic intended to view the advertisement is parents or carers of young children.*

2.4 *The media schedule for the television advertisement is attached. The advertisement has not been placed in programming that has a predominant child audience or in a program directed to children.*

2.5 *Therefore, the AANA Code for Advertising & Marketing Communications to Children does not apply.*

#### *Food & Beverages Advertising & Marketing Communications Code*

2.6 *Section 2.8 of the AANA Code of Ethics states that:*

*“Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code”.*

2.7 *The advertisement is for a beverage and therefore is subject to the AANA Food & Beverages Advertising & Marketing Communications Code.*

2.8 *As you know, Section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code 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 references to nutritional values or health benefits.”*

2.9 *Additionally section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code – Practice Note states that:*

*“The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code.*

*In testing the requirement that advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.”*

2.10 *We regard the information taken from the advertisement by an average consumer in the target market to be truthful and honest in full compliance with the AANA Food & Beverages Advertising & Marketing Communications Code. Our response to the complaint in this regard is set out below.*

#### *Background to A1 and A2 beta-casein protein*

2.11 *Our products have now been in the marketplace for many years. By way of background to the beta-casein protein present in our products, there are three types of cow: A1 cows, A1/A2 cows and A2 cows. A1 cows produce milk that contains A1 beta-casein protein, not A2 beta-casein protein. A2 cows produce milk that contains A2 beta-casein protein, not A1 beta-casein protein. A1/A2 cows produce milk that contains A1 and A2 beta-casein protein.*

2.12 *Regular dairy milk (Regular Milk) is sourced from uncharacterised ratios of milk from A1 cows and/or milk from A1/A2 cows and/or milk from A2 cows. Our products, including the products the subject of this advertisements, are sourced from milk from A2 cows.*

2.13 *We source milk from A2 cows because current, credible and developing scientific opinion suggests that certain discomfort some consumers experience following consumption of Regular Milk may be caused by an adverse reaction to beta-casomorphin-7 (BCM-7). BCM-7 is released by the body on digestion of A1 beta-casein protein but is not released by the body on digestion of A2 beta-casein protein.*

2.14 *Our website sets out the developing body of science which suggests that, at least for a proportion of those consumers who experience discomfort after drinking Regular Milk, the cause of their discomfort may be an adverse reaction to BCM-7 which is released by the body on digestion of the A1 beta-casein (but not A2 beta-casein) protein present in Regular Milk.*

2.15 *For the reasons set out above, a2 Milk™ may be a suitable alternative to Regular Milk for some people who suffer discomfort after drinking Regular Milk, (due to a reaction to BCM-7, not lactose).*

*Response to complaint*

2.16 *The advertisement for a2 Platinum Toddler Milk is not misleading in breach of the AANA Food & Beverages Advertising & Marketing Communications Code.*

2.17 *We respond directly to each of the complainant's specific allegations below.*

2.18 *Firstly, the complainant alleges that the statement:*

*“[the advertised product]... contains the all-natural A2 protein, not A1, because when it comes to nutrition, we know some toddlers could use a little back up.*

*...implies that it is A2 milk as opposed to A1/A2 milk that is providing the nutritional back up.*  
“

2.19 *The complainant has taken part of the phrase used in the advertisement only and thus has construed it out of context. The full text that the complainant takes issue with is the following “a2 Platinum Toddler Milk is formulated for tiny tummies and contains the all-natural A2 protein, not A1. Because when it comes to nutrition, we know some toddlers could use a little back up”*

2.20 *This is factually correct. It is this formulation that provides the “nutritional back up” that a toddler may obtain from drinking this type of formulated milk.*

2.21 *One serving of a2 Platinum Toddler Milk provides from 14-47% of 16 essential vitamins or nutrients for the healthy growth and development in toddlers. The super makes it clear that the a2 Platinum Toddler Milk is to be consumed “as part of a healthy diet” and should not be used exclusively. In this context, the words “nutritional back up” are both appropriate and clear to consumers.*

2.22 *Secondly, the complainant alleges the following:*

*“Further, the phrase ‘the natural A2 Protein’ implies that A1 protein is not natural, and thus somehow adversely affects a child's health.”*

2.23 *As we have stated above, A2 milk is obtained from cows that only produce the A2 beta-casein protein, not the A1 beta-casein protein. This statement is designed to reflect the fact that we do not chemically extract or isolate a particular type of protein in the cows' milk to produce A2 based products. It is this fact that we consider makes the product the subject of this advertisement “all- natural” as it is a type of beta-casein protein that occurs naturally in A2 cows. The advertisement does not imply that A1 protein is not naturally occurring but that it is a different type of protein that is not contained in a2 Platinum Toddler Milk drink. We submit that consumers would be aware that we are referring to a type of protein that occurs naturally in cows' milk.*

2.24 *The second part of the complainant's allegation is that by failing to refer to A1*

*beta-casein as natural, the advertisement is implying that A1 beta-casein 'somehow adversely affecting a child's health'. We make no such claim in our advertisement and we don't consider that any claim of this nature arises by implication. Consumers make product choices that are suitable for them based on a range of factors. The statement reflects that the a2 Platinum Toddler Milk product contains A2 protein and doesn't contain A1, which may be a preference for certain consumers.*

2.25 *You will note that the wording that is used in the advertisement reflects our consistent messaging to be found on our website at <https://a2milk.com.au/about-us/> We consider that our reputation and the growing knowledge by consumers of the A2 beta-casein protein is sufficient to allow them to form their own opinion on the product.*

2.26 *Finally, the complainant alleges that the words 'believe in better' are misleading because the complainant alleges 'there no evidence that A2 milk confers any health benefits.'*

2.27 *We make two points in relation to this:*

(a) *First, we disagree strongly that there is 'no evidence' of any benefits to be obtained from drinking A2 milk. As noted earlier, an increasing body of scientific evidence suggests that for certain people who cannot drink Regular Milk, the issue may be an intolerance response to digesting the A1 beta-casein protein. For this group of people, a2 milk may assist in alleviating digestive discomfort. The tagline "believe in better" reflects that these people who drink a2 milk say that they just feel better.*

(b) *Second, this tagline represents general "puffery" in advertising. It is clearly a statement that is visionary, non-specific and does not set out any performance characteristics of the product.*

### 3. *Conclusions*

3.1 *For the reasons set out above, we believe that:*

(a) *the advertisement for a2 Platinum Toddler Milk is not misleading; and*

(b) *does not contravene the AANA Food & Beverages Advertising & Marketing Communications Code or the AANA Code of Ethics.*

*Therefore, we believe the complaint should 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 this advertisement is misleading as there is no evidence to suggest that A2 milk has superior features to A1 milk, that A2 milk confers any health benefits or that A1 protein is detrimental to health.

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

The Board considered whether the advertisement complied with all relevant provisions of the Food and Beverages Code.

The Board noted that the product advertised is food and that therefore the provisions of 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 Code further provides that "The Board will not attempt to apply legal tests in its determination of whether advertisements are truthful and honest, designed to mislead or deceive, or otherwise contravene prevailing community standards in the areas of concern to this Code. In testing the requirement that an advertising or marketing communication should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board will consider the advertiser's stated intention, but may also consider, regardless of stated intent, that an advertisement is by design misleading or deceptive, or otherwise contravenes prevailing community standards in particular regard to stated health, nutrition and ingredient components of the food or beverage product. Thus, an advertising or marketing communication may make reference to one or more of the nutritional values or health benefits of a product but such references must be accurate and appropriate to the level of understanding of the target audience, and must not misleadingly represent the overall nutritional or health benefits of the product."

The Board noted the complainant's concerns about the A1 protein being portrayed as inferior or detrimental to health.

The Board noted the advertiser's response that the advertisement does not imply that A1 protein is not naturally occurring but that it is a different type of protein that is not contained in A2 Platinum Toddler Milk Drink A2 milk, and may be a preference for certain customers.

The Board considered that the advertisement may appear to imply that A2 is better through the subtle use of language and the negative claim that it is not A1, however the product is for A2 milk, not an A1 product and the advertiser is indicating what their product is, and what it isn't. The Board considered that the use of language that is differentiating to suggest that A2 is better, is subtle and not being used to mislead a customer about what they are purchasing (which is an A2 milk product). The Board also considered that there is no specific claim that A1 milk is inferior or detrimental for one's health and that the phrase "Not A1" can be taken literally to mean it does not contain A2 protein.

Consistent with its determination in Case 0440/11, the Board noted that the advertisement does not make any claims that other milk is not good for you and considered that, based on the advertiser's information about the content and nutritional profile of the product, the

statements in the advertisement are not misleading or deceptive.

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

Finding that the advertisement did not breach the Food Code on other grounds, the Board dismissed the complaint.