



Case Report

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| 1 | Case Number | 0296/12 |
| 2 | Advertiser | Nestle Australia Ltd |
| 3 | Product | Food and Beverages |
| 4 | Type of Advertisement / media | Radio |
| 5 | Date of Determination | 08/08/2012 |
| 6 | DETERMINATION | Upheld - Modified or Discontinued |

ISSUES RAISED

- 2.6 - Health and Safety Unsafe behavior
2.6 - Health and Safety within prevailing Community Standards

DESCRIPTION OF THE ADVERTISEMENT

The advertisement portrays a scenario that reflects a child's reluctance to follow their parent's instructions and take the necessary precautions to ensure safety in active play. The mother and son have some dialogue back and forth relating to what gear he needs to wear. The mother offers him a milo as part of this which he eagerly agrees to have.

THE COMPLAINT

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

As parents we do everything we can to keep our kids safe. The LAW requires kids to wear helmets on bikes and horses so when you have an ad that goes against the law as parents we have to explain that Milo isn't going to protect your head when the kid goes flying off the bike.

THE ADVERTISER'S RESPONSE

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

Nestlé submits that there is nothing in the script which suggests that the child's reluctance is endorsed by the parent, or that the non-use of the safety equipment is in any way appropriate. To the contrary, from both the tone of voice and dialogue it is clear that the mother does not accept her child's complaints and keeps going through a check list to make sure her child is fully protected.

In this context, we do not consider it reasonable to suggest that MILO is portrayed as a substitute to safety equipment. It clearly isn't. MILO is positioned as a way to help support the development of strong bones. MILO is fortified with calcium, a nutrient necessary for the development of strong bones. A glass of MILO and milk provides 50% recommended daily intake (RDI) of calcium, combined with the other nutrients, and is an appropriate way to provide nutritional support as part of a balanced diet for healthy active children and along with daily physical activity plays an important role in supporting children's healthy growth and development. It is accepted that physical activity combined with enough calcium is considered the best way to build strong bones during the growing years.^{1,2}

No-one considers that MILO protects a child's head when the child 'goes flying off the bike' and in Nestlé's view this is an unreasonable implication to attribute to the advertisement. Conversely, the fact that the advertisement supports, rather than undermines, safe play is evidenced by the demonstration that after the child is offered a glass of MILO, the mother continues to instruct the child to wear further safety equipment. There is a link between MILO and active play, but safety requirements are not compromised either before or after the product reference.

It follows from the above that we can see no basis for the claim that the advertisement is against the law, promotes unsafe behaviour, or is otherwise contrary to prevailing community standards on health and safety. In its proper context, this advertisement is part of a wider campaign from MILO which encourages kids to get outside and get active which we would submit is entirely in line with prevailing community standards.

Nestlé respectfully requests that the complaint be dismissed.

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) and the AANA Code of Ethics for Advertising (the Code).

The Board noted the complainant's concern that the advertisement portrays a scenario that is promoting unsafe behavior that could lead to serious harm.

The Board listened to the advertisement and noted the advertiser's response.

The Board noted that the product advertised is food and that 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 that the advertisement portrays a scenario that reflects a child's reluctance to follow his parent's instructions and take the necessary precautions to ensure safety during play. The mother and son have some dialogue back and forth relating to what gear he needs to wear. The mother offers him a milo as part of this which he eagerly agrees to have.

The Board accepted the advertiser's response that the advertisement reflects an accurate representation of the increased calcium content of a beverage that consists of milo mixed with milk.

The Board noted that the information provided, and provided by the voiceover states that Milo will "Boost the Calcium of Milk by nearly 70%." The Board considered that although the addition of Milo to the milk may increase the calcium content of the complete beverage to nearly 70%, there is some ambiguity around the statement that the calcium content of the milk itself is increased by the addition of Milo.

The Board considered that the statement was not designed to be misleading or deceptive but identified that some consumers may be led to believe that the calcium content of the milk itself was heightened, whereas it is the combination of the Milo and the milk that equates to the "increase by nearly 70%" of calcium.

Based on the above, a minority of the Board considered that the advertisement contained a statement that was ambiguous but did not amount to an action that was designed to be misleading or deceptive. The Board further considered that on balance, the ambiguous statement could not be considered inappropriate to the level of understanding of the target audience to the extent that it would breach the Code.

The Board noted that they had recently considered a television advertisement (case reference 0280/12) that used the same statement relating to the calcium content of milk and determined that the advertisement was not misleading or deceptive and did not breach Section 2.1 of the Code.

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

The Board then considered whether the advertisement was in breach of 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 the advertiser’s response that Milo is fortified with calcium, a nutrient necessary for the development of strong bones and is an appropriate way to provide nutritional support as part of a balanced diet for healthy active children and along with daily physical activity plays an important role in supporting children’s healthy growth and development.

The Board noted that the dialogue between the mother and son is typical conversation that would take place in many homes relating to children who think that they are invincible and do not need protective gear and parents who are trying to ensure the safety of their children.

The Board noted that throughout the advertisement the mother tries to encourage the boy to wear protective gear and he continually responds negatively at the thought of having to do so. The Board considered that as a radio advertisement there are no visuals to confirm whether or not the boy does use the gear or not. At the end of the advertisement the mother offers a glass of milo which the boy eagerly accepts.

The Board considered that without visuals the voiceover describing the nutritional content of Milo and in combination with active play could be suggestive of the Milo drink being sufficient to develop strong bones and it could be interpreted that drinking Milo alone could make it unnecessary to wear protective gear at all.

The Board noted that listeners are unable to determine the outcome of the interaction between mother and son and whether or not he did wear the gear being offered. The Board considered that some members of the broader community may reasonably assume that it is sufficient to drink Milo in order to have strong bones, thus making it unnecessary to wear protective equipment.

The Board noted that community concern around keeping children safe and encouraging healthy and active lifestyles and considered that the advertisement was contrary to prevailing community standards on health and safety and therefore the advertisement did breach Section 2.6 of the Code.

Based on the above, the Board determined that the advertisement did depict material contrary to prevailing community standards on health and safety and did breach Section 2.6 of the Code.

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

ADVERTISER RESPONSE TO DETERMINATION

Nestlé and the MILO brand have been committed to encouraging a healthy and active lifestyle for many generations of Australians. This is why in 2012 we launched the MILO Play Movement campaign to encourage children to get outdoors, have fun and play. This radio advertisement was developed as part of an overall Play campaign and was intended to highlight the importance of the calcium rich diet in helping to develop and maintain strong and healthy bones. As mentioned in our response to the complaint, through this advertisement, we simply wanted to portray a common scenario with which many parents would be familiar – that is, a child’s reluctance to follow his parent’s instructions and take the necessary precautions to ensure safety in active play.

Nestlé prides itself on its compliance with the highest safety standards. We would never intentionally encourage any activity that is unsafe, nor endorse any activity without sufficient safety precautions, and did not intend for this advertisement to be taken to suggest that MILO is in any way a substitute for protective equipment, rather that MILO is a nutritional way to help support the development of strong bones.

We are disappointed that the Board has found the advertisement contrary to prevailing community standards on health and safety, and as a result of this determination, have ceased use of this existing script. We will ensure that any future communications are in line with this determination.