



## Case Report

1	Case Number	0280/12
2	Advertiser	Nestle Australia Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV
5	Date of Determination	25/07/2012
6	DETERMINATION	Dismissed

### ISSUES RAISED

Food and Beverage Code      Misleading / deceptive

### DESCRIPTION OF THE ADVERTISEMENT

The Advertisement shows children actively playing in a common backyard setting with the super “Boost the Calcium of Milk by nearly 70%”

Voice over makes statements such as “Active play is very important for building strong bones. But are your kids getting enough calcium in their diet? Milk is a great source, and I love mine with MILO because it boosts the Calcium of Milk by nearly 70%. Find out more about MILO and the MILO play movement on Facebook.”

The Advertisement references a Nestlé commissioned State of Play study.

### THE COMPLAINT

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

*Milo conducted some research themselves about children's play. The ad suggests that milo be a supplement to improve the health of children. I think this is false and misleading. Milo is full of sugar and quite high in fat. It is not necessary in a balanced diet. The advertisement (and their whole campaign) attempts to make Milo a health product. It is not. I feel this advertisement is contrary to aims to reduce obesity and cavities in children. Milo have a right to advertise their product but it is a treat and should not be promoted in the same manner as Toddler formula! There is also NO connection made in the ad between how/when children play and how much calcium they may require - it uses misleading statistics/quotes to confuse the viewer.*

## THE ADVERTISER'S RESPONSE

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

*The Complainant is primarily concerned the Advertisement is 'misleading and deceptive' because it suggests that MILO will improve the health of children, contrary to the Complainants assertion that;*

- (a) MILO is a "treat"; and*
  - (b) MILO is "full of sugar and quite high in fat" and "not necessary in a balanced diet."*
- The Complainant also asserts that the Advertisement is;*
- (c) contrary to aims to reduce obesity and cavities in children; and*
  - (d) uses misleading statistics/quotes to confuse the viewer as to the connection between how/when children play and how much calcium they may require."*

*Nestlé has considered in detail the Complainant's concerns and respectfully submits that the Advertisement does not breach the Code of Ethics or the Food Code. We feel strongly that MILO has a place in a balanced diet and the MILO Play campaign including this Advertisement fits firmly within all recommendations for physical activity and dietary guidelines.*

### *Overview of the Advertisement*

*The background to this Advertisement and the MILO Play Campaign as a whole is based around the body of scientific evidence which considers that the best way to build strong bones during the growing years is daily physical activity, which for children includes active play, and adequate calcium intake, of which MILO mixed with milk as directed provides 50% of the recommended daily intake (RDI).*

*Dairy Australia have recently released a media release for National Healthy Bones Week which confirms this position that exercise and a calcium rich diet are essential at all ages for healthy bones. For optimal bone health these lifestyle factors are best applied together. For more information on this initiative, the full media release is attached.*

*The Advertisement shows children actively playing in a common backyard setting with the super "Boost the Calcium of Milk by nearly 70%"*

*V/O "Active play is very important for building strong bones. But are your kids getting enough calcium in their diet? Milk is a great source, and I love mine with MILO because it boosts the Calcium of Milk by nearly 70%! Hey kids! So why not try MILO and milk next time your kids go out to play. Find out more about MILO and the MILO play movement on Facebook."*

*The Advertisement references a Nestlé commissioned State of Play study conducted amongst grandparents, parents and children by Sweeney Research, an independent research agency in November 2011 and included 1397 respondents including 330 grandparents, 733 parents and 334 children.*

*The report findings are summarised in a video viewed via the following url;*

*<http://www.youtube.com/watch?v=1ERt-G-aZlg>*

*The study established that nearly half of all Aussie kids don't play every day. The Advertisement is part of a broader MILO branded campaign which encourages and*

*emphasises the benefits of a healthy active lifestyle, including through play, while representing the product in a responsible manner.*

*Alleged breach under section 1.2 of the Code of Ethics and 2.1 of the Food Code*

*The essence of the complaint is that it “attempts to make MILO a health product” which “it is not.”*

*First, Nestlé disagrees with the complainant’s general claim that the Advertisement promotes MILO as a “health product.” As can be seen from the script, the Advertisement does not make this general claim. It simply states that “and I love mine with MILO because it boosts the Calcium of Milk by nearly 70%!” and encourages parents to try a MILO with milk next time your kids go out to play.*

*MILO is regulated as a Formulated Supplementary Food under Standard 2.9.3 of the Food Standards Code. A Formulated Supplementary Food is “specifically designed as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.” This type of product is required to be formulated to contain minimum levels of energy and protein and requires the addition and labelling of a number of vitamins and minerals.*

*The Advertisement meets this positioning entirely in that it highlights a feature of MILO to support and supplement a normal diet through the provision of additional nutrients.*

*As to the Complainants concerns that the nutritional profile of MILO, we have dealt with these issues in detail in response to a previous ASB Complaint (Advertisement Complaint Reference 574/09) which was dismissed. A copy of this case report is attached for reference. We do not propose to canvas those issues again here, other than to note in relation to the specific ingredients called out by the Complainant:*

*Sugar content;*

*MILO powder is specially formulated to be added to milk and consumed as a beverage.*

*Assessing total sugar content on a dry weight basis per 100g of the powder alone is therefore inappropriate and it is more appropriate to assess the product on an ‘as consumed’ basis, as a beverage.*

*o The total sugars in a glass of MILO (20g) + milk (200mL) ranges between 19.0 to 20.1g, depending on the type of milk used:*

*? Over half, (9.7 to 10.8g) come from the 200mL milk alone (lactose).*

*? Of the remaining 9.3g of sugars in the MILO powder,*

- 2.5g comes from the natural milk sugar lactose and a very small amount of galactose (in the milk powder component of MILO); and*

- 3g is maltose from the malt extract.*

- This leaves 3.8g as sucrose (added cane sugar) from the MILO powder, which is less than one teaspoon.*

*While there is no accepted recommendation on sugar intake in Australia, the Australian Dietary Guidelines advocate moderate amounts of foods containing added sugars and state ‘There is no evidence that, for most Australians, consumption of up to 15-20% of energy as sugars is incompatible with a healthy diet’.<sup>2</sup> The Australian National Health and Medical research Council (NHMRC) Nutrient Reference Values recommend carbohydrate choices based on ‘predominantly low energy density and/or low glycaemic index foods’.<sup>1</sup>*

*Fat content;*

*The fat content of a glass of MILO and milk is driven by the milk used. When MILO is made up with reduced-fat milk, the fat content is around 1 teaspoon (4.8g fat) per serve. When MILO is made up with skim milk, the fat content drops to around 1/2 teaspoon (2.2g fat).*

*There is only 2g total fat per 20g serve MILO powder.*

*The NHMRC Nutrient Reference Values for Australia and New Zealand recommend that for optimal health, fat intake to consist of 20-35% of total energy intake.<sup>1</sup>*

*It is noted that energy requirements for individuals vary based on age, gender and physical activity. Based on an average energy requirement 8700KJ as utilised by the FSANZ Food Standards Code, a glass of MILO and reduced fat milk contributes 1.3% to total energy as added sugars (6.8g) and 2% to total energy as fat (4.8g).*

*Being high in protein, low glycaemic index (GI) and nutrient rich, a glass of MILO and milk can be a valuable contribution to a healthy balanced eating pattern and contribute towards daily dairy intake recommendations.*

*Complaint that the Advertisement is contrary to aims to reduce obesity and cavities in children.*

*Nestlé disagrees that the Advertisement in any way undermines the aims to reduce obesity and cavities in children.*

*The whole focus of the Advertisement is on activity. It builds on the long history MILO has with sport to encourage and facilitate physical activity and “play.”*

*We note this is entirely in line with the Food Code which states under section 2.2 (emphasis added);*

*“Advertising or Marketing communications for Food or beverage products shall not undermine the importance of healthy or active lifestyles nor the promotion of healthy balanced diets...or by means otherwise regarded as contrary to Prevailing community Standards.”*

*Nestlé submits that contrary to the Complainants suggestions, the Advertisement is entirely consistent with the aim of encouraging a healthy active lifestyle incorporating both physical activity and a balanced diet.*

*Complaint that the Advertisement uses misleading statistics/quotes to confuse the viewer and and how much calcium they may require.*

*Nestlé can see no basis for this aspect of the Complaint.*

*As noted above, the focus of the Advertisement and the campaign on play is based on the understanding that daily physical activity plays an important role in supporting children's healthy growth and development. It is accepted that physical activity combined with enough calcium, it is considered the best way to build strong bones during the growing years. 4,5 Calcium was identified as a key nutrient of concern in the 2007 Australian National Children's Nutrition and Physical Activity Survey with 60% of children aged 9-16 yrs not meeting the Estimated Average Requirements (EAR) for Calcium in Australia.<sup>3</sup> Combined with the findings of the State of Play report which found that nearly half of today's kids aged 8-12 not engaging in active play every day, - missing out on two important factors that contribute to healthy bone development is something to be concerned about. Through its Play Campaign, MILO promotes active lifestyle and encourages Australian families to incorporate active play into everyday. At the same time a glass of MILO and milk provides 50% RDI of calcium, combined with the other nutrients, and is an appropriate way to provide nutritional support as part of a balanced diet for healthy active children.*

*Calcium Claim*

*The only reference to the product and any nutrition claim in the Advertisement is the following reference to the calcium content of MILO when made up with milk as recommended;*

*“...are your kids getting enough calcium in their diet? Milk is a great source, and I love mine with MILO because it boosts the Calcium of Milk by nearly 70%! ...”*

*This claim is substantiated with reference to the calcium content of a MILO and milk serve: 20g MILO combined with 200mL milk. By adding 20g MILO to 200mL of milk the calcium content of the beverage increases from 240mg to 400mg, a 67% uplift (nearly 70%). The calcium content of a serve of MILO and milk is provided in the nutritional information panel of the product with one serve providing 50% RDI of calcium.*

*In response to the Complainants query as to how much calcium is required, this is clearly listed within the nutritional panel on the MILO label and notes specifically that a serve of MILO and milk prepared as instructed provides 50% RDI for Calcium.*

*The messaging in the advertisements as well as the campaign in general are entirely consistent with the National Physical Activity Guidelines for Australians which recommends minimum levels of activity for all Australians, as well as the Australian Dietary Guidelines and the NHMRC nutrient reference values.*

*In addition to which, Nestlé submits that all aspects of the MILO Play Movement are consistent with all relevant sections of the Code of Ethics and Food Code given the focus of the Advertisement is on physical activity – specifically active playing.*

*It is for these reasons outlined above, and those raised previously under Advertisement Complaint Reference 574/09, Nestlé feel strongly that the Advertisement is entirely accurate in its claims and represents MILO and milk in an entirely responsible manner.*

*Other considerations under the Code of Ethics and other Relevant Codes*

*Given the complainant's allegation the Advertisement 'is misleading and deceptive' we have reviewed the advertisements in line with the relevant sections 2 of the Food Code, and we feel the advertisement also complies in all respects.*

*Nestlé has also considered the AANA Code for Advertising and Marketing Communications to Children and consider that the Advertisement does not fall within this code.*

*Other relevant information*

*We confirm that we have had no similar complaints about the advertisements or the MILO Play Campaign in general. Any relevant comments received have predominantly asked how people and business can get involved and information on the State of Play Report. We have only received positive feedback on the initiative and PLAY campaign.*

#### *Final Comments*

*The Advertisement is an honest, truthful and reasonable representation of the nutritional characteristics of the MILO product and provides an entirely appropriate and positive focus on playing and physical activity. It is for the above reason that we respectfully disagree that the Advertisement is in contravention of Section 1.2 of the Code of Ethics or 2.1 of the Food Code and can see no basis for the complaint. We respectfully request the complaint be dismissed.*

#### *References:*

- 1. Nutrient Reference Values for Australia and New Zealand 2006. Department of Health and Ageing. Canberra: Commonwealth of Australia.*
- 2. Dietary Guidelines for Children and Adolescents in Australia 2003. National Health and Medical Research Council.*
- 3. 2007 National Children's Nutrition and Physical Activity Survey – Main Findings. The Commonwealth Department of Health and Ageing, The Department of Agriculture, Fisheries and Forestry, and the Australian Food and Grocery Council.*
- 4. Specker B, Binkley T 2003, Randomised trial of physical activity and calcium supplementation on bone mineral content in 3- to 5-year-old children, Journal of Bone and Mineral Research, 18(5): 885-982.*

5. *Iuliano-Burns S et al 2003, Regional specificity of exercise and calcium during skeletal growth in girls: a randomised controlled trial, Journal of Bone and Mineral Research, 18(1): 156-162.*
6. *NUTTAB 2006 Common Liquids Reported per 100 ml 09A10073 Milk, Cow, Regular Fat*  
*[http://www.foodstandards.gov.au/\\_srcfiles/Common%20Measures%20Reported%20per%20100%20ml.pdf](http://www.foodstandards.gov.au/_srcfiles/Common%20Measures%20Reported%20per%20100%20ml.pdf)*

## **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) and the AANA Code of Ethics for Advertising (the Code).

The Board noted the complainant’s concern that the advertisement is misleading in its promotion of Milo as a healthy product and that there is no reference to how much calcium children need.

The Board reviewed 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 features children playing in a common backyard setting with well-known TV presenter Shelley Craft making a Milo and milk drink and talking to the audience about the benefits of milk and the addition of milo. The super “Boost

the Calcium of Milk by nearly 70%” appears on screen and the voice over makes statements such as “Active play is very important for building strong bones.”

The Board noted that there is no reference to the sugar content of the product. The Board noted the advertiser’s response that MILO is regulated as a Formulated Supplementary Food under Standard 2.9.3 of the Food Standards Code. A Formulated Supplementary Food is “specifically designed as a supplement to a normal diet to address situations where intakes of energy and nutrients may not be adequate to meet an individual’s requirements.” This type of product is required to be formulated to contain minimum levels of energy and protein and requires the addition and labelling of a number of vitamins and minerals.

The Board considered the importance of accurate nutrition information provided to consumers given the high public health and community concern about children’s health and dietary intakes.

The Board considered that the failure to declare the specific sugar content of the product is not of itself an action intended to mislead or deceive the viewer. The Board considered that it is reasonable for an advertiser to promote a particular feature of a product and in this case the overall theme of the advertisement was around the calcium content and that this was the key nutrient being highlighted.

The Board noted the complainant’s concerns that the advertisement implies that Milo is a product high in calcium but with no evidence of how much calcium children need.

The Board noted the advertiser’s response that the advertisement is encouraging both the consumption of enough calcium in conjunction with active play as positive and important measures to build strong bones, particularly in children.

The Board accepted the advertiser’s response that the advertisement reflects an accurate representation of the increased calcium content of a beverage that consists of milo mixed with milk.

The Board noted that the information provided, and subsequently displayed as the super states that Milo will “Boost the Calcium of Milk by nearly 70%.” The Board considered that reference to ‘children needing calcium’ is a statement that can be applied in a general sense to all children. The Board considered that nutrition requirements will vary from child to child and it is reasonable to expect that if a member of the community wishes for more accurate, personalized information regarding calcium content that they seek the advice of a medical professional.

The Board considered that although the addition of Milo to the milk may increase the calcium content of the complete beverage to nearly 70%, there is some ambiguity around the statement that the calcium content of the milk itself is increased by the addition of Milo. A minority of the Board members were concerned that the statement, taken literally, was misleading as some consumers may be led to believe that the calcium content of the milk itself was heightened, whereas it is the combination of the Milo and the milk that equates to the “increase by nearly 70%” of calcium.

The majority of the Board considered that on balance the statement was not designed to be misleading or deceptive but was a poorly chosen description relying on the visual imagery to confirm the intention of the written message.

Based on the above the Board considered that the advertisement contained a statement that was ambiguous but did not amount to an action that was designed to be misleading or deceptive.

The Board considered that a clarification in the super in the advertisement, by substituting the word “milk” with words that would better reflect the combined beverage of milk plus Milo, would have removed the ambiguity.

The Board further considered that on balance, the ambiguous statement could not be considered inappropriate to the level of understanding of the target audience 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 any other grounds, the Board dismissed the complaint.