



CASE REPORT

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| 1. Complaint reference number | 357/09 |
| 2. Advertiser | Wyeth |
| 3. Product | Food & Beverage |
| 4. Type of advertisement | TV |
| 5. Nature of complaint | |
| 6. Date of determination | Wednesday, 12 August 2009 |
| 7. DETERMINATION | Dismissed |

DESCRIPTION OF THE ADVERTISEMENT

Television advertisement with a large tin and an individual sized ready-mixed carton of S 26 Baby Formula. The voice over describes the nutrients has important nutrients your child needs for every stage of their development – its sucrose free goodness you can take anywhere – perfect mix of science and love.

THE COMPLAINT

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

My 9 month old child is breastfed. The ad implies that I should purchase formula to give my child important nutrients that she needs at this stage of development whilst it is well known that breastfeeding is best. It is important that women who may not be aware of the health benefits of breastfeeding long term both for their children and themselves are not undermined by such advertising. This is why the MAIF agreement was published in 2003. Both my 4yo and 9yo were breastfed and never needed formula. It is important that parents are not made to feel that they should introduce formula into their children's diets just to provide them with "the important nutrients" their "child needs".

The MAIF agreement states - Clause 5: The general public and mothers 5(a) Manufacturers and importers of infant formulas should not advertise or in any other way promote infant formulas to the general public. (WHO Code Article 5.1).

THE ADVERTISER'S RESPONSE

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

The complainant alleges that Wyeth has breached Section 2.6 (Health and Safety) of the Australian Association of National Advertisers' (AANA) Code of Ethics. Section 2.6 states:

“Advertising or Marketing Communications shall not depict material contrary to Prevailing Community Standards on health and safety,”

In addition, the complainant appears to be alleging that Wyeth has breached the Marketing in Australia of Infant Formula (MAIF) Agreement 5(a) which prohibits the advertisement of infant formula. In so arguing, the complainant totally ignores the critical fact that the advertisement in question relates to toddler supplementary milk drink and not infant formula. Just as the complainant ignores the fact that the advertisement involves toddler supplementary milk drink, as distinct from infant formula, the complainant also misquotes the vocals in the advertisement, leaving out the critical word “toddler”. As you can see from the advertisement and the script, the actual words spoken are, “S-26 Gold Toddler has important nutrients your child needs for every

stage of their development.” This statement is truthful and not misleading complying with the Prevailing Community Standards on Health and Safety in Australia. The reference to important nutrients is in compliance with the Food Standards Code Part 2.9.3, which sets out the compositional and labelling requirements for formulated supplementary food for young children, aged one to three years.

Since the MAIF Agreement clearly permits the advertisement of toddler supplementary milk drink, the Wyeth advertisement does not breach the MAIF Agreement. By its compliance with the MAIF Agreement and the Food Standards Code with a truthful advertisement, Wyeth by definition is in compliance with Section 2.6 of the AANA 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.