



**Ad Standards** Community Panel  
PO Box 5110, Braddon ACT 2612  
P (02) 6173 1500 | F (02) 6262 9833

**AdStandards.com.au**

Ad Standards Limited  
ACN 084 452 666

### Case Report

<b>1. Case Number :</b>	<b>0258-21</b>
<b>2. Advertiser :</b>	<b>Nestle Australia Ltd</b>
<b>3. Product :</b>	<b>Food/Bev Groceries</b>
<b>4. Type of Advertisement/Media :</b>	<b>TV - Free to Air</b>
<b>5. Date of Determination</b>	<b>22-Sep-2021</b>
<b>6. DETERMINATION :</b>	<b>Dismissed</b>

### ISSUES RAISED

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

### DESCRIPTION OF ADVERTISEMENT

This television advertisement for Nan Pro toddler baby formula features visuals of women smiling and the product packaging. A voice-over says, "Be amazed by your child every day. NAN SUPREMEPro Toddler supports little immune systems. NAN SUPREMEPro Toddler, nourishing your child".

Text on the screen includes "Nutrients to support IMMUNE SYSTEMS"

The words: "Iron", "Zinc" "Vitamin A", "Vitamin C" and "Vitamin D" are shown in bubbles.

Disclaimers at the bottom of the screen say:

"Enjoy NAN SUPREMEPro Toddler supplementary to a varied diet" and

"Supplementary to a varied diet when energy and nutrient intakes may not be adequate. From 1 year of age."

### THE COMPLAINT

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

*The ad made a claim that the product supports baby immune development. I would like to see any study that supported this MEDICAL CLAIM*



## THE ADVERTISER'S RESPONSE

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

*Nestlé's strong view is that the Advertisement does not breach either the AANA Food and Beverage Marketing and Communications Code (Food & Beverage Code) or the AANA Advertiser Code of Ethics (Code of Ethics) for the reasons set out below.*

### 1. NAN SUPREMEPro 3 toddler milk drink

*The Advertisement is for Nestlé's NAN SUPREMEPro 3 toddler milk drink. NAN SUPREMEPro 3 toddler milk drink is a Formulated Supplementary Food for Young Children under Food Standards Code 2.9.3 Division 4. It is specially formulated for toddlers from 1 year of age and meets the composition and labelling requirements under Food Standard 2.9.3 Division 4.*

*NAN SUPREMEPro 3 toddler milk drink contains 16 vitamins and minerals including Iron, Zinc and Vitamins A, C and D.*

*Food Standards Code 1.2.7 permits general level health claims from Schedule 4-5 to be made on Formulated Supplementary Foods for Young Children, such as NAN SUPREMEPro 3 toddler milk drink, where the conditions for making a claim are met.*

### 2. Claim made in the Advertisement

*In the complaint, it is alleged the Advertisement contains a medical claim that NAN SUPREMEPro 3 toddler milk drink supports "baby immune development". The actual claim made in the Advertisement (the Immune System Support claim) is:*

*Voice over: "NAN SUPREMEPro Toddler supports little immune systems"*

*On-screen claim: "Nutrients to support IMMUNE SYSTEMS"*

*On-screen images: "Iron", "Zinc" "Vitamin A", "Vitamin C" and "Vitamin D" in bubbles*

*On-screen disclaimer: "Enjoy NAN SUPREMEPro Toddler supplementary to a varied diet"*

*We also re-iterate that NAN SUPREMEPro 3 toddler milk drink is specially formulated for toddlers from 1 year of age. There are no baby-related claims in the Advertisement and the Advertisement:*

- (a) contains numerous toddler references, including: in the voice over; the on-screen logo; in the activity described in the opening screen (watching your little one jump in puddles) and the on-screen information (Toddler; From 1 year of age); and*
- (b) does not contain any reference to an infant or baby.*

### 3. Claim is compliant with Food Standards Code 1.2.7

*The Immune System Support claim is a general level health claim permitted under Food Standards Code 1.2.7, not a medical claim as alleged in the Complaint. The relevant claims from Food Standards Code Schedule 4-5 are:*



<i>Iron</i>	<i>Necessary for normal immune system function</i>
<i>Zinc</i>	<i>Necessary for normal immune system function</i>
<i>Vitamin A</i>	<i>Contributes to normal immune system function</i>
<i>Vitamin C</i>	<i>Contributes to the normal immune system function</i>
<i>Vitamin D</i>	<i>Contributes to the normal function of the immune system</i>

*Food Standards Code 1.2.7 permits these function claims for Iron, Zinc and Vitamins A, C and D because a cause and effect relationship has been established. The wording of these claims is not prescribed (Food Standards Code 1.2.7-10).*

*NAN SUPREMEPro 3 toddler milk drink meets the conditions for making general health claims for Iron, Zinc and Vitamins A, C and D under Food Standards Code Schedule 4-3 and 2.9.3 -8(2) as the product contains at least 10% of the recommended dietary intake (RDI) for the 1-3 year age group of these vitamins and minerals.*

*In addition, the Advertisement includes the three required elements to make a general health claim which are: property of food; the specific health effect; and the dietary context statement. These are met in the Advertisement on-screen through:*

- (a) Property of the food: Iron, Zinc and Vitamins A, C and D*
- (b) Specific health effect: Nutrients to support immune systems*
- (c) Dietary Context Statement: Enjoy NAN SupremePro Toddler supplementary to a varied diet*

#### *4. Other considerations*

*We have reviewed the Advertisement for compliance with the Food & Beverage Code and Code of Ethics and are confident the Advertisement complies in all respects. In particular:*

- (a) The Advertisement is directed at parents of toddlers. It is not directed at, and does not have a strong or evident appeal to children.*
- (b) All nutrient content and health claims in the Advertisement are truthful, honest and not misleading or deceptive; and*
- (c) the Advertisement does not contravene any prevailing community standard.*

*Nestlé takes our responsibilities in advertising our products very seriously. The Immune System Support Claim is a compliant general health claim under the Foods Standards Code and our view is the Advertisement does not contravene the Food & Beverages Code or the Code of Ethics. For the reasons set out above, we submit that the complaint should be dismissed.*

## **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 makes a medical claim which is not supported.

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

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

**Section 2.1 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 Panel Noted the Practice Note to this section of the Food Code which includes:

*"The Panel 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 shall be truthful and honest, the Community Panel 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..."*

The Panel noted that the target audience for this advertisement would be parents of toddlers.

The Panel noted that the voice-over included the phrase, "supports little immune systems" and text on the screen includes "Nutrients to support IMMUNE SYSTEMS".

The Panel also noted two disclaimers appeared on the advertisement, these being: "Enjoy NAN SUPREMEPro Toddler supplementary to a varied diet" and "Supplementary to a varied diet when energy and nutrient intakes may not be adequate. From 1 year of age."

The Panel considered that the phrase 'supports... immune systems' is a broad, non-specific statement. The Panel considered that the target audience for this advertisement was likely to take the message that the product can assist the immune system of toddlers, in much the same way that a good diet can.

The Panel noted that advertisers should take care when making claims of benefits to the immune system at a time of heightened alertness to the importance of immune systems during a pandemic. However, in this instance the Panel considered that the broad claims made by the advertiser were not specific and were not claims to boost the immune system or prevent disease.



Overall the Panel considered that the advertisement was not designed to be 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.

### **2.3 Advertising or Marketing Communication 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 Panel Noted the Practice Note to this section of the Food Code which includes:

*“This provision is intended to be triggered by the Community Panel when considering that an average consumer, acting reasonably, might consider statements made within an advertising or marketing communication as health or nutrition claims.*

*In testing whether this provision is properly triggered, the Community Panel will apply its view of what an average consumer within the target market, might reasonably take from a communication.*

*Having considered that statements made within an advertisement might reasonably be taken by an average consumer as health or nutrition claims, the Community Panel will rely on substantiation provided by the advertiser and/ or appropriate expert or professional advice as to whether such claims can be properly supported by scientific evidence meeting the requirements of the Food Standards Code.”*

The Panel noted that the phrase, ‘supports little immune systems’ could be interpreted by an average consumer to be a nutrition claim.

The Panel noted the advertiser’s response that support of the immune system is a general level claim permitted under Food Standards Code 1.2.7 for Iron, Zinc and Vitamins A, C and D, which are present in the product.

The Panel noted that the claim of supporting the immune system was supportable by appropriate evidence and met the requirements of the Food Standard Code.

### **Section 2.3 Conclusion**

The Panel determined that the advertisement did not breach Section 2.3 of the Food Code.

### **Conclusion**



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