



Australian Government

Department of Health and Aged Care

Annual Report of the MAIF Agreement Complaints Committee 2021-2022

The Annual Report of the Marketing in
Australia of Infant Formulas – Manufacturers
and Importers (MAIF) Agreement Complaints
Committee

Current to 30 June 2022

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1 Scope and functions

The Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement

The Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement (MAIF Agreement)¹ has operated since 1992, as a voluntary, self-regulatory, code of conduct between the manufacturers and importers of infant formula products in Australia. It is part of Australia's response to the World Health Organization's International Code of Marketing of Breast-milk Substitutes 1981 (WHO Code)².

The MAIF Agreement aims to contribute to the provision of safe and adequate nutrition for infants, by protecting and promoting breastfeeding; and by ensuring the proper use of breast-milk substitutes, when they are necessary, through appropriate marketing and distribution. The MAIF Agreement applies to infant formula products for infants up to 12 months.

The MAIF Agreement applies to Australian manufacturers and importers of infant formula who are signatories to the MAIF Agreement. Signatories to the MAIF Agreement must adhere to provisions with respect to marketing and promotion of formulas for infants up to 12 months of age. The marketing activities of retailers including pharmacies and supermarkets are outside the scope of the MAIF Agreement. Products aimed at toddlers over 12 months of age (commonly referred to as toddler milk), and baby food, feeding bottles, teats and dummies are also outside the scope of the MAIF Agreement.

Signatories to the MAIF Agreement (on 30 June 2022)

Signatories to the MAIF Agreement

Abbott Australasia Pty Ltd	Aspen Pharmacare Pty Ltd
Australian Dairy Park Pty Ltd	Bayer Australia Ltd
Bega Nutritionals	Bellamy's Organic
H & H Group	Max Biocare
Nature One Dairy Pty Ltd	Nestlé Australia Ltd
Nuchev Pty Ltd	Nutricia Australia Pty Ltd
Sanulac Nutritionals Australia Pty Ltd	Spring Sheep Milk Co
Sprout Organic	The a2 Milk Company Ltd
The Infant Food Co. Pty Limited	The LittleOak Company
Zuru Edge	Wattle Health Australia Limited

MAIF Complaints Committee

The MAIF Agreement Complaints Committee (the Committee) was established in September 2018 and is managed by the Australian Government Department of Health and Aged Care (the Department). The Committee consists of 3 members: an independent representative; a

¹ <https://www.accc.gov.au/system/files/public-registers/documents/D15%2B143530.pdf>

² World Health Organization 1981, International Code of Marketing of Breast-Milk Substitutes, Geneva.

public health representative; and an industry representative. The Department is responsible for associated secretariat functions.

Guidance documents for interpretation of the MAIF Agreement

Guidance documents have been developed to assist MAIF Agreement signatories in understanding: their responsibilities, how to interpret the MAIF Agreement and to improve compliance with the MAIF Agreement. The guidance documents can be accessed on the Departments website³.

In 2019, the Committee agreed to undertake a review of all guidance documents for the interpretation of the MAIF Agreement. The Committee consulted with signatories and reflected on issues and themes raised through the complaints process, in reviewing and redrafting the guidelines.

The following guidance documents were updated in 2021-22:

- Clause 4: Guidance related to information and education; and
- Clause 5: Guidance related to general public and parents and/or carers.

Guidance documents are considered 'living documents' which may be amended to remain relevant in a changing marketing environment. The Committee will continue to review the MAIF Agreement guidance material, including updates to existing guidance for Clause 7(c) and 7(d).

Authorisation of the MAIF Agreement

The MAIF Agreement is authorised under the Competition and Consumer Act 2010 (the Act) and can be viewed at the Australian Competition and Consumer Commission (ACCC) website⁴. As the MAIF Agreement and guidelines restrict promotion and advertising of infant formula to the public it has potential to breach the competition provisions of the Act.

The ACCC last reauthorised the MAIF Agreement in 2021 for a period of 3 years to 31 August 2024.

Review of the MAIF Agreement

An independent review of the MAIF Agreement will be managed by the Department and will commence in early 2023.

³ <https://www.health.gov.au/resources/collections/maif-agreement-interpretation-guides>

⁴ <https://www.accc.gov.au/system/files/public-registers/documents/D15%2B143530.pdf>

2 MAIF Complaints Committee members 2021-2022

Independent representative and Chair:

Adjunct Professor Debra Thoms RN RM BA MNA Grad Cert Bioethics Adv Dip Arts FCN FRCNA FACHSM (Hons)

Adjunct Professor Debra Thoms was the Chief Nursing and Midwifery Officer for the Australian Government from September 2015 – June 2019 and is responsible for providing high-level advice on nursing and midwifery issues. She also participated in the formulation and implementation of policy and strategic direction in relation to health care in Australia. Professor Thoms was formerly the inaugural Chief Executive Officer of the Australian College of Nursing, a position she took up in mid-2012 following 6 years as the Chief Nursing and Midwifery Officer with NSW Health.

Public health representative:

Emeritus Professor Jane Scott PhD, MPH, Grad Dip Dietetics (with Distinction), BApp Sci (Nutrition and Food Science), Fellow Dietitians Australia (appointed May 2021)

Emeritus Professor Jane Scott is a public health dietitian whose early childhood nutrition research has underpinned and influenced national and international policy and practice. She has contributed to the surveillance of infant feeding practices in Australia and advised on the 2010 National Infant Feeding Survey and National Breastfeeding Indicators. Professor Scott was a member of the Breastfeeding Expert Reference Group, which contributed to the development of the *Australian National Breastfeeding Strategy: 2019 and Beyond*. She is a Fellow of Dietitians Australia and, prior to her retirement at the end of 2020, was Deputy Head of the School of Public Health at Curtin University.

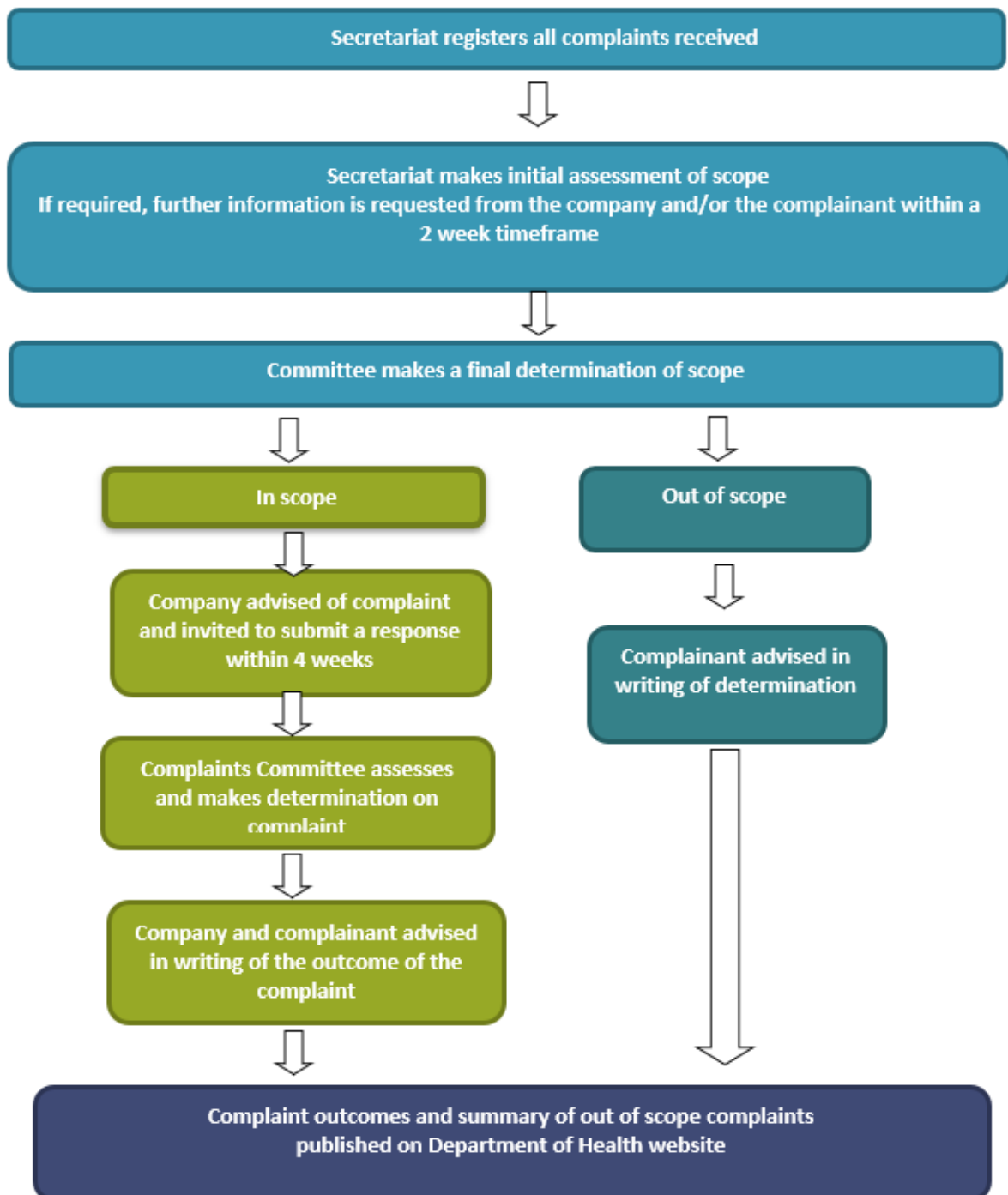
Industry representative:

Ms Jan Carey, Chief Executive Officer, Infant Nutrition Council

Ms Jan Carey is the CEO of the Infant Nutrition Council (INC), and was previously the Executive Director of Infant Formula Manufacturers' Association of Australia and the New Zealand Infant Formula Marketers' Association, prior to their amalgamation to form INC. She is also the industry representative on the Ministry of Health's Compliance Panel in New Zealand. In 2013, Ms Carey was appointed to the Executive of the Governing Board for the International Special Dietary Food Industries Association (ISDI). ISDI is based in Brussels, represents the industry globally at Codex, World Health Assembly meetings and WHO Executive Board meetings.

3 How complaints are processed

Formal complaints can be lodged with the MAIF Complaints Committee Secretariat from any interested party, such as members of the public, breastfeeding advocacy groups, and health professionals. The [flowchart](#) below demonstrates the complaints handling process.



4 Complaint outcomes 2021 – 2022

In the 2021-22 the MAIF Complaints Committee:

- **Considered** a total of 52 complaints. 41 were new complaints received in 2021-22, and 11 were complaints carried over from previous financial years.
- **Resolved** a total of 49 complaints. 38 from the new complaints received in 2021-22, and 11 were complaints carried over from 2020-21.

3 complaints from 2021-22 have been carried over to the 2022-23 reporting period.

Outcomes of complaints considered and resolved

In-scope of the MAIF Agreement

Of the 49 complaints resolved in 2021-22, 37 complaints were determined to be in scope of the MAIF Agreement, 10 of these were carried over from previous financial years:

- 29 complaints were determined to be in breach – these are outlined in the table below.
- 8 complaints were determined not to have breached.

Out-of-scope of the MAIF Agreement

- 12 complaints were determined to be out of scope of the MAIF Agreement
 - 8 related to non-signatory activity.
 - 4 related to retailer activity.

Table 1: Summary of complaints determined to be in breach of the MAIF Agreement.

	Complaint reference number	Date received	Company	Proposed breach	Determination
1.	1920-08	19 May 2020	Biostime	<i>Breach of clause 5(a)</i> Alleged activity relating to the company's promotion of the entire brand and products (use of the Biostime logo).	The Committee at its meeting on 28 May 2021 determined the breach of 5(a) of the MAIF Agreement still stands as determined at the 11 December 2020 meeting. The use of the name 'Biostime' alone gives reference to the 'Biostime Nutrition' infant formula range.
2.	2021-39	12 October 2020	Little Oak Company	<i>Breach of clause 4(a), 4(b), 5(a), 5(c)</i> Alleged activity relating to the company's social media marketing activity	The Committee considered this complaint on 13 October 2021 and 7 February 2022 and determined the reference of 'Mummy and Baby' is to be removed, requiring labelling and advertising changes as this is a breach of 4(a), 4(b) 5(a),5(c) of the MAIF Agreement.
3.	2021-40	13 October 2020	Biostime	<i>Breach of clause 5(a)</i> Alleged activity relating to the company's social media marketing advertisement.	The Committee considered this complaint on 7 February 2022 and determined at the time of the complaint it was a breach of 5(a) of the MAIF Agreement. The committee acknowledged the company's attempt since to rectify this matter.
4.	2021-42	22 October 2020	Bellamy's/Australia Multiple Births Association	<i>Breach of clause 5(a) inadvertent, no breach of 5(d), 6(a) or 6(e).</i>	The Committee considered this complaint on 13 October 2021 and noted the AMBA discounts are helpful for those who have multiple births, but

Complaint reference number		Date received	Company	Proposed breach	Determination
				Alleged activity relating to the company's discount offer through the Australian Multiple Births Association (AMBA).	proper process requires that a health care professional confirms a woman has had multiple births to be able to access the discount. It was determined a breach of 5(a) inadvertent and no breach of 5(d), 6(a) or 6(e) .
5.	2021-58	22 March 2021	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged activity relating to the company's promotion of infant formula through a radio interview.	The Committee considered this complaint on 7 February 2022 and determined that discussions which state 'what the product does' through a radio interview is a breach of clause 5(a) of the MAIF Agreement.
6.	2021-60	27 April 2021	The Infant Food Co.	<i>Breach of clauses 4(a), 4(b) and second issue of clause 5(a). No breach for first issue in clause 5(a).</i> Alleged activity relating to the company's website limited breastfeeding information and 'linking' of products and on the Bubs Australia Facebook and Instagram page.	The Committee considered this complaint on 13 October 2021, noting the company's website graphics included an arrowhead continuing the progression of their range of formulas and social media activity reference to the 'range' may imply infant formula products. It was determined the company's activity is a breach of clauses 4(a), 4(b) and second issue of clause 5(a). There is no breach for issue one in clause 5(a) as the company had removed the arrowhead.
7.	2122-04	19 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with posts on the company's social media	The Committee considered this complaint on 13 October 2021, 7 February, and 13 July 2022. It was

	Complaint reference number	Date received	Company	Proposed breach	Determination
				accounts featuring a customer review promoting infant formula and using hashtags directed at the public.	determined a breach of clause 5(a) of the MAIF Agreement.
8.	2122-05	19 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with an Instagram post promoting infant formula products and using hashtags to promote products to the public.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.
9.	2122-06	19 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with an Instagram post promoting use of infant formula where the company replied to a customer’s comment on the post regarding infant formula.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.
10.	2122-09	20 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with promotion of infant formula on the company’s social media platforms.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.
11.	2122-10	24 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with promotion of infant formula in a video on the company’s social media platforms.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.

	Complaint reference number	Date received	Company	Proposed breach	Determination
12.	2122-11	24 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with promotion of infant formula on the company's social media platforms.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement as the promotion contained a written reference to 'baby formula'.
13.	2122-12	24 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clauses 5(a) and 5(d) with promotion of infant formula products through a third-party Instagram page, including a question-and-answer session with a LittleOak company representative.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined that it was a breach of clauses 5(a) and 5(d) of the MAIF Agreement.
14.	2122-13	27 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with the promotion of infant formula on the company's Facebook page via customer testimonial.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.
15.	2122-15	27 July 2021	The LittleOak Company	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with promotion of infant formula on the company's Instagram page.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement.
16.	2122-18	28 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i>	The Committee considered this complaint on 13 July 2022 and determined marketing claims in this

	Complaint reference number	Date received	Company	Proposed breach	Determination
				Alleged breach of clause 5(a) with announcements of infant formula to consumers that infant formula is back in stock.	‘announcement’ reads as advertising and determined it a breach of clause 5(a) of the MAIF Agreement.
17.	2122-23	29 March 2022	Sprout Organic	<i>Breach of clauses 5(a) and 6(e)</i> Alleged breach of clauses 5(a) and 6(e) in relation to the company’s social media post and sponsored advertisement.	The Committee considered this complaint on 13 July 2022 and determined it a breach of clauses 5(a) and 6(e) as it included identifiable images of infant formula product.
18.	2122-24	29 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with cross marketing references to 0 years old alongside images of 12+ toddler milk products on Facebook.	The Committee considered this complaint on 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement due to the age references in the text.
19.	2122-25	29 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with a Facebook post containing an image of children holding a tin of infant formula.	The Committee considered this complaint on 13 July 2022 and determined that the post was in breach of clause 5(a) of the MAIF Agreement as the tin colour is identifiable as infant formula. The Committee agrees that the child in the image is older than 12 months of age which adheres to the MAIF Agreement.
20.	2122-26	29 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with a Facebook post promoting the	The Committee considered this complaint on 13 July 2022 and determined it a breach of clause 5(a)

Complaint reference number		Date received	Company	Proposed breach	Determination
				company's Black Friday Sale with an image of infant formula product identifiable in the advertisement.	of the MAIF Agreement as the infant formula product is identifiable by the tin colour.
21.	2122-27	29 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with a Facebook post that the company shared of a customer testimonial about their infant formula product.	The Committee considered this complaint on 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement due to Sprout Organic sharing and commenting on the post.
22.	2122-28	31 March 2022	Sprout Organic	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with promotion and advertising to customers on Facebook that infant formula is back in stock, including promotional phrases.	The Committee considered these complaints on 13 July 2022 and determined them a breach of clause 5(a) of the MAIF Agreement.
23.	2122-29	1 April 2022			
24.	2122-30	2 April 2022			
25.	2122-31	2 April 2022			
26.	2122-32	2 April 2022			
27.	2122-33	2 April 2022			
28.	2122-34	2 April 2022			
29.	2122-36	10 April 2022	Sprout Organics	<i>Breach of clause 5(a)</i> Alleged breach of clause 5(a) with targeted sponsored Facebook advertisements showing infant formula products.	The Committee considered this complaint on 13 July 2022 and determined it a breach of clause 5(a) of the MAIF Agreement due to the advertisement containing images of infant formula products.

Table 2: Summary of complaints determined not in breach of the MAIF Agreement.

Complaint number	Date received	Proposed breach	Determination
1920-10:	6 June 2020	<i>No breach of clause 5(a)</i> Alleged activity relating to the company's social media marketing on their Facebook page.	The Committee considered this complaint on 13 October 2021 and re-considered new information provided by the company and determined no breach of clause 5(a) and overturned the previous decisions of breach of clause 5(a) in December 2020.
2021-34	1 October 2020	<i>No breach of clause 5(d)</i> Alleged activity relating to the company's careline online information resource promoting breast milk substitutes to parents and pregnant women.	The Committee considered this complaint on 28 May 2021 and determined no breach of clause 5(d). However, noted some potential issues with adherence to the electronic media guidance.
2021-57	22 March 2021	<i>No breach of clause 5(a)</i> Alleged activity relating to Australian Multiple Births Association advertising discounts for infant formulas.	The Committee considered this complaint on 13 October 2021 noting the company cannot breach because it was not the company who undertook the action and determined no breach of clause 5(a) of the MAIF Agreement.
2021-59	21 April 2021	<i>No breach of clause 5(a)</i> Alleged activity relating to the company's television marketing activity with a young child who appears to be younger than 12 months.	The Committee considered this complaint on 7 February 2022 and the company's response that confirmed the child's age was over 12 months of age. It was determined no breach of clause 5(a) of the MAIF Agreement.

Complaint number	Date received	Proposed breach	Determination
2122-03	14 July 2021	<i>No breach of clause 5(a) and 9(b)</i> Alleged breach of clause 5(a) and 9(b) relating to the company's promotion of infant formula and follow-on formula on the label of the product.	The Committee considered this complaint on 13 October 2021 and determined this not a breach of clause 5(a) as the advertisement is on the back of the tin and not the front. The complaint is out of scope for clause 9(b) as wording on labelling is not mandated by the MAIF Agreement.
2122-07	20 July 2021	<i>No breach of clause 5(a)</i> Alleged activity relating to social media posts from the company promoting infant formula using a tagline.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it not a breach of clause 5(a) of the MAIF Agreement and requested the company to remove statements that may infer a reference to infant formula.
2122-14	27 July 2021	<i>No breach of clause 5(a)</i> Alleged breach of clause 5(a) with the promotion of infant formula through a retailer.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it not a breach of clause 5(a) as retailer activity is not in scope of the MAIF Agreement.
2122-17	21 December 2021	<i>No breach of clauses 7(a) and 7(c)</i> Alleged breach of clauses 7(a) and 7(c) with an online seminar to health professionals showing alleged promotional information including a competition.	The Committee considered this complaint on 7 February 2022 and determined it not a breach, as the seminar and competition were within the guidelines of the MAIF Agreement.

Table 3: Overview of complaints out of scope of the MAIF Agreement

Complaint number	Date received	Proposed breach	Determination
2021-61	27 April 2021	<i>Out of scope</i> Alleged breach of clause 5(a) by a retailer concerning infant formula promotion.	The Committee considered this complaint on 28 May 2021 and amended their determination of in-scope to 'out-of-scope' of the MAIF Agreement due to retailer activity. It was recommended that the company request the retailer update their online images of the product.
2122-01	1 July 2021	<i>Out of scope</i> Alleged breach of clause 5(a) relating to the promotion of infant formula products through a retailers Instagram page.	The Committee considered this complaint on 7 February 2022 and determined it not a breach of clause 5(a) as retailer activity is not in scope of the MAIF Agreement.
2122-02	12 July 2021	<i>Out of scope</i> Alleged breach of clause 5(a) relating to the promotion of infant formula products by a retailer.	The Committee considered this complaint on 13 October 2021 and determined it not a breach of clause 5(a) as retailer activity is not in scope of the MAIF Agreement.
2122-08	20 July 2021	<i>Out of scope</i> Alleged breach of clause 5(a) with retailer social media posts promoting infant formula.	The Committee considered this complaint on 13 October 2021, 7 February 2022 and 13 July 2022 and determined it not a breach of clause 5(a) as retailer activity is not in scope of the MAIF Agreement.
2122-16	17 November 2021	<i>Out of scope</i> Alleged breach of clause 5(a) claiming promotion of infant formula products in a retail setting.	The Committee considered this complaint on 7 February 2022 and determined that this complaint is out of scope of the MAIF Agreement as the company are not a signatory to the agreement. The company has been invited to sign the MAIF Agreement.

Complaint number	Date received	Proposed breach	Determination
2122-19	28 March 2022	<i>Out of scope</i> Alleged breach of clause 5(a) with the promotion of infant formula to the general public through targeted, sponsored Facebook advertisements.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.
2122-20	28 March 2022	<i>Out of scope</i> Alleged breach of clause 4(a) and 4(b) stating that the click-through acknowledgement on the company's webpage is not adequate.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.
2122-21	28 March 2022	<i>Out of scope</i> Alleged breach of clause 5(a) and 5(c) with a promotion to win a prize when purchasing any of the company's products.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.
2122-22	28 March 2022	<i>Out of scope</i> Alleged breach of clauses 4(a), 4(b), 5(a) and 5(b) with direct marketing to the general public through Facebook, offering samples of products.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.
2122-38	27 April 2022	<i>Out of scope</i> Alleged breach of clause 4 and 5 for advertising of infant formulas and no mention of the benefits and superiority of breastfeeding	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.

Complaint number	Date received	Proposed breach	Determination
2122-39	17 May 2022	<i>Out of scope</i> Alleged breach of clause 7(a) for advertising of infant formulas in a Dietitian Newsletter.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.
2122-40	28 June 2022	<i>Out of scope</i> Alleged breach of clause 4(a), 4(b), 5(a) and 7(a) with advertisements directly to the general public through targeted Instagram posts and use of an Instagram influencer.	The Committee considered this complaint and determined that it was out of scope as the company is not a signatory to the MAIF Agreement. The company has been encouraged to become a signatory to the MAIF Agreement.