

Australian Competition & Consumer Commission  
Adjudication Branch  
By e-mail [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

14<sup>th</sup> August 2015

Dear Sir or Madam

**Subject** - A91506 – A91507 – Infant Nutrition Council – submission

We note that the Infant Nutrition Council has made application to the Australian Competition and Consumer Commission for re-authorisation of the MAIF Agreement. The MAIF Agreement plays an important role encouraging responsible marketing of infant formula and should remain in place. We are concerned that the agreement has become out of date and believe that it must be reviewed to remain effective in achieving the intended outcome. We give permission for our submission to be published on the public register.

#### Key Issues

- Request for re-authorisation for a period of ten years. An independent review of the MAIF Agreement by Nous Group, commissioned by the Department of Health in December 2011, stated 'Authorisation expires in 2015 and it is expected that the content and operation of the MAIF Agreement will have to be reviewed prior to application for re-authorisation'.
- The content of the MAIF Agreement requires updating.
  - The Review recommended that the wording of the MAIF Agreement needs to be updated to reflect modern health terminology and developments in the marketing environment.
  - Changes to Australia New Zealand Food Standards Code – Standard 1.2.7 – Nutrition, Health and Related Claims in regard to Infant Formula should be incorporated.
- The current MAIF Agreement does not adequately address electronic media and social marketing.

#### Comments on Application

##### 3. Substitution of authorisation

c) INC submits that a period of ten years is appropriate for authorisation, stating only minor amendments have been proposed. The Review recommended changes to the MAIF Agreement to ensure it reflects current legislation, standards, marketing practices and modern health terminology. The content of the MAIF Agreement submitted for re-authorisation has not incorporated changes recommended by the Review. The MAIF Agreement needs updating to align with modern marketing context.

#### Comments on INC Submission

##### 2 Authorisation of the MAIF Agreement

###### 2.1 Terms of authorisation

**a) Ten year term** - We would like to see the MAIF Agreement re-authorised, however we believe that the content should be updated. The Review recommended that the content of the MAIF Agreement required updating to remain effective and relevant. In addition, as of 18<sup>th</sup> January 2016, food businesses are required to comply with Standard 1.2.7 - Nutrition, Health and Related Claims. The new standard states that 'A nutrition content claim or health claim must not be made about c) an infant formula product'. The new standard is relevant to the marketing of infant formula and should be acknowledged by the agreement.

### **3 The Infant Formula Market**

The INC defines Infant Formula and Follow-On Formula (IFFO) and Growing Up Milks (GUMs) and states that the MAIF Agreement relates only to IFFO.

We accept that the MAIF Agreement only applies to IFFO. Recommendation 4 of the Review stated 'Consideration should be given as to how to best restrict manufacturers' labelling of toddler milk drinks with product identifiers resembling those of infant formula labels. Labelling of products should be sufficiently different to enable consumers to clearly and quickly distinguish between infant formula and toddler milk drinks.'

Current marketing practices involve labelling both IFFO and GUMs in similar and sequential packaging. There is currently aggressive marketing of GUMs, which have similar packaging to IFFO. This practice of brand marketing allows for the marketing of GUMs to act as pseudo marketing for infant formula. We accept that the MAIF Agreement only applies to IFFO, however we believe that GUMs should be easily differentiated by consumers to avoid confusion. This form of marketing undermines the intention of the MAIF Agreement.

A recent decision by the MAIF Complaints Tribunal found that promotional material for infant formula comprising sequential numbering in conjunction with an arrow depicting the manner of progression from infant formula (IFFO) to Toddler and Junior milk (GUMs), including a pack shot of formula, was in breach of the MAIF Agreement.

### **4 The MAIF Agreement**

#### **4.3 Amendments to the MAIF Agreement**

Amendments in 2015 did not incorporate recommendations made by the Review.

#### **4.4 Guidelines on the interpretation and application of the MAIF Agreement**

##### **a) Guidelines concerning the marketing of infant formula via electronic media**

The Review found that 'there have been significant changes to the marketing environment – many new forms of marketing (including electronic marketing and social media) are not currently covered explicitly under the MAIF Agreement. We believe that these marketing avenues should be incorporated into the MAIF Agreement, rather than being addressed in interpretation guidelines which may or may not be applied by the MAIF Complaints Tribunal.

### **Reference**

Review of the effectiveness and validity of the operations of the Marketing in Australia of Infant Formula: Manufacturers and Importers Agreement (the Review) NOUS group.

<http://www.health.gov.au/internet/main/publishing.nsf/Content/review-effective-infant-formula>

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