

Compliance Report

Health and Beauty 2006

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Published 2006

1 Summary

The ASA has undertaken a survey into the compliance rate of health & beauty advertising with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code), BCAP Radio Advertising Standards Code and BCAP TV Advertising Standards Code.

We assessed all health & beauty advertisements that appeared in a sample of the national press, consumer magazines and on TV & radio against the relevant Code.

The survey targeted only obvious breaches of the Codes. Where a breach was found, the Compliance team contacted the advertiser, told it to ensure all advertisements complied fully with the CAP Code and advised it to use the CAP Copy Advice team in future. The ASA later investigated five advertisements that seemed to breach the Code.

Excluding duplicates, 40 of 422 advertisements (9.5%) were found to breach the CAP Code, a compliance rate of 90.5%.

The Compliance Team noted that 70% of the advertisements that breached the Code appeared in the national press. No Code breaches were identified in broadcast advertising. Because television advertisements are routinely pre-vetted, that is not surprising. The Compliance team will continue to monitor health & beauty advertisements to achieve an improvement in the compliance rate. It urges publishers to ensure that advertisements for health & beauty products comply with the relevant Code.

2 Introduction

2.1 Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) which applies to non-broadcast marketing communications. It is responsible for ensuring that the self-regulatory system works in the public interest. It achieves that by investigating complaints, identifying and resolving problems by research and by promoting and enforcing high standards in marketing communications by ensuring that everyone who commissions, prepares and publishes marketing communications observes the CAP Code for non-broadcast advertisements. On 1 November 2004, the ASA assumed powers for TV and radio advertisements under contract from the communications regulator, Ofcom.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. It represents advertisers, promoters and direct marketers, their agencies, the media and other trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service for non-broadcast advertising and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The Compliance team works to ensure that marketing communications comply with the CAP Code and with ASA adjudications. The team follows-up ASA adjudications, monitors marketing communications and takes immediate action to ensure marketing communications that breach the Code are removed from the media. One of the team's objectives is to create a level-playing field for marketers within each sector and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys to assess compliance rates in particular industries, sectors or media; those surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA and CAP.

2.2 Code Rules

The 11th edition of the British Code of Advertising and Sales Promotion came into force on 4 March 2003. The purpose of the Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the trade. All advertisements should be legal, decent, honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition.

The BCAP Television Advertising Standards Code and the Radio Standards Code both set out the rules that govern advertisements on television and radio channels licensed by Ofcom.

The CAP Code is made up of general rules, sales promotion rules and direct marketing rules. Specific rules cover sectors such as alcohol, motoring, health and beauty products and therapies and financial products.

The main requirements of the general rules are:

Legal

Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it.

Decent

Marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency.

Honest

Marketers should not exploit the credulity, lack of knowledge or inexperience of consumers.

Truthful

No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

2.3 Survey Objectives

The purpose of the survey was to:

- Assess compliance rates for advertisements for health & beauty products in the national press, a selection of consumer magazines and broadcast media;
- Identify potential problems and resolve them;
- Contact the advertiser responsible for advertisements that appear to break the Codes and obtain an assurance that future advertisements would comply fully with the Code's requirements;
- Act as a deterrent to bad practice and an encouragement to good practice.

3 Methodology

3.1 Method

The Compliance team monitored all advertisements and reader offers in a representative sample of health & beauty magazines for men and women, the national press, and broadcast media from 21 January 2006 to 17 February 2006.

Where a breach of the Code was identified, the Compliance team wrote to the advertiser and asked for a written assurance that the advertisement would be withdrawn and amended. The advertiser was asked to send an assurance within 72 hours. Publishers were informed of the name of the advertiser and the nature of the problem. Written assurances were received from all of the advertisers contacted.

3.2 Newspapers and Magazines Examined in the Survey

The Compliance team surveyed these 22 national newspapers:

- Daily Express
- Daily Mail
- Daily Mirror
- Daily Record
- Daily Sport
- Daily Star
- Daily Telegraph
- Guardian
- Independent
- Independent On Sunday
- Mail on Sunday
- Metro
- News of the World
- Observer
- Scotsman
- Sunday Mail
- Sunday Mirror
- Sunday Post
- Sunday Sport

- Sunday Times
- Times
- The Sun

And these twenty one magazines:

- Company
- Cosmopolitan
- Elle
- Glamour
- Heat
- Hello
- Ok!
- In Style
- Health & Fitness
- Natural Health & Beauty
- Marie Claire
- Men's Health
- Men's Fitness
- Muscle & Fitness
- New Woman
- Red
- She
- Top Sante
- Vogue
- Yours
- Zest

Advertisements broadcast on television or radio at any point between 21 January and 17 February were also included.

They included these 87 television stations:

- Animal Planet
- Animal Planet + 1
- Bravo
- Bravo + 1
- Challenge TV
- Challenge TV +

- Channel 4
- Channel 5
- Discovery
- Discovery +1
- Discovery Civilisations
- Discovery Health
- Discovery Home & Health
- Discovery Science
- Discovery Travel & Adventure
- Discovery Wings
- E4
- E4 + 1
- Extreme Sports Channel
- FTN
- FX
- Hallmark
- Home & Leisure
- Home & Leisure + 1
- ITV1
- ITV2
- ITV3
- Kerrang
- Kiss TV
- Living TV 2
- LivingTV
- LivingTV + 1
- Magic TV
- MTV
- MTV Base
- MTV Dance
- MTV Hits
- MTV2
- National Geographic TV
- Nickelodeon
- Nickelodeon Replay
- Paramount
- Paramount +1
- Paramount Comedy 2
- Q

- Reality TV
- Reality TV +1
- Sci-Fi Channel
- Sky Cinema 1
- Sky Moviemax 1
- Sky Moviemax 5
- Sky News
- Sky One
- Sky One Mix
- Sky Premier 1
- Sky Premier 3
- Sky Premier 4
- Sky Travel 2
- Smash Hits
- The Biography Channel
- The History Channel
- The History Channel + 1
- The Hits
- The Vault
- TMF
- Trouble
- Trouble Reloaded
- UK Bright Ideas
- UK Drama
- UK Food
- UK Gold
- UK Gold + 1
- UK Gold 2
- UK History
- UK Horizons
- UK Horizons + 1
- UK Style
- UK Style Plus
- UKTV Food + 1
- UKTV History + 1
- UKTV People
- UKTV People + 1
- UKTV Style Gardens
- VH1

- VH1 Classic

And these 36 radio stations.

- 104.9 XFM
- Beat 106
- BRMB
- Capital 95.8 FM
- Capital Gold
- Century 105.4 FM
- Classic FM
- Clyde 1 102.5
- Clyde 2 1152 AM
- Cool FM
- Essex FM
- Galaxy 102 FM
- Galaxy 102.2
- Galaxy 105
- Heart 100.7
- Heart 106.2 FM
- Invicta FM
- Jazz FM 102.2
- Key 103 FM
- Kiss 100 FM
- LBC FM
- LBC News
- Magic 105.4
- Mercia 97.0 FM
- Metro City
- Power FM
- Radio City
- Radio Wave 96.5
- Real Radio FM
- Real Radio Scotland
- Red Dragon FM
- Smooth FM
- TalkSPORT
- Virgin AM
- Virgin FM

- XFM Scotland

Magazines for under 18-year-olds were not included.

3.3 Categorisation

The Compliance team considered only advertisements for health and beauty products. It did not include advertisements for health foods or for slimming products and services; the latter were the subject of a separate survey, undertaken in the early part of 2005.

Each of the advertisements identified as falling within the remit of the survey was categorised by advertiser, media and product or brand. Each of the products was categorised as one of these:

- Advice
- Alternative Therapies
- Beauty Treatment
- Cosmetic Surgery
- Cosmetics
- Dental
- Devices
- Exercise
- Eye care
- Fragrance
- Hair Loss
- Hair Product
- Health Clinic
- Hearing Aid
- Herbal Product
- Hygiene
- Laser Skin Treatment
- Medical Research
- Medicine
- Pain Relief
- Prescription Only Medicine
- Sexual Health
- Sports Supplements
- Supplements.

4 Findings

4.1 Compliance Rate

The survey sought to establish the proportion of advertisements for health & beauty products and services that appeared between 21 January 2006 and 17 February 2006 that complied with the Codes.

In total, the Compliance team considered 756 advertisements. Of that, 334 were duplicates leaving 422 original advertisements.

Of the 422 advertisements examined, 40 (9.5%) breached the Code.

4.2 Compliance by Newspaper, Magazine and Broadcast Media

The team noted most advertisements that breached the Codes (70% excluding duplicates) appeared in the national press:

Magazines:	12 breaches
National Newspapers:	28 breaches
Broadcast:	No breaches
Total	40 breaches

The team was concerned by the relatively high number of breaches in the national press. It contacted the newspapers and magazines running the breach advertisements and informed them that the advertisements breached the CAP Code. The compliance rate for television media was higher than that for non-broadcast; mainly because television advertisements are pre-vetted by the BACC.

Table .1 Compliance by Newspaper (excluding duplicates)

Publication	Breaches
Daily Express	4
Daily Mail	3
Independent on Sunday	3
Sunday Telegraph	3
Daily Star	2

Daily Record	2
Mail on Sunday	2
Daily Telegraph	1
Daily Mirror	1
The People	1
The Scotsman	1
The Times	1
Sunday Express	1
Sunday Sport	1
News Of The World	1
Metro	1
TOTAL	28

Table. 2 Compliance by Magazine (excluding duplicates)

Publication	Breaches
Vogue	2
Natural Health & Beauty	2
Yours	2
She	1
Red	1
Marie Claire	1
Hello	1
Health & Fitness	1
Top Sante	1
TOTAL	12

Table. 3 Number of advertisements by medium (Excluding Duplicates)

Medium	
Magazine	195
Newspaper	139
TV	62
Radio	26
TOTAL	422

Table. 4

Compliance by Magazine, Newspaper & Broadcast Media (Excluding Duplicates)

	<u>Magazines</u>	<u>Newspapers</u>	<u>Broadcast</u>
<u>No of Ads</u>	<u>195</u>	<u>139</u>	<u>88</u>
<u>Breach</u>	<u>12</u>	<u>28</u>	<u>0</u>
<u>No breach</u>	<u>183</u>	<u>111</u>	<u>88</u>
<u>% in breach</u>	<u>6%</u>	<u>20%</u>	<u>0%</u>

Compliance by Product

The team placed products into 24 categories: Advice, Alternative Therapies, Beauty Treatment, Cosmetic Surgery, Cosmetics, Dental, Device, Exercise, Eye care, Fragrance, Hair Loss, Hair Product, Health Clinic, Hearing Aid, Herbal Products, Hygiene, Laser skin treatment, Medical Research, Medicine, Pain Relief, Prescription only medicine, Sexual health, Sports supplements and Supplements.

It noted that most breaches were for alternative therapies and supplement advertisements. See the table below:

Table. 5 Breaches by product category (Excluding Duplicates)

Product Category	Breaches
Alternative Therapies	8
Supplements	7
Cosmetics	5
Devices	5
Pain Relief	4
Laser Skin Treatment	3

Product Category	Breaches
Health Clinics	2
Beauty Treatment	1
Exercise	1
Hair Loss	1
Herbal Product	1
Prescription Only Medicine	1
Sexual Health	1

A good example of an advertisement for an alternative therapy product was “Chi” foot patches. The advertisement claimed that the product could extract toxins from the body during sleep and improve the immune system and circulation.

Neither CAP nor the ASA has seen robust scientific evidence to substantiate the efficacy of any type of foot patch that claims to detoxify the body. The advertisement was caught by clauses 3.1 and 50.1:

3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.

50.1 Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Where relevant, the rules will also relate to claims for products for animals. Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.

Another advertisement for an alternative therapy advertised an holistic treatment called “Mickel Therapy”. The advertisement claimed that it could treat such serious medical conditions as depression, ME and multiple sclerosis.

Advertisers should not offer treatment for serious medical conditions unless that treatment is conducted under the supervision of a doctor or suitably qualified health professional. We asked the advertisers to remove references to serious medical conditions and not to place the advertisement again. As well as clause 3.1 (above), the advertisement was caught by clause 50.3:

50.3 Marketers should not discourage essential treatment. They should not offer specific advice on, diagnosis of or treatment for serious or prolonged conditions unless it is conducted under the supervision of a doctor or other suitably qualified health professional (e.g. one subject to regulation by a statutory or recognised medical or health professional body). Accurate and responsible general information about such conditions may, however, be offered.

The team also noted several breaches in the advertising of supplements (of 40 breaches). An advertisement for Glucosamine claimed “injuries and the natural ageing process affect our bodies’ ability to produce glucosamine making supplementation essential for joint health”. Because we have not seen evidence to demonstrate the efficacy of ingested glucosamine, or that injuries or ageing affect the body’s ability to produce glucosamine, we considered the advertisement breached clauses 3.1 and 50.1 of the CAP Code.

Supplements featured heavily in the survey. An example of such an advertisement that breached the Code was one for liquid collagen. The advertisement claimed that ingesting liquid collagen would “help support healthy joints”. Neither CAP nor the ASA has seen enough evidence to substantiate the efficacy of ingested collagen. The advertisement implied that collagen production in the body decreases with age. Again, we have seen no evidence to substantiate that claim. The advertisement breached Code Clauses 3.1, 50.1 and 50.20:

50.20 Marketers should hold scientific evidence for any claim that their vitamin or mineral product or other food supplement is beneficial to health. In assessing claims the ASA and CAP will bear in mind recommendations made by bodies such as the Department of Health and the Food Standards Agency.

Seven cosmetics advertisements breached the Code. One for a skin cream claimed that the cream could boost the skin's "rejuvenation", correct wrinkles and seemed to compare the product to cosmetic surgery with the statement "surgery-like precision".

The ASA has seen evidence to show that skin creams can reduce the appearance of wrinkles, not that they can be removed or corrected. And, we have not seen evidence that a cosmetic cream can have the same effect as cosmetic surgery. Also, the advertisers were asked to remove "surgery like precision". The Code does not allow for the unqualified use of the term "rejuvenation". The advertisement was caught by Clause 50.7:

50.7 References to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated. Unqualified claims such as 'cure' and 'rejuvenation' are not generally acceptable.

Five advertisements for beauty devices breached the Code. One of those was for a device that claimed, through the flexing of facial muscles, the product could reproduce the effects of a "face lift without surgery".

We have not seen evidence to prove that such devices can claim to be an alternative to cosmetic surgery. Although cosmetic procedures, applied by beauticians, may be described as just that (i.e. a cosmetic treatment or cosmetic therapy), we have not accepted that exercise devices produce more than a temporary effect or that they can provide the same dramatic effect as a facelift or other cosmetic surgery procedures. We asked the advertiser to amend the advertisement by removing the claim. The advertisement was caught by clauses 3.1 and 50.1.

We identified breaches of the CAP Code in advertisements for crystals contained in a pen and for magnotherapy products. The former claimed the product could relieve back pain and the symptoms of sciatica, by producing a charge from low frequency crystals.

The ASA had already adjudicated on advertisements for the product. It has not seen robust scientific evidence to substantiate any direct or implied efficacy claims for the product. The advertisement offered to treat serious medical conditions such as arthritis. We asked the advertiser to withdraw the advertisement. The advertisement was caught by clauses 3.1 and 50.1.

An advertisement for a magnotherapy product claimed that it offered “drug free pain relief”, consumers could “feel the difference the new magnetic mattress underlay can make to your wellbeing” and “an estimated 120 million people worldwide have experienced the positive therapeutic effects of magnetic therapy”. To date, neither CAP nor the ASA have seen enough evidence to support efficacy claims for magnotherapy products. Although some people believe in the power of magnets, the Code states testimonials alone do not constitute substantiation. The Code requires advertisers making medical and scientific claims about health-related products to hold evidence in the form of clinical trials conducted on human subjects. We asked the advertiser to amend the advertisement to remove all direct and implied efficacy claims. The advertisement was caught by clauses 3.1, 14.3 and 50.1.

14.3 Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Code.

Advertisements for supplements and cosmetics formed the bulk of health and beauty advertisements surveyed but most of those advertisements did not breach the Code. See table 6 below:

Table.6 Non-breaches by Product Category (Excluding Duplicates)

Product Category	Non-Breaches
Cosmetics	77
Supplements	31
Medicine	31
Cosmetic Surgery	31
Sports Supplement	28
Fragrance	28
Hair Product	19
Positional Relief	18
Eye care	16
Hair Loss	14
Exercise	13

Product Category	Non-Breaches
Health Clinic	12
Laser Skin Treatment	10
Alternative Therapies	10
Hearing Aid	9
Beauty Treatment	8
Advice	8
Dental	6
Medical Research	4
Herbal Product	3
Devices	3
Hygiene	2
Sexual Health	1

Of the advertisements that were in breach, the main categories were supplements, cosmetics (skin creams), laser skin treatment and devices that offered to treat various medical conditions.

4.6 CAP Ad Alerts issued during the Survey period

CAP issued no Ad Alerts for health & beauty products between 21 January 2006 and 17 February 2006; it issued 14 Ad Alerts for healthy & beauty products in 2005. One was against an advertisement for a skin cream that claimed it could cure psoriasis and eczema. The ASA had adjudicated and upheld complaints against the advertisement because the advertiser could not provide evidence to substantiate the efficacy claims. Psoriasis is also a serious medical condition and treatment should not be offered. CAP issued the Ad Alert because the advertiser continued to place the advertisement in the national press after the ASA had adjudicated against it.

CAP issued an Ad Alert against an advertisement headlined “Prostate”. The advertisement offered “free nutrients, consultation and books”. The advertisement seemed to breach the Code because it discouraged readers from seeking advice for a serious medical condition from a suitably qualified professional. The Ad Alert was issued because the advertisement appeared after the Compliance Team asked for it to be withdrawn. Despite being contacted twice by the Compliance team about

similar advertisements, the advertiser did not contact the Copy Advice Team as requested.

CAP also issued an Ad Alert against an advertisement for a sonic device that promised “soothing relief from nagging pain”. The ASA had upheld complaints challenging the efficacy of the device in treating various medical conditions. Although the advertiser gave assurance that it would remove the efficacy claims and references to serious medical conditions, the advertiser had continued to place advertisements that did not comply with the adjudication.

4.7 Complaints

Five of the 40 advertisements that breached the Code have been the subject of subsequent investigations by the ASA; adjudications have not yet been published. Between 21 January and 17 February, however, the ASA adjudicated on seven complaints about health and beauty products.

In January, the ASA published an upheld complaint about an advertisement for an eye lifting gel. The advertisement claimed that the gel could “Instantly reduce the appearance of ageing” and contained before and after photographs.

The ASA ruled that, although the advertiser had provided signed and dated proof to prove the photographs were genuine, that was not an indication of the efficacy of the product. Because the advertiser was also unable to prove the efficacy of the product, the ASA ruled that the advertisement was misleading. See the Appendix for the adjudication (a copy of the advertisement is on the following page).

In February, the ASA published an adjudication against an advertisement for a creatine-based sports supplement. The advertisement claimed that studies showed the product was “up to 400% more effective than normal creatine” and “creatineX4 is unmatched in its ability to boost training intensity and recovery”.

Again, the ASA ruled that as the advertisers could not prove the efficacy of the product and that the advertisement was misleading. See the appendix for a full copy of the adjudication.

Lean Muscle Gain & Fat Management

EFA's High Potency Omega 3, 6 & 9 Essential Fatty Acid Formula

Research shows that Omega 3, 6 & 9 supplementation could result in increased metabolism of body fat when combined with a sensible diet and training program.

Why choose USN's EFA's?

- High potency sports complex
- USN's unique OmegaTech™ 3,6 & 9 blend
- Ideal ratios for optimum effect
- 100% Natural Formula

• £9.99 - 40 caps • £16.99 - 80 caps • £29.99 - 160 caps



Xedra Cut - Effective Fat Management

Remain focused on your weight loss goals by combining Xedra-Cut with a sensible training and eating plan.

Why choose Xedra-Cut?

- Laboratory researched formula
- Safe herbal ingredients
- Contains Xedragon Plus™
- Acetyl L-Carnitine
- Anti-oxidants
- Green tea leaf extract with polyphenols
- Octopamine HCL
- EGCG (epigallocatechin gallate)

Backed by 5 years of research

• £15.99 - 50 caps • £23.99 - 100 caps • £39.99 - 200 caps



Muscle Fuel Dynamic

53 grams of protein per serving!

The ultimate protein shake! Muscle Fuel Dynamic is USN's latest ultra potent, high protein shake, designed for serious athletes and bodybuilders.

With Whey Protein Isolate and Micellar Casein, this formula is highly comprehensive in covering all the amino acid requirements of serious athletes and bodybuilders.

Muscle Fuel Dynamic's time release formula ensures that amino acids are gradually replaced as required throughout the day, with rapidly absorbed proteins for post workout recovery as well.

Muscle Fuel Dynamic has a low carbohydrate to protein ratio (Only 32g carbs to 53g protein).

Why Choose Muscle Fuel Dynamic?

- 53g of Protein per serving
- 13g of Glutamine per serving
- Sustained time release formula
- 40 thick, satisfying servings per tub
- Mixes easily with water

• £19.99 for 1kg - 10 servings • £59.99 for 4kg - 40 servings

Available in 3 creamy delicious flavours
Rich Chocolate • Strawberry Cream • Vanilla Cream



Pure Protein Bio-engineered Luxury Protein Blend

USN's flagship protein formulation!

Containing proteins from 4 different natural sources, this luxurious protein shake is unique in its nutritional profile.

This blend of both rapidly absorbed and gradual release proteins ensures that amino acids lost during training are immediately replaced, as are the amino acids that break down gradually throughout the day through normal metabolic activity.

This unique protein blend, coupled with the powerful free form and branch-chain amino acid package ensures that positive nitrogen balance is maintained in muscle tissue.

An outstanding protein product to add to meals for increased protein intake, or to use between meals and at night. Pure Protein is a rich, creamy and thick shake which mixes easily with water.

Why choose Pure Protein?

- High in protein (40 grams per serving)
- Wide spectrum of amino acids
- Virtually carb-free
- 8 grams of Glutamine per serving
- High levels of essential fatty acids

• £19.99 - 1kg • £39.99 - 5lbs value pack

Available in 3 delicious flavours
Strawberry Cream • Rich Chocolate • Vanila Cream



100% Whey Protein

Whey Protein Isolate & Concentrate Blend

A precise blend of high quality whey proteins with added free form and branch-chain amino acids. This product rapidly supplies the body with amino acid rich proteins that are vital for muscle growth. The ultra-fast delivery system is extremely effective in aiding recovery after intense training.

Why choose 100% Whey Protein?

- Only EU approved whey proteins used
- Added enzymes and amino acids
- Great tasting
- Mixes easily with water

• £19.99 - 2lbs • £39.99 - 5lbs



CreatineX4

New generation Creatine Ethyl Ester

Creatine Ethyl Ester is the latest breakthrough in creatine research. This innovative and faster than ever creatine absorption formulation ensures maximum effect with its rapid muscle penetration system.

Studies have shown that this form of creatine is up to 400% more effective than ordinary creatine!

USN's CreatineX4 is unmatched in its ability to boost training intensity and recovery.

Take your performance to the next level with this revolutionary sports supplement!

• £12.99 - 30 caps • £34.99 - 120 caps



ZMA Boost Sports Performance!

Every Power Athletes' secret weapon!

ZMA has become a popular choice amongst athletes seeking constant improvement in their performance. Backed by over a decade of proven research, ZMA should form part of any complete supplement plan.

Why choose USN's ZMA?

- Extremely powerful formulation
- Excellent value
- Research backed
- Combine with Tribulus for best results

• £14.99 - 120 caps • £24.99 - 240 caps



ATP Creatine Complex

Revolutionary Lean Muscle Gain Formulation

ATP Creatine Complex offers the latest and most effective advances in sports performance and lean muscle building!

This unique combination of ingredients could dramatically increase strength and recovery, resulting in intensified training sessions and triggering new muscle growth. Each daily serving contains 9000mg Creatine Monohydrate, 3000mg L-Glutamine, 1500mg Taurine, 300mg Glycine 600mg Beta-Alanine, 100mg Alpha-Lipoic Acid and 450mg Chromium Picolinate

Why choose USN's ATP Creatine Complex?

- All-in-one Formula
- Unique high performance complex
- Enhance muscle strength, recovery and growth
- Great tasting and mixes easily with water

• £24.99 - 224g • £55.99 - 668g

Available in Refreshing Orange Flavour



5 Conclusions

The survey found that, excluding duplicates, 9.5% of the health and beauty advertisements that appeared in the national press, magazines and broadcast media between 21 January and 17 February breached the Code.

We are concerned that 12% of the health and beauty advertisements that appeared in the non-broadcast media did not comply. As stated earlier, the Compliance team received written assurances from the advertisers whose advertisements breached the Code that they would not place the same advertisements again. The team recommended the advertisers should consult the CAP Copy Advice team if they had any doubts about the Code's requirements when designing future advertisements. The team told the publishers about the Code breaches.

We expected to see a high compliance rate in broadcast commercials because of the requirement to have advertisements cleared by the BACC or the RACC. It is very encouraging that no breaches of the BCAP TV Code or the BCAP Radio Code were identified.

In comparison to the Slimming Survey that was carried out in 2005, this result is slightly more encouraging: over 50% of advertisements from that survey breached the Code.

The team will continue to monitor the national press and magazines. We hope that the action taken during this survey will correct the problem of non-compliance. If it finds that advertisements for health & beauty products continue to breach the Code, the team will consider taking other action.

An option is for the team to send an Ad Alert to the media asking it not to accept advertisements for health & beauty products without first consulting the Copy Advice team.

6 Pre-publication advice

Seeking advice from the CAP Copy Advice team is the best way to ensure that non-broadcast marketing communications do not break the Code and advertisers are urged to use that service. The team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. Consult the team on 020 7492 2100 (telephone), 020 7242 3696 (fax) or email on copyadvice@cap.org.uk. The team responds to almost all written enquiries within 24 hours.

Also, advertisers, their agencies and the media can stay the right side of the line by using AdviceOnline, an up-to-date database of advice that tells advertisers what they can and cannot do and links users to relevant Code clauses, Help Notes and past ASA decisions. CAP encourages users to subscribe to Update@CAP, its e-mail newsletter. Both services are free and available on www.cap.org.uk.

7 Appendix

7.1 CAP Code clauses referred to in the Survey

General

- 3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.
- 7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 14.3 Testimonials alone do not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Any claims based on a testimonial must conform with the Code.

Health & Beauty Products and Therapies

- 50.1 Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Where relevant, the rules will also relate to claims for products for animals. Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.
- 50.3 Marketers should not discourage essential treatment. They should not offer specific advice on, diagnosis of or treatment for serious or prolonged conditions unless it is conducted under the supervision of a doctor or other suitably qualified health professional (e.g. one subject to regulation by a statutory or recognised medical or health

professional body). Accurate and responsible general information about such conditions may, however, be offered.

- 50.7 References to the relief of symptoms or the superficial signs of ageing are acceptable if they can be substantiated. Unqualified claims such as 'cure' and 'rejuvenation' are not generally acceptable.
- 50.20 Marketers should hold scientific evidence for any claim that their vitamin or mineral product or other food supplement is beneficial to health. In assessing claims the ASA and CAP will bear in mind recommendations made by bodies such as the Department of Health and the Food Standards Agency.

7.2 Help Notes

**Committee of Advertising
Practice**
(Non-broadcast)

Help Note on Substantiation for Health, Beauty and Slimming Claims

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing. References to CAP and the ASA are to CAP (Non-broadcast) and the ASA (Non-broadcast) council. For advice on the rules for TV and radio commercials, contact the BACC www.bacc.org.uk (for TV ads) and the RACC www.racc.co.uk (for radio ads).

Background

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing as far as they relate to the subject discussed. They are based on past ASA cases and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

The Code states:

“Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Substantiation will be assessed by the ASA on the basis of available scientific knowledge”
(Clause 50.1);

“Any claims made for the effectiveness or action of a weight reduction method or product should be backed where appropriate by rigorous trials on people...” **(Clause 51.1);**

“The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication” (**Clause 3.1**); and

“If there is a significant division of informed opinion about any claims made in a marketing communication they should not be portrayed as universally agreed” (**Clause 3.2**).

Three types of health, beauty and slimming claims are made for products (or services): sensory or impressionistic subjective claims; uncontroversial or established objective claims; and “new” objective claims.

1. Sensory/impressionistic subjective claims

Claims that cannot be proved objectively, such as “no other shower gel leaves you feeling fresher”, might be understood to be opinion or might only require satisfactory consumer research to back them up.

2. Uncontroversial/established objective claims

These might constitute satisfactory proof for uncontroversial/established claims:

- 2.1A clear and concise account of the physiological effect of a product on the intended subjects, perhaps supported by an expert opinion (provided this reflects general scientific opinion, i.e. is accepted, or likely to be accepted, by most relevant experts);
- 2.2 Information contained in authoritative reports, reputable guidelines or other published material that represents or reflects general scientific opinion. For example, in relation to health and slimming claims, reports published by COMA, the Food Advisory Committee, CODEX, and the Scientific Committee for Foods; and in relation to beauty claims, reports published by the Journal of the Society of Cosmetic Chemists, the British Journal of Dermatology and the Journal of Investigative Dermatology.

3. “New” objective claims

For “new” or “breakthrough” claims, sound data, relevant to the claim made, should be collated to form a body of evidence. The “totality” of this evidence is important; marketers should not ignore sound data that does not support the “new” claim. There are now generally recognised ways of collating existing data (where it is not immediately available) by conducting a systematic review of all available scientific evidence and evaluating it for its relevance (e.g. by using standardised data extraction procedures and electronic databases).

3.1 Evidence for health and slimming claims

A body of evidence might consist of one or more of these categories (though read 3.3 and 3.4 as well):

- 3.1.1 experimental human studies in which an “intervention” group (or groups) of human subjects uses the product under examination and a “control” group uses a control, with neither subjects (single-blind) nor researchers taking the measurements (double-blind) knowing which subjects are in which group (sometimes referred to as clinical studies or placebo-controlled trials);
- 3.1.2 observational human studies in which a group or groups of people are studied in their environment (sometimes called epidemiological studies);
- 3.1.3 an appropriate expert’s extrapolation of relevant findings from seemingly irrelevant human studies (e.g. where a product’s proven effect on ill people provides the basis of proving the proposed effect on those healthy people that the marketers wish to target);
- 3.1.4 studies without human subjects (e.g. biochemical, cellular or animal studies);
- 3.1.5 before and after studies with little or no control;
- 3.1.6 self-assessment studies (to support objective statements that can be ascertained only by consumer observation);
- 3.1.7 published and unpublished literature (perhaps supporting the rationale behind a claim);

3.1.8 anecdotal evidence such as testimonials and endorsements.

3.2 Evidence for beauty claims

A body of evidence might consist of one or more of these categories (though read 3.3 and 3.4 as well):

- 3.2.1 experimental human studies;
- 3.2.2 within-subject comparisons of treated and untreated sites;
- 3.2.3 studies without human subjects;
- 3.2.4 before and after studies with little or no control;
- 3.2.5 self-assessment studies;
- 3.2.6 published and unpublished literature;
- 3.2.7 anecdotal evidence.

3.3 Quality of data

The body of evidence should normally include at least one adequately controlled experimental human study but an adequately controlled observational human study might be sufficient in some circumstances. To consider acceptable a body of evidence that does not include at least one adequately controlled experimental human study, the ASA's or CAP's experts will usually need to be convinced of the soundness of the data provided and the futility or impracticality of commissioning an experimental human study. Before and after studies with little or no control, studies without human subjects, self-assessment studies, published and unpublished literature and anecdotal evidence are unlikely to be considered acceptable as sole support for a "new" claim relating to physiological action in humans (though in vitro studies may provide sole support for inherent activity, e.g. anti-oxidant action).

Sound individual studies should:

- 3.3.1 follow a recognised methodology (see 3.1.1) that controls both for the "placebo" effect and for other factors unconnected with the

proposed action of the product (e.g. effects brought about by the way in which a medical device is used or a cream is applied). The most reliable method of allocating subjects to different groups in experimental human studies is by random allocation (“randomised” studies). Reliability can also normally be gained by incorporating a “cross-over” element (the subjects in the two groups swap with each other after a sufficient period in their respective groups and with a sufficient period of “rest” in between). Similarly, some designs for observational human studies are more reliable than others; for example, studies that are planned in advance and undertaken prospectively are less likely to be biased than studies carried out retrospectively. The validity of data, however, depends not only on the protocol of the study but also on how well the study was designed, carried out and analysed;

- 3.3.2 be large enough to demonstrate the proposed effect. A desirable size for a study can be assessed using standard statistical formulae (though meta-analysis, the pooling of results from several studies, might allow valid conclusions to be drawn from two or more small studies);
- 3.3.3 normally be carried out on a representative cross-section of a population similar to that of the UK or on a representative sample of the sector of the population at which the product is targeted (though see 3.1.3);
- 3.3.4 involve the intervention group consuming, applying or using a reasonable and, as far as possible, quantified amount of the product at a reasonable frequency (this should reflect the normal usage proposed for the product);
- 3.3.5 where appropriate, be of sufficient duration to ensure that any beneficial effect is maintained over a reasonable period of time and is not a short-term response to which the body or mind adjusts. A follow up period might also be needed depending on the nature of the effect studied;
- 3.3.6 where appropriate, take into account confounding factors (e.g. smoking) and other relevant variables;

- 3.3.7 produce statistically, and physiologically, significant results by tests selected before the studies began;

3.4 Credibility of data

If studies have not been published in reputable, peer-reviewed journals (and indeed studies often have not), an objective review should be carried out by a suitably qualified individual possessing relevant expertise before the data is submitted to the ASA or CAP.

3.5 Submitting data

Where possible, the body of evidence should be provided in a clearly set out indexed dossier. This might include:

- 3.5.1 the “new” or “breakthrough” claims to be supported;
- 3.5.2 the composition of the product and an explanation of how it works;
- 3.5.3 precise details of who might benefit and why;
- 3.5.4 the quantity of product consumed, applied or used and its frequency of use;
- 3.5.5 the preferred experimental human studies (ideally, with greater emphasis given to those that have been published or subjected to assessment by a suitably qualified expert). If several studies are provided to back up several claims, it should be clear which study supports which claim;
- 3.5.6 data supporting the experimental human studies (e.g. observational, cellular, animal and self-assessment studies);
- 3.5.7 anecdotal evidence.

Matters of opinion

Marketers who do not hold satisfactory evidence of the purported qualities of their product can ask the CAP Copy Advice team for help in devising an acceptable marketing platform. This might involve the marketers giving their opinion on the desirability of their product, though they must clearly

be expressing their opinion and not stating fact. Claims that go beyond subjective opinions are subject to the Code' rules on substantiation.

Division of opinion

If informed opinion about the acceptability of a “new” claim is divided, the claim should not be portrayed as universally agreed. Such a claim might be acceptable if prefixed by “some experts believe...”, or similar. To confirm that a division of informed opinion exists, documentary evidence, perhaps in the form of published articles, conference minutes, studies or published correspondence, should be provided. This should show that the acceptability of the “new” claim is under debate, with a reasonable number of suitably qualified, competent experts believing it to have been adequately supported.

Guidance

Information about recognised methodology for studies to support health and slimming claims can be sought from those medical journals that review papers for publication. Marketers wishing to support beauty claims may wish to consult the European Cosmetic, Toiletry and Perfumery Association (COLIPA) Guidelines for the Evaluation of the Efficacy of Cosmetic Products. Please note that the COLIPA Guidelines endorse the use of some tests, most notably the consumer self-assessment test, that are unlikely to be considered by the ASA's or CAP's experts as satisfactory sole supporting data for proving “new” claims.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by email on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

Help Note on Health, Beauty and Slimming Marketing that Refers to Ailments

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing. References to CAP and the ASA are to CAP (Non-broadcast) and the ASA (Non-broadcast) council. For advice on the rules for TV and radio commercials, contact the BACC www.bacc.org.uk (for TV ads) and the RACC www.racc.co.uk (for radio ads).

Background

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing as far as they relate to the subject discussed. They are based on similar ASA cases and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

These rules of the Code have particular relevance to health, beauty and slimming marketing that refers to ailments:

“Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it” **(clause 4.1)**;

“Marketers should not discourage essential treatment. They should not offer advice on, diagnosis of or treatment for serious or prolonged conditions unless it is conducted under the supervision of a doctor or other suitably qualified health professional (eg one subject to regulation by a statutory or recognised medical or health professional body). Accurate and responsible general information about such conditions may, however, be offered” **(clause 50.3)**; and,

“Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people.... Substantiation will be

assessed by the ASA on the basis of the available scientific knowledge” (**Clause 50.1**).

Checking marketing communications

Checking the acceptability of marketing communications under both the law and the Code can be a multi-stage process. Marketers, agencies and media are urged to follow these steps:

1. satisfy clause 4.1 by establishing whether medicine law, food law or medical devices law applies to either the product, its constituents or the claims made for it. Advice on medicine law can be sought from the Medicines & Healthcare Products Regulatory Agency (MHRA), food law from Trading Standards Officers (TSOs) and medical devices law from the MHRA;
2. satisfy clause 50.3 by deleting all references to any ailments that are usually considered to be serious or prolonged. This helps avoid situations where sufferers of such ailments are encouraged to seek treatment from marketed products or therapies instead of qualified medical practitioners. The ASA is unlikely to accept references to serious or prolonged ailments in a marketing communication addressed to the public, even if the marketed product is proven to treat the ailments (though see points 1 and 2 below); and,
3. satisfy clause 50.1 by establishing whether substantiation is held to back up claims, particularly “new” or “breakthrough” claims.

References to Ailments in Marketing

To help the industry determine whether ailments are serious or prolonged, the Copy Advice team has compiled two lists. When referring to either list, please consider these points:

1. clause 50.3, and therefore the rest of these guidelines, does not apply to marketing: for products that hold a product licence/marketing authorisation to treat a serious or prolonged ailment; for hospitals, clinics and the like that employ qualified practitioners; that is addressed only to members of the medical or allied professions;

2. clause 50.3 is not intended to prohibit claims that products or therapies can help reduce the risk of contracting a serious or prolonged ailment (though it is important to ensure that such claims are legal);
3. most health practitioners specialise in treating different types of ailments. For example, a physiotherapist might be suited to treating aches and pains and a hypnotherapist might be of use to someone suffering from a phobia. Practitioners of the disciplines represented by these capital letters can probably treat those listed ailments that display the same capital letter:

P Psychosomatic (e.g. hypnotherapy, psychotherapy)
M Manipulative (e.g. osteopathy, physiotherapy, chiropractic)

Ac Acupuncture
Ar Aromatherapy;

This information is not exhaustive and may, on receipt of satisfactory evidence, be updated from time-to-time.

4. unless otherwise indicated, prefixing an acceptable reference to an ailment with "serious", "chronic", "persistent" or similar is likely to render it unacceptable; and
5. the lists are not exhaustive and are subject to amendment and updating in line with ASA adjudications and prevailing medical opinion, including Government reports. ASA/CAP will also take account of those ailments that can be referred to in marketing, or on labelling, for over-the-counter medicines that are generally available.

Non-serious but evidence may be sought by the ASA/CAP

Aches and Pains (M)	Flatulence
Acid Indigestion	Fluid Retention
Acidity, Stomach	Flushes
Acne	Foot Odour
Allergic Rhinitis	Frigidity (P)
Anxiety (P)	Frozen Shoulder
Arthritic Pain (M)	
Asthma	Gastric Reflux
Athlete's Foot	Glue Ear
	Grief (P)
	Guilt (P)
Backache (M)	
Back Pain (M, Ac)	Haemorrhoids
Bedwetting (P)	Halitosis
Biliousness	Hayfever
Bunion	Headaches (P, Ac?)
	Heartburn
	Hoarseness
Calluses	
Candida	Indigestion
Catarrh	Indigestion, Nervous
Chilblains	Inflammation
Circulatory Problems, Local or Minor (M) [c.f. Circulation, Poor]	Influenza
Cold	Insomnia
Compulsions (P)	Irritable Bowel Syndrome (IBS)
Concentration (P)	
Confidence (P)	Joint Pains (M)
Constipation	Jumpy (P)
Cough	
Cough, Persistent or Chronic	Lethargy (P)
Cramp (M)	Libido, Low (P)
Cystitis	Lumbago (M)
Dandruff	Memory Lapses
Dental Pain (Ac)	Menopause
Dermatitis	Menstrual Pain
Diarrhoea	Migraine Headache [c.f. Migraine]
Diet, Trouble Sticking to (P) [c.f. Obesity]	Motion Sickness
Digestion Problems (M)	Muscle Spasms (M)
Drink Problems	Muscle Tension (M,P)
Drowsiness	
Dyspepsia	
	Nailbiting (P)
Earache	Nappy Rash
Eczema	Nausea (Ac)
Eczema, Stress Related (P)	Neck Ache (Ac?)
Emotional Problems (P)	Neuralgia (M)
Enuresis (Bedwetting) (P)	Numbness
Erection, Improved	

Erection Problems/Erectile Dysfunction, Temporary [c.f. Impotence, Impotence Temporary and Erection Problems/Erectile Dysfunction]

Fatigue
Fatigue, Chronic
Fears (P)
Feeling Down or Feeling Blue (P) [c.f. Depression]
Fever
Fibrositis (M)

Relax, Inability to (P,M,Ar)
Rheumatic Pain (M, Ac?)
Rheumatism (M)
Ringworm

Sexual Counselling (P)
Sciatica (M)
Sinuses, Congested
Sinusitis
Skin Problems [c.f. Psoriasis]
Skin Problems, Stress Related (P)
Sleep, Trouble Getting to (Ar,P)
Sleeplessness, Intermittent (Ar,P)
Smoking (P)
Snoring (P)
Spasms (M)
Sports Injuries, minor (M)
Stammering (P)
Stomach, Upset
Stress (Ar,P)

Tension (P,M,Ar)
Tiredness
Tiredness, Chronic
Thrush, Vaginal [c.f. Thrush, Oral]
Travel Sickness

Verrucae

Water Retention
Warts
Wind

Obsession (P)
Pre-Menstrual Tension (PMT) or Pre-Menstrual Syndrome (PMS) (P)
Panic Attack (P)
Period Pain
Phobias (P)
Piles
Pins and Needles
Relationship Problems (P)

Serious – medical/suitably qualified supervision needed

Angina	Impetigo
Anorexia	Impotence [c.f. Erection Problems/Erectile Dysfunction, Temporary]
Arthritis [c.f. Arthritic Pain (M)]	Impotence, Temporary [c.f. Erection Problems /Erectile Dysfunction, Temporary]
Blood Pressure, Low or High	Infertility [c.f. Sexual Counselling]
Bronchial Congestion	Jaw Joint Dysfunction
Bronchitis	Myalgic Encephalomyelitis (ME)
Bulimia	Multiple Sclerosis (MS)
Cancer	Malaria
Cholesterol, High	Menstruation, Regulation of
Circulation, Poor [c.f. Circulatory Problems, Local or Minor (M)]	Migraine [c.f. Migraine Headaches]
Colic	Muscular Dystrophy
Conjunctivitis	Myopathy
Depression [c.f. Feeling Down or Feeling Blue]	Obesity [c.f. Diet, Trouble Sticking to]
Diabetes	Osteoporosis
Diverticulitis	Paralysis
Dizziness	Prostate Problems
Ear Disorders, Serious	Psoriasis [c.f. Skin Problems]
Eating Disorders	Respiratory Diseases
Emphysema	Senility
Epilepsy	Sexually Transmitted Diseases
Erection Problems or Erectile Dysfunction [c.f. Erection Problems/Erectile Dysfunction, Temporary]	Shingles
Eye Disorders, Serious	Skin Disorders, Serious
Fits	Spinal Injuries
Gastroenteritis	Stroke
Gingivitis	Thrush, Oral [c.f. Thrush, Vaginal]
Glaucoma	Tonsillitis
Gout	Ulcer, Gastric
Haematoma	Undereating
Hiatus Hernia	Whiplash
Heart Disease	
Herpes Zoster	
Hypertension	

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by email on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

July 1998
Revised: October 1998
Revised: October 1999
Revised: March 2003

7.3 Upheld Complaint against BuyCosmetics

ADVERTISER	: BuyCosmetics.com Manor Farm Barn Fox Road Framingham Pigot Norwich NR14 7PZ
MEDIUM	: National press
PUBLIC COMPLAINTS	: North Somerset and South Yorkshire

COMPLAINT:

Objections to a national press ad headlined "EyeLifting Gel". Text stated "Reduce the appearance of wrinkles". The ad featured "before and after" photos of a woman's eye. In the photo labelled "BEFORE" the woman clearly had wrinkles under her eyes whereas in the photo labelled "5 minutes later", there were no wrinkles beneath the eye.

1. The complainants challenged whether the before and after photos were genuine.
2. We challenged whether the photos exaggerated the efficacy of the product.

(Ed 11: 3.1; 6.1; 7.1; 14.1; 14.3; 14.4; 50.1; 50.7)

ADJUDICATION:

1. Complaint not upheld

BuyCosmetics.com sent signed and dated copies of the photos and said the ad had been approved by CAP. They said it was their policy to evaluate the efficacy of all new products before advertising and the before and after photos were genuine images of an employee.

We noted BuyCosmetics.com sent signed and dated photos to show that the photos were genuine and the CAP Copy Advice team had approved the ads on the basis that they held that evidence. Although we considered that the photos were not, in themselves, enough to prove the efficacy of the product, we considered that

Buycosmetics.com had demonstrated that the photos were genuine.

2. Upheld

BuyCosmetics.com submitted a study by Blemish Clinic on the effects of EyeLifting gel on the wrinkles and fine lines around the eyes of 10 volunteers over 30 days. In that study, 100% of the subjects noted improvement around the eye, felt the gel tightened, lifted and firmed the area around the eye and saw a significant improvement over the 30-day assessment; 90% felt the gel smoothed their fine lines and wrinkles; and 70% felt the gel reduced puffiness around the eyes. The study also contained photos, taken before and after the 30 days treatment of some of the subjects, that suggested they had experienced a reduction in the appearance of wrinkles and lines.

We noted the study sent by the advertisers but considered that, because it included only 10 subjects and was neither placebo controlled nor double blind, it was not robust enough to substantiate the level of efficacy implied in the photos. We asked BuyCosmetics.com to ensure that photographs in future advertising did not exaggerate the efficacy of their products.

The ad breached CAP Code clauses 3.1 (Substantiation), 6.1 (Honesty), 7.1 (Truthfulness), 14.1 and 14.3 (Testimonials and endorsements) and 50.1 (Health and beauty products and therapies). The ad was also considered under CAP Code clause 50.7 (Health and beauty products and therapies) but was found not in breach.

7.4 Upheld Complaint against USN

ADVERTISER	: USN (UK) Ltd Unit L8 Andoversford Industrial Estate Station Road Andoversford Gloucestershire GL54 4LB
MEDIUM	: Magazine
PUBLIC COMPLAINT	: Cleveland

COMPLAINT:

Objection to a magazine ad, for a sports nutrition supplement, that stated "CreatineX4 New generation Creatine Ethyl Ester". The complainant challenged the claims:

1. "Studies have shown that this form of creatine is up to 400% more effective than ordinary creatine" and
2. "CreatineX4 is unmatched in its ability to boost training intensity and recovery".

(Ed 11: 3.1; 7.1; 19.1; 50.1)

ADJUDICATION:

1. & 2. Complaint upheld

USN (UK) Ltd said their product was creatine monohydrate that had been chemically modified to have an ester attached to its molecular structure; they believed that meant their product would be absorbed up to four times better than ordinary creatine. However, USN were unable to provide robust evidence in the form of clinical trials on humans to support the claims.

The ASA concluded that, in the absence of sound clinical evidence, the claims "Studies have shown that this form of creatine is up to 400% more effective than ordinary creatine" and "CreatineX4 is unmatched in its ability to boost training

intensity and recovery" were misleading. We welcomed USN's willingness to amend their ad and told them to contact the CAP Copy Advice team for help with future ads.

The ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 19.1 (Fair comparison) and 50.1 (Health and beauty).

7.5 Other ASA Adjudications Published between 21 January and 17 February

ADVERTISER	: BUPA Ltd 13-19 Bloomsbury Way London WC1A 2BA
AGENCY	: WCRS
MEDIUM	: Poster
PUBLIC COMPLAINTS	: London (x2) and East Renfrewshire

COMPLAINT:

Objections to a poster, for private healthcare, that was headlined "Clean". Text stated "Our hospitals make you feel better BUPA". The complainants objected that the ad was misleading and denigratory, because it implied BUPA hospitals were cleaner than NHS hospitals.

(Ed 11: 3.1; 7.1; 19.1; 20.1)

ADJUDICATION: Complaints not upheld

BUPA strongly denied that the ad criticised NHS hospitals. They said they did not intend to compare their hospitals with those of the NHS, but wished to highlight the benefits of private healthcare with BUPA. They said recent BUPA research revealed that access to clean hospitals was given as the most important reason for taking out private medical insurance and the poster was developed to reassure the public that BUPA hospitals were clean. They pointed out that the expression "feel better" was a common element in BUPA marketing material and emphasised that it was against BUPA's interests to denigrate the NHS.

They stated that all BUPA hospitals were inspected annually and sporadically by the Healthcare Commission and no adverse reports relating to cleanliness or infection control had been noted. They said they also undertook regular patient satisfaction surveys, which showed that the majority of respondents rated BUPA hospital cleanliness highly. In addition, they said their own monitoring revealed an extremely low rate of MRSA incidences and believed this reflected BUPA's high standard of infection control; they submitted the results of their internal research to show this.

The ASA acknowledged that the reported rate of MRSA was higher in NHS hospitals than in BUPA hospitals and reports from the Healthcare Commission showed that the percentage of survey participants who were dissatisfied with the level of cleanliness they experienced was higher for NHS hospitals than BUPA. We also noted, however, BUPA had not referred to an identifiable competitor in the poster. We considered that readers were likely to interpret the claims "Our hospitals make you feel better" and "clean" as BUPA's opinion of their own hospitals' quality, rather than as a comparison with the NHS. We concluded that the poster did not make a misleading or denigratory comparison with the NHS and did not object.

The ad was considered under CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 19.1 (Other comparisons) and 20.1 (Denigration and unfair advantage) but was not found in breach.

ADVERTISER : **Church & Dwight UK Ltd**
trading as
First Response
Wear Bay Road
Folkestone
Kent
CT19 6PG

AGENCY : Media Therapy

MEDIUM : Brochure

INDUSTRY COMPLAINT : Bedfordshire

COMPLAINT:

A TV ad for First Response Early Result Pregnancy Tests began with a woman saying: "You know, there is such a thing as being a little bit pregnant. And First Response is sensitive enough to detect the pregnancy hormone at the first stage of pregnancy, four days before your missed period. First Response - detects the pregnancy hormone first." The ad included an image showing the level of pregnancy hormone rising against time. A line running from left to right rose as it passed bars representing days up to and including the first days of a missed period. The line was highlighted at the point four days before the beginning of the period and continued to rise after this.

An ad in the July/August edition of 'Advantage at Shelf', a brochure distributed to Vantage chemists, for First Response Early Result Pregnancy Tests showed the packaging along with text that said: "It's never too early to get excited about a new baby and, with First Response Early Result Pregnancy Test, there's no need to wait. First Response - unlike any other home pregnancy tests - can detect pregnancy four days before the missed period, identifying the hCG pregnancy hormone at very low levels. Independent consumer tests confirm First Response's best performance with 9 out of 10 women stating it as their preferred pregnancy test." The claim "Test earlier than any other home test" that appeared on the packet was legible.

Two complainants, including a competitor Unipath Ltd, raised four issues:

1. Unipath Ltd complained that the claim in the TV ad that the product 'detects the pregnancy hormone first' was misleading because their product, Clearblue Pregnancy Test, could also be used up to four days before the due period. Clearblue's packaging had been changed to reflect this fact in the week commencing 11 July. Unipath Ltd said that the TV ad had been broadcast up until at least 7 August.

2. Unipath Ltd objected to the claim in 'Advantage at Shelf' that "First Response - unlike any other home pregnancy tests - can detect pregnancy four days before the missed period" and the claim on the product's package that was pictured in the brochure because their product, Clearblue Pregnancy Test, could also detect pregnancy four days before a missed period.

3. Unipath Ltd said that the claim in 'Advantage at Shelf' that nine out of ten women identified First Response as their preferred choice was misleading and was not supported by market research.

4. A complainant objected to the claim in the TV ad that the product could detect pregnancy four days before a missed period because, according to its packaging and online information, the product was accurate only 69% of the time at this point. She said that the ad implied that the product would be as accurate four days before a missed period as it would be on the due day of a period and that was why she had bought the product.

(Ed 11: 3.1; 7.1; 19.1)

ADJUDICATION:

1. Complaint not upheld

The Broadcast Advertising Clearance Centre (BACC) said that it cleared the claim in good faith on the basis of the information provided by First Response. They said that the claim had subsequently been made untenable by Unipath Ltd's claims for their product, of which they and First Response were unaware at the beginning of the campaign.

First Response said that Unipath Ltd informed them that they had introduced new packaging for the Clearblue Pregnancy Test to communicate that it could be used four days before a missed period. They said that Unipath Ltd had asked them to remove from their advertising the claim about First Response being able to detect pregnancy before other tests. They said that they had done so. They said that they regularly checked the availability of products sold by their competitors and did not find examples of the new Clearblue packaging in retailers until after 8 August.

We noted that, when the TV ad had been cleared and first broadcast, First Response was the only manufacturer claiming that their product could detect pregnancy four days before a missed period. We also noted they had undertaken not to repeat the claims once they were made aware by Unipath Ltd in early August that this was no longer the case. Though Clearblue's packaging was changed in early July, we were not presented with evidence that it was available to consumers while the ad was being broadcast. We did not consider that First Response could have been aware of the development in the market until early August or that the continued broadcasting of the ad had misled viewers to the detriment of Unipath Ltd.

2. Complaint not upheld

First Response said the claims made in 'Advantage at Shelf' were made before they were aware of Unipath's 'early response' product.

We noted that the claim had been made before the Clearblue Pregnancy Test was repackaged in July to reflect that it could be used four days before a missed period. At the time of publication the claim to be the only test that could be used so early was accurate but became inaccurate soon after. We did not consider that First Response had the opportunity to amend the advertising once the Clearblue packaging had changed and welcomed their subsequent decision to remove the claim in all future advertising material.

3. Complaint upheld

First Response said that the claim that First Response was the preferred pregnancy test for 9 out of 10 women in the USA had appeared in an approved press release. They said that, due to the restrictions of available space, their sales department had amended the release when submitting it to Advantage at Shelf and inadvertently omitted the reference to the USA. They said that they had since put measures in place to ensure that such a mistake did not happen again.

We noted that the "9 out of 10" claim was applicable only to consumers in the USA and that it had been mistakenly misrepresented on publication. We considered that the information in the ad was inaccurate and misleading to the detriment of First Response's competitors.

4. Complaint upheld

The BACC said that the TV ad made no reference to accuracy and that they took great care when dealing with anything in a script that appeared to relate to accuracy. They said the content of the ad related solely to efficacy and that it included text stating that the product should only be used as directed.

First Response said that the ad made no reference to accuracy and simply stated the product's ability to detect pregnancy early. Substantiation for this ability had been presented to the BACC before broadcast.

According to the First Response website, the product was accurate 69% of the time four days before the first day of a period, 83% three days before and 93% one or two days before. We noted that the ad included a graph showing the rising level of pregnancy hormone measured against time, that the level was highlighted at a point four days before the due day of a period and that it continued to rise after this point. However, the overall impression of the ad was of the ability of the product to detect pregnancy four days before the first day of a period. We considered that the ad gave the misleading impression that the product would be as accurate four days before a period as it would be the day before or on the due day of the period, the time at which home pregnancy tests are at their most accurate.

The TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.1 (Evidence). It must not be shown again in this form. It was also investigated under 5.4.6 (Comparative advertising) but was not found in breach.

On point 3 the brochure ad breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness) and 19.1 (Other comparisons).

ADVERTISER : **Niagara Therapy (UK)
Ltd**
Colomendy Industrial
Estate
Rhyl Road
Denbigh
LL16 5TS

MEDIUM : Leaflet

PUBLIC COMPLAINT : Kent

COMPLAINT:

Objection to a leaflet for physiotherapy products that was headed "Tick where it hurts" and claimed "Send now for a FREE home trial" and "FREE TRIAL". The complainant objected that, although he had received a free demonstration of the product in his home that lasted a few minutes, the claim "free trial" was misleading.

(Ed 11: 7.1)

ADJUDICATION: Complaint not upheld

Niagara said they offered a free trial of their product to all respondents. They said the free trial lasted approximately 45 minutes and, usually, another 45 minutes on areas that the customer thought required more attention. Niagara pointed out that the Oxford English dictionary defined "trial" as meaning "mode of testing qualities", "experimental treatment" or "test". They considered that the test of the product given to respondents met all three definitions. Niagara said, on average, the total time spent with a customer ranged from an hour and a half to three hours. Niagara said they gave free trials to hundreds of customers a week and had been giving free trials of their products for 40 years. They said they had used the phrase "Free trial" in their advertising for over 20 years and that about 500 million mailings had been sent in that time. Niagara said they had not received other complaints about the "Free trial" claim.

The complainant said the saleswoman who sold him the massage belt visited his home for no more than 30 minutes and that the trial lasted no longer than 15 minutes.

The ASA acknowledged that the length of time taken by each salesperson to demonstrate the products might vary, nevertheless, because the text in the ad offered a free trial and respondents received a free trial of the product, we considered that the text "FREE TRIAL" was not misleading. We did not object.

The ad was investigated under clause 7.1 (Truthfulness) of the CAP Code.

ADVERTISER : **Perfect Performance Products Ltd**
13-15 Victoria Way
Newmarket
Suffolk
CB8 7SH

MEDIUM : Leaflet

INDUSTRY COMPLAINT : West Midlands

COMPLAINT:

The Alliance for Physical Activity Honesty (AFPAH) objected to a leaflet for Nature's Best sports nutrition products. A section of the leaflet was headed "SLIMMING, WEIGHT MANAGEMENT, MUSCLE TONING" and stated " ... FAST ACTIVE FAT BURNER PERFECT BURNER ... NATURE'S BEST has developed a new fat burner. Designed for maximum effectiveness, this dietary supplement contains active substances, which on the one hand are able to increase fat combustion and on the other hand help to control the appetite more effectively, while promoting muscle tone. It contains, among other things: Hydroxycitric acid which cuts down production of fat due to excess calories. Caffeine, taken from extract of guarana, which increases energy consumption and stimulates the burning of reserve fats. Citrus aurantium which helps to convert fats to energy. L-phenylalanine which L-tyrosine [sic] curbs appetite. Chromium picolinate, which regulates blood sugar, [sic] levels and curbs nibbling. Apple pectin which acts as a mechanical appetite suppressant. By taking Perfect Burner on a daily basis, you will eliminate fat without losing your dynamism, your form and above all your muscle mass. The Perfect Burner is the solution for losing weight in an effective, intelligent and long-lasting way ... THIRST QUENCHING FAT BURNER BURNER 500 ml The burner is a low-calorie drink, essential as part of any slimming diet. This refreshing drink, based or [sic] L-carnitine and caffeine produced from extract of guarana helps in the reduction of fats especially when you are taking physical exercise. L-carnitine helps the muscle cells to convert fats into energy. In addition to its stimulating effect, caffeine increases the mobilisation of fatty acids from fat tissue ...".

1. AFPAH challenged the efficacy of "Perfect Burner", particularly the claims "FAST

ACTIVE FAT BURNER" and "By taking Perfect Burner on a daily basis, you will eliminate fat without losing your dynamism, your form and above all your muscle mass".

2. We challenged the efficacy of "Burner 500 ml".

(Ed 11: 3.1; 7.1; 51.1; 51.8)

ADJUDICATION: Complaint upheld

Perfect Performance Products Ltd (PPP) said they would not re-print the leaflet. They explained that they were working on a new leaflet, which they would send us before printing.

The ASA was concerned that PPP had sent no evidence to substantiate the efficacy of "Perfect Burner" and "Burner 500 ml". In the absence of any substantiation, we considered that the claims about those products were misleading. We welcomed PPP's decision not to re-print the claims. We advised them to contact the CAP Copy Advice team before advertising "Perfect Burner" and "Burner 500 ml" again.

The leaflet breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 51.1 and 51.8 (Weight control).

ADVERTISER : **Ultravox Holdings Ltd**
Amplivox House
Stannylands Road
Wilmslow
SK9 4HH

MEDIUM : National press

INDUSTRY COMPLAINT : Channel Isles

COMPLAINT:

Specsavers Hearcare Ltd objected to a national press ad that was headed "Supported by World Leading Manufacturers 'Best Value' Hearing Aid Centres NOW OPEN NATIONWIDE". Text stated "A benefit of the National Campaign For Better Hearing Silver Jubilee Programme ... SILVER JUBILEE - SPECIAL OFFERS - CELEBRATING 25 YEARS OF THE NCBH ... "; the ad included an image of a Union Jack flag with the letters N, C, B, H on it, between the text "1980" and "2005". Smallprint stated "The Hearing Aid Specialists sponsoring this Campaign are Amplivox, Ultratone Ltd. Ingrams, SieTech Hearing Ltd., Hearing Health Ltd and Active Life UK." The complainants challenged whether the ad was misleading because it implied the National Campaign for Better Hearing was an independent National Health initiative and did not make clear that it was a campaign sponsored by a commercial organisation.

(Ed 11: 6.1; 7.1)

ADJUDICATION: Complaint not upheld

Ultravox Holdings disagreed that the ad was misleading. They pointed out the ad contained illustrative pictures, trade names and company logos with cut price offers and a £200 discount voucher; they said the sponsoring companies were clearly stated in the ad and believed it was clear that the communication was for a commercially promoted enterprise. They said they had used this approach for the past 25 years and had not previously received any complaints that the ad was supported by the NHS.

We noted text in the headline stated "Supported by World Leading Manufacturers" and smallprint in the ad listed the commercial companies sponsoring NCBH. We

considered that the ad made sufficiently clear that NCHB was sponsored by a commercial organisation and that readers were unlikely to infer that the NCBH was an independent national initiative. We did not object.

The ad was investigated under CAP Code clauses 6.1 (Honesty) and 7.1 (Truthfulness) but was not found in breach.