



Ad Standards Community Panel
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Ad Standards Limited
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Case Report

1. Case Number :	0304-20
2. Advertiser :	Lactalis Australia
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	TV - Free to Air
5. Date of Determination	7-Oct-2020
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Truthful Honest Not Misleading or deceptive

DESCRIPTION OF ADVERTISEMENT

This television advertisement features a reference to "fresh, natural Zymil". The advertisement depicts various scenes with a backing jingle, including a woman collecting a drink in a cafe; two men sitting on a couch; a man and woman at a diner table; an older man and woman on a balcony; a man and woman in a pool; a young boy and girl in a kitchen. The end of the advertisement states "Fresh, natural Zymil. The easy to digest milk. You'll love Zymil, because Zymil loves you".

THE COMPLAINT

Comments which the complainant/s made regarding this advertisement included the following:

*The ad presents the product as 'natural'.
Lactose free milk is NOT natural and is produced by modifying a natural product.*

THE ADVERTISER'S RESPONSE

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



The ZYMIL advertisement (the “TVC”) first went to air 29 March 2020. In this TVC, Zymil milk is depicted as the milk that is easy to love because it is easy to digest due to it being lactose free. The many number of scenarios throughout the TV highlight the benefits of Zymil which align to our product proposition.

A copy of the script and a digital copy of the TVC are attached.

The TVC has appeared on the programs set out in the attached spreadsheet. Given the target market for Zymil is 18+, the TVC is not directed at children and is not broadcast in programs primarily directed at children. As such, the Code for Advertising and Marketing to Children does not appear to be applicable here.

The applicable code for the complaint appears to be the AANA Code of Ethics. Lactalis rejects any notion that the TVC breaches the following provisions of the Code

- 2.1 – Discrimination of vilification;*
- 2.2 – Exploitative or degrading;*
- 2.3 – Violence;*
- 2.4 – Sex, sexuality and nudity;*
- 2.6 – Health and safety;*
- 2.7 – Distinguishable as advertising.*

The TVC itself or language employed in the TVC is not offensive or degrading. Nor is there any violence or discrimination.

The content is not offensive to children which is reinforced by the Clear Ads approval from 19 March 2020, granting the TVC a G Classification with a W Placement Code. The W Code refers to the requirement of special care with regards to placement of this TVC in programs principally directed to children. In compliance with this, Lactalis has not placed the TVC in programs principally directed to children.

The complaint “The ad presents the product as ‘natural’. Lactose free milk is NOT natural and is produced by modifying a natural product” is rejected by Lactalis and reinforced by the CAD substantiation letter attached from 18 March 2020, which highlights the below.

Zymil is made from fresh, natural dairy milk sourced from Australian dairy farms. All dairy milk contains lactose unless it is also lactose free. Lactose Free milk is whereby the naturally occurring sugars in the milk are broken down into simpler sugars of glucose and galactose. The naturally occurring sugars in Zymil are broken down into simpler sugars which results in Zymil being lactose free.

In addition to the above please see below further information to substantiate our position.

Zymil milk is made with two ingredients and both are of natural origin Milk, whether it is full cream, reduced fat and skim milk which is of course natural



The enzyme Lactase, (β -galactosidase) used in the milk to breakdown the Lactose is obtained from the fermentation process of a yeast strain and it is purified by filtration which is a natural process.

Therefore both the milk, and the enzyme used to produce Zymil are natural products.

In conclusion, Lactalis does not believe the TVC is in anyway misleading or deceptive, thus Lactalis does not believe any breach of the Code of Ethics has occurred.

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 Food Code).

The Panel noted the complainant's concern that that advertisement is misleading because lactose free milk is not natural and is produced by modifying a natural product.

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. In particular the Panel 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."

In relation to section 2.1 of the Code the Panel considered the Practice Note to the Food code which provides that:

"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 should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Panel 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 Panel noted that the advertisement states “Fresh, natural Zymil”.

The Panel noted that there is no definition of ‘natural’ in the Food Standards Australia New Zealand, however considered that the Australian Competition and Consumer Commission does have guidelines for food descriptors. The Panel noted the guidelines state:

“‘Nature’, ‘natural’, ‘mother nature’ or ‘nature’s way’ are a few terms that may be misused on food and beverage labels. These claims often suggest that a product is superior because it has certain ‘natural’ characteristics as opposed to being processed or artificial or otherwise removed from its natural form. The Macquarie Dictionary refers to something that existed in, or was formed by nature; i.e. not artificial, or something that is based on the state of things in nature; i.e. constituted by nature, or is true to nature, or closely imitating nature.

“‘Natural’ claims imply that the product is made up of natural ingredients, i.e. ingredients nature has produced, not man made or interfered with by man. It may be misleading to use the term ‘natural’ to describe foods that have been altered by chemicals. In some cases, the claim ‘natural’ is not too dissimilar to the claims of ‘contains no added food additives or artificial preservatives’, such additional qualification to the claim ‘natural’ is helpful in producing a label that is unlikely to mislead the consumer.

“Consumers may view what is ‘natural’ differently to manufacturers and food technologists. When providing a label with a claim that the product is ‘natural’, thought should be given to what the consumer would think. In those cases where the term ‘natural’ meets a technical definition, a code or a standard, and this information is not available to the consumer, the consumer is left to draw their own conclusion and may therefore be misled.”

The Panel noted the information provided by the advertiser regarding how the lactose free milk product is produced – “Lactose Free milk is whereby the naturally occurring sugars in the milk are broken down into simpler sugars of glucose and galactose. The naturally occurring sugars in Zymil are broken down into simpler sugars which results in Zymil being lactose free.”

The Panel considered that while the product has been slightly modified in order to produce a product that is lactose free, such a modification is likely to be considered by most consumer to be “closely imitating nature” in that it has no additives or chemicals but rather has the lactase enzyme added to break down the lactose.



The Panel considered that the advertisement did make a claim about the product depicted in the advertisement being natural and that this claim, in the context of the advertisement under complaint and the response provided by the advertiser, was not misleading. The Panel determined that the advertisement did not breach Section 2.1 of the Food Code.

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