



## Case Report

<b>1</b>	<b>Case Number</b>	<b>0440/11</b>
<b>2</b>	<b>Advertiser</b>	<b>A2 Milk</b>
<b>3</b>	<b>Product</b>	<b>Food and Beverages</b>
<b>4</b>	<b>Type of Advertisement / media</b>	<b>TV</b>
<b>5</b>	<b>Date of Determination</b>	<b>23/11/2011</b>
<b>6</b>	<b>DETERMINATION</b>	<b>Dismissed</b>

### ISSUES RAISED

Food and Beverage Code      misleading nutritional/health comparisons

### DESCRIPTION OF THE ADVERTISEMENT

Various people are shown drinking milk and saying "Thank you, a2" whilst a voiceover says that "About one in four Australians say they have trouble drinking regular milk" and that a2 may be suitable for people who find that drinking milk makes them feel uncomfortable. A disclaimer at the bottom of the screen states that a2 milk is not suitable for people with cows' milk protein allergy or a lactose intolerance.

### THE COMPLAINT

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

*While the ad is implying that A2 milk is a better or even suitable choice for those who have adverse reactions to milk there is fine print across the bottom of the screen that disclaims everything they are implying in the ad. The ad is dangerous as it implies drinking the milk is a good and healthier choice and suitable for all those mother's that have children who can't drink milk which is generally related to lactose intolerance. This milk still contains lactose and the benefits are yet to be proved even their own research on their website warns against any possible benefits that may arise from drinking milk with only A2 proteins in it! I assume because they have put that incredibly small fine print on the bottom that says they are pretty much lying in this advert that they can still make ridiculous claims and purport that they have a healthier alternative to 'normal' milk? The ad is misleading at best and a risk to lay people's health at worst. This is the best I can articulate this and I hope this complaint is*

*enough however I am so disgusted by the blatant disregard for health and the obvious manipulation of this form of advertising that I am willing to do more research and spend more energy to write a better complaint should you think there is cause for concern and complaint over this particular advertisement. I don't feel just boycotting the product and telling people I know about it as I normally would do with advertising (as most of it is insidious) is enough with this advert. I am worried that parents who watch this advert may give the A2 milk to their children without actually reading the fine print at the bottom which is cleverly camouflaged in with the bright white themes of the ad (and some people only hear ads while they are making a coffee etc). Everyone knows MacDonald's is not a healthy option but to be manipulating a milk product and calling it a healthier option is deceptive and as I said before dangerous possibly fatal.*

## **THE ADVERTISER'S RESPONSE**

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

*We believe that the advertisement complies with all of the sections of the AANA Code of Ethics. Specifically with respect to section 2 of the Code, the advertisement:*

- 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, sex, age, sexual preference, religion, disability or political belief;*
- does not present or portray violence;*
- does not portray sex, sexuality and nudity;*
- does not use strong or obscene language;*
- does not depict material contrary to Prevailing Community Standards on health and safety; and*
- is not advertising for a motor vehicle.*

*Section 2.4 of the AANA Code of Ethics states that: "Advertising or Marketing Communications to Children shall comply with the AANA's Code of Advertising & Marketing Communications to Children".*

*The relevant advertisement, having regard to the theme, visuals and language used, is not directed to children. Further, the a2 Milk <sup>TM</sup> product is not a product primarily directed to Children. The media schedule for the television advertisement is attached.*

*The advertisement has not been placed in programming that has a predominant child audience or in a program directed to children.*

*Therefore, the AANA Code for Advertising & Marketing Communications to Children does not apply.*

*Section 2.8 of the AANA Code of Ethics states that: 'Advertising or Marketing Communications for food or beverage products shall comply with the AANA Food & Beverages Advertising & Marketing Communications Code as well as to the provisions of this Code'.*

*The advertisement is for a beverage and therefore is subject to the AANA Food & Beverages Advertising & Marketing Communications Code.*

*As you know, Section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code states: "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."*

*Additionally section 2.1 of the AANA Food & Beverages Advertising & Marketing Communications Code - Practice Note states that: "The Board 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 advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest. "*

*We regard the information taken from the advertisement by an average consumer in the target market to be truthful and honest; in full compliance with the AANA Food & Beverages Advertising & Marketing Communications Code. Our response to the complaint in this regard is set out below.*

*Background to a2 Milk <sup>TM</sup>*

*By way of background to the a2 Milk <sup>TM</sup> product, there are three types of cow: A1 cows, A1/A2 cows and A2 cows. A1 cows produce milk that contains A1 beta-casein protein, not A2 beta-casein protein. A2 cows produce milk that contains A2 beta-casein protein, not A1 beta-casein protein. All A2 cows produce milk that contains A1 and A2 beta-casein protein. Regular dairy milk (Regular Milk) is sourced from uncharacterised ratios of milk from A1 cows and/or milk from A1/A2 cows and/or milk from A2 cows. a2 Milk <sup>TM</sup> is sourced from A2 cows.*

*We source milk from A2 cows because current, credible and developing scientific opinion suggests that certain discomfort some consumers experience following consumption of Regular Milk may be caused by an adverse reaction to betacasomorphin- 7 (BCM-7). BCM-7 is released by the body on digestion of A1 beta-casein protein but is not released by the body on digestion of A2 beta-casein protein.'*

*Our website (<http://www.a2milk.com.au/scientific-resources/disclaimer.php>) sets out the developing body of science which suggests that, at least for a proportion of those consumers who experience discomfort after drinking Regular Milk, the cause of their discomfort may be an adverse reaction to BCM-7 which is released by the body on digestion of the A1 beta-casein (but not A2 beta-casein) protein present in Regular Milk.*

*For the reasons set out above, a2 Milk <sup>TM</sup> may be a suitable alternative to Regular Milk for some people who suffer discomfort after drinking Regular Milk, (due to a reaction to BCM-7, not lactose). We believe that many of those consumers may have self diagnosed their intolerance as lactose intolerance when in fact this is incorrect.*

*Response to complaint*

*The advertisement for a2 Milk <sup>TM</sup> is not misleading in breach of the AANA Food & Beverages Advertising & Marketing Communications Code. A consumer's trouble with drinking Regular Milk may result from a number of factors, not just medically diagnosed lactose intolerance. As noted earlier, independent scientific research shows that some consumers experience discomfort after drinking Regular Milk, due to an intolerance reaction when digesting the A1 milk protein. a2 Milk <sup>TM</sup> may provide an alternative to Regular Milk for those consumers. Therefore, the claims made in the advertisement are not misleading.*

*We respond directly to each of the complainant's specific allegations below.*

*Firstly, the complainant alleges that: "While the advertisement is implying that A2 milk is a better or even suitable choice for those who have adverse reactions to milk, there is fine print across the bottom of the screen that disclaims everything they are implying in the ad."*

*The complainant's statement presupposes that lactose intolerance is the only cause of an adverse reaction to milk. As mentioned above, a2 Milk™ may be a suitable or better choice than Regular Milk for those consumers who may be experiencing troubles with the digestion of the A1 beta-casein protein contained in Regular Milk. We submit that the super at the bottom of the advertisement is not disclaiming "everything that is implied in the ad" but rather clearly identifying certain classes of persons for whom a2 Milk™ will not be suitable. The purpose of the super is to make it clear to consumers with medically diagnosed lactose intolerance and cow's milk protein allergy that the product is not suitable for their specific intolerance response to milk.*

*Secondly, the complainant alleges that: "The ad is dangerous as it implies drinking the milk is a good and healthier choice and suitable for all those mother's that have children who can't drink milk, which is generally related to lactose intolerance. This milk still contains lactose and the benefits are yet to be proved, even their own research on their website warns against any possible benefits that may arise from drinking milk with only A2 proteins in it" As noted earlier, an increasing body of scientific evidence suggests that for certain people who cannot drink milk, the issue may be an intolerance response to digesting the A1 milk protein. The advertisement certainly makes no suggestion that a2 Milk™ is suitable for all mothers that have children who can 't drink milk. In fact, as noted earlier, the disclaimer is designed to make it clear that a2 Milk™ is not suitable for those consumers with medically diagnosed lactose intolerance.*

*Further, the advertisement at no stage makes the claim that a2 Milk™ does not contain lactose. The advertisement in fact states, "change your life, change your milk". This evidences a fact that the target here is largely existing milk drinkers who may experience discomfort following their consumption of Regular Milk. As for the allegation regarding our website, our website includes the disclaimer: "A2 Dairy Products Australia does NOT make any representation as to the health benefits of A2 dairy foods compared with non-A 2 dairy foods."*

*This statement is designed to reflect the fact that A2 Dairy Products Australia is relying on scientific studies conducted by independent third parties and that the representations being made in those scientific studies are representations of the authors of the studies, not A2 Dairy Products Australia.*

*Thirdly, the complainant expresses concern that: "parents who watch this advert may give the A2 milk to their children without actually reading the disclaimer."*

*However, we contend:*

*(a) that the disclaimer is clear enough, and on the screen for long enough in the context of the whole advertisement, that consumers will be able to read the disclaimer;*  
*(b) the words "change your milk" at the end of the commercial indicate that the advertisement is targeting existing milk drinkers, not those who currently do not drink milk at all; and a consumer with medically diagnosed lactose intolerance falls into a class of sophisticated consumer who would review the actual product more carefully than other classes of consumer, as the only way to avoid symptoms of lactose intolerance is to avoid purchasing and consuming foods containing lactose. In this regard, we note that in addition to the disclaimer set out in the television commercial, the packaging on the product itself also makes it quite clear that the product is not suitable for consumers with medically diagnosed lactose intolerance or cow's milk protein allergy.*

*Finally, the complainant alleges that the disclaimers are: "cleverly camouflaged in with the bright white themes of the ad".*

*However, the text of the disclaimers appears in a black colouring that contrasts with the white background and in a font size that is large enough to read. The disclaimers appear on the screen for approximately five seconds and over a number of screen shots, which,*

*considering the short word length of the disclaimers provides sufficient time for the consumer to read the disclaimers.*

#### *Conclusions*

*For the reasons set out above, we believe that:*

*(a) the advertisement for a2 Milk™ is not misleading; and*

*(b) does not contravene the AANA Food & Beverages Advertising & Marketing Communications Code or the AANA Code of Ethics.*

*Therefore, we believe the complaint should 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).

The Board noted the complainant’s concern that the advertisement is misleading because it implies that A2 milk is healthier than normal milk and is suitable for people who can’t drink normal milk.

The Board reviewed the advertisement and noted the advertiser’s response.

The Board determined that the advertisement is not directed to children or likely to appeal to children and that the AANA Code for Advertising and Marketing Communications to Children does not apply.

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 the explanatory notes to the Food Code prepared by AANA which, in relation to Section 2.1, provide:

“The Board 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 advertisements and/or marketing communications should be truthful and honest, the Board will consider whether the information most likely to be taken from the advertisement by an average consumer in the target market would be reasonably regarded as truthful and honest.

In testing the requirement that advertisements and/or marketing communications should not be designed to be misleading or deceptive, or otherwise contravene prevailing community standards, the Board 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, advertising and/or marketing communications may make reference to one or more of the nutritional values and/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 Board noted that the advertisement states that “about one in four Australians say they have trouble drinking regular milk” and that A2 milk may be suitable for those people. The Board noted that there is a disclaimer at the bottom of the screen which states that A2 milk is not suitable for people with cows’ milk protein allergy or a lactose intolerance.

The Board considered the statements to be conveying a message to a reasonable consumer that A2 milk can be suitable for some people who feel uncomfortable drinking regular cows’ milk, and not that A2 milk is suitable for everyone.

The Board noted that the advertisement does not make any claims that other milk is not good for you and considered that the statements in the advertisement are not misleading or deceptive.

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 any grounds, the Board dismissed the complaint.

