



SUBMISSION

Food & Beverages Advertising Code Review

Breastfeeding Advocacy Australia Ltd ABN 58 637 390 295

12th June 2020

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The AANA codes are acknowledged and supported by Federal and state governments as an important self-regulatory mechanism to assist in achieving public policy outcomes.



Breastfeeding Advocacy Australia

P R O T E C T P R O M O T E S U P P O R T

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Introduction

Breastfeeding Advocacy Australia (BAA) is a non-profit community organisation seeking to advocate for parents to have control of decision making around infant and young child feeding without the exposure to predatory marketing tactics. There are many different ways parents are influenced and we seek to draw attention to the issue of toddler drinks in this submission and their role in obesity and unhealthy outcomes for infants and young children. These products also represent a vehicle for manufactures to circumvent their responsibility for responsible marketing of the 0-12 month products.

"Believing that, in the light of the foregoing considerations, and in view of the vulnerability of infants in the early months of life and the risks involved in inappropriate feeding practices, including the unnecessary and improper use of breast-milk substitutes, the marketing of breast-milk substitutes requires special treatment, which makes usual marketing practices unsuitable for these products;" International Code of Marketing of Breast-milk substitutes p.7¹

Background related to the Food and Beverage Code (F&B Code)

Toddler drinks have not come to the scrutiny of this body as they are primarily aimed at the average consumer who is responsible for young children. Manufacturers and advertisers aim to create panic and concern about healthy diet then purport to offer a solution, whilst making false claims and creating brand recognition for their 0-12months products. All of these products describe themselves as "supplementary" and are not part of the Dietary Guidelines for young children.

The toddler drink advertising seeks to:

Create brand recognition for their 0-12 month products using deceptive photographs, sequential numbering and shelf placement in supermarkets and pharmacies. They suggest to the parent (the average customer) there should be concern about diet and this product will offer suitable meal replacement plus benefits to growth, development and immunity that are not substantiated. The following sections of the F&B Code are breached:

- not undermine the importance of healthy or active lifestyles;
- not encourage excess consumption;
- be based on appropriate substantiation for claims made;
- clearly distinguish advertising from editorial content such as news or current affairs;
- not portray food and beverages products as suitable meal substitutes when they are not;
- encourage an inactive lifestyle or unhealthy eating or drinking habits;
- employ ambiguity or a misleading sense of urgency;
- undermine the role of parents;
- feature ingredients or premiums unless they are an integral element of the product;
- claim the product will give the child a physical, social or psychological advantage over other children;

A sample of examples of how toddler drinks breach the F&B Code are provided at the end of this document as Appendix A on page 8.

¹ World Health Organization. (1981). International Code of Marketing of Breast-milk Substitutes. Retrieved from http://www.who.int/nutrition/publications/code_english.pdf

Consultation

Question

1. It is the AANA's intention to formally review each of its Codes via a public consultation at least every five years. Is this frequency appropriate for the F&B Code? If not, why not?

Yes, formal review every 5 years is appropriate.

Community Complaints and Compliance

Question

2. Do you think the relatively low level of complaints about F&B advertising is indicative of public satisfaction with food and beverage advertising? If not, why not?

No

Toddler drinks and their advertisements are aimed at parents and workers within the health and childcare sector. There is limited understanding of the product content and the ethical guidelines that exist to protect families from the current state of predatory marketing of these products. Widespread education about current feeding guidelines and the absence of need for any such product is required in order for complaints to be made. Implementation of the International Code of Marketing of Breastmilk Substitutes (The Code)², specifically the 2016 World Health Assembly (WHA) resolution 69/9³ which seeks action to end inappropriate promotion of foods for infants and young children up to the age of three years is relevant to this community need. These ultra-processed powders should be considered "discretionary". Many are labelled as "toddler milk drink" however advertisers and retailers used the word "formula" in promotions.

Question

3. Ad Standards reports 100% compliance by food and beverage advertisers with decisions made by its Community Panel. There are significant costs associated with withdrawing advertisements and, in the rare event that non-compliance were to occur, major media owners would step in to ensure compliance. Is there a need for further sanctions for breaches of the AANA F&B Code or AFGC initiatives and/or a need to consider penalties for non-compliance? If so, why?

Those that sell toddler drinks have enormous resources and have yet to prove that they will abide by any decisions of the panel as these products have not been included in any advertising standards. The public need to be aware of the issue so complaints can be made. Experience from their behaviour would suggest the need for clear and decisive action on breaches related to these products. Voluntary standards that do not include all the companies making these products have not served to protect families.

Food & beverage advertising self-regulation

Questions

4. Following a change to the F&B Code, the RCMI and QSRI requirements now apply to all advertisers. Should the F&B Code incorporate the requirements of the RCMI and QSRI to create one over-arching Food and Beverage Code? If not, why not?

Yes, an overarching code that includes all manufacturers, not just signatories, would be useful provided it includes toddler drinks, and they are duly recognised as "discretionary" food because of they are unnecessary ultra-processed powder with high sodium and sugar content. It is acknowledged that they are not required after 12 months according to the NHMRC Infant Feeding

² World Health Organization. (1981). International Code of Marketing of Breast-milk Substitutes. Retrieved from http://www.who.int/nutrition/publications/code_english.pdf

³ World Health Organization, UNICEF, Save the Children, IBFAN, Helen Keller International (2016) Policy Brief, World Health Assembly Resolution on The Inappropriate Promotion of Foods for Infants and Young Children

Guidelines for Health Workers. The recommendation is for cow's milk forming part of the daily dairy requirements for young children 12-36 months in the Australian Dietary Guidelines. These products are not cow's milk.

5. There are differences in terms of what the F&B Code, RCMI and QSRI define as 'included' or 'excluded' media (see table below). Should there be a single definition of 'medium' to which the self-regulation of F&B advertising in Australia applies? If not, why not? If so, what should the definition of 'medium' include and exclude?

The definition should include sponsorship agreements and social media "influencers". For example this sponsorship with Museums Victoria would not be tolerated if it was "Milo" or "Coke" however this product is no different, it is unnecessary and uses deceptive marketing tools.

<https://museums victoria.com.au/media-releases/big-news-for-little-learners-as-melbourne-museum-opens-early-to-start-the-day-with-play/>

Example D, featuring the obese aboriginal child, in Appendix A is an example of using social media influencing to sell these products.

6. The RCMI and QSRI 's definition of advertising to children includes a placement definition whereby "Advertising or Marketing Communications that are placed in Medium that is directed primarily to Children (in relation to television this includes all C and P rated programs and other rated programs that are directed primarily to Children through their themes, visuals and language); and/or where Children represent 35 per cent or more of the audience of the Medium". Should these parameters around placement be incorporated into the F&B Code?

Yes, this definition should be incorporated into the F & B Code.

7. The F&B Code (via the requirements of the RCMI) currently requires all ads directed to children for food or beverages, other than fresh fruit and vegies, to promote good dietary habits and physical activity. There are foods like legumes, milk, mushrooms and tinned vegetables that have considerable nutritional value that must include promotion of good dietary habits and physical activity. This has created an additional hurdle for such products to be advertised to children. Should certain other products with known nutritional benefits be exempt from the additional requirement to promote good dietary habits and physical activity? If so, which foods?

This question raises an important issue, the advertising of unnecessary toddler drinks to parents as a way to add extra "nutrients" and "supplement" a suboptimal diet. Whilst not directed at children, these products are harmful to children and in conflict with health policy and messaging. These ultra-processed powders need to be included as discretionary foods in order to protect parents and children from using them instead of promoting healthy diet and exercise.

To answer the question specifically, general advertising of what constitutes healthy eating, as described in the Australian Dietary Guidelines, and exercise is needed rather than specific products as this will always lead to unbalanced communication about specific food items. Having appropriate products (such as fresh fruit producers) doing this kind of messaging, rather than advertising a specific food item, would meet that need and offer advertising opportunity. It would be much safer for the public to only have government agencies doing these advertisements.

8. The application of the AFGC Initiatives to all advertisers has resulted in all ads for food or beverages, other than for fresh fruit or vegetables, being prohibited during C and P rated TV programmes and movies regardless of the time it is shown and the makeup of the audience unless the ad is for a healthier choice and promotes good dietary habits and physical activity. Should food advertising designed specifically to target adults through the themes, visuals and language used be permitted during TV programming during certain times, e.g. 9pm – 6am? If not, why not?

Advertisements directed at parents, regardless of the time of day, about children's eating should include the recommendations from the Dietary Guidelines but not specific products. Products claiming to offer meal or nutrient replacement or unproven health claims of immune protection, such as the ultra-processed powders labelled as "toddler drinks" or "toddler milk drinks" have no place in this space and need to be considered "discretionary" in order to protect parents and children. These product are often advertised during the day or when caregivers will be watching, often lifestyle shows and those directed at cooking or homemaking.

9. Under the F&B Code, there is no definitive rule or guidance regarding the application of the F&B Code in cases of incidental placement of food or beverages in an advertisement. For example, an ad for a supermarket showing a family dinner in the background may be required to also promote good dietary habits and physical activity if that ad was aired during a children's show or on a show where 35% of the audience was comprised of children. Do you think advertisements where food or beverages are incidental to the ad should comply with the requirement to promote good dietary habits and physical activity?

Yes, placing specific products in these background images is advertising and should be covered under this Code. This should include movies and magazine advertisements like the one below with product placement for a drinking cup.



10. The AFGC's QSRI specifies nutrition criteria for assessing whether an advertisement for that meal can be directed to children⁴. Is this definition of meals offered by quick service restaurants for which advertising can be directed to children appropriate? If not, why not?

No comment

11. The AFGC's RCMI specifies that signatories can determine what nutrition criteria they use to determine whether advertising for the food product can be directed to children and publicly report on this annually. Should signatories to the RCMI continue to determine and publish the nutrition criteria used to establish whether advertising for the food product can be directed to children and/or should common nutrient criteria be applied noting an expert, on behalf of Ad Standards independently validates the nutritional composition of a product subject to complaint? If so, what methodology should apply?

Yes the nutrition criteria should be transparent and independently validated.

12. Both of the AFGC's initiatives have a range of compliance requirements, in relation to which signatories have agreed to report annually and publicly⁶. Given that all relevant advertisers, not just signatories, now need to meet the requirements of the initiatives, is a compliance regime required? If so, what should it look like?

Yes, a compliance regime is required. A panel of independent consumers should investigate and report annually.

13. Should the Practice Note applying to the F&B Code be amended to include specific references to the additional requirements currently contained in the AFGC's initiatives that only healthier options be marketed to children and brand owners restrict activities in places where children congregate? If not, why not?

Unhealthy, unnecessary products such as toddler drinks pose a significant threat to the health of children and should be considered as manufacturers direct their advertising and product placement at the "average consumer". Children are the ones at risk. This specific type of advertising that deceives parents should be included somehow, including product placement in supermarkets.

Food & beverage advertising and health

Question

14. Are you aware of any evidence-based research that could help inform the development of the self-regulation of food and beverage advertising in Australia?

These two articles may be helpful.

<https://www.choice.com.au/babies-and-kids/feeding-children/making-healthy-choices/articles/are-toddler-formulas-just-marketing-spin>

<https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4143&context=theses>

Specific provisions of the F&B Code

Objectives

The objectives of the F&B Codes are to:

The object of this Code is to ensure that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing food and beverage products in Australia.

Questions

15. Does the F&B Code continue to meet its stated objectives? If not, why not?

No – for the objectives to met, toddler drinks and their aggressive, deceptive marketing strategies need to be identified to be included in this Code.

16. Do the current objectives need to be amended? If so, what are the objectives that the F&B Code should address?

The objectives of the Code as they exist are appropriate; however industry cannot be responsible, there must be an independent mechanism and deterrents that match the seriousness of the impact on child health outcomes.

Questions

17. Are any changes required to the definitions in the F&B Code? If so, what changes are required and why?

The existing definitions are adequate, provided that toddler drinks are included as discretionary products and it is recognised that deceptive tactics are used to seduce parents to buy the product based on untrue claims.

18. The AANA Codes define a child as a person 14 years old or younger. The Australian government's *Children's Television Standards* define children as "people younger than 14 years of age". The QSRI defines a child as a person under 14 years of age and the RCMI defines a child as a person under 12 years of age. The New Zealand Children and Young People's Advertising Code defines children as all persons below the age of 14 years. Should there be a single definition of a child and if not, why not? If so, what should that definition be?

No comment

Section 2 - Advertising for food and beverage products

Questions

19. Are any changes required to the rules in Section 2 of the F&B Code? If yes, please give reasons.

The rules as they exist are adequate.

20. Are any changes required to the Practice Notes for section 2 of the Code? If yes, please give reasons.

The practice notes as they exist are clear, and if used to include the marketing practices employed to sell toddler drinks, they would be adequate. Health and nutrition claims should be available from a source that is not selling the product.

Purchaser reviews on toddler drink products are not appropriate tools to evaluate the claims made by the manufacturer.

Section 3 - Advertising & children

21. Are any changes required to the rules in Section 3 of the F&B Code? If yes, please give reasons.

Children are the ones harmed by the toddler drinks; however this group is too young for targeted advertising so the ads are targeted specifically to create concern in vulnerable parents in order to sell the product.

22. Are any changes required to the Practice Notes for section 3 of the Code? If yes, please give reasons.

Yes, the impact on the child via the deceptive advertising to their parent should be considered in determining if the code has been breached.

Section 4 – Compliance with RCMI and QSRI

Questions

23. Are any changes required to the rules in Section 4 of the F&B Code? If yes, please give reasons.

Yes, marketing to parents of toddler drinks should be included.

24. Are any changes required to the Practice Notes for section 4 of the Code? If yes, please give reasons.

The impact on the health of the child in relation to the purchase and use of toddler drinks should be considered as these children are unable to advocate and their parents are being targeted using deception.

Additional comments

25. Do you have any additional questions or comments on the effectiveness of the self-regulation of food and beverage advertising in Australia?

Toddler drinks pose a significant health risk to Australian children, the use of the word “formula”, product placement in supermarkets and labelling to mimic products designed for 0-12 months need to be regulated in order for parents to begin to make informed decisions about the use of such products.

Regular evaluation of self-regulation by an independent body is required in order to protect the health of Australian children. Toddler drinks need to be included as a discretionary product and the use of deceptive tactics to induce sales to vulnerable parents requires consideration and scrutiny from this agency.

Many Thanks for the opportunity to contribute to this review.

APPENDIX A



EXAMPLE A

“be truthful and honest and not misleading or deceptive”

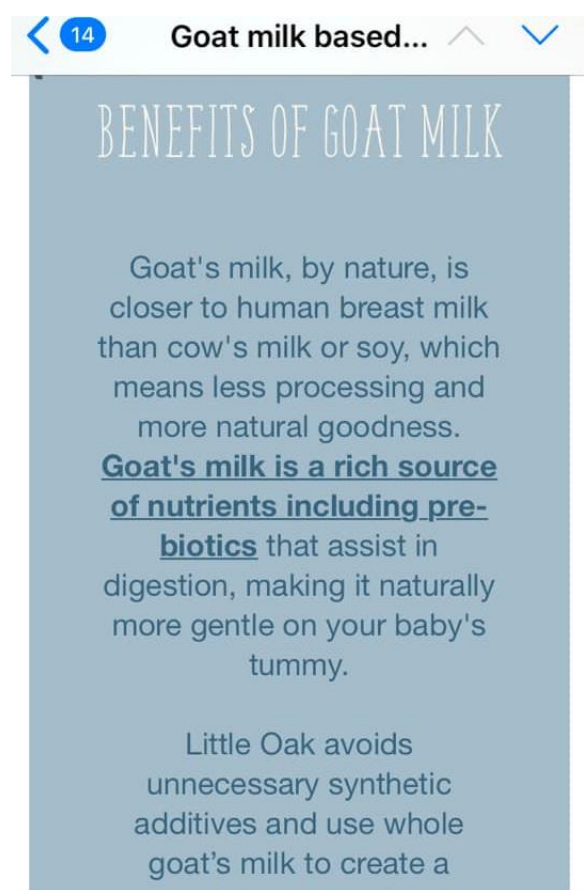
The toddler milk drink looks exactly like the under 12 months products. The use of numbering and the placement with infant formula on the shelf, is intended to imply it is the next step, although it is unnecessary after 12 months is deliberately deceptive to the average customer.



EXAMPLE B

“be truthful and honest and not misleading or deceptive”

The toddler milk drink looks exactly like the under 12 months products. The use of numbering to imply it is the next step, although it is unnecessary after 12 months is deliberately deceptive to the average customer.



EXAMPLE C

“be based on appropriate substantiation for claims made;”

There is no evidence that goats milk is any closer to human milk than cows milk or soy or that any “prebiotics” have the accompanying mechanisms required to become activated once in the stomach.

<https://thelittleoakcompany.com/shop/>

Ingredients: Lactose, Goat Whole Milk Powder [37%], LittleOak Proprietary Oil Blend (Sunflower Oil, High Oleic Sunflower Oil, Pressed Coconut Oil, Pressed Flaxseed Oil), Galacto-oligosaccharide (GOS), DHA Powder (Docosahexaenoic Oil from Schizochytrium sp.), Minerals (Calcium Citrate, Tricalcium Phosphate, Magnesium Sulphate, Ferrous Lactate, Zinc Sulphate, Potassium Iodide), Vitamins (Sodium Ascorbate, Niacinamide, Vitamin E Acetate, Vitamin D3, Vitamin A Acetate, Pyridoxine Hydrochloride, Thiamin Hydrochloride, Riboflavin, Folic Acid, Vitamin B12), Antioxidant (α-Tocopherol).

Allergens: Contains milk and trace amounts of soy Made using Goats Milk Protein

Nutrition Information For made-up drink

Serve Size: 30g into 200mls water yields approximately 220mls prepared Toddler Milk

“not portray food and beverages products as suitable meal substitutes when they are not;”

“LittleOak Toddler Milk is a Formulated Supplementary Food for young children. It has been specially designed to help meet the dietary needs of active growing toddlers in situations where their dietary intake may not be adequate. Prepare LittleOak Toddler Milk as directed and consume in addition to a healthy diet.”

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OMG how about the cheeky beautiful smiling face of our cute Royal Baby Princess @baby.samsam 🥰 mummy Kyah @itskyahwalker told us that little Sammy didn't want to let go of her milk 🍼 and from her expression we definitely believe her 😊

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#northernterritory #ozzie
#aboriginal #firstaustralians
#aussiemums #models #oz
#helpingtummies
#tummiesfulloflove #fortummies
#photooftheday #milk #happyallday
#landdownunder #toddler #aussies
#formula #smallbusiness
#mumtribeaus #lifeasreps #milk
#forallages

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EXAMPLE D

“not undermine the importance of healthy or active lifestyles;”

This advertisement uses storytelling and a clearly obese aboriginal child. The message certainly does not support healthy eating and lifestyle and goes on to specifically target aboriginal mothers. This advertisement is offensive. And the mother must have been given product and financial inducement.

Ingredients

Skim Milk Solids, Lactose, Vegetable Oils, Whey Protein Concentrates, Galacto-oligosaccharides (GOS), Lecithin (soy), Arachidonic Acid (AA), Docosahexaenoic Acid (DHA), Nucleotides (5'Cytidine Monophosphate, 5'Uridine Monophosphate Disodium Salt, 5' Adenosine Monophosphate, 5' Inosine Monophosphate Disodium Salt, 5' Guanosine Monophosphate Disodium Salt), Lutein

Minerals: Tri Calcium Phosphate, Magnesium Chloride, Magnesium Sulphate, Ferrous Sulphate, Zinc Sulphate, Potassium Iodide.

Vitamins: Sodium Ascorbate, Niacinamide, Vitamin A Acetate, D-Alpha Tocopheryl acetate, Cholecalciferol, Thiamine Hydrochloride, Pyridoxine Hydrochloride, Riboflavin, Folic Acid, Cyanocobalamin

“be truthful and honest and not misleading or deceptive”

“be based on appropriate substantiation for claims made;”

This product does not represent “healthy” , has nothing to do with fashion, it has no way to “help tummies” and sends a very disturbing message about obesity.

The LittleOak Company
Sponsored · 🌐

LittleOak Natural Goat Milk Baby Formula. Worlds First Certified Palm Oil Free Baby Formula. Free Delivery in Australia & NZ Now.



Product/Service
The LittleOak Company
4,604 people like this

Like Page

EXAMPLE E


“be truthful and honest and not misleading or deceptive”

The toddler milk drink looks exactly like the under 12 months products. The use of a baby that could be 12 months but is probably 9-10 months old and the comments about their infant formula, not toddler drink, is deliberately deceptive to the average customer.

●●●● Optus 4G 6:29 pm

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EXAMPLE F

“claim the product will give the child a physical, social or psychological advantage over other children;”

This advertisement is clearly directed at a concerned mother, your “average customer”, and by the use of expression on her face and suggesting her daughter will do dance moves because the mother has bought this “premium” product for her.

Ingredients

Maltodextrin, lactose (milk), vegetable oils, enzymatically hydrolysed whey protein (milk), minerals (calcium phosphate, calcium chloride, magnesium chloride, ferrous sulphate, zinc sulphate, potassium iodide), fish oil, vitamins [sodium ascorbate (vit C), dl-alpha tocopherol acetate (vit E), niacinamide (niacin), riboflavin (vit B2), thiamin mononitrate (vit B1), retinyl acetate (vit A), pyridoxine hydrochloride (vit B6), folic acid, cholecalciferol (vit D3)], acidity regulator (citric acid), culture (bifidus), antioxidants (ascorbyl palmitate, mixed tocopherols).

Allergens

Contains Milk and Fish.



Nature One Dairy Australia

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Look out for these premium nutrients in your little one's milk: DHA, ARA, Nucleotides, Prebioti... Continue reading



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Ingredients:

Organic Demineralised Whey Powder, Organic Vegetable Oils (Organic Palm Kernel Oil, Organic Soybean Oil, Organic Sunflower Oil, Organic Palm Olein Oil), Organic Skim Milk Powder, Organic Whole Milk Powder, Organic Lactose. **Total Certified Organic Ingredients=97%**. Docosahexaenoic acid (DHA, from fish oil), Arachidonic acid (ARA), Lutein, **Minerals** (Calcium Carbonate, Potassium Chloride, Sodium Citrate, Magnesium Sulphate, Ferrous Sulphate, Zinc Sulphate, Copper Sulphate, Manganese Sulphate, Potassium Iodide, Sodium Selenite), **Vitamins** (Niacinamide, Retinyl Acetate, d- α -Tocopheryl Acetate, Cholecalciferol, D-Calcium Pantothenate, Sodium Ascorbate, L-Ascorbic Acid, Thiamine Hydrochloride, Pyridoxine Hydrochloride, Folic Acid, Phytonadione, d-Biotin).

Allergens: Contains Dairy, Soy, and Fish.

Protein Source: From Cow's Milk

EXAMPLE G

"be truthful and honest and not misleading or deceptive"

The toddler milk drink looks exactly like the under 12 months products. The use of a baby that could be 12months but is probably 9-10months old is deceptive.

"be based on appropriate substantiation for claims made;"

There is no evidence that these additives are utilised once they hit the stomach.

On the website the term "formula" is used along with a toddler and a young baby when the product image is of the toddler milk drink. The claims made are false and without any substantiation.

"claim the product will give the child a physical, social or psychological advantage over other children;"

"YOUR CHILD MOST'S NATURAL START TO LIFE

*Give your little ones an amazing start to life with a nutritionally complete milk-based organic formula. **NATURE ONE DAIRY® Organic Formula** is specially formulated with a higher concentration of Omega-3 fatty acids, Omega-6, Lutein, essential vitamins, and antioxidants to protect your baby's development and growth."*

This is definitely unsubstantiated as we know pesticides are present in the food chain, to suggest that these health concerns to the "average consumer" is catastrophising then selling a solution to vulnerable parents.

"REDUCE RISKS OF OTHER HEALTH PROBLEMS

As organic milk contains no chemical pesticide traces, your baby will less likely be encountering issues with their nervous system, lungs, reproductive system, and immune or endocrine system dysfunction as these are the possible side-effects of consuming food with pesticides traces."

<https://www.natureonedairy.com/benefits-of-organic-milk-formula>