



United States of America  
FEDERAL TRADE COMMISSION  
Washington, DC 20580

Division of Advertising Practices

July 25, 2019

VIA ELECTRONIC MAIL

Laura Brett, Director  
National Advertising Division  
112 Madison Avenue  
New York, NY 10016

Dear Ms. Brett:

We have reviewed the National Advertising Division's referral of the National Milk Producers Federation's ("NMPF") challenge that The a2 Milk Company (the "Company") makes misleading advertising claims that its a2 Milk dairy products may help some people avoid gastrointestinal discomfort because the products do not contain one of the protein types found in ordinary cows' milk. The NMPF also challenged the Company's claims that ordinary cows' milk may induce "painful bloating, wind, cramps, inflammation" and "gut inflammation and other uncomfortable symptoms" because it contains the A1 protein type. NAD referred the matter to the Federal Trade Commission after the Company refused to formally participate in the NAD self-regulatory process.

The FTC fully supports the NAD and industry self-regulation, and we regret the Company did not participate fully in the NAD proceeding. The Company's contention that NAD was not in a position to review advertising claims approved for use in labeling by the California Department of Food and Agriculture is meritless. Under California law, label revision is required if labels are found to promote consumer confusion or to be misleading. Any implication that label revision would be burdensome is simply untrue.

Furthermore, any suggestion by the Company that discussions with FTC staff made NAD participation unnecessary is also incorrect. FTC staff has not approved the Company's claims and has not opined as to the adequacy of any substantiation for those claims. Although staff recognizes that the Company has published a randomized controlled trial purporting to show minor improvements in digestive symptoms over ordinary cow's milk, the staff has not made any determination as to whether this study substantiates the Company's "easier on digestion" claims.

After reviewing this referral, we have determined not to take additional action at this time. In reaching this conclusion, we considered a number of factors including resource allocation and enforcement priorities, the nature of any FTC Act violation, and the type and severity of any consumer injury. We also considered that the Company engaged in some informal discussions with the NAD and made some changes to its advertising. For example, the

Laura Brett, Esq.  
July 25, 2019  
Page 2

Company removed various challenged graphics, videos, promotional pages, testimonials, and statements from its website during discussions with the NAD.

The staff's decision to forego a formal investigation at this time is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require. The FTC appreciates your referral and the opportunity to assist in supporting the NAD.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'CHANN', followed by a long horizontal line extending to the right.

Carolyn L. Hann  
Chief of Staff  
Division of Advertising Practices

cc: Scott R. Bialecki, Esq.  
Sheridan Ross P.C.