



Case Report

1	Case Number	0323/12
2	Advertiser	Lion
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	08/08/2012
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The Advertisement depicts a dairy farmer walking towards a table with two glasses displayed – one next to a generic milk carton and one next to a PURA milk carton. The dairy farmer states "Us dairy farmers know that not all milk's the same. Some contain something you can't see. They're diluted with a by-product called permeate". The dairy farmer then pours some of the generic milk into the first glass and holds it up to show that the milk comprises two components, one of which is depicted as a watery layer at the bottom of the glass. The dairy farmer then states "PURA fresh milk, on the other hand, isn't diluted with anything". He pours some of the PURA milk into the second glass and holds it up to show that there is no second component at the bottom of the glass. He then states "Every drop of PURA milk is milk. Pure, simple, permeate free. And that's the way milk should be".

THE COMPLAINT

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

My complaint is that the first glass does not contain permeate in the bottom of it as permeate is soluble in milk and therefore the milk should not be seen floating on top of this clear liquid (whatever it is) This ad is misleading as to what permeate actually is and is trying to give the impression it is foreign to milk which it is not as it is a fraction of milk.

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 dated 24 July 2012 regarding the complaint received by the Advertising Standards Bureau (ASB) about Lion's television advertisement for PURA's new permeate free milk (Advertisement). We have considered the complaint and, for the reasons set out below, submit that the complaint should be dismissed.

The Advertisement first aired on television on 1 July 2012. Between the period 1 July and 28 July (inclusive) the Advertisement was viewed by approximately 14.5 million viewers comprising:

(a) 10 million metro viewers, based on the rating of programmes during which the Advertisement was aired; and

(b) 4.5 million regional viewers based on the rating of programmes during which the Advertisement was aired except in Queensland and in NSW which can't be post analysed and are therefore based on what was booked by Lion's media buying agency.

Since the Advertisement first aired on television, Lion has not received any complaints or queries from any consumers or competitors regarding the Advertisement, other than the complaint currently under consideration.

History and context of the Advertisement

It is generally accepted and undisputed amongst milk manufacturers that permeate is a watery by product of milk and is added to many milks in order to dilute the milk and standardise protein levels. Once added to milk, it is unseen. Until recently, Lion's PURA milk products were produced using permeate as an additive.

The presence of permeate in milk has been the subject of considerable media attention over the past 6 to 12 months. Reports have featured on a number of news reports and current affairs television shows, including most recently on Today Tonight which reported on "Lion's decision to eliminate permeate – a watery by-product" from its PURA and DAIRY FARMERS milk products. You can view the report at <http://au.news.yahoo.com/today-tonight/article/-/14035566/permeates-in-milk/>. The media attention given to this topic has greatly increased awareness amongst consumers as to the nature and origin of permeate. Some recent media articles are attached as Annexure 2 by way of example.

Lion's decision to remove permeate from its PURA milk products and change its PURA milk recipe was made in direct response to growing consumer concern about the presence of permeate in milk.

The Complaint

The complaint alleges that the Advertisement is misleading because "permeate is soluble in milk and therefore should not be seen floating on top of this clear liquid".

The complaint also alleges that the Advertisement is "misleading as to what permeate actually is and is trying to give the impression it is foreign to milk, which it is not as it is a fraction of milk."

The ASB has therefore raised this issue under Section 2 of the AANA Code of Ethics (Code of Ethics) which incorporates the AANA Food and Beverages Marketing and Communications Code (Food and Beverages Code). Section 2.1 of the Food and Beverages Code provides that "Advertising or Marketing Communications for Food or Beverage Products 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."

Response to the complaint

We consider the Advertisement to be compliant with Section 2.1 of the Food and Beverage Code for the reasons set out below.

Messages conveyed

The overall message conveyed by the Advertisement, when viewed as a whole, is that PURA milk (unlike some other milks) does not contain any permeate.

More specifically, the Advertisement conveys the following messages:

- (a) some other milks have a by-product known as "permeate" added to them;*
- (b) permeate is watery in appearance;*
- (c) permeate is unseen once added to milk; and*
- (d) PURA milk (unlike some other milks) does not contain any permeate.*

Each message conveyed by the Advertisement, as described above, is factually correct and can be substantiated.

Substantiation

The messages conveyed about permeate in the Advertisement are entirely consistent with scientifically accepted information regarding the nature and origin of permeate and with information published by Lion on its official PURA website (www.pura.com.au) regarding the nature and origin of permeate, including the fact that it is a watery by-product of milk that is often added back into milk for the purpose of diluting the milk and standardising protein levels. The official PURA website includes a short video for consumers that explains how milk is made and the process by which permeate is often extracted and then added back into milk. You can view the video at <http://www.pura.com.au/permeatefree/>.

The Advertisement includes a visual depiction of a glass of milk with two components, a white layer of milk and a watery layer intended to depict permeate and distinguish it from the rest of the milk. The depiction of the second component at the bottom of the first glass (but not at the bottom of the glass of PURA milk) illustrates visually to the average consumer that permeate is present in some milks but not PURA. The corresponding voice-over makes it clear that permeate is something "you can't see". Both of these messages are factually correct. The representation of the second component (namely permeate) at the bottom of the glass is an appropriate visual representation of something that is an unseen by-product of milk. In any event, the average consumer is likely to understand from personal experience that milk does not come with a separate layer of watery liquid. Anyone who has poured themselves a glass of milk will be aware of this fact.

We do not, therefore, accept the complainant's argument that the depiction of the second component at the bottom of the first glass is misleading because permeate is in fact "soluble". The average consumer will understand that the image is for illustrative purposes only and is used to visually communicate the fact that permeate is in some milks and not others, and is not intended to be a scientific representation of the solubility or non-solubility of permeate in milk. The overall message conveyed is that permeate is an unseen watery by-product present in some milks but not PURA, and this message is factually correct. Any consumer who is caused to wonder how permeate is produced or added to milk in the manufacturing process can seek out that information from other sources, including via the PURA website.

We further note that, in preparing the Advertisement, Lion measured the average amount of permeate added to its existing PURA milks. The visual depiction of the second component at the bottom of the glass is consistent with those findings so as not to mislead consumers as to the average amount of permeate present in a standard glass of milk.

The voice over describes permeate as a "by-product". The Macquarie Dictionary defines "by-product" as "produced as a secondary or incidental product". The term "by-product" is

therefore, by definition, a secondary product of something else. In our view, this definition is consistent with the average consumer's understanding of the meaning of the word "by-product".

The statement that permeate is a "by-product" is made in the context of milk and while the dairy farmer is holding up a carton of milk. No other product is mentioned in the Advertisement or in relation to the statement that permeate is a "by product". When used in the context of milk, the statement conveys the message that permeate is a by-product of milk as opposed to a foreign substance. We therefore do not accept the complainant's argument that the Advertisement is misleading as to what permeate actually is or that the Advertisement gives the impression that permeate is foreign to milk. On any view, it is factually correct to say that permeate is a by-product and is added to some milks, and this is the central message conveyed by the Advertisement.

Furthermore, we note that the media attention given to the topic of permeate in milk over the past 6 to 12 months has greatly increased awareness amongst consumers as to the nature and origin of permeate, including the fact that it is a by-product of milk itself and is not a foreign substance. If other consumers viewing the Advertisement are caused to wonder about the details of how permeate is created, or are interested to find out, there are many sources of detailed information available online, including our own PURA website.

Conclusion

It is important that food manufacturers are able to convey messages to consumers, including messages about changes to its recipes and processes of manufacture, in a simple, easy to understand manner provided such messages are truthful, honest and not misleading, and are appropriate to the level of understanding of the target audience.

The central messages conveyed by the Advertisement, as described in paragraphs 4.1 and 4.2 above, are communicated truthfully and honestly, and are not misleading or likely to mislead. They are also conveyed in a manner that is appropriate to the level of understanding of the target audience regarding permeate, and consistent with scientifically accepted information amongst milk manufacturers regarding the nature and origin of permeate. We therefore consider that the complaint should not be upheld.

Thank you for taking the time to consider our response. We look forward to receiving the ASB's determination in this matter.

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 complainant's concern that the advertisement is misleading in its representation of what permeate actually is.

The Board viewed 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 depicts a 'farmer' walking towards a table talking about the addition of permeate to milk and then pours milk onto the top of a clear liquid in a glass. He then pours more milk into a second glass saying that Pura milk is permeate free.

The Board accepted the advertiser's response that it is generally accepted amongst milk manufacturers that permeate is a watery by product of milk and is added to many milks in order to dilute the milk and standardise protein levels. Once added to milk, it is unseen.

The Board considered the complainants concerns that the image shown reflects the permeate in milk as a separate entity to the milk rather than a soluble component of the milk.

The Board considered that the advertisement shows a watery layer in the glass intended to depict permeate and distinguish it from the rest of the milk. The Board noted that this depiction is to provide a visual representation of the presence of permeate in milk to assist viewers to understand a concept not a reflection of what permeate actually looks like. The Board noted that the second glass of milk is poured without the presence of the liquid substance in the glass to provide the visual contrast for viewers and an opportunity for the advertiser to promote their Pura brand over other brands of milk.

The Board noted that the voice-over states that permeate is something "you can't see".

The Board noted that the advertiser offers information regarding the substantiation of the claims made about permeate on their website at website (www.pura.com.au).

The Board determined that on balance, the visuals and the voiceover provided information that was appropriate to the level of understanding of the target audience and was not communicated in a manner that was designed to be misleading or deceptive to the extent that it would breach the 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 other grounds, the Board dismissed the complaint.