



Ad Standards Community Panel
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AdStandards.com.au

Ad Standards Limited
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Case Report

1. Case Number :	0322-21
2. Advertiser :	A2 Milk
3. Product :	Food/Bev Groceries
4. Type of Advertisement/Media :	Radio
5. Date of Determination	24-Nov-2021
6. DETERMINATION :	Dismissed

ISSUES RAISED

AANA Food and Beverages Code\2.1 Not misleading or deceptive

DESCRIPTION OF ADVERTISEMENT

This radio advertisement is for A2 milk. The voicover states:

When people say they feel happy about making the switch to 'a2 Milk',
You're probably wondering; What's the 'a2 Milk' difference?
'a2 Milk' comes from cows hand-picked to naturally produce only the A2 protein –
and no A1.

It's completely natural and every drop of fresh 'a2 Milk' is 100% Australian milk.
To see if you FEEL the a2 Milk difference, look for the purple a2 cow on the bottle to
be sure it's fresh, natural a2 Milk from The a2 Milk Company.
Milk as nature intended with only all natural A2 protein.
a2 Milk; More good please.

THE COMPLAINT

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

*I object to one of the statements they make in the advertisement. They use the tag line "Enjoy milk as nature intended with ONLY all natural A2 protein."
This implies that ONLY A2 protein in milk is natural, and thus milks which contain both A1 and A2 proteins are in some way un-natural.*



I believe this is deceptive and mis-leading and I am just tired of companies trying to guilt people to use their products.

Yes their milk is a point of difference, and for some people I am sure it is easier for them to consume, but ONLY A2 protein is not as nature intended, or ALL cows would make milk with only the A2 protein and not a mixture of both.

Disclaimer: I do not work for a milk or dairy related company (nor does anyone related to me), however I have worked in the infant formula industry in a previous role.

THE ADVERTISER'S RESPONSE

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

1.1 Based on the description provided in the complaint, we believe that the advertisement the subject of the complaint (Advertisement) is a live read advertisement in relation to our a2 Milk™ product which was broadcast on the SmoothFM radio station in Sydney from around 27 September 2021 to 7 November 2021. We enclose a copy of the full script of the Advertisement as well as one example of the live read in the attached digital copy of the Advertisement.

The Advertisement was broadcast on the SmoothFM radio program, which is directed at an adult audience. The target audience for the Advertisement is main grocery buyers from 25-54 years of age.

2.1 Compliance with the Code of Ethics

The Advertisement is required to comply, and does in fact comply, with the Code of Ethics. We refer to Section 2 of the Code of Ethics which regulates consumer complaints and confirm that the Advertisement:

- (a) does not portray people or depict material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual orientation, religion, disability, mental illness or political belief;*
- (b) does not employ sexual appeal in any manner, including a manner which is exploitative or degrading of any individual or group of people;*
- (c) does not present or portray violence;*
- (d) treats sex, sexuality and nudity with sensitivity to the relevant audience;*
- (e) uses language which is appropriate in the circumstances (including appropriate for the relevant audience and medium) and avoids strong or obscene language;*



(f) does not depict material contrary to Prevailing Community Standards on health and safety; and

(g) is clearly distinguishable as advertising to the relevant audience.

Further, we confirm that the Advertisement complies with Prevailing Community Standards in respect of its treatment of each of the areas outlined from paragraphs (a) to (f) above.

2.2 The Children’s Advertising Code, Environmental Claims Code, and Wagering Advertising Code do not apply to the Advertisement

Section 3 of the Code of Ethics states that:

If the Advertising or Marketing Communication is directed primarily to children, the Children’s Advertising Code may also apply.

The Advertisement is not directed primarily to children, having regard to the theme and language used. Rather, the Advertisement is primarily directed towards an adult demographic. Accordingly, the AANA Code for Advertising & Marketing Communications to Children does not apply to the Advertisement.

Section 3 of the AANA Code of Ethics also states that:

Depending on the nature of the product or service being advertised, these other AANA codes may also apply:

- Food & Beverages Advertising Code*
- Environmental Claims Code*
- Wagering Advertising Code*

Neither the Environmental Claims Code nor the Wagering Advertising Code apply having regard to the nature of the product being advertised as well as the nature of the claims being made in the Advertisement.

2.3 Application of Food & Beverages Advertising Code

The Advertisement is, however, required to comply with the Food & Beverages Advertising Code given that the Advertisement is for a beverage, being milk.

We refer to the following key obligation under the Food & Beverages Advertising Code:

Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive. [1]



In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the Community Panel will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The Community Panel will consider whether or not an Average Consumer within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement. [2]

The Advertisement complies with the Food & Beverages Advertising Code for the reasons set out below.

3. Our detailed response to the complaint

3.1 Executive summary

We refer to the complainant's allegations that the tagline "Milk as nature intended with only all natural A2 protein" (Tagline) is misleading and deceptive because the complainant alleges that:

- The Tagline implies that "ONLY A2 protein in milk is natural, and thus milks which contain both A1 and A2 proteins are in some way un-natural", when this is not in fact the case; and*
- The Tagline asserts that "ONLY A2 protein in milk is natural" when in fact "ONLY A2 protein is not as nature intended, or ALL cows would make milk with only the A2 protein and not a mixture of both".*

The alleged representations have not in fact been made, having regard to the overall themes of the Advertisement, the net takeout for the Average Consumer in the target audience, and the wording of the Tagline. Instead, the Tagline simply makes the following representations, which can be fully substantiated:

- a2 Milk™ is natural; and*
- The A2 beta-casein protein type is natural.*

We have set out our detailed response on each of these issues below.

3.2 Background to A1 and A2 protein

The terms "A1 and A2 protein" as used in the Advertisement refer to A1 and A2 beta-casein protein types.

Cows' milk contains a number of different protein types, including beta-casein protein which makes up around a third of the protein in cows' milk.[3] The two main beta-casein protein types found in most regular cows' milk today are A1 and A2 beta-casein protein types.[4]



Originally, all cows produced milk containing only the A2 beta-casein protein type.[5] However, due to selective breeding of dairy cows, over time a genetic mutation occurred as a result of which the A1 beta-casein emerged and became more common in cows' milk.[6]

The genetic makeup of a particular cow will determine the type of beta-casein proteins contained in the milk which it produces. For instance, some cows will naturally produce milk containing only the A1 beta-casein protein type; other cows will naturally produce milk containing both A1 and A2 beta-casein protein types; and other cows will naturally produce milk containing only the A2 beta-casein protein type.[7]

All a2 Milk™ is sourced from cows which naturally produce milk containing only the A2 beta- casein protein type.

3.3 Interpretation of the Advertisement by an Average Consumer

The Advertisement is true, accurate, and not in any way misleading or deceptive on the basis that:

- The alleged representations do not reflect how an Average Consumer would be likely to interpret the Advertisement; and*
- All representations which have in fact been made in the Advertisement can be fully substantiated.*

The complaint relies upon an assumption that the Tagline contains an express or implied assertion that the product is “Milk as nature intended” because it contains “only all natural A2 protein”. However, this interpretation goes against a natural reading of the specific wording of the Tagline when heard in the context of the Advertisement as a whole, as well as the overall impression created by the Advertisement.

The Tagline specifically uses the word “with” between the two concepts of “Milk as nature intended” and “only all natural A2 protein”. The word “with” is a neutral linking word, which does not carry any connotations of cause and effect. Accordingly, an Average Consumer within the target audience would interpret the Tagline as meaning simply that the product is both “Milk as nature intended” and contains “only all natural A2 protein”.

The Tagline effectively summarises the overall message of the Advertisement, which is that:

- a2 Milk™ is natural; and*
- The A2 beta-casein protein type is natural.*



This message is reflected in the earlier references in the Advertisement to the fact that the A2 beta-casein protein type is “naturally produced” by “hand-picked cows” and also that a2 Milk™ is “completely natural”. These references are designed to reassure the consumer that there is in fact nothing unnatural about a2 Milk™ and how it is produced. These claims have been included to address the fact that consumers do not necessarily know what the A2 beta-casein protein type is. That is, we have received feedback from consumers wanting to understand whether the A2 beta-casein protein type is some form of additive or other unnatural ingredient in the product. The Advertisement therefore explains that the A2 beta- casein protein type is natural and that our milk is natural.

3.4 Specific substantiation for Tagline complained about

Our a2 Milk™ is natural

We confirm that a2 Milk™ is “Milk as nature intended” because it is in fact natural cows’ milk which has not been modified or processed in any manner which would detract from its “naturalness” in the eyes of an Average Consumer within the target audience. Whilst a2 Milk™ has been pasteurised and homogenised, these are very common processes for producing commercial milk and would not affect an Average Consumer’s view of whether or not a product is a natural milk product.

The A2 beta-casein protein type is natural

As discussed above, the A2 beta-casein protein type is a naturally occurring protein in cows’ milk. Moreover, the A2 beta-casein protein type was the original milk protein in the sense that it preceded all other beta-casein protein types in cows’ milk, including the A1 beta- casein protein type. Hence, it is entirely natural for cows to produce milk which contains only the A2 beta-casein protein type.

4. Conclusion

For the reasons set out above, we believe that:

- (a) the Advertisement is not misleading or deceptive or otherwise in contravention of prevailing community standards; and*
- (b) does not contravene the AANA Food & Beverages Advertising Code or the AANA Code of Ethics.*

Therefore, we believe the complaint should be dismissed.

If you require any further details about any matters associated with this complaint, we would be happy to assist in providing those.

Notes

1 Food & Beverages Advertising Code – Section 2.1.



2 *Food & Beverages Advertising Code – Practice Note, Section 2.1.*

3 *Pieter Walstra and Robert Jenness, Dairy Chemistry and Physics (Wiley-Interscience, 1st ed, 1984).*

4 *Mohammed R Ul Haq, β -Casomorphins: A1 Milk, Milk Peptides and Human Health (Springer, 2020).*

5 *Patrick F Fox and Paul McSweeney (eds), Advanced Dairy Chemistry (Springer, 3rd ed, 2003).*

6 *Mohammed R Ul Haq, β -Casomorphins: A1 Milk, Milk Peptides and Human Health (Springer, 2020).*

7 *Mohammed R Ul Haq, β -Casomorphins: A1 Milk, Milk Peptides and Human Health (Springer, 2020).*

THE DETERMINATION

The Ad Standards Community Panel (the Panel) considered whether this advertisement breaches the AANA Food and Beverages Advertising Code (the Food Code).

The Panel noted the complainant's concern that the advertisement suggests that only the A2 protein in milk is natural and that milks containing other proteins are unnatural.

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

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

Section 2.1 Advertising for Food or Beverage Products must not be misleading or deceptive or likely to mislead or deceive.

The Panel Noted the Practice Note to this section of the Food Code which provides:

"In determining whether advertising for food or beverage products is misleading or deceptive or likely to mislead or deceive, the Community Panel will consider the likely audience for the advertising, including whether the advertisement is directed at the public at large or a more targeted audience. The Community Panel will consider whether or not an Average Consumer within the target audience would have been misled or deceived or likely to be misled or deceived by the advertisement."

The Panel noted that the target audience for this advertisement would be anyone listening to the radio station that the advertisement was broadcast on.

The Panel noted the advertiser's response that the advertisement heavily promotes the natural aspect of the A2 protein due to consumers potential confusion about the protein, and to correct assumptions that the A2 protein is in some way unnatural or man-made.



The Panel noted that the voiceover states “Milk as nature intended with only all natural A2 protein”. The Panel considered that most members of the community would interpret the advertisement as stating that the product contains only the (all natural) A2 protein and not any other protein, rather than suggesting that only the A2 protein is natural.

The Panel considered that the advertisement does not disparage products containing the A1 protein, nor does it suggest that the A1 protein is unnatural. The Panel considered that the advertisement only makes comments about the A2 protein and considered that most members of the community would not find the advertisement to be misleading or deceptive.

Section 2.1 Conclusion

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

Conclusion

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