



Case Report

1	Case Number	0297/16
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	27/07/2016
6	DETERMINATION	Dismissed

ISSUES RAISED

RCMI 1.1 - Advertising Message AFGC - Advertising Message

DESCRIPTION OF THE ADVERTISEMENT

The Fuel your Child's Inner Champion advertisement (Advertisement) follows the hard work and dedication of typical adolescent boys as they train as part of a basketball team to be 'champions'.

It features a repetitive voiceover with accompanying visuals of adolescent boys participating in team basketball training – in the first three repetitions the adolescent depicted misses the basket, finally making the basket it on the fourth repetition.

THE COMPLAINT

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

As you are aware, Nestle Australia Ltd is a signatory to the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI), has agreed to be bound by this initiative and has submitted a Company Action Plan to the Australian Food and Grocery Council (AFGC), which is publicly available on the AFGC website.

We are of the view that the advertisement breaches Core Principle 1.1 of the RCMI and the Nestle Australia Ltd RCMI Company Action Plan (Action Plan).

Breaches of the RCMI

We submit that this advertisement breaches Core Principle 1.1 of the RCMI. In our view, this

advertisement falls within the jurisdiction of the RCMI in that it is featured on free to air television, and several internet websites, and therefore is a 'Medium' for the purposes of the RCMI definition of 'Advertising or Marketing Communications'.

Advertising or Marketing Communications directed primarily to children under 14 years

The RCMI defines 'Advertising or Marketing Communications to Children' as communications which, having regard to the theme, visuals and language used, are directed primarily to children. The term 'children' is defined to include persons under 12 years of age.

We submit that this advertisement is a communication directed primarily to children under the age of 12 years, having regard to the themes and visuals of the advertisement. This conclusion has been drawn with reference to the following:

Nature of the product – As noted above, the advertisement features both MILO consumed as a powder with milk, and in the form of a MILO 2 Go drink. MILO Australia website describes the original MILO powder with respect to consumption by children, stating that 'MILO was developed...as a directed response to the fact that children were not receiving enough nutrients from their daily diet,' and 'together with milk [MILO] is a nutrient rich drink for active kids.' Further, MILO 2 Go is described with reference to being 'perfect for... popping into lunch boxes' and as a 'green' item according to the Australian National Healthy School Canteens Guidelines for Healthy Foods and Drinks.

Age of actors - The advertisement features a number of boys of various ages (approximately early high school aged) engaging in a number of basketball training activities and, intermittently, consuming MILO.

Storyline/theme - The advertisement's simple theme is that of training for and competing in a team sporting activity to become a 'Champion'. The storyline, depicted across 22 short scenes, involves training for sport, in conjunction with consumption of various MILO drinks as 'fuel', with perseverance leading to the scoring of a goal during a game at about 0:21. The theme of training for and playing sport with friends ('work hard and be rewarded'), and being part of a team ('squad'), along with the simple message of drinking or 'being made of' MILO to be a 'Champion' is simple, clear and easy to understand. In this respect it is likely to appeal to the majority of child viewers of school age, including those under the age of 12, particularly those children involved in team sports.

Visuals – The advertisement is fast paced, with 22 different scenes appearing over 30 seconds, which is likely to capture the attention of child viewers under the age of 12. Further, the advertisement features a number of bright green MILO products against a scenes that otherwise include fairly dull colours, which is likely to direct the appeal to child viewers, directing them to the product.

Use of child's perspective – The multitude of scenes presented (basketball training, connecting with teammates, studying, eating at home and playing a game/scoring a goal) depict normal aspects of the life of a high school student. In this respect, the advertisement appears to be presented from the perspective of a young high school student, and will likely be familiar to and of appeal to children under the age of 12.

Use of language – As outlined above, the advertisement includes repeated use of the words

'my training, my fuel, my sport, my bad,' and then 'my training, my fuel my sport... MILO.' The words 'my fuel' are depicted when MILO is being consumed, and the word MILO is spoken while a boy shoots a goal during a basketball game. The advertisement concludes with the tagline 'you've gotta be made of MILO.' Overall, the language used in the advertisement is very clear simple, with repetition and use of slang terms 'my bad' and 'gotta', and is therefore likely to resonate with young children, including those under the age of 12.

Health and Nutrition

As you are aware, Core Principle 1.1, found within Schedule 1 to the RCMI, states that:

Advertising and Marketing Communications to Children for food and/or beverages must:

- a. Represent healthier dietary choices, consistent with established scientific or Australian Government standards, as detailed in Signatories' Company Action Plans; and*
- b. Reference, or be in the context of, a healthy lifestyle, designed to appeal to Children through messaging that encourages:*
 - i. Good dietary habits, consistent with established scientific or government standards; and*
 - ii. Physical activity.*

The Nestle Australia Responsible Children's Marketing Initiative Company Action Plan states that:

Advertising Messaging

Nestle Australia will not advertise food and beverage products to children between the ages of 5 and 12 years unless they meet the following:

- 1. Those products represent healthy dietary choices, consistent with established scientific standards or Australian government standards.*
- 2. Nestle products must also meet the standards of the Nestle Nutritional Profiling System, Nutritional Foundation criteria for children appropriate to the category in which that product falls.*

Healthier Dietary Choice

The MILO Australia website provides the following nutritional profiles for the products depicted in the advertisement:

·MILO powder with milk - 20g of MILO with 200mL of skim milk:

Energy: 640kJ

Fat: 2.2 g (of which 1.3g is saturated fat)

Sugars: 19.3g (of which 9.3g is added sugar)

· MILO 2 Go - 200mL pack:

Energy: 600kJ

Fat: 2.8g (of which 1.8g is saturated fat)

Sugar: 17.9g (of which 8.4g is added sugar)

'Established scientific or Australian Government standards'

Guideline 3 of the Australian Dietary Guidelines (ADGs) recommends that Australians 'limit intake of foods containing added sugars.' The ADGs state that sugars 'increase the energy content of the diet while diluting its nutrient density.' In relation to sugar consumption by children and adolescents, the ADGs state that:

'milk and water are the recommended drinks for children. Children and adolescents should limit intake of sugar-sweetened drinks...Sweetened flavoured milk provides nutrients but can be energy dense; plain milk is preferable.'

Diets high in added sugars are generally energy-dense and nutrient poor, and are associated with weight gain and dental caries. Further, the World Health Organisation's Sugar Intake for Adults and Children Guidelines recommend that no more than 10 per cent of total energy intake should come from added sugars, with a further reduction to below five per cent recommended for additional health benefits.

Nestle Australia Company Action Plan

The Action Plan states that Nestle reviews nutritional value of its products in accordance with a Nutritional Profiling System. The criteria for nutritional factors for the product category 'milk-based beverages for consumption as part of a small meal or in between meals':

Total energy: = 10% DV/serving

Saturated fatty acids: = 20% DV/serving

Added sugars: = 25% DV/serving

The Action Plan provides a Nestle Australia Daily Reference Values (NADRV) for Children aged 9-11 years of age as 2000kcal (8368 kJ) with 50g of added sugar.

Analysis

We note that WHO added sugar guidelines and the Action Plan are set out in terms of percentage of recommended daily energy/nutrient intake. The Australian National Health and Medical Research Council estimates that energy needs for lightly active 10 year old boys and girls are approximately 8300kJ and 7600kJ respectively. A ten percent added sugar intake would be approximately 51g of added sugar (about 12 teaspoons) for boys, and about

45g of added sugar (about 11 teaspoons) for girls.

If consumed as stated on the MILO Australia website, MILO powder with milk and MILO 2 Go each provide a quarter to a fifth of a 10 year old child's daily sugar intake.

We note, however, that the serving sizes for MILO powder with milk depicted on the MILO Australia website and the MILO powder tin is not consistent with what is shown in the advertisement.

At about 0:15 of the advertisement, a mother is featured providing a teenage boy with a drink while he is sitting at his desk during the evening. The glass provided to him clearly contains a larger amount of both MILO powder and milk than the 3 heaped teaspoons/200mL serving listed on the MILO Australia website (the Drink). We are of the view that the glass used has a volume of approximately 400mL. Given the dark shade of the liquid in the glass relative to the white sleeve of the mother's blouse, and the amount of milo remaining on top of the liquid, it appears that the Drink contains at least six teaspoons of MILO. A similar serving is depicted at 0:25 where a boy consumes MILO mixed with milk in the kitchen at home.

The Drink therefore appears to contain at least 1280kJ (approximately 300kcal) and 18.6g of added sugar, provided that skim milk has been used and:

Provides nearly five teaspoons of added sugar, almost half of the upper limit recommended by the WHO.

Provides more than 10% of NADRV total energy for a 9-11 year old (2000kcal) and more than 25% of the NADRV upper limit of 50g of added sugar. The Drink is not, therefore, compliant with the Nestle Australia Nutritional Profiling System criteria for 'milk-based beverages for consumption as small part of a meal or in-between meals.'

Encourages preparation of MILO powder and milk in a manner that is wholly inconsistent with the serving size listed on the MILO Australia website, and on the MILO powder tin. I also note that this is the basis upon which MILO powder and milk has been awarded 4.5 stars using the Australian Government's Health Star Rating System.

In this respect, we submit that the advertisement breaches Core Principle 1.1 of the RCMI in that it does not represent either 'healthier dietary choices' or 'good dietary habits' that are consistent with established scientific or government standards as set out by the WHO and the NHMRC.

Further, the advertisement is not consistent with 'healthier dietary choices' as set out in the Action Plan in relation to 'Advertising Messaging.' We submit that the advertisement, with its depiction of the Drink, is for a beverage product that does not meet the standards set out in the Nestle Nutritional Profiling System appropriate to the category of 'milk-based beverages for consumption as small part of a meal or in-between meals' in which the MILO powder with milk drink falls.

Determination

We submit that this advertisement breaches the RCMI, and request that the Board require the advertiser to cease broadcasting and remove the advertisement from all websites and other

electronic media immediately. An urgent determination in relation to this advertisement is needed, given that the advertisement is unlikely to be broadcast over a long period, and a finding made following cessation of broadcasting will be somewhat futile.

THE ADVERTISER'S RESPONSE

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

In making our submission, Nestlé has considered the Advertisement under the Australian Food and Grocery Council Responsible Children's Marketing Initiative (RCMI) including the Nestlé Australia Company Action Plan (Nestlé CAP) and the AANA the Food & Beverage Advertising & Marketing Communications Code (Food Code), specifically section 2.2 of that Code which provides that;

“Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

Nestlé has also considered other relevant aspects of section 2 of the Food Code and under the AANA Advertiser Code of Ethics (Code of Ethics) in the following response.

The Complaint

The Complainant is concerned the Advertisement is in breach of Core Principle 1.1 of the RCMI and the Nestlé CAP in that it is;

(a) primarily directed to children having regard to the themes, visuals and language used; and

(b) does not represent a healthier dietary choice or good dietary habits consistent with established scientific or government standards set out by WHO and the NHMRC.

The Complainant further alleges “the serving size for MILO powder with milk depicted on the MILO Australia website and the MILO powder tin is not consistent with what is shown in the advertisement.”

Nestlé has considered in detail the Complaint and respectfully submits that the Advertisement does not breach the RCMI, the Code of Ethics or the Food Code. It is our view that MILO has a place in a balanced diet and the MILO Advertisement fits firmly within all recommendations for physical activity and dietary guidelines.

Overview of the Advertisement

The Fuel your Child's Inner Champion advertisement (Advertisement) follows the hard work and dedication of typical adolescent boys as they train as part of a basketball team to be

'champions'.

It features a repetitive voiceover with accompanying visuals of adolescent boys participating in team basketball training – in the first three repetitions the adolescent depicted misses the basket, finally making the basket it on the fourth repetition.

My training

My squad

My fuel

My bad (repeat x 3)

My training

My squad

My fuel

MILO. Nutrition to help fuel their inner champion.

The visuals match the voiceover with a serving of MILO and milk or MILO ready to drink being either served to, or consumed by, the adolescent under the voiceover 'my fuel.'

The Advertisement conveys an important message as to the importance of dedicated and long term training in order to succeed in a sporting endeavour.

ALLEGED BREACH OF NESTLÉ'S OBLIGATIONS UNDER THE RCMI AND THE NESTLÉ AUSTRALIA CAP

Nestlé is committed to the RCMI and has a Company Action Plan (CAP), a copy of which has previously been provided to the ASB. We are happy to resubmit if required.

Under the RCMI, Nestlé commits to not advertise food and beverage products to children under 12 unless they represent healthier dietary choices.

We note the RCMI outlines Advertising or Marketing Communications to Children include;

"Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products".

We note the Board has previously referenced the dictionary definition of 'primarily' as being "in the first place" and as such it is necessary to consider whether the Website is in the first instance aimed at children and as such within scope of the RCMI.

The Advertisement was developed to appeal to an adult audience, in particular parents and carers who are heavily involved in their children's development – driving them to training and sporting events, supervising homework and importantly ensuring that they are provided

a balanced and nutritious diet to support their growth and development.

In line with this intention, the theme and visuals of the Advertisement depict typical adolescents undertaking activities which are instantly recognisable and familiar to the adult viewer with children of this age. The Advertisement also depicts the product being advertised, both MILO powder and the MILO ready to drink products, in an appropriate setting. This is considered in more detail below.

The voiceover is that of the adolescent's perspective and highlights the repetition involved in their basketball training, designed to capture and enhance the familiar nature of these scenes to the adult viewer, with the end line "MILO. Nutrition to help fuel their inner champion" making direct reference to the adolescents depicted in the Advertisement in the third person so as to speak directly to the adult viewer.

The buying target of media for the Advertisement was adults (25-54 years), an age bracket likely to include the parent or carer (whether babysitter, parent, carer or grandparent) of an adolescent of the age depicted in the Advertisement. We submit the theme of the Advertisement has broad appeal to this audience, featuring content that resonates with parents and caregivers of adolescents of this age.

Despite our submission the Advertisement is out of the scope of the RCMI, even were this not the case, we consider the Advertisement not to be in breach of Core Principle 1.1 of the RCMI. We provide the following in support of this contention;

(a) MILO energy food drink and other products mentioned on the Website (MILO branded cereals and snack food products) are all products that represent healthier dietary choices in line with the standards of the Nestlé Nutritional Profiling System, Nutritional Foundation criteria (NF) for children appropriate to the category in which MILO falls as detailed in our CAP;

(b) the Advertisement references, and is in the context of, a healthy lifestyle and encourages good dietary habits (as highlighted through the display and consumption of the product in association with sporting activity and as contributing to the nutrition forming part of a healthy lifestyle); and

(c) the focus of the Advertisement is around participation in physical activity.

Please note that in developing the Nestlé CAP, full detail of the Nestlé Nutrition Profiling System was provided and we understand this has been previously assessed by the ASB. In the event this has not been assessed by the Board, we request that we be notified and we are happy to provide additional detail as required.

For the reasons stated above we are confident and respectfully submit the Advertisement raises no issues under RCMI.

Alleged breach under section 2.2 of the Food Code

In addition to the allegation made by the Complainant that the Advertisement is in breach of the RCMI and the Nestlé CAP, it is also alleged that "the serving size for MILO powder with milk depicted on the MILO Australia website and the MILO powder tin is not consistent with

what is shown in the advertisement.”

Section 2.2 of the Food Code states;

“Advertising or Marketing Communications for Food or Beverage Products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards.”

The Advertisement is focused around the physical activity and training of a typical adolescent participating in a basketball squad, interspersed with snacking occasions in which it may be appropriate to consume a MILO and milk or MILO ready to drink product.

The Advertisement portrays MILO and milk and MILO ready to drink products as helping to nutritionally ‘fuel’ an active teenager by depicting an appropriate snacking occasion in accordance with the Australian Dietary Guidelines. We do not consider the Advertisement in any way undermines the importance of a healthy or active lifestyle nor the promotion of healthy balanced diets, rather we feel the advertisement supports and illustrates this position. The Advertisement is consistent with the recognition that growing adolescents with active lifestyles require additional nutrition to fuel their bodies.

As to the Complainant’s concerns as to the nutritional profile of MILO, we have dealt with these issues in detail in response to previous ASB Complaints (Advertisement Complaint Reference 574/09, 0280/12, 0097/14 and most recently 0128/15), each of which were dismissed. Copies of these case reports are attached for reference. We do not propose to cover those issues again here, other than to note them in relation to this concern called out by the Complainant.

The Product

A serve of MILO and skim milk or a MILO ready to drink product is an appropriate nutrient rich drink to supplement a normal diet through the provision of additional nutrients. In this regard we note MILO is a Formulated Supplementary Food under Standard 2.9.3 of the Food Standards Code, in that it is “specifically designed as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.” Under the Food Standards Code such foods are required to contain minimum levels of energy, protein, vitamins and minerals.

In relation to both a serve of MILO and skim milk and the MILO ready to drink product, we note they each have the following nutrition credentials;

- It scores 4.5 stars under the Government’s Health Star Rating;*
- It is fortified with 8 vitamins and minerals and contributes at least 20% of the RDI of those vitamins and minerals and contributes to the daily dairy intake recommendations;*
- It is a source of protein;*
- It is Low Gi; and*

• *It meets various nutrition criteria including Nestlé Nutrition Foundation criteria (under which our Nestlé CAP is currently assessed) and meets the nutrition criteria of the EU Pledge for a dairy product and is a green item according to the Australian National Healthy School Canteen Guidelines for healthy foods and drinks.*

In addition, the MILO ready to drink product was recently awarded the “Best Kids Lunchbox Snack” in the 2015 Healthy Food Awards by the Australian Healthy Food Guide in recognition of its nutrition credentials.

The recommended serve size for a glass/mug of MILO and milk is 200mL skim milk with 20g (3 teaspoons) of MILO powder. This is predominantly provided on the packaging of MILO powder as well as the Website as highlighted by the Complainant.

We have confirmed with our Advertising Agency and confirm the glass used to film certain shots in the Advertisement was a glass with a capacity as depicted.

Contrary to assertions made by the Complainant, the amount of skim milk used was no more than 330mL and the MILO powder used to make up the glasses of MILO and skim milk in these scenes was the 20g (3 teaspoons) as per the recommended serve size provided on pack.

While a larger glass size was used in filming to allow the product to be visible in a fast paced filming sequence, we do not believe the use of a larger glass of milk with the recommended amount of MILO powder could be seen to “...encourage what would reasonably be considered as excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standards” in contravention of section 2.2 of the Food Code for the following reasons;

(a) The Australian Dietary Guidelines 2013 recommend the following as a minimum number of serves of dairy per day for children;

The adolescents depicted in the Advertisement were boys between 14 and 15 years of age, who should consume a minimum recommended daily intake of dairy of 3 ½ serves per day.

(b) a standard serve of dairy is 250mL of milk (mostly reduced fat).

(c) While the glass used in the Advertisement had a larger capacity, the skim milk content was no more than 330mL - in the context of an adolescent boy who needs to consume a minimum of 3 ½ serves of dairy per day, we do not feel that the portion size depicted in the Advertisement is “disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to Prevailing Community Standard”.

Specific nutrition concerns of the Complainant.

Sugar content;

MILO powder is specially formulated to be added to milk and consumed as a beverage. When assessing the product on an ‘as consumed’ basis, as a dairy beverage;

The total sugars in a glass of MILO + skim milk is 19.3g (when made up 200mL of skim milk and 20g of MILO as recommended):

Over half of this sugar, (10g) comes from the 200mL of added skim milk (in the form of lactose).

Of the remaining 9.3g of sugars coming from the MILO powder,

2.5g comes from the natural milk sugar lactose and a very small amount of galactose found in the milk powder component of MILO;

- 3g is maltose from the malt extract;*
- 3.8g is sucrose (added cane sugar).*

While there is no accepted recommendation on sugar intake in Australia, the Australian Dietary Guidelines advocate moderate amounts of foods containing added sugars and state 'There is no evidence that, for most Australians, consumption of up to 15-20% of energy as sugars is incompatible with a healthy diet'.² The Australian National Health and Medical Research Council (NHMRC) Nutrient Reference Values recommend carbohydrate choices based on 'predominantly low energy density and/or low glycaemic index foods.'¹

While we have depicted a larger serving of milk in the Advertisement, we do not believe this impacts the nutrition provided nor suggests or endorses an unhealthy consumption of the Product or skim milk.

The nutritional contribution of 20g MILO powder with 200mL skim milk (recommended serve size) and 330ml skim milk (depicted serve size) are summarised as follows³;

MILO 20g & 200mL Skim Milk

Energy: 640 kJ

Protein: 9.8g

Fat: 2.2g

Sat Fat: 1.3g

Carbohydrate: 22.9g

Total Sugars: 19.3g

Added Sugars (Sucrose): 3.8 (< 1tsp)

MILO 20g and 330mL Skim Milk

Energy: 815 (195 kCal) = 9.75 (% DV based on 2000 cal DV and 50g added sugar)

Protein: 14.6g

Fat 2.3g

Sat Fat 1.5g 6.9%

Carbohydrate: 29.4g

Total Sugars: 25.8g

Added Sugar (Sucrose): 3.8 (< 1tsp) = 7.8 (% DV based on 2000 cal DV and 50g added sugar)

The additional nutrients contributed by the additional 130mL skim milk as depicted in the Advertisement does not impact the positioning of the MILO and skim milk as being assessed as a healthier product under the Nestlé Nutrient Profiling System.

In addition to which, we reiterate the positive contribution made by the additional skim milk consumption in helping adolescent boys meet the 3 ½ serves of dairy required every day.

The Australian Health Survey: Usual Nutrient Intake 2011—2012 has recently identified the prevalence of inadequate calcium intake, demonstrating 71% of 14-18 year old males have inadequate calcium intake⁴.

Further, research has shown that children who drink MILO and milk are more likely to meet the recommended intake for calcium with no difference in body mass index (BMI)⁵.

The messaging in the Advertisement is consistent with encouraging consumption of dairy in line with the Australian Dietary Guidelines and the NHMRC nutrient reference values.

It is for the reasons outlined above, and those previously raised under Advertisement Complaint References 574/09, 0280/12, 0097/14 and 0128/15, that we believe the Advertisement represents MILO and skim milk and MILO ready to drink products in an entirely responsible manner.

Other considerations under the Code of Ethics and other Relevant Codes

We have reviewed the Advertisement for compliance with section 2 of the Food Code and the Code of Ethics and are confident the Advertisement complies in all respects.

Nestlé has also considered the AANA Code for Advertising and Marketing Communications to Children and submits the Advertisement does not fall within or breach this code.

Other relevant information

We confirm that we have had no similar complaints about the Advertisement or suggesting the Advertisement is directed to children and in breach of our obligations under the RCMI.

Final Comments

The Advertisement is an honest, truthful and reasonable representation of the nutritional

characteristics of the MILO product and provides an entirely appropriate and positive focus on physical activity. It is for the above reasons that we respectfully disagree the Advertisement is in contravention of the RCMI or the Nestlé CAP or Section 2.2 of the Food Code and can see no basis for the Complaint. We respectfully request the Complaint be dismissed.

References:

1. Nutrient Reference Values for Australia and New Zealand 2006. Department of Health and Ageing. Canberra: Commonwealth of Australia.

2. Dietary Guidelines for Children and Adolescents in Australia 2003. National Health and Medical Research Council.

3. NUTTAB 2010

<http://www.foodstandards.gov.au/science/monitoringnutrients/nutrientables/nuttab/Pages/default.aspx>

4. Australian Health Survey: Usual Nutrient Intakes, 2011-12

<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.008~2011-12~Main%20Features~Calcium~401>

5. Fayet, F (2011) Nutrition Research Australia, Secondary analysis of the 2007 Australian National Children's Nutrition and Physical Activity Survey.

<http://daa.asn.au/wp-content/uploads/2011/07/Boosting-Childrens-calcium-intake.pdf>

THE DETERMINATION

The Advertising Standards Board (Board) considered whether this advertisement breaches the Responsible Children's Marketing Initiative of the Australian Food and Grocery Council (RCMI), the AANA Food and Beverages Advertising and Marketing Communications Code (the 'Food Code'), the AANA Code for Advertising and Marketing Communications to Children (the 'Children's Code') and the AANA Code of Ethics.

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

The Board noted the complainant's concern that the advertisement breaches the RCMI because it is primarily directed to children and it does not represent a healthy dietary choice.

The Board noted that its role is to consider the advertisement's compliance with the RCMI and the issue of whether or not the product is a 'healthier choice' is only relevant once the Board has determined that the advertisement is directed primarily to children.

The Board noted that the television advertisement is for MILO products.

The Board considered whether the advertisement met the requirements of the RCMI. The RCMI applies to advertising or marketing communications to children (under 12 years of

age). The Board noted the RCMI provides that advertising or marketing communication activities are captured under the RCMI if the:

Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for food and/or beverage products.

Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium.

The Board noted the dictionary definition of “primarily” is “in the first place” and that to be within the RCMI the Board must find that the advertisement is aimed in the first instance at children under 12 years.

The Board considered the theme of the advertisement. The Board noted the concept of team sport and performance, and considered that this concept would be of general appeal, including older teenagers, and would not be of primary appeal to children under 12.

With regards to visuals in the advertisement, the Board considered the use of the repetitive images of the basketball court, shooting the ball at the ring and the image of the milo being consumed as ‘fuel’. In the Board’s view this type of imagery would be of appeal to a broad audience. The Board considered that as the actors represented in the advertisement appeared to be 14 or 15 years of age, it would also have an aspirational appeal for teenagers, but not be of specific appeal to children under 12.

With regards to the language used, the Board noted the male voiceover of the advertisement and considered that the tone of voice and the actual words used (“my training, my squad, my fuel, my bad”) are not designed to be of appeal primarily to younger children under 12. The Board considered the language elements of the advertisement interact throughout with the visual images, and the overall impression that they make is much more likely to captivate an older audience of teenagers and including adults.

The Board noted the advertiser’s response that the advertisement was developed to appeal to an adult audience, in particular parents and carers who are heavily involved in their children’s development – driving them to training and sporting events, supervising homework and importantly ensuring that they are provided a balanced and nutritious diet to support their growth and development. In line with this intention, they state, the theme and visuals of the advertisement depict typical adolescents undertaking activities which are instantly recognisable and familiar to the adult viewer with children of this age.

The Board considered that the various elements all combine to create an advertisement that is, in the Board’s view, of some appeal to children, teenagers and adults but whilst they agreed that the advertisement may be attractive to children, considered that it would be primarily attractive to teenagers and adults and considered that overall the advertisement was not directed primarily to children under 12.

The Board noted that the advertisement was rated ‘W’ by CAD, which means it may be broadcast at any time except during P and C Programs or adjacent to P or C periods. The

Board noted that the buying target of media for the advertisement was adults (25-54 years), an age bracket likely to include the parent or carer (whether babysitter, parent, carer or grandparent) of an adolescent of the age depicted in the advertisement. The Board therefore considered that the advertisement does not appear in media where 35 per cent or more of the audience are under 12, nor in a program that is directed primarily to children.

The Board determined that as the advertisement is not directed primarily to children under 12, does not appear in media directed primarily to children and does not appear in media where Children represent 35 per cent or more of the audience, the advertisement does not come within the RCMI.

The Board then considered whether the advertisement complied with the AANA Code for Advertising and Marketing Communications to Children.

The definition of what is 'advertising and marketing communications to children' in the AANA Children's Code means: means Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The Board shall have regard to the Practice Note to this Code in determining whether Advertising or Marketing Communications are to children under this definition.

The Board noted that the definition is largely the same as that in the RCMI. For the same reasons noted above, the Board considered that this advertisement is not directed primarily to children and that the AANA Children's Code does not apply.

The Board then considered whether the advertisement complied with all relevant provisions of the AANA Food and Beverages Code. The Board noted in particular section 2.2 which states: "the advertising or marketing communication... shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets, or encourage what would reasonably be considered excess consumption through the representation of product/s or portion sizes disproportionate to the setting/s portrayed or by means otherwise regarded as contrary to prevailing community standards."

The Board noted that the theme of the advertisement is team sport and the dominant visuals throughout the advertisement are of an active lifestyle, with sport being played.

The Board noted that the advertised product is MILO. The Board considered that, consistent with previous decisions (0280/12, 0097/14 and 0128/15), promotion of a product which may have a particular nutritional composition is not, per se, undermining the importance of a healthy or active lifestyle.

The Board noted the complainant's concern that the amount of MILO present in the milk consumed in the advertisement was in excess of the standard amount stated on the MILO website, judging by the shade and amount of milo remaining on top of the liquid, and that this serving size provides substantially more sugar than recommended by WHO. The Board considered that this was a subjective interpretation and conjecture as it was not possible based on the visual in the advertisement to make any accurate analysis of quantity of milo added to milk.

The Board noted the advertiser's response that, "the recommended serve size for a glass/mug of MILO and milk is 200mL skim milk with 20g (3 teaspoons) of MILO powder. This is

predominantly provided on the packaging of MILO powder as well as the Website as highlighted by the Complainant. We have confirmed with our Advertising Agency and confirm the glass used to film certain shots in the Advertisement was a glass with a capacity as depicted. Contrary to assertions made by the Complainant, the amount of skim milk used was no more than 330mL and the MILO powder used to make up the glasses of MILO and skim milk in these scenes was the 20g (3 teaspoons) as per the recommended serve size provided on pack.”

The Board noted that the boy in the advertisement does consume MILO numerous times during the advertisement but considered that the advertisement does not suggest that the activity takes place over the course of one day and therefore in the absence of any time context, the Board is not able to state that the consumption is excessive. Therefore, based on the advertiser’s response and the Board’s own view of the images in the advertisement, the Board considered it did not promote or depict excess consumption.

The Board determined that the advertisement did not breach Section 2.2 of the Food Code.

Finding that the advertisement did not breach the AFGC RMCI, the Food Code, the Children’s Code or the Code of Ethics, the Board dismissed the complaint.