



Case Report

1	Case Number	0437/17
2	Advertiser	Vitasoy Australia Products Pty Ltd
3	Product	Food and Beverages
4	Type of Advertisement / media	TV - Free to air
5	Date of Determination	11/10/2017
6	DETERMINATION	Dismissed

ISSUES RAISED

Food and Beverage Code 2.1 (a) - Misleading / deceptive

DESCRIPTION OF THE ADVERTISEMENT

The voiceover says "Milk, Milk, Milk, Milk, Milk, Milk, Milk, Milk" and the screen pans between fields of wheat, grains, etc, and then they display an Oat liquid product, and a Soy liquid product, that they claim is milk.

THE COMPLAINT

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

*The definition of milk is a "white liquid produced by the mammary glands of mammals."
There is no such thing is Oat milk. There is no such thing as Soy milk.
The liquid produced by mixing water with oats, is not milk.
You cannot milk an Oat, like you can a cow. To base a whole advertisement around a lie, and a voiceover that says MILK, MILK, MILK, MILK over and over again is misleading.
It just isn't true.*

THE ADVERTISER'S RESPONSE

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

Response to the complaint

The complaint received is that “The definition of milk is a “white liquid produced by the mammary glands of mammals.” There is no such thing [as] Oat milk. There is no such thing as Soy milk. The liquid produced by mixing water with oats, is not milk. You cannot milk an Oat, like you can a cow. To base a whole advertisement around a lie, and a voiceover that says MILK, MILK, MILK, MILK over and over again is misleading. It just isn’t true.”

The complainant asserts that it is misleading to use the word “milk” to describe products like Oat milk which are made with ingredients like oats and water.

We strongly disagree that the Advertisement is misleading in any way.

In Australia, consumers are very familiar with the term “milk” being used to refer to plant-based beverages that are milky in colour, milky in texture, and often used as a replacement or alternative to dairy based milk. Common examples of these type of beverages are soy milk, almond milk, coconut milk, rice milk and oat milk.

Plant based milks have been sold in the Australian market and labelled and marketed as, for example, “soy milk” and “almond milk” for decades, and since at least the 1980s.

The term “...milk” has become deeply entrenched with consumers as the way to refer to plant-based beverages that are milky in colour, milky in texture, and often used as a replacement or alternative to dairy based milk.

The Macquarie Dictionary, being the dictionary for Australian English, defines “milk” as both the “white liquid secreted by the mammary glands of female mammals” and “liquid obtained by crushing parts of plants as beans or nuts or tubers”, extracted as follows:

- 1. an opaque white or bluish white liquid secreted by the mammary glands of female mammals, serving for the nourishment of their young, and, in the case of the cow and some other animals, used by humans for food or as a source of dairy products.*
- 2. any liquid resembling this, as the liquid within a coconut, the juice or sap (latex) of certain plants, the liquid obtained by crushing parts of plants as beans or nuts or tubers, or various pharmaceutical preparations.*

For completeness we also note that one of the definitions of “milk” in the Oxford Dictionary is “The white juice of certain plants” and gives “coconut milk” as an example.

We attach a schedule showing use of the term “...milk” to refer to plant-based beverages in the Australian market.

The Australia New Zealand Food Standards Code (the Food Code) also condones this use and recognises that the term “milk” may be used in a food name in connection with the sale and advertisement of plant-based beverages. For example, the Food Code provides the following note in Standard 1.1.1—13(4): “The context within which foods such as soy milk or soy ice cream are sold is indicated by use of the name soy; indicating that the product is not a dairy product to which a dairy standard applies.”

For completeness, we are also confident that the advertisement does not mislead consumers that Vitasoy Products are, or are related, to cows milk or milk from any other mammal.

The Advertisement does not make any claims or depict anything directly or indirectly that implies any association with cow’s milk or any form of mammal milk. In fact, the advertisement consists solely of images of plants and fields of plants (apart from the actor that appears near the final scene to drink a glass of one of Vitasoy’s products).

The use and repetition of the word “milk” in the initial seconds of the Advertisement could not create any confusion. The context presented by the Advertisement, which only features shots of plants, renders any confusion that Vitasoy Products are animal milk extremely

unlikely. The use of the word “milk” with such imagery is intended to draw consumers’ specific attention to the obvious and clear inference that the “milk” referred to in the Advertisement comes from the plants depicted. In fact, even if there is any ambiguity, it is resolved by the end of the Advertisement when the voice-over specifically refers to “delicious plant milk” and that “Vitasoy has been turning plants into milk”. The final frame showing the Vitasoy Product range clearly shows the packaging labelled as “oat milk”, “coconut milk”, “soy milk”, “almond milk” and “rice milk”. It is inconceivable that a consumer could be left in any doubt as to the meaning of the Advertisement. Substantiation of any health, nutrition or ingredient claims or statement made in the advertisement

The advertisement does not make any health, nutrition or ingredient claims.

It is clear from the overall context of the Advertisement that Vitasoy Products are not associated with dairy or any other mammal milk, and in no way does it represent that they are nutritionally equivalent to dairy or any other mammal milk. We further note that we clearly communicate nutritional information on Vitasoy Product packaging, and support all relevant Australian government guidelines, including warning statements around suitability of Vitasoy Products for infants and children.

Whether the audience is predominantly children

This advertisement is not marketing directed to children, or predominantly directed to children.

Does the advertisement breach Section 2 of the Advertiser Code of Ethics, namely the following:

2.1 –Discrimination or vilification

There is no discriminative language used or person/group of persons vilified.

2.2- Exploitative and degrading

There is no exploitative or degrading language used.

2.3 – Violence

There is no violent language or actions used or depicted.

2.4 -Sex, sexuality and nudity

There is no sexual content

2.5 – Language

The language used is consistent with community standards

2.6 -Health and Safety

The advertisement does not depict material contrary to prevailing community standards on health and safety.

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 complainants’ concerns that the advertisement is false in its suggestion that the substance from Oats and soy is milk.

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 the advertisement shows several plant crops and the voiceover states that “for over 70 years Vitasoy have been turning plants into milk.” The final shot on screen is of the various plant varieties and the text “Growing milk since 1940.”

The Board noted the complainant’s concern that the definition of milk is a white liquid produced by the mammary glands of mammals.

The Board noted that the advertisement does not make any claims regarding nutritional equivalence to dairy or any other mammal milk and that the overall context of the advertisement clearly represents the products as being from plants.

The Board noted the Macquarie Dictionary definition of milk as:

“...both the “white liquid secreted by the mammary glands of female mammals” and “liquid obtained by crushing parts of plants as beans or nuts or tubers”,
extracted as follows: 1. an opaque white or bluish white liquid secreted by the mammary glands of female mammals, serving for the nourishment of their young, and, in the case of the cow and some other animals, used by humans for food or as a source of dairy products.
2. any liquid resembling this, as the liquid within a coconut, the juice or sap (latex) of certain plants, the liquid obtained by crushing parts of plants as beans or nuts or tubers, or various pharmaceutical preparations.”

The Board noted there is genuine community concern regarding the truthful representations of products and in particular food products.

The Board noted the advertiser’s response that product complies with the Australia New Zealand Food Standards Code (the Food Code) which:

“...condones this use and recognises that the term “milk” may be used in a food name in connection with the sale and advertisement of plant-based beverages.

For example, the Food Code provides the following note in Standard 1.1.1—13(4): “The context within which foods such as soy milk or soy ice cream are sold is indicated by use of the name soy; indicating that the product is not a dairy product to which a dairy standard

applies.” and noted that there is a standard outlined in the Food Standards Code.”

The Board noted that there is a Standard for milk and considered that on the basis of the advertiser’s response that their milk products meet the requirements of this Standard, the advertisement is not misleading or deceptive in its promotion of plant based milk products.

In the Board’s view, most members of the community would recognise and accept plant based milk products as ‘milk’ and considered that the advertisement did not breach Section 2.1 of the Food Code.

Finding that the advertisement did not breach the Food Code the Board dismissed the complaint.