

COMPLAINT NUMBER	17/340
COMPLAINANT	M. Jonassen
ADVERTISER	Fonterra Group Ltd
ADVERTISEMENT	Fonterra Group Ltd, Television
DATE OF MEETING	14 November 2017
OUTCOME	Not Upheld

SUMMARY

The television advertisement for Fonterra showed dairy farmers Mark and Deborah talking about milk powder concentrate and its role as a nutritional supplement in the recovery of Dylan Davidson from a serious accident. The advertisement showed various aspects of Dylan's recovery, including physiotherapy and wheelchair sport. The advertisement concludes with the onscreen message: "From here to everywhere. Fonterra."

Complainant, M. Jonassen, was concerned the advertisement was misleading because it was "insinuating that dairy somehow aids in the recovery and rehabilitation of serious accidents" which was not able to be substantiated. The Complainant said the advertisement was insensitive.

The Advertiser provided information to support that milk powder concentrate, used as an ingredient in specialised medical foods, provides essential nutrition as a part of recovery from serious accidents and illness.

The Complaints Board said the advertisement did not create a misleading impression and, taking into account the information provided by the Advertiser, said it was unlikely to mislead consumers. It said there was nothing about the depiction of Dylan's recovery that was likely to cause serious or widespread offence to most people taking into account prevailing community standards.

The Complaints Board ruled the advertisement was not in breach Principle 1 or 2 of the Code for Advertising Food or Rule 4 of the Code of Ethics and had been prepared with a high standard of social responsibility.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Principles 1 and 2 of the Code for Advertising Food and Rule 4 of the Code of Ethics. This

required the Complaints Board to consider whether the advertisement observed a high standard of social responsibility and whether it was likely to mislead or deceive consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear.

The Complaints Board were also required to consider whether the advertisement contained anything which, in light of generally prevailing community standards, was likely to cause serious or widespread offence taking into consideration the content, medium, product and audience to whom it is directed.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

Complainant, M. Jonassen, was concerned the advertisement was misleading because it was “insinuating that dairy somehow aids in the recovery and rehabilitation of serious accidents.” The Complainant also said, in part: “there is no evidence to support dairy having any healing properties.”

The Complainant raised another concern the advertisement was insensitive as in their experience “dairy has nothing to do with it, it is the hard work of the patient and Doctor.”

The response from Advertiser, Fonterra

The Advertiser responded to the concerns raised by the Complainant the advertisement was misleading and insensitive to the range of factors involved in rehabilitation.

The Advertiser said, in part: “The advertisement in question shows visuals of Dylan exercising with the farmer voiceover speaking to the nutritional benefits of the milk protein concentrate... The advertisement does not claim nor seek to imply that milk protein concentrate is the sole contributor to Dylan’s recovery, it is merely one part of that equation. The visual elements of Dylan working out and playing sport give context to this message.”

In support of the claims made in the advertisement Fonterra provided information relating the nutritional benefits of milk protein concentrate in aiding rehabilitation in patients. It said, in part: “Fonterra does not dispute that the combined efforts of the doctor and the patient are essential in the repair from serious trauma. However, it is also true that humans have innate nutritional requirements for essential nutrients, and for patients undergoing surgery or recovering from a traumatic injury, those nutritional requirements increase – especially with respect to protein...The nutrition needs of a patient can be met by a combination of diet and medical nutrition therapy (which encompasses oral nutritional supplements, enteral tube feeding and parenteral nutrition). These medical nutrition products typically contain a source of protein or specialised free amino acids (typically parenteral products)... Fonterra manufactures and sells a range of protein ingredients from milk including, but not limited to, total milk protein, whey protein concentrates or hydrolysates, sodium or calcium caseinate, and milk protein concentrate. These products are used by medical nutrition product manufacturers to produce medical foods that meet the required nutritional targets.”

The Advertiser also explained that “the European Society of Parenteral and Enteral Nutrition (ESPEN) highlights that patients after major surgical procedures display specific nutritional challenges, with a high risk of consequent malnutrition due to their often highly pronounced stress metabolism.” Further, it noted that “experts, including the Ministry of Health, recommend regular consumption of dairy products such as milk because they contain a range of important nutrients that are essential for optimal health.”

Regarding the Complainant’s view the advertisement was insensitive, the Advertiser responded “Fonterra is not seeking to diminish the role that the patient or doctor (or indeed any other external contributing factor) play in the process of recovery and rehabilitation from

serious accidents. Given that this is a Fonterra advertisement, we have naturally chosen to focus on the role of milk protein concentrate and the part it plays in this recovery process - but the advertisement does not claim any sort of exclusivity in terms of the causative effect of this product. It is therefore Fonterra's view that the advertisement aligns with prevailing standards of decency."

Response from Media, Commercial Approvals Bureau

The Commercial Approvals Bureau afforded the advertisement a G rating (General Audiences) and said the milk protein concentrate "is definitely used in recovery and rehabilitation programs, as demonstrated in the commercial itself and verified by medical professionals who administer nutritive MPC."

Complaints Board Discussion

The Complaints Board noted the concerns of the Complainant and took into account the responses from the Advertiser and Media.

The Complaints Board considered the likely consumer takeout of the advertisement. It said the advertisement presented the role milk protein concentrate played in the recovery and rehabilitation of Dylan Davidson after a serious accident. The Complaints Board noted the advertisement depicted various stages of Dylan's recovery from the perspective of a dairy farmer who says, in part

"our milk protein concentrate is an ingredient that is used in medical nutritional products all around the world. That was the catalyst to bring Dylan back from the brink. It gives him strength, it gives him muscle mass. You can see it when he's training. To think that milk from New Zealand is playing a large part in his recovery... is really quite humbling for us."

The Complaints Board said the language used in the advertisement clearly referred to milk powder concentrate playing a part in recovery and acting as a starting point for rehabilitation.

The Complaints Board considered whether the advertisement created a misleading impression or representation about the benefits of milk powder concentrate in the recovery from serious illness or accidents. It said the advertisement highlighted the role that milk powder concentrate played. It did not imply it was the sole factor but portrayed that it was part of a programme which showed Dylan in various scenarios and stages of recovery.

The Complaints Board said the representation in the advertisement was supported by the information provided by the Advertiser that milk powder concentrate, as an ingredient in specialised medical foods, provides essential nutrition as a part of recovery from serious accidents and illness.

The Complaints Board said the advertisement did not create a misleading impression and, taking into account the information provided by the Advertiser, said it was unlikely to mislead consumers. The Complaints Board ruled the advertisement was not in breach Principle 2 of the Code for Advertising Food.

The Complaints Board considered whether the advertisement offended against generally prevailing community standards. It noted the Complainant's view it was insensitive to suggest that milk aides in the recovery from a serious accident, however, in its view the Advertiser had demonstrated that milk powder concentrate did play a role in helping to meet nutritional requirements. Therefore, while the Complaints Board noted the offence the advertisement had caused the Complainant, it was of the view there was nothing about the depiction of Dylan's recovery that was likely to cause serious or widespread offence to most

people. The Complaints Board ruled the advertisement was not in breach of Rule 4 of the Code of Ethics.

The Complaints Board concluded the advertisement was not misleading and was unlikely to cause offence and as such, had been prepared with a high standard of social responsibility and was not in breach of Principle 1 of the Code for Advertising Food.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

Decision: Complaint **Not Upheld**

DESCRIPTION OF ADVERTISEMENT

The television advertisement for Fonterra showed dairy farmers Mark and Deborah talking about milk powder concentrate and its role as a nutritional supplement in the recovery of Dylan Davidson from a serious accident. The advertisement showed various aspects of Dylan's recovery, including physiotherapy and wheelchair sport, and Mark said, in part: "our milk protein concentrate is an ingredient that is used in medical nutritional products all around the world. That was the catalyst to bring Dylan back from the brink. It gives him strength, it gives him muscle mass. You can see it when he's training. To think that milk from New Zealand is playing a large part in his recovery... is really quite humbling for us." The advertisement concludes with the onscreen message: "From here to everywhere. Fonterra."

COMPLAINT FROM M JONASSEN

This ad is insinuating that dairy somehow aids in the recovery and rehabilitation of serious accidents.

This ad is very insensitive. I know first hand that dairy has nothing to do with it, it is the hard work of the patient and Doctor.

There is no evidence to support dairy having any healing properties.

CODE OF ETHICS

Rule 4 Decency - Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).

CODE FOR ADVERTISING FOOD

Principle 1: All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However food advertisements containing nutrient, nutrition or health claims*, should observe a high standard of social responsibility.

Principle 2: Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

RESPONSE FROM ADVERTISER, - FONTERRA GROUP LTD

Ms Jonassen's complaint relates to a Fonterra advertisement for milk protein concentrate. It is one of a series of commercials from our "From Here to Everywhere" campaign.

Ms Jonassen states in her complaint that the advertisement is “insinuating that dairy somehow aids in the recovery and rehabilitation of serious accidents.” She claims that the ad is “very insensitive” noting “I know first-hand that dairy has nothing to do with it, it is the hard work of the patient and Doctor. There is no evidence to support dairy having any healing properties”.

In the ASA letter regarding this complaint, the relevant sections in the Advertising Codes of Practice are identified as:

- **Code of Ethics – Rule 4**
Decency – Advertisements should not contain anything which clearly offends against generally prevailing community standards taking into account the context, medium, audience and product (including services).
- **Code for Advertising Food – Principle 1**
All food advertisements should be prepared with a due sense of social responsibility to consumers and to society. However food advertisements containing nutrient, nutrition or health claims, should observe a high standard of social responsibility.
- **Code for Advertising Food – Principle 2**
Advertisements should not by implication, omission, ambiguity or exaggerated claim mislead or deceive or be likely to mislead or deceive consumers, abuse the trust of or exploit the lack of knowledge of consumers, exploit the superstitious or without justifiable reason play on fear.

Fonterra’s Response

The overarching complaint by Ms Jonassen is that our advertisement implies that dairy aids in the recovery of serious accidents, that this is untrue (recovery relies on the work of the doctor and patient), and as a result, the advertisement is insensitive.

Fonterra does not dispute that the combined efforts of the doctor and the patient are essential in the repair from serious trauma. However, it is also true that humans have innate nutritional requirements for essential nutrients¹, and for patients undergoing surgery or recovering from a traumatic injury, those nutritional requirements increase – especially with respect to protein.

The European Society of Parenteral and Enteral Nutrition (ESPEN) describes Clinical Nutrition as a branch of Human Nutrition that “*encompasses the knowledge and science about body composition and function during acute and chronic disease*”². ESPEN highlights that patients after major surgical procedures display specific nutritional challenges, with a high risk of consequent malnutrition due to their often highly pronounced stress metabolism.

The nutrition needs of a patient should be assessed as a component of a nutritional assessment performed by the clinician, with a protein target in the range of 0.8g/kg/day (similar to the current NZ recommended dietary intake) to 1.5g/kg/day or higher. The nutrition needs of a patient can be met by a combination of diet and medical nutrition therapy (which encompasses oral nutritional supplements, enteral tube feeding and parenteral

¹ Commonwealth Department of Health and Ageing Australia, Ministry of Health New Zealand & National Health and Medical Research Council (2006).

Nutrient Reference Values for Australia and New Zealand, including Recommended Dietary Intakes. National Health and Medical Research Council and the Ministry of Health, Canberra.

² Cederholm, T., Barazzoni, R., Austin, P., Ballmer, P., Biolo, G., Bischoff, S. C., et al. (2017). ESPEN guidelines on definitions and terminology of clinical nutrition. *Clinical Nutrition*, 36(1), 49–64.

nutrition). These medical nutrition products typically contain a source of protein or specialised free amino acids (typically parenteral products).

Fonterra manufactures and sells a range of protein ingredients from milk including, but not limited to, total milk protein, whey protein concentrates or hydrolysates, sodium or calcium caseinate, and milk protein concentrate. These products are used by medical nutrition product manufacturers to produce medical foods that meet the required nutritional targets.

Experts, including the Ministry of Health, recommend regular consumption of dairy products such as milk because they contain a range of important nutrients that are essential for optimal health. At least two to three serves of milk and milk products are recommended each day as part of a healthy diet for good health³. Menus for the majority of NZ hospitals are based upon “*choices [which] will maximise the opportunities for patients to consume the number of serves from each of the four food groups as recommended by the Ministry of Health*”⁴. This captures at least two services of milk or milk products as a source of protein:

<p>Eat at least two servings per day (choose low or reduced fat options)</p>	<p>Milk and milk products (includes cheese, yoghurt and ice cream)</p>	<p>Protein</p> <p>Fats: higher proportion of saturated than poly- or mono-unsaturated fats especially in full fat products</p> <p>Vitamins: riboflavin, B₁₂, A</p> <p>Minerals: especially calcium, phosphorous, zinc and iodine</p>
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Ministry of health (MOH) Food and Nutrition Guidelines for Healthy Adults: A background paper 2003 (page 5]

ESPEN provides expert guidelines for Clinical Nutrition in Surgery⁵, highlighting the important benefits of providing suitable nutrition in the post-operative and recovery periods. The guidelines highlight that key aspects of perioperative care include the integration of nutrition into the overall management of the patient. They also highlight the benefits of early mobilisation around protein synthesis and muscle function, and include recommendations for resistance exercise where possible. The guidelines further note that those at nutritional risk have requirements of between 104-125kJ/kg for energy and 1.5g/kg/day for protein.

Milk protein concentrate is source dairy of protein produced by filtration of fresh skim milk, and is used in a range of medical nutrition products. Milk protein is used in these products because it is a high nutritional quality protein⁶, meaning the protein contains high levels of bioavailable indispensable amino acids which are required from the diet to meet human requirements. Milk protein supports muscle mass by the stimulation of muscle protein

³ Ministry of Health, 2015

⁴ <http://www.nzhealthpartnerships.co.nz/wp-content/uploads/2016/02/Food-Services-Agreement.pdf>

⁵ Weimann, A., Braga, M., Carli, F., Higashiguchi, T., Hübner, M., Klek, S., et al. (2017). ESPEN guideline: Clinical nutrition in surgery. *Clinical Nutrition*, 36(3), 623–650.

⁶ Rutherford, S. M., Fanning, A. C., Miller, B. J., & Moughan, P. J. (2015). Protein digestibility-corrected amino Acid scores and digestible indispensable amino Acid scores differentially describe protein quality in growing male rats. *The Journal of Nutrition*, 145(2), 372–9.

synthesis.⁷ Consumption of protein, especially in combination with resistance exercise (as demonstrated within the advertisement), also helps improve muscle and strength.⁸ Finally, milk protein concentrate (~80% protein by weight) also provides approximately 1520kJ/100g of energy (using the standard factors of 17kJ/g for protein and carbohydrate, and 36kJ/g for fat). The above ESPEN guideline for clinical nutrition in surgery highlights the additional benefits of early nutrition support – with a reduction in infectious complications, reduction in the length of hospital stay and associated reductions in the cost of care.

The advertisement in question shows visuals of Dylan exercising with the farmer voiceover speaking to the nutritional benefits of the milk protein concentrate (which we have more fully outlined and substantiated above). The advertisement does not claim nor seek to imply that milk protein concentrate is the sole contributor to Dylan's recovery, it is merely one part of that equation. The visual elements of Dylan working out and playing sport give context to this message.

Each claim contained within the advertisement is factual, not misleading, and able to be substantiated. In light of the evidence relating the nutritional benefits of milk protein concentrate set out above which make the relevant claims in the advertisement **true**, Fonterra is confident that in promoting the benefits of this form of dairy ingredient, the advertisement has:

- been prepared with and observed a high standard of social responsibility;⁹
- not by implication, omission, ambiguity or exaggerated claim;¹⁰
- misled or deceived or been likely to mislead or deceive consumers;
- abused their trust;
- exploited their superstitions;
- exploited their lack of knowledge; or
- played on their fear.

Other claims within the advertisement such as "*aiding millions of people around the world*" can be substantiated from our internal customer sales data, the specific details of which are commercially sensitive to Fonterra.

Finally, we respectfully submit that the advertisement does not contain anything which clearly offends against generally prevailing community standards. Fonterra is not seeking to diminish the role that the patient or doctor (or indeed any other external contributing factor) play in the process of recovery and rehabilitation from serious accidents. Given that this is a Fonterra advertisement, we have naturally chosen to focus on the role of milk protein concentrate and the part it plays in this recovery process - but the advertisement does not claim any sort of exclusivity in terms of the causative effect of this product. It is therefore Fonterra's view that the advertisement aligns with prevailing standards of decency and thus complies with Rule 4 of the Code of Ethics.

Contact person for advertising complaints	Emma Willis Senior Corporate Counsel Fonterra
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⁷ Mitchell, C. J., Mcgregor, R. A., Souza, R. F. D., Thorstensen, E. B., Markworth, J. F., Fanning, A. C., ... Cameron-smith, D. (2015). Consumption of Milk Protein or Whey Protein Results in a Similar Increase in Muscle Protein Synthesis in Middle Aged Men. *Nutrients*, 7(10), 8685–8699.

⁸ Cermak, N. M., Res, P. T., de Groot, L. C. P. G. M., Saris, W. H. M., & van Loon, L. J. C. (2012). Protein supplementation augments the adaptive response of skeletal muscle to resistance-type exercise training: a meta-analysis. *The American Journal of Clinical Nutrition*, 96(6), 1454–64. .

⁹ Code for Advertising Food, Principle 1

¹⁰ Code for Advertising Food, Principle 2

Name and contact at creative agency	Jo McDonald Group Business Director Colenso BBDO
Name and contact at media agency	Ashleigh Nicholson Mediacom
A basic, neutral description of the advertisement	An emotional story told through the eyes of a New Zealand farmer. We hear first-hand the farmer's passion as an owner of Fonterra and we see that the Co-operative achieves amazing things through the innovation of milk protein concentrate – a medical nutritional product used to aid in the recovery of patients who cannot feed themselves. In this commercial we reflect on the case of Dylan Davidson from Toronto.
Date advertisement began	Sunday 10 September 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	TV, Billboard
Is the advertisement still accessible – where and until when?	Housed on Fonterra's You Tube Channel & Fonterra's website (www.fonterra.com) – no further paid media
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	https://www.youtube.com/watch?v=GojINsOSEiE
Who is the product / brand target audience? Please provide a copy of the media schedule.	General New Zealand public aged 25-54 years. See attached under Schedule 2 .
Pre-vetting Approval number if applicable	N/A
Clear substantiation on claims that are challenged by the complainant.	Please see Schedule 3 for a response to this complaint and substantiation of the claims made in the advertisement.

For Broadcast advertisements:	
A copy of the script	<p><i>60 second script:</i></p> <p>[Opening Frame Text]: FROM HERE TO EVERYWHERE</p> <p>[MARK] Dylan's accident was catastrophic to his body. He was so lucky to survive.</p> <p>[DYLAN] Broke seven ribs, all of them punctured my lungs, broke T3 and 4 in my spinal cord... I had a head injury...</p> <p>[DEBORAH] Dylan was in a coma for two weeks... his body was wasting away. How do you feed someone that can't eat or drink?</p> <p>[MARK] We're passionate dairy farmers Deborah and I. Our milk protein concentrate is an ingredient that is used in medical nutritional products all around the world... that was a catalyst to bring Dylan back from the brink. It gives him strength, it gives him energy, it gives him muscle mass. You can see it when he's training. To think that milk from New Zealand is playing a large part in his recovery, and aiding millions of people around the world is really quite humbling for us.</p> <p>[End Frame]: Fonterra FHTE DFL lock up</p>
CAB key number and rating	Key: FOP/060/00284R, G rating, rating #70817030

RESPONSE FROM MEDIA – CAB**FONTERRA TELEVISION ADVERTISEMENT****COMPLAINT: 17/340****KEY: FON180MPC01****RATING: G**

We have been asked to respond to this complaint under the following codes:

Code of Ethics – Rule 4;

Code for Advertising Food – Principle 1 and 2

CAB approved this Fonterra commercial on 05/09/17 with a G classification. Under CAB internal policies, this commercial is not considered food advertising as no food product appears.

The commercial describes and shows the uses of MPC (milk protein concentrate) in programs of medical recovery, and includes personal testimony.

A sole complainant has challenged the idea the MPC has a role in recovery and rehabilitation.

This complaint is rendered void by the fact that MPC is definitely used in recovery and rehabilitation programs, as demonstrated in the commercial itself and verified by medical professionals who administer nutritive MPC.