



ADVERTISING
STANDARDS
BUREAU

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Case Report

1	Case Number	0272/14
2	Advertiser	Lion
3	Product	Food and Beverages
4	Type of Advertisement / media	Free TV
5	Date of Determination	13/08/2014
6	DETERMINATION	Dismissed

ISSUES RAISED

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

DESCRIPTION OF THE ADVERTISEMENT

A farmer walks across a grassy paddock past a dairy cow and informs viewers that the cow is busy making milk with a range of proteins, one of which is A2 protein. The farmer is then shown drinking a glass of PURA milk. A voiceover states "PURA milk naturally contains A2 protein". In the final screen, three bottles of PURA milk variants are shown with "Pura naturally contains A2 protein" appearing as text next to the bottles.

THE COMPLAINT

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

This claim may be factually accurate but is a gross misrepresentation of the science and intended to mislead. The benefits of A2 milk is believed not to be due to the presence of the A2 protein but rather the 100% absence of the "bad" A1 variant. While Pura milk may naturally contain A2 protein as herds have mixed genetic composition for this trait, it is blended with milk also containing the A1 form and so may not provide any of the health benefits attributed to true 100% A2 milk. This is clearly a marketing campaign designed to jump on the A2 fad by misleading those who do not understand the science behind it.

Now this is true but deceptive as the health issue surrounding A2/A1 protein is not that A2 is beneficial but that A1 is harmful. True A2 milk does NOT contain A1 protein which is claimed to be harmful. The health issue is not that the milk contains A2 protein but that it does NOT contain A1 protein. In other words that it contains ONLY A2 protein. Like most milk Pura milk contains BOTH A2 and A1 proteins. They do not state that their milk also

contains A1 protein (believed by some to be harmful) and IMPLY that their milk only contains A2 protein in an attempt to cash in on the A1 protein scare. What they say is the absolute truth but it is deceptive (lying by omission) and could be potentially harmful to children who are A1 protein intolerant. The medical issue is children's intolerance to the A1 protein which this milk still contains.

THE ADVERTISER'S RESPONSE

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

We refer to your letter bringing to our attention a consumer complaint in relation to our new television advertisement for PURA milk.

Lion - Dairy & Drinks Pty Ltd (Lion) is a leading manufacturer of dairy products in Australia, including milk under the PURA brand. Quality PURA milk has been provided to Australian families for over 75 years and Lion is committed to continuing to provide consumers with fresh, healthy and nutritious PURA milk as well as truthful information concerning its natural composition.

For the reasons set out in the attached response to this complaint, Lion has not derogated from these commitments or breached any provision of an applicable advertising code in its new television advertisement for PURA milk.

Lion - Dairy & Drinks Pty Ltd

Response to Complaint to the Advertising Standards Bureau

Complaint reference number: 0272/14

1. Description and details of the advertisement

1.1 A farmer walks across a grassy paddock past a dairy cow and informs viewers that the cow is busy making milk with a range of proteins, one of which is A2 protein. The farmer is then shown drinking a glass of PURA milk. A voiceover states "PURA milk naturally contains A2 protein". In the final screen, three bottles of PURA milk variants are shown with "Pura naturally contains A2 protein" appearing as text next to the bottles. A copy of the script for the television advertisement is provided at Annexure 1.

1.2 Details of the programs in which the advertisement appears is attached at Annexure 2.

2. Applicable codes

2.1 The television advertisement specifically concerns PURA milk and the intended target audience is adult grocery buyers. Accordingly, the advertisement is subject to the following advertising codes:

(a) AANA Advertiser Code of Ethics (Advertiser Code of Ethics); and

(b) AANA Food & Beverages Advertising and Marketing Communications Code (Food and Beverages Code).

2.2 The advertisement is not directed primarily to, or intended to engage, children as is evident from the various features of the advertisement, including the language, imagery, actor and nature of product advertised. Further, the advertisement is not scheduled to air during programs primarily directed to children or that are likely to be viewed predominantly by children. Attached at Annexure 2 is a copy of the media schedule for the week commencing 20 July 2014. On this basis, the AANA Advertising and Marketing Communications to Children Code and Australian Food and Grocery Council Responsible Children's Marketing Initiative are not applicable.

3. Response

3.1 Consumers are increasingly interested in the composition of food and beverages they consume. This television advertisement is intended to convey information to consumers about the composition of PURA milk. Many consumers are aware that milk may contain A2 beta-casein (also referred to as A2 protein). This advertisement is intended to confirm that PURA milk naturally contains A2 protein amongst other milk proteins.

3.2 The substance of the complaint appears to be that the television advertisement is "deceptive" as it implies that PURA milk only contains A2 protein when PURA milk also contains A1 protein. The complainant asserts that this poses a medical issue as A1 protein is "harmful". For the reasons set out below, Lion submits that the complaint is misconceived and unfounded.

Advertiser Code of Ethics

3.3 The television advertisement does not:

(a) portray people or depict material in a way which discriminates or vilifies a person or section of the community;

(b) employ sexual appeal in a manner which is exploitative or degrading;

(c) present or portray violence;

(d) portray sex, sexuality or nudity;

(e) use inappropriate language; or

(f) depict material contrary to prevailing community standards on health and safety;

and therefore does not contravene section 2 of the Advertiser Code of Ethics.

Food and Beverages Code

3.4 Section 2.1 of the Food and Beverages Code requires that the television advertisement is truthful and honest. It must not mislead or deceive or otherwise contravene prevailing community standards.

3.5 Contrary to the complainant's view, the advertisement does not imply that A2 protein is the only protein in PURA milk. This is abundantly clear from the opening statements of the television advertisement which are as follows:

"This wonderful PURA cow is busy making milk with a range of proteins and one of those proteins is A2."

3.6 These opening statements are unambiguous and it would be plainly obvious to an average viewer that PURA milk contains more than one type of protein and that A2 protein is only one of the types of protein present in PURA milk. In fact, like all milk PURA milk also contains whey proteins and, like most regular milk, also contains other beta-casein proteins including, but not limited to, A1 beta-casein.

3.7 There is no requirement under section 2.1 or elsewhere in the Food and Beverages Code that each and every other protein present in PURA milk is stated nor is it necessary to do so in order to provide honest and truthful information about the protein content of PURA milk or to avoid misleading consumers. It is a fact that PURA milk naturally contains A2 protein. It is clear that PURA milk also contains other proteins and there is no need to list them.

3.8 Section 2.6 of the Food & Beverages Code also requires that advertisements which include content claims must be specific to the promoted products and accurate. As stated in paragraph 3.5 above, the advertisement states that PURA milk contains a range of proteins, one of which is A2 protein. This is a fact confirmed by testing. There is no evidence referred to in the complaint that calls this fact into question. Rather, it proceeds on the misconception that Lion has some duty if it mentions A2 protein to list every protein in its PURA milk.

3.9 The complainant's grievances in relation to the television advertisement appear to be premised on the view that there is a "health issue surrounding A2 / A1 protein" and that A1 protein is "harmful", including to children who are "A1 protein intolerant", and therefore there was some duty on Lion to disclose the presence of A1 protein in its PURA milk.

3.10 Contrary to these assertions however, there is no scientific consensus or medical opinion that there is any health issue associated with A1 protein or milk containing A1 protein, or that it is harmful to children or adults. In fact, according to Dairy Australia "there is no convincing scientific evidence to indicate that milk containing only A2 beta casein is better for health than regular milk (milk containing both A1 and A2-beta casein)".¹

¹ <http://www.dairyaustralia.com.au/Standard-Items/Media-Releases/2011-Media-Release-Archive/A-B-C-of-milk.aspx>

² <http://daa.asn.au/for-the-public/smart-eating-for-you/frequently-asked-questions/which-type-of-milk-should-i-drink/>

3.11 A1 protein is simply one of the forms of beta-casein naturally found in regular white cow's milk, including PURA milk. Both Dairy Australia and the Dieticians Association of Australia recommend A1 and A2 protein as high quality natural sources of protein. Specifically, in the view of the Dieticians Association of Australia "to date, there is no solid scientific evidence demonstrating that A2 milk is better for you than regular milk. As there is no food safety issue with either type of milk people are encouraged to keep drinking either A1

*or A2 milk as a nutritious food"*² (emphasis added).

3.12 In any event, as set out in paragraphs 3.5 and 3.6 above, the television advertisement makes clear that there are proteins in PURA milk other than A2 protein and the applicable advertising codes impose no duty on Lion to list or give detail of other proteins. It is appropriate to note the presence of A2 protein for those consumers who are interested, without detailing other features of its protein composition. Any viewer specifically requiring milk with only A2 protein will appreciate that PURA milk includes other proteins and will need to check if it includes other beta-caseins. As required by the Food Standards Code, the label for PURA milk sets out this information in the usual way.

3.13 For the above reasons, Lion submits that the television advertisement is compliant with all applicable advertising codes and on that basis the complaint should be dismissed.

We refer to your letter in this matter which enclosed notice of a further complaint in respect of this advertisement.

In most respects the further complaint raises the same issues as the original complaint of 4 July 2014 to which Lion responded on 21 July 2014. However, the further complaint does raise some additional issues to which Lion wishes to respond as follows:

1. The complaint wrongly claims that PURA milk is "blended with milk containing the A1 form" of protein (beta-casein). PURA milk is from the milking of dairy cows whose milk naturally includes both A1 and A2 betacasein.

It is not a matter of adding and blending. It is regular, natural milk.

2. The complaint claims that the advertisement is "designed to jump on the A2 fad". The intent of the advertisement is simply to provide composition information. Consumers have become increasingly interested in the composition and production of their food - what it is made from, where it originates and how it is processed or altered during manufacture. With respect to milk, this curiosity was recently evidenced by consumer interest in whether their milk contains added permeate. At the time, Lion advertised the permeate free status of its PURA milk.

More recently still, other manufacturers have stimulated consumer interest in the proteins in milk, and A2 protein in particular. Lion has responded to this interest by pointing out that its regular PURA milk "contains" A2 protein as part of "a range of proteins" and that the A2 protein is "naturally" present in PURA milk i.e. A2 protein is not added. It is made very clear in the advertisement that A2 protein is not the only protein in PURA milk. It is also very clear that A2 is used as the generic, descriptive name for one\ type of protein and not as a name or brand for a type of milk.

3. The scientific and medical consensus is that both A1 and A2 beta-casein are high quality,

natural sources of protein and that no additional health benefits have been proven to be gained by consuming milk whose betacasein protein is 100% A2 beta-casein. It is for these reasons that Lion does not make any health claims about the presence of A2 beta-casein.

Its advertising is responding to consumer interest in the composition of the milk they are buying and Lion is entitled to point out that A2 beta-casein is a protein that is naturally present at significant levels in regular milk which consumers buy at regular prices. If other suppliers want to claim that there is some benefit to 100% of the beta-caseins in milk being A2 beta caseins, rather than 50% or 70%, and that their milk is 100% A2 beta casein, then that is for them to substantiate. Lion's PURA milk naturally contains A2 beta-casein and it is entitled to let consumers know this through its advertising.

4. Finally, Lion understands that these complaints are to be referred for input from an independent scientific expert. We are not sure that this is necessary. The advertisement does not make any scientific or healthrelated claims but merely informs viewers of the presence of A2 protein in PURA milk, amongst other milk proteins. No benefit is expressly or by implication attached to the presence of A2 protein in PURA milk.

Accordingly, the central issues raised by the complaint are not scientific but rather issues regarding the message that is conveyed by the advertisement and whether it can be substantiated.

In summary, Lion submits that the position is quite clear. The advertisement claims that PURA milk includes a range of proteins, one of which is A2 protein. The complaints do not contest this. Rather, the complaints allege that the advertisement claims or implies that PURA milk is 100% A2 protein and/or that it contains no A1 beta-casein. We have submitted that such an interpretation is unfounded. The express words of the advertisement do not make such claims and there is no basis to imply them.

If the ASB nevertheless sees a need to seek independent input then Lion assumes that the need relates to references in the complaint to "the benefits of A2 milk", to these alleged benefits only being available from milk that does not contain A1 beta-casein, to A1 beta-casein being "bad" and to the advertisement misleading consumers who "do not understand the science behind" A2 beta-casein. In relation to these matters Lions submits:

5. There is no consensus scientific or medical opinion that there are any health issues associated with the consumption of A1 beta-casein or established benefits from consuming milk with 100% A2 beta-casein.

6. Over the last 10 to 15 years those involved in marketing milk products containing 100% A2 beta-casein have pointed to studies and publications that have speculated as to links between A1 beta-casein and various health issues. In the earliest years links were alleged between A1 betacasein and serious diseases including heart disease, diabetes, autism and

schizophrenia. These claims were submitted to close scientific scrutiny and were never accepted. Indeed, Lion notes that the Queensland Health Department fined the A2 Dairy Marketers \$15,000 for making false and misleading health claims, including that consumption of milk with 100% A2 protein reduced the risk of heart disease and diabetes and inferred that ordinary milk was unhealthy (see http://www.brw.com.au/p/business/enterprise/milk_sales_flow_the_white_way_aViVxG63SEcrmnyt13OmfO and

http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=3597336).

7. These health-related claims were made known to consumers including through the promotion of milk products with 100% A2 beta-casein. Some consumers continue to repeat these claims as though they are established facts. For example, see <https://www.facebook.com/a2milk>, <https://twitter.com/a2milk> and <http://a2milk.com.au/video-testimonial/> where fans of a2 milk claim that:

a) relief from symptoms of serious diseases including autism, irritable bowel syndrome, asthma and infections;

b) health benefits to unborn babies;

c) improvement to stomach or digestional issues; and

d) increased energy and reduction in fatigue.

8. In more recent years the health issues allegedly associated with A1 betacasein have focussed on claims that it may cause "digestive discomfort" so that milk with 100% A2 beta-casein may assist with "digestive wellbeing". Again these claims have been made known to consumers who repeat them as if they were established facts. They are not. Food Standards Australia New Zealand considered the evidence and reported that there was still limited scientific evidence available on the health effects of both A1 and A2 beta-casein (see Annexure 1). Even a recently published study involving A2 Dairy Products Australia's scientists which subjected participants to diets with and without A1 beta-casein concludes:

Although the differences in digestive discomfort measures between the two diets were not statistically significant for this predominantly milkdrinking cohort of people, the effect sizes suggest that this may be possible. However, a much larger study of susceptible people is needed to either confirm or refute this hypothesis.(emphasis added)"1

9. While Lion would dispute many of the statements and conclusions from this study, the above quote makes it clear that at this stage the alleged link between A1 beta-casein and digestive discomfort is only a hypothesis, just as the alleged links with autism and other serious health conditions were once hypotheses. An objective review of the available

scientific and medical evidence does not support the views of the complainants but instead supports the recommendation of the Dieticians Association of Australia that both A1 and A2 beta-casein are high quality proteins (see Annexure 2). Regular milk naturally contains a range of proteins including A2 protein and the advertisement makes this point.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches the AANA Food and Beverages Advertising and Marketing Communications Code (the Food Code).

The Board noted the complainants’ concern that the advertisement is misleading because it focuses on the inclusion of the A2 protein in the milk and does not mention that this product also contains A1 protein and therefore consumers may believe that this product is healthier than it actually is.

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

The Board determined that the advertisement is not directed to children or likely to appeal to children and that the AANA Code for Advertising and Marketing Communications to Children does not apply.

The Board noted that the product advertised is a food/beverage product 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 that 'prevailing community standards' means the community standards determined by the Advertising Standards Board as those prevailing at the relevant time, and based on research carried out on behalf of the Advertising Standards Board as it sees fit, in relation to the advertising or marketing of food or beverage products taking into account at a minimum the requirements of the Australia New Zealand Food Standards Code, the

Australian Dietary Guidelines as defined by the National Health and Medical Research Council and the National Physical Activity Guidelines as published by the Federal Government of Australia.'

The Board noted the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide:

“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.

In testing the requirement that advertisements and/or marketing communications 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, advertising and/or marketing communications may make reference to one or more of the nutritional values and/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 that the advertisement features a farmer saying that a Pura cow is busy making milk “...with a range of proteins and one of those proteins is A2...Pura milk naturally contains A2 protein”.

The Board noted it had sought independent advice on the accuracy of the information provided in the advertisement with regards to the protein contained in the advertised product.

The Board noted the advice provided by the Independent Expert that:

“In this case, no health claim is being made, but a nutrition content claim ie that it contains A2 protein... In my opinion, the voiceover “milk with a range of proteins” and the on pack information about the A1 and A2 content are truthful.”

The Board noted it had previously dismissed a similar complaint against A2 Milk in case 0440/11 where:

“The Board noted that the advertisement does not make any claims that other milk is not good for you and considered that the statements in the advertisement are not misleading or deceptive.”

In the current advertisement the Board noted that there are no health claims made against the Pura milk product advertised. The Board noted that there is considerable scientific debate regarding the health aspects of the different proteins in milk and acknowledged that some members of the community who are aware of this debate could interpret the advertisement’s focus on the presence of the A2 protein in the advertised product as suggestive that this Pura milk is better for consumers. In assessing the wording and message of the advertisement against the Code and the explanatory note the Board considered that an average consumer would take away the message that the advertised product contains a range of proteins including A2. On balance, the Board considered that the omission of a comment indicating that the milk may also contain the A1 protein is not in itself, misleading.

The Board considered that as the advertisement is not making any specific claims other than the milk contains many proteins of which A2 is just one the advertisement is not misleading in terms of the provisions of the Food Code.

The Board considered that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Code.

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