



CASE REPORT

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| 1. Complaint reference number | 355/09 |
| 2. Advertiser | Nutricia Australasia Pty Ltd |
| 3. Product | Food & Beverage |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | Health and safety – section 2.6 |
| 6. Date of determination | Wednesday, 12 August 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

Television advertisement with a party for a one year old toddler. The child is shown to share a spoon with one of his friends. The advertisement then shows the toddler drinking Karicare Gold plus. The voice over states that Karicare Gold plus supports your toddler's immune system.

THE COMPLAINT

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

1. The advertisement is misleading and does not promote a healthy lifestyle. The best way to support your child's immune system is to breastfeed them. Breast milk contains unique antibodies from the mothers system that cannot be replicated in artificial milk. Research has consistently shown that breastfed children have lower incidences of illnesses such as gastroenteritis. The advertisement has taken one of the unique and special properties of breast milk, and promoted it as something their product provides. This is misleading and unethical. There is no mention in the advertisement of breastfeeding being the best way to promote your child's health and immune system. It is easy to see how an unsuspecting consumer may assume that your product is required to give their child the best health, when in fact they would be better off continuing to breastfeed.

2. The World Health Organisation recommends breastfeeding until your child is aged two years old. The advertisement promotes the use of infant formula as soon as your child turns one. This is in conflict with the WHO recommendations and contributes to a culture where breastfeeding of older babies and toddlers is marginalised and the use of formula or other foods is considered the norm. The rates of Australian babies 6 months, 12 months and older who are still breastfeeding are far too low and this advertisement contributes to this problem.

3. Although the advertisement is ostensibly for a "toddler" product, and not a "from birth" formula, the company also sells infant formula with the same brand name and packaging, and the same claims about these special ingredients (probiotics and omega 3) protecting the baby's immune system. This advertisement is a back-door way to promote the company's infant formula. A parent may see this advertisement and therefore think that they will not be compromising their child's health by using artificial milk instead of breast milk, because the nutricia formula will still support their immune system. Promoting the immunological benefits of any artificial infant or toddler milk is unethical unless consumers are clearly provided with information that breast milk is the best substance for supporting children's immune system.

There is no mention of breast milk being a superior product for toddlers which contravenes world health guidelines which recommend that children up to the age of 2 years of age have breast milk rather than formula. This ad also helps to normalise the use of formula rather than breast milk (the superior source of food) and I object to this it impedes work being done to promote breastfeeding newborn babies, infants and toddlers. This is despite the vast body of evidence available to support the benefits of breast milk for children over formula.

This extract is taken from WHO website

http://www.who.int/child_adolescent_health/topics/prevention_care/child/nutrition/breastfeeding/en/index.html

"Over the past decades, evidence for the health advantages of breastfeeding and recommendations for practice have continued to increase. WHO can now say with full confidence that breastfeeding reduces child mortality and has health benefits that extend into adulthood. On a population basis, exclusive breastfeeding for the first six months of life is the recommended way of feeding infants, followed by continued breastfeeding with appropriate complementary foods for up to two years or beyond."

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

Thank you for your advice of the complaints alleging a breach by Nutricia to Section 2 of the AANA Advertiser Code of Ethics.

It is important to note that this complaint has previously been submitted to the Advisory Panel of Marketing in Australia of Infant Formula (APMAIF) for their consideration. APMAIF is the Australian interpretation of the WHO Code for the marketing of breast milk substitutes. The APMAIF decision confirmed the Nutricia view that this advertisement for toddler supplement was not in breach of the MAIF Agreement. Similarly, Nutricia would argue that this advertisement does not breach the ANNA Advertiser Code of Ethics (Code of Ethics).

It should also be noted that Nutricia takes all steps to ensure that our advertising meets our regulatory and self-regulatory requirements and as such we reject this alleged complaint of any breach of the Code of Ethics.

Both complainants have referred to Clause 2.6 of Section 2 of the Code of Ethics that states:

2.6 Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety.

Clause 2.6 of the Code of Ethics specifies that the advertisement should be judged against Prevailing Community Standards. Nutricia would argue that the MAIF Agreement would certainly reflect prevailing community standards; and as we have already been judged by APMAIF to have not breached the MAIF Agreement with this advertisement, that we should not be found to be in breach of the Code of Ethics.

In addition to this we have addressed the specifics of the complaints with regards to Clause 2.6, below.

Complainant A alleged:

Description of Ad: Advert about the health benefits of toddler formula. The ad gives no indication that Breast Milk is actually better than the formula.

The use of Toddler Supplement is provided for with the Australia New Zealand Food Standards Code. This provides for the addition of a toddler supplement to a toddlers diet "where the diet is inadequate".

Toddler supplements have a role for toddlers when their diet is inadequate, regardless of whether they are being breastfed or receiving a milk based drink.

At no time does the advertisement for Karicare Toddler Supplement, suggest or imply that this product be used to replace breast milk. This advertisement concludes by stating the use of the product is "where the diet is inadequate" so as to clearly advise parents and carers of its possible role in the diet. This could very well be for use at times when a breastfeeding mother is unwell, has a temporary reduction in breast milk or is unavailable to feed her toddler due to a need to be apart from the toddler. In such instances a Toddler Supplement may well be used until the mother is able to continue breastfeeding to a level required by the toddler for good health.

In such instances where the mother experiences a temporary reduction in breast milk, this product may be used as an addition to breast milk in the diet of a toddler. Hence, breastfeeding and the use of Toddler Supplement are not mutually exclusive as the complaint implies.

Of course for toddlers who are no longer being breastfed, a Toddler Supplement may also be used when their diet is inadequate to meet their needs at any given time.

In summary, the ad references that toddler supplement is for when the toddler's diet is inadequate; it does not reference breast milk as inclusive or exclusive of the diet of the toddler.

Reason for Concern: There is no mention of breast milk being a superior product for toddlers which contravenes world health guidelines which recommend that children up to the age of 2 years of age have breast milk rather than formula

The Toddler Supplement is clearly positioned as an addition when the toddler's diet is inadequate (for whatever reason).

This ad also helps to normalise the use of formula rather than breast milk (the superior source of food) and I object to this it impedes work being done to promote breastfeeding newborn babies, infants and toddlers. This is despite the vast body of evidence available to support the benefits of breast milk for children over formula.

Toddler Supplements are not a 'formula' as such. Infant formulas are designed for use as total nutrition. A Toddler Supplement is quite a different product, designed to supplement the diet. The complainant refers to "babies, infants and toddlers". We presume this is referring to "babies and infants" as up to 12 months old - with toddlers being older than 12 months. This product is not suitable for infants under 12 months and the advertisement clearly shows and positions this for toddlers only, overtly stating at the beginning of the ad that the child has turned one.

Complainant B has alleged:

Description of Ad: The advertisement features images of a children's birthday party with a voice over of a woman

talking about how her "baby has just turned one". She says "he shares everything" and there are pictures of the baby taking things from another child and putting it in his mouth. The woman asks how she can protect her baby's immune system. Information is then provided about your product, stating that it contains ingredients which promote a healthy immune system in children. An image of the child drinking the formula milk from a bottle cup is shown.

Reason for Concern: 1. The advertisement is misleading and does not promote a healthy lifestyle. The best way to support your child's immune system is to breastfeed them. Breast Milk contains unique antibodies from the mother's system that cannot be replicated in artificial milk. Research has consistently shown that breastfed children have lower incidences of illnesses such as gastroenteritis. The advertisement has taken one of the unique and special properties of breast milk, and promoted it as something their product provides. This is misleading and unethical. There is no mention in the advertisement of breastfeeding being the best way to promote your child's health and immune system. It is easy to see how an unsuspecting consumer may assume that your product is required to give their child the best health, when in fact they would be better off continuing to breastfeed.

Nutricia does not dispute that breastfeeding is superior to infant formula products and toddler supplements, however, as stated above, whenever a toddler's diet is inadequate a Toddler Supplement can be of benefit. Nor would we dispute the benefits of the antibodies present in breast milk. Nevertheless, the complainant cannot assume that all toddlers are being breastfed and then come to a conclusion that seeing an advertisement for this supplement would interfere with that. Unfortunately the reality is the majority of Australian toddlers are not breastfed. This occurs as a result of a plethora of reasons. Further, there are a number of additional reasons that even a breastfed toddler may at times also require the consumption of a toddler supplement.

It should also be noted that Karicare Gold Plus Toddler Supplement for young children aged 1 - 3 years has the additional benefit of containing the unique combination of Nutricia Probiotics, Iron, Zinc and Omega 3's. This combination does support the immune system when the diet is inadequate and the scientific validation of this is well documented.

It should be noted that this may be particularly important for the toddlers being offered a Toddler Supplement, as this should be used as an addition when their diet is inadequate and in need of enrichment.

Reason for Concern: 2. The World Health Organisation recommends breastfeeding until your child is aged two years old. The advertisement promotes the use of infant formula as soon as your child turns one. This is in conflict with the WHO recommendations and contributes to a culture where breastfeeding of older babies and toddlers is marginalized and the use of formula or other foods is considered the norm. The rates of Australian babies 6 months, 12 months and older who are still breastfeeding are far too low and this advertisement contributes to this problem.

This advertisement is for a Toddler Supplement. We would strongly dispute that this is an advertisement for an infant formula. Nutricia is a signatory to the MAIF Agreement which does not permit the advertising of infant or follow-on formulas in Australia.

We would equally dispute the statement that advertisements for different products, for use after a young child turns 1 year of age, can be held accountable for the rates of breastfeeding of infants being lower than desirable.

Reason for Concern: 3. Although the advertisement is ostensibly for a "toddler" product, and not a "from birth" formula, the company also sells infant formula with the same brand name and packaging, and the same claims about these special ingredients (probiotics and omega 3) protecting the baby's immune system. This advertisement is a back-door way to promote the company's infant formula. A parent may see this advertisement and therefore think that they will not be compromising their child's health by using artificial milk instead of breast milk, because the Nutricia formula will still support their immune system. Promoting the immunological benefits of any artificial infant or toddler milk is unethical unless consumers are clearly provided with information that breast milk is the best substance for supporting children's immune system.

Again, we would stress that the advertisement is for a Toddler Supplement. The young child shown in the advertisement is clearly not an infant, as defined in the Food Standards Code as being under 12 months of age.

Whilst we do not argue that the brand is the same; i.e., Karicare; the packaging clearly states that it is for Toddlers and specifies the ages being 1 - 3 years old. Again, we would also stress that the advertisement clearly states that the product is a supplement for use when a toddler's diet is inadequate; also, clearly articulating it is for when they are over one year of age.

It may also be helpful to note that the interpretation to the MAIF Agreement does not prohibit the use of the same brand name for infant formula and follow-on formulas and toddler supplement. In fact the interpretation specifies that where the same brand is used, then any communications must ensure that it is clear which product is being referred to. This advertisement clearly states that this is for a Toddler Supplement, showing a young child.

As noted previously, this is directed at the use of the supplement when a toddler's diet is inadequate; and at such times a product that supports their immune system would be appropriate.

I would like to reiterate Nutricia's support for breastfeeding and breastfeeding mothers. This does not, however, detract from our view of the need for a Toddler Supplement to support a toddler for those times when their diet is

inadequate. It must be assumed that this view is shared by food regulators who have allowed provisions for such products to be inserted into the Food Standards Code. The Nutricia advertisement clearly positioned the supplement for such instances and therefore we do not believe that we have breached the Code of Ethics.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”) and the AANA Food and Beverages Advertising and Marketing Communications Code (the “F&B Code”).

The Board considered the application of the F&B Code. The Board noted that the F&B Code does not require advertisers to present information about alternatives to their product. The Board noted that the nutritional claims made in the advertisement were relevant to the product and considered that they were not in breach of Section 2 of the F&B Code. The Board also determined that the advertisement did not breach any other section of the F&B Code.

The Board then considered the application of Section 2.6 of the Code, relating to health and safety.

The Board considered the complainants’ objection was directed more towards the product than the advertisement. The Board noted that the advertiser has a right to advertise its legal product provided that the advertisement complies with the AANA Codes. The Board determined that the advertisement was not contrary to prevailing community standards of health, noting that there are strict rules about the marketing of infant formula and that this product is not an infant formula, and therefore found no breach of Section 2.6.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.