

David Hatfield
Director, Competition Exemptions
Australian Competition & Consumer Commission
exemptions@accc.gov.au

22 March 2021

Dear Mr Hatfield,

Re – AA1000534 – Infant Nutrition Council - submission

Thank you for the opportunity to make a submission in response to the ACCC's draft determination on AA1000534.

We agree that the public benefit of the MAIF Agreement outweighs the possible public detriment until alternate regulatory mechanisms are in place to restrict marketing.

Length of authorisation

We are encouraged to see the reduction of the re-authorisation period from 10 years to 5 years however, we call for this to be further reduced to 2 years. During the last authorisation period of 5 years, there was no meaningful attempt to update the MAIF Agreement. The Department of Health plans to review the MAIF Agreement during 2021, making a shorter period appropriate.


Condition to extend the limitation on advertising to include toddler milk

We strongly support the condition to extend the agreement to cover all breast milk substitutes including toddler milk. The World Health Organization states that toddler milks are breast milk substitutes and therefore should not be marketed. Adding this condition would strengthen the public benefit.

A more targeted approach to address the issue of toddler milk is unlikely to be effective. This is evident through the demonstrated history of wide-ranging industry practices to circumvent the MAIF Agreement. We provide examples of the extent of toddler milk marketing in Attachment 1.

We are happy for our submission to be placed on the public register on the ACCC website.

Yours sincerely,



Ros Escott
Convenor, Breastfeeding Coalition Tasmania
bctsecretariat@gmail.com

Attachment 1

Examples of toddler milk marketing collected by Breastfeeding Coalition Tasmania between 2017 – 2020.

Marketing material in retail outlets

Nature One dairy, banner displayed in retail outlet Priceline, 2020



Nature One dairy
Your child's most natural start to life

16 VITAMINS & MINERALS
Contribute to normal cognitive development in children.

IRON
Contributes to normal cognitive development in children.

ZINC
Necessary for normal immune system function.

VITAMIN D
Necessary for normal bone structure.

CHOLESTEROL
LUTEIN

ORGANIC TODDLER NUTRITIOUS MILK DRINK
\$25.99 per can

Available exclusively at:
priceline

ACO Certified Organic

HIGH QUALITY • BETTER VALUE

PER 100ML	UNIT	NOD ORGANIC TODDLER (1-3 years)	BRAND B (12 months-)
DHA	mg	+ 5.1	-
ARA	mg	+ 5.1	-
Lutein	µg	+ 26	-
Vitamin D	µg	+ 1.1	0.5
Vitamin B6	µg	70	70
Vitamin C	mg	+ 7.5	6.6
Iron	mg	0.85	1.2
Choline	mg	+ 11	-
L-Carnitine	mg	+ 2.3	-
Inositol	mg	+ 3.8	-

WHY NATURE ONE DAIRY ORGANIC INFANT FORMULA?

- AUSTRALIAN MADE WITH ORGANIC MILK POWDER
- CERTIFIED BY AUSTRALIAN CERTIFIED ORGANIC
- HIGH QUALITY INGREDIENTS
- MANUFACTURED IN PHARMACEUTICAL GRADE FACILITY

Give your little ones an amazing start to life with a nutritionally complete milk-based organic formula. Nature One Dairy Organic Infant Formula is specially formulated with a higher concentration of Omega-3 fatty acids, Omega-6, Lutein, essential Vitamins and Minerals to protect your baby's development and growth.

Made in Australia with organic milk powder, our organic infant formula is certified by the Australian Certified Organic which is Australia's largest certifier for organic and biodynamic produce. The organic powder is processed in pharmaceutical grade facility licensed by Dairy Food Safety Victoria (DFS) in Australia, bringing Nature One Dairy Organic Infant Formula Milk at its purest and freshest state.

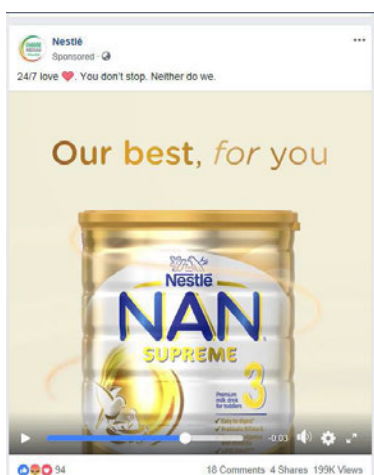
Nature One dairy
Est. Reg. No.: 1879
Address: 12 Capital Place, Carrum Downs VIC 3201 Australia
Customer Careline: +613 9708 2988
For enquiries, please email: enquiries@natureonedairy.com
www.natureonedairy.com

The MAIF Complaints Committee determined that:

“Based on the following grounds: the slogan and other information on the pamphlet refers to infants “give your little ones an amazing start to life”, “our infant formula is certified by” and “bringing Nature One Dairy Organic Infant Formula Milk at its purest”. The Committee also noted that the use of the image of an infant, clearly not over 12 months of age for a toddler milk product could be considered misleading advertising.”

Social media marketing

Nestlé, Nan Supreme 3, Facebook advertisement, 2019



Nestlé Sponsored

24/7 love ❤️ You don't stop. Neither do we.

Our best, for you

Nestlé NAN SUPREME 3

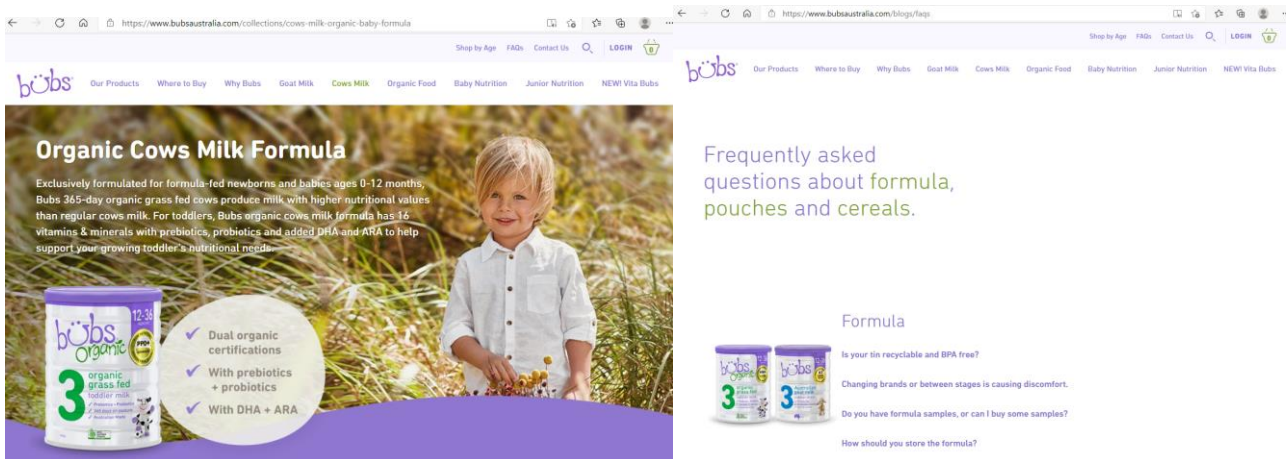
18 Comments 4 Shares 193K Views

The Committee determined the complaint is out of scope on the grounds that promotion of toddler milk is beyond the scope of the MAIF Agreement, and that the age of the child was confirmed to be 15 months. The Committee recommended to Nestlé that it use imagery that distinguishes without doubt, a toddler from an infant, when promoting toddler milk.

Websites

Bubs Australia Limited, Website, accessed 03.03.2021

Bubs is the number 1 goat infant formula brand in Chemist Warehouse and the fastest growing infant formula manufacturer in Woolworths, Coles and Chemist Warehouse combined. (IRI Scan value sales Dollars data, 13 weeks to 03/01/21). Bubs is NOT a signatory to the MAIF Agreement. Homepage of Bubs website blends infant formula and toddler milk drink information together and calls products for toddlers “formula”. “For toddlers, Bubs organic cows milk formula has 16 vitamins.....”



Bubs FAQ page talks about formula and pictures pack shots of toddler milk drink.

Billboards and shopping centre advertisements

Bellamy's Organic, billboard and shopping centre advertisements, 2019/20



Out of scope of MAIF Agreement as the advertisement is for toddler milk.

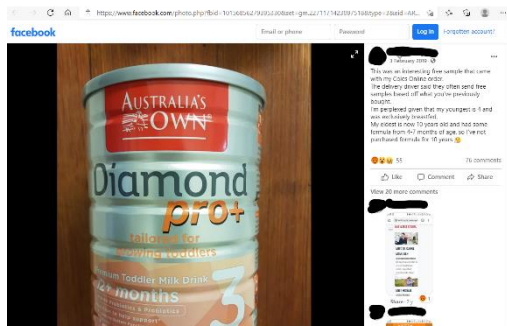
The A2 Milk Company, billboard at Sydney Airport, 2019



The A2 container is cut off which gives the illusion that it could be any one of their infant formula or toddler milk products.

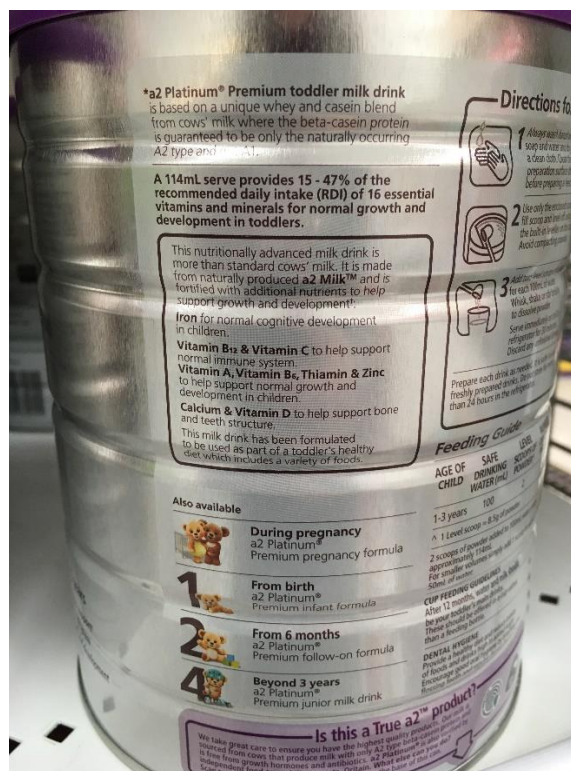
Free samples with online shopping

Freedom foods product sample received with online shopping, 2019



Infant formula packaging used to advertise product range

A2 Milk Company container labels of “toddler milk drink”, 2018



Front label highlights number 3 in a row of numbers (1, 2, 3, 4) and the back label lists all other “formulas” available, thereby promoting infant formula and the idea that the number 3 and 4 products are a formula for those ages.

Interestingly, the new guidance documents produced by the MAIF Complaints Committee state that text about other formulas is acceptable, however images of formula products are not. In previous guidance by the APMAIF and implemented by The MAIF Tribunal (Ethics Centre), text or images related to other formula products were determined to be a promotion of those products and many breaches of the MAIF Agreement were attributed to this.

Social media marketing

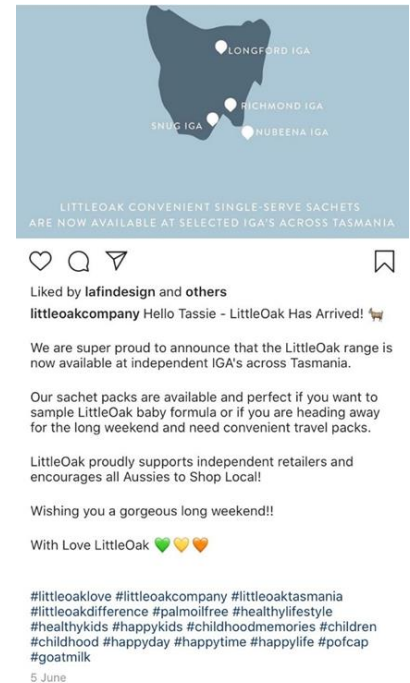
The Little Oak Company, Instagram posts, 2020



Instagram post 11 May 2020:
Advertising Gold Rush
Promotion at Ritchies IGA.
Although “Stage 3 Toddler Milk”
is pictured, the details below
specify ANY Little Oak products
are included in the promotion.



Instagram post 28 May
2020: promoting the
range now available at
Costco online and
membership discounts.



Instagram post 5th June
2020: promoting the Little
Oak range now available at
IGA's in Tasmania,
promoting single-serve
sachet packs.

Nutrition Australia (Nuchev), Oli6 Goat Facebook page, 2017

If you want your children
to be intelligent read them
Fairy tales - Albert Einstein



The MAIF Tribunal (The Ethics Centre) determined this to be a breach of the MAIF Agreement because the image was clearly that of an infant less than 12 months of age. Further, the information

Blackmore's & Aptamil advertisement in health professional magazines

BLACKMORES®

Blackmores.com.au/nutrition

Blackmores
infant formula
for longer,
better sleep*

#Winning

Australian
most
trusted
brand

For formula fed infants, Blackmores can help ease the stress of parenting, with **OPO**® to reduce crying and improve sleep duration,^{2,3} and alpha-lactalbumin to improve sleep quality.^{1,4}

* Blackmores supports breastfeeding as the best nutrition for babies. Toddler Milk & Drink is also covered by a support grant to a range of specialist makers of specialty infant foods. ¹Wahash's Med Toddler vitamin and mineral blend as used by Nutricia in the 2005-2010 Nestlé's Baby Med Toddler Study. ²Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study. ³Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study. ⁴Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study.

A lot of wind
and a little rash
signalled a
bigger problem.

Bethany Ling, Noah's mum

Two symptoms can tell a story

92% of infants with cows' milk allergy suffer from two or more symptoms¹

Up to 90%
prevalence of
dermatological symptoms²

Up to 60%
prevalence of
gastrointestinal symptoms²

Up to 30%
prevalence of
respiratory symptoms²

Recommend Aptamil® AllerPro® to help reduce the symptoms of cows' milk allergy^{1,2,3}

For additional details on this study visit: www.blackmores.com.au

BLACKMORES® is a registered trademark of Blackmores Pty Ltd. ¹Infants with cows' milk allergy (CMA) are at a higher risk of developing other allergic conditions. ²Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study. ³Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study. ⁴Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study. ⁵Blackmores Follow-On Toddler vitamin and mineral blend as used by Nestlé in the 2005-2010 Nestlé's Baby Med Toddler Study.

Raise them Ready
Aptamil® toddler