

Compliance Report

Cosmetics Advertising Survey 2007



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1. Summary

The Compliance team last surveyed cosmetics advertising in its Health and Beauty survey published in January 2006. It covered a wide range of categories including skin creams, hair loss treatments, alternative therapies, health supplements and slimming products. The compliance rate was 93%.

In 2007, we decided to conduct another survey, this time focusing more on skin products. This survey included ads for skin creams (for the face and body), acne treatments, fillers, make-up, perfume and men's cosmetics.

The Compliance team examined 445 unique cosmetics advertisements that appeared between 12 July and 12 September 2007. The team assessed TV and radio ads, direct mailings, online ads, posters and press ads. The team recorded breaches only when the nature of the breach was obvious. The team did not assess television sponsorship credits; they are regulated by the Office of Communications (Ofcom).

32 advertisements (7%) breached the Codes – a compliance rate of 93%. Of the 32 ads that breached the Codes, the ASA investigated three after receiving complaints and found all three to be unacceptable. Another three had been independently dealt with by the Compliance team; they appeared among the surveyed ads because the advertisers had not had a chance to withdraw or amend the ads before the survey began.

The compliance rate was just below that recorded for cosmetics ads that were assessed in the 2006 Health and Beauty survey. The survey shows the main problems were unsubstantiated cumulative beneficial effect claims and physiological claims for skin creams for women. 24 of the 32 breaches appeared in ads for skin creams; six were for unsubstantiated cumulative benefit claims. Most of the breaches appeared in non-broadcast media: 28 of the 32 breaches were in press ads, two were in internet advertisements and two were in television advertisements. It is not surprising that relatively fewer breaches appeared on TV and radio given that ads in those media are routinely pre-cleared by Clearcast (TV) and the RACC (radio).

With a breach rate of more than 10%, cosmetics ads in the press represent the main source of non-compliance with the Codes and the main target for improvement. For the purposes of this survey, "press" included national and regional newspapers and magazines.

The Compliance team will continue to monitor cosmetics ads and will work with the industry, publishers, Clearcast and the RACC to improve the level of compliance in this sector.

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). 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 through research and by promoting and enforcing high standards in marketing communications by ensuring advertisers observe the CAP Code. On 1 November 2004, the ASA assumed responsibility for television and radio advertisements under contract from the communications regulator Ofcom.

The Committee of Advertising Practice (CAP) is the industry body responsible for writing, revising and enforcing the CAP Code. CAP's Broadcast Committee (BCAP) is contracted by the broadcast regulator, Ofcom, to write and enforce the codes that govern TV and radio advertisements. BCAP comprises representatives of broadcasters licensed by Ofcom, advertisers, agencies, direct marketers and interactive marketers.

The Compliance team works to ensure that advertisements comply with the CAP and BCAP Codes and with ASA decisions. The team follows up ASA adjudications, monitors both broadcast and non-broadcast marketing communications and acts to ensure that advertisements that breach the Codes are removed from the media. One of the team's objectives is to create a level-playing field for marketers in each sector and communicate decisions that have sector-wide ramifications. The Compliance team conducts surveys (of which this is one) 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 or by CAP.

For cosmetics advertising, the main policy principles established in previous ASA adjudications are that cosmetics advertisements should not imply that:

- cosmetics creams can have a permanent or long-lasting effect on removing or reducing wrinkles
- anti-ageing benefits occur over time (cumulative effects)
- fillers can have a rejuvenating or permanent effect
- cosmetics creams have physiological effects, for example trigger collagen production or cell regeneration.

This survey acknowledges work that has taken place between the ASA, Clearcast and the Cosmetic Toiletry and Perfumery Association (CTPA) since late 2005. The ASA and CAP Executives have accepted in principle both that cosmetics creams could have a cumulative moisturising effect (a beneficial

effect over time) when applied to dry skin and that that effect can persist for a short time after the cessation of use. At the time of writing, however, neither CAP nor the ASA has seen reliable product-specific substantiation that any skin product can deliver those benefits.

In their clauses that commonly apply to cosmetics advertisements, the CAP and BCAP Codes are similar:

2.2 BCAP Television Code Rules

The BCAP Television Advertising Standards Code sets out the rules that govern advertisements on any television channel licensed by Ofcom.

The specific broadcast rules for cosmetics advertisements are:

5.2.1 Evidence

Licensees must obtain adequate objective evidence to support all claims

Notes:

(1) Where a claim is based on scientific research or testing, that work should have been conducted in accordance with recognised best practice. Where licensees lack the specialised knowledge to assess the adequacy of evidence, they must consult independent experts.

(2) Licensees must make their own independent assessment of evidence submitted in support of advertising, and of any advice they have commissioned.

(3) Absolute claims – e.g. ‘best on the market’, ‘lowest prices guaranteed’ – should be avoided unless they are backed up by clear evidence and are based on a formula on which an advertiser can completely deliver. In particular, licensees should be alert to the fact that such claims may be invalidated by sudden changes in the market or the actions of competitors while the advertising is still on air. For this reason, absolute price claims should be treated with great caution.

(4) Under the Control of Misleading Advertisements Regulations 1988, the ASA is empowered to regard a factual claim as inaccurate unless adequate evidence of accuracy is provided to it when requested.

(5) A claim can be implied or direct, written, spoken or visual. The name of a product or service may in itself be regarded as a claim.

8.2.3 Products without a marketing authorisation

No medicinal claims may be made for products that do not hold a marketing authorisation under the Medicines Act 1968

(Registered homeopathic medicinal products are dealt with separately at 8.2.2 above).

8.2.1 Unacceptable products and services

Advertisements for the following are not acceptable:

(a) medicinal products or treatments available only on prescription (POM)

8.2.8 Guarantee of efficacy

No advertisement for a medicinal product may claim that its effects are guaranteed.

2.3 BCAP Radio Code Rules

1. Advertisements

'Advertising' in this Code refers to any items, including spot advertisements and promotions with advertisers, which are broadcast in return for payment or other valuable consideration to a licensee or which seek to sell to listeners any products or services. It does not cover product placement or sponsorship. Ofcom requires adherence to this Code for the content of sponsorship credits. 'Special Category' sponsorship credits are cleared for broadcast by the Radio Advertising Clearance Centre (RACC). See Rule 3 below.

Radio advertising should be legal, decent, honest and truthful, and these Rules should be applied in spirit as well as in the letter.

3. Misleadingness

a) Advertisements must not contain any descriptions, claims or other material which might, directly or by implication, mislead about the product or service advertised or about its suitability for the purpose recommended.

b) Advertisements must clarify any important limitations or qualifications, without which a misleading impression of a product or service might be given. Scripts must not contain complicated technical jargon. Relevant scientific terminology may only be used in a way that can be readily understood by listeners without specialist knowledge.

c) Before accepting advertisements, licensees must be satisfied that all descriptions and claims have been adequately substantiated by the advertiser. A half-truth, or a statement which inflates the truth, or which is literally true but deceptive when taken out of context, may be misleading for

these purposes. Ambiguity in the precise wording of advertisements and in the use of sound effects must be avoided.

Advertisements must not falsely suggest or imply official approval for a product.

4. Medicines, Treatments and Health

Central copy clearance is required. These Rules regulate the advertising and not the medicines, treatments (including veterinary products and services), and health claims themselves, which are regulated by the health regulators, such as the Medicines and Healthcare products Regulatory Agency (MHRA), the Department of Health and Local Health Authorities.

4.4 Prescription-only Medicines (POMs)

Advertisements for medicinal products or treatments available only on prescription are not acceptable.

4.5 Products Without a Marketing Authorisation

Advertisements for products which do not hold a marketing authorisation under the Medicines Act 1968 must not include medical claims.

(Registered homeopathic products are dealt with separately, at 4.13 below).

4.6 Mandatory Information

Advertisements for medicinal products must include the following information:

- a) the name of the product and an indication of what it is for;
- b) the name of the active ingredient, if it contains only one;
- c) where necessary, the information needed for the correct use of the product;
- d) wording such as 'always read the label' or 'always read the leaflet', as appropriate.

4.14 Celebrities

Advertisements for medicines and medical products which require legal marketing authorisation must not be presented by, or include testimonials from, persons well known in public life, sport, entertainment, etc. The Medicines (Advertising) Regulations 1994 prohibits "recommendations by persons who because of their celebrity, could encourage the consumption of medicinal products." This includes persons corporate as well as singular, and would prohibit, for example, recommendations by medical charities, patient groups and health/sport organisations.

4.17 Unacceptable Descriptions

Advertisements must not suggest that any medicinal product is a foodstuff, cosmetic or other consumer product.

2.4 CAP non-broadcast Code Rules

The 11th edition of the British Code of Advertising, Sales Promotion and Direct Marketing 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 advertising industry. All advertisements should be legal, decent honest and truthful. They should be prepared with a sense of responsibility to consumers and to society and be in line with the accepted principles of fair competition.

The specific non-broadcast rules for cosmetics advertisements are:

- 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.
- 14.1 Marketers should hold signed and dated proof, including a contact address, for any testimonial they use. Unless they are genuine opinions taken from a published source, testimonials should be used only with the written permission of those giving them.
- 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.
- 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... Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.
- 50.11 Medicines must have a marketing authorisation from the MHRA before they are marketed and any claims made for products must conform with the authorisation. Medicinal claims should not be made for unauthorised products.

50.12 Prescription-only medicines may not be advertised to the public. Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions are exempt from the Code.

50.24 Claims made about the action that a cosmetic has on or in the skin should distinguish between the composition of the product and any effects brought about by the way in which it is applied, such as massage. Scientific evidence should also make this distinction.

50.25 Some cosmetics have an effect on the kind of skin changes that are caused by environmental factors. Marketing communications for them can therefore refer to temporarily preventing, delaying or masking premature ageing.

2.5 2007 Cosmetics Survey Objectives

The purpose of this survey was to:

- Assess compliance rates for cosmetics advertisements against the CAP and BCAP Codes
- Identify potential problems and resolve them, and
- Act as a deterrent to bad practice and encourage good practice.

3. Methodology

3.1 Sample Method

To identify the advertisements for assessment the Compliance team used Thomson Intermedia, an online provider of advertising and media intelligence in the UK.

The team assessed 445 unique advertisements that were published or aired between 12 July and 12 September 2007.

The team assessed 53 TV ads, 25 radio ads, 12 direct mailings, 93 online ads, four posters and 258 press ads. Only ads that included recognisable problems were recorded as in breach of a Code.

After receiving complaints, the ASA investigated three advertisements in the survey. All three were found to be in breach of the CAP Code.

In its routine monitoring work just before the survey began, the Compliance team, took action against three of the ads in the survey.

The team assessed the non-broadcast ads against the CAP Code, television ads against the BCAP Television Code and radio ads against the BCAP Radio Code.

3.2 Cosmetics Categories

Categories

- Skin creams
- Body lotions
- Make-up
- Perfumes
- Tanning products
- Cellulite creams
- Nail products
- Acne treatments
- Facial scrubs
- Fillers
- Cosmetic surgery
- Laser treatment
- Miscellaneous (body washes, tweezers, offers, general brand ads)

4. Findings

4.1 Compliance rate

The survey sought to establish the proportion of cosmetics advertisements, published or aired between 12 July and 12 September 2007, that complied with the Codes.

We judged 32 ads (7%) had breached the Codes, a compliance rate of 93%.

The advertisements in the survey were categorised as set out in Table 1.

Table 1: Breakdown of surveyed advertisements by media and product category

	BROADCAST		NON-BROADCAST					Total	(%)
	TV	Radio	Press	Cinema	DM	Online	Poster		
Skin creams	13	12	68	0	2	29	2	126	28.3
Body creams	3	0	8	0	0	1	0	12	2.7
Make-up	4	8	42	0	3	14	0	71	16.0
Mascara	2	0	11	0	0	6	1	20	4.5
Perfumes	15	5	73	0	2	22	0	117	26.3
Cellulite	0	0	1	0	0	0	0	1	0.2
Fillers	0	0	4	0	0	1	0	5	1.1
Acne	2	0	4	0	0	0	0	6	1.4
Laser	0	0	2	0	0	0	0	2	0.4
Surgery	0	0	0	0	0	5	0	5	1.1
Nails	0	0	7	0	0	0	0	7	1.6
Tanning	4	0	9	0	0	3	1	17	3.8
Scrubs	0	0	1	0	0	0	0	1	0.2
Stretch mark oil	4	0	1	0	0	0	0	5	1.1
Other	6	0	27	0	5	12	0	50	11.2
TOTAL	53	25	258	0	12	93	4	445	100
(%)	12	6	60	0	3	21	1	100	

The table shows that ads for skin creams and perfumes each accounted for over a quarter of the sample. Make-up ads accounted for over a sixth of the sample. Ads in magazines and newspapers accounted for 60% of the sample.

4.2 Breaches by product category

Table 2: Breaches by product category:

Product Category	Ads	Breaches	Breach rate (%)
Skin creams	126	24	19
Body creams	12	1	8
Make-up	71	0	0
Mascara	20	0	0
Perfumes	117	0	0
Cellulite	1	1	100
Fillers	5	2	40
Acne	6	1	17
Laser	2	1	50
Surgery	5	0	0
Nails	7	0	0
Tanning	17	0	0
Scrubs	1	0	0
Stretch mark oil	5	1	20
Other	50	1	2
TOTAL	445	32	7

Although ads for skin creams accounted for three quarters of the breaches, when the large number of skin cream ads was taken into account, the category's compliance rate looked more favourable. Even so, the breach rate of 19% was disappointingly high. The higher breach rates in other categories were based on small sample sizes; the data was not robust enough statistically to provide either a meaningful breach rate figure or a basis for comparison with skin creams.

From a sub-sample of 117 scent ads not one breach was recorded, a figure perhaps unsurprising given ads in that category rarely include efficacy claims of the type found in skin creams. The emphasis of scent ads is usually on creating brand awareness or creating and reinforcing brand imagery.

4.3 Breaches by media type

For the purposes of this survey, “press” included national and regional newspapers and magazines.

Table 3: Breaches by media type

Media Type	Ads	Breaches	Breach rate (%)
Television	53	2	4
Radio	25	0	0
Press	258	28	11
Direct mail	12	0	0
Online	93	2	2
Cinema	0	0	0
Posters	4	0	0
TOTAL	445	32	7

Press advertisements accounted for 88% of breaches and 60% of the survey sample. Just under 11% of press advertisements breached the Code. Just under 4% of TV ads were non-compliant. Internet ads accounted for 7% of breaches and 25% of the total sample. The compliance rate of around 98% for online advertisements was high.

4.4 Men’s Cosmetics

35 of the 445 ads were for men’s cosmetics. We recorded no breaches, even though nearly half the 35 ads were for men’s skin creams (women’s skin creams accounted for 16 of the survey’s 32 breaches).

Claims in men’s skin cream advertisements seem not to stress efficacy whereas advertisements for women’s skin creams frequently do. Ads in the survey suggested men’s skin cream advertisements often have less text. Efficacy claims when they did appear were often in the product’s name, for example L’Oreal’s Men Expert Wrinkle Decrease.

4.5 ASA Investigations

The ASA investigated three complaints about ads in the survey.

An informal investigation resulted in Union Swiss agreeing to remove its ad for Bio-Oil.

Two formal investigations of complaints about mascara ads resulted in upheld adjudications against Rimmel and L’Oreal. Both concerned whether models wearing false eyelashes was likely to misleadingly exaggerate the effect the mascaras could have in increasing eyelash length. The ASA asked the advertisers to make clear that the women were wearing false eyelashes and to ensure that references to percentage increases were stated in terms of perceived improvements in lash length. The ASA adjudications are attached at Appendices 2 and 3.



During the latter part of the survey period, L’Oreal’s advertisements for mascara started to reflect the July ruling against its mascara advertisements. Some ads that appeared not long after the adjudication was published had not been updated because the advertiser had not had time to do so. We did not record those ads as being in breach of the CAP Code for that reason. Similarly, the Rimmel investigation took place during the survey period so ads that we now know are in breach of the Rimmel ruling were not recorded as in breach of the CAP Code for the purposes of the survey.

Advertisements for L’Oreal and Rimmel mascara now comply with the requirements of the adjudications.

4.6 Breaches identified by the Compliance team

The Compliance team identified 32 breaches. Five were dealt with by the Compliance team just before work started on the survey.

Two press ads and one television ad for skin creams featured so-called cumulative claims. Cumulative claims normally mention a period, say six weeks, over which a product is claimed to deliver noticeable cumulative moisturising benefits to skin. Although CAP and the ASA Executives have accepted in principle that moisturisers could offer cumulative moisturising benefits to dry skin, we have yet to see convincing evidence that a product does.

Two press ads for a skin cream featured anti-ageing claims that went beyond those that have been substantiated previously. The advertiser agreed to remove the claims when we pointed out that the claims were new or breakthrough ones that would require high-level evidence to support.

The Compliance team dealt with the remaining 27 breaches during the survey. The breaches fell into these product categories:

Five press ads for an anti-wrinkle cream were recorded as breaching the CAP Code after we assessed, and considered inadequate, evidence that the advertiser believed supported cumulative and skin-regenerating claims. The advertiser agreed to amend the ads.

Three advertisements for a night cream were recorded as breaching the CAP Code because claims about the product's ability to repair skin, neutralise environmental effects and build anti-oxidants went beyond those considered acceptable. The advertiser agreed to amend the ads.

Five press ads for the same advertiser's products were recorded as breaching the CAP Code because claims about lifting skin, repairing skin, increasing collagen production and providing cumulative benefits went beyond those considered acceptable. The advertiser agreed to amend the ads.

An ad for an acne treatment was recorded as breaching the CAP Code because it included medicinal claims without the product having been granted a marketing authorisation by the MHRA. Also, the efficacy claims and the before-and-after photos were questionable but the advertiser agreed to amend the ad instead of providing evidence to prove the claims.

A press ad for a facial patch was recorded as breaching the CAP Code because it claimed to remove wrinkles. Such claims are not supported by the available evidence. The advertiser agreed to amend the ad.

A press ad claiming that the advertiser's moisturiser could repair damage was recorded as breaching the CAP Code. Such claims are not supported by existing evidence. The advertiser agreed to amend the ad.

An advertisement for skin laser treatment was recorded as breaching the CAP Code because it described the treatment as "painless". Neither the ASA nor CAP has seen adequate evidence to prove skin laser treatment is pain free. The advertiser agreed to remove the claim.

A press advertisement for an anti-cellulite cream was recorded as breaching the CAP Code. The advertiser's evidence was not robust enough to substantiate claims that the product could firm, tone and improve the elasticity of the skin. The advertiser agreed to amend the ad.

A television ad for a body lotion was recorded as breaching the BCAP Television Code because it included a cumulative claim. The advertiser did not try to substantiate the claim and instead agreed to stop using it.

Two magazine ads for a moisturiser were recorded as breaching the CAP Code because they included breakthrough claims for ingredients in the product. Also, the claims, about strengthening immunity and improving circulation were considered to be medicinal; the advertisers did not possess a marketing authorisation from the MHRA. The advertiser agreed to amend the ads.

Two online ads and a press ad for a face cream were recorded as breaching the CAP Code because they referred to removing wrinkles and regenerating skin. The available evidence does not support either of those two effects. The advertiser agreed to amend the ads.

Two magazine ads for a filler were recorded as breaching the CAP Code because they claimed the treatment could rejuvenate skin and promote the production of healthy skin. We considered the claims were breakthrough ones that would require high-level evidence to substantiate. The advertiser's evidence was not robust enough and the advertiser agreed to change the ads.

One ad was found to breach the CAP Code for reasons unrelated to cosmetics claims.

5. Conclusion

We last assessed cosmetics ads in the Health & Beauty survey of 2006. On that occasion cosmetics ads formed only part of the survey. Nevertheless, 82 ads were assessed and 5 were found to be in breach of a Code, a compliance rate of 94%.

The compliance rate of 93% from this 2007 survey suggests no significant change in compliance for cosmetics advertising. Of course, the aim is to improve compliance in the sector so from that point of view the results of this survey are somewhat disappointing. Indeed, relative to other sectors surveyed recently, such as telecoms, utilities, alcohol, food and gambling, the compliance rate is on the low side. Nevertheless, a compliance rate comfortably above 90% suggests that the industry is acting reasonably responsibly within the self-regulatory system. It does, however, leave room for improvement.

The greatest cause for concern was the relatively poor compliance rate for skin cream ads. 19% were found to breach the Code. Ads for skin creams, especially those targeting women, tended to include strong efficacy claims that, on too many occasions went beyond the evidence. New or breakthrough claims require a high-level of evidence to substantiate. Some advertisers defended their claims strongly and sent evidence in support of their claims. But the evidence we assessed was flawed on each occasion. Sometimes trials were on very few people and others were not adequately controlled. The data for one trial did not support the claimed effect of a specific ingredient in a moisturiser. We noted no breaches for the 35 ads for men's skin creams. Our impression was that ads for men's skin creams included fewer efficacy claims.

The ASA and CAP accept that moisturisers can, in principle, have cumulative benefits over time but we have yet to see convincing evidence a product can work in that way. Cumulative claims accounted for six of the 24 breaches recorded for skin cream ads suggesting that cumulative claims are relatively commonplace in skin cream ads. The Compliance teams will work with publishers and the industry to help ensure that ads with cumulative claims do not appear unless robust evidence to substantiate them has been accepted by CAP or the ASA.

In terms of media categories, the "press", had a breach rate of around 11%. For the purposes of this survey, "press" included national and regional newspapers and magazines. As expected, the breach rate was much lower for TV ads; perhaps surprisingly, the breach rate was an encouraging low 2% for online ads. The relatively high breach rate for press ads could be accounted for by the type of text-heavy creative that is more likely to appear in newspapers and magazines. More text could increase the likelihood of problematic efficacy claims appearing. TV ads are of course pre-cleared by Clearcast and online ads are perhaps less likely to be text-heavy.

The Compliance team considers that future problems with skin creams could revolve around claims referring to DNA stress, environmental damage, the delaying of wrinkles, cell renewal, cell regeneration and stem-cell-derived products. Ads for new products seen since the survey have included such claims.

The Compliance team will monitor ads, especially those for skin creams, to try to improve the compliance rate. For a better understanding of the evidence required to substantiate efficacy claims, please consult: the CAP Copy Advice team on 020 7492 2100 or e-mail advice@cap.org.uk; Clearcast on 020 7339 4700 or e-mail enquiries@clearcast.co.uk; the RACC on 020 7306 2620 or e-mail adclear@racc.co.uk or the CTPA on 020 7491 8891 whose website address is www.ctpa.org.uk

6. Pre-publication advice

Seeking free pre-publication advice from the CAP Copy Advice team is the best way to ensure that non-broadcast marketing communications do not break the Code. 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. The team can be contacted on 0207 492 2100 (telephone), 0207 242 3696 (fax) or at copyadvice@cap.org.uk. The team responds to over 90% of all enquiries within 24 hours.

Advertisers, their agencies and the media should be aware of AdviceOnline, an up-to-date database of advice on code interpretation and how to ensure that advertisements comply with the CAP Code; it has useful links to relevant Code clauses, Help Notes and ASA decisions. CAP encourages users to subscribe to Update@CAP, its e-mail newsletter. Both services are free and available at www.cap.org.uk

Television advertisements are sent to Clearcast for pre-transmission examination and clearance at 4 Roger Street, London, WC1N 2JX, 020 7339 4700 (telephone) or enquiries@clearcast.co.uk.

7. Appendices

Appendix 1 - CAP Help Note on Health, Beauty and Slimming Claims

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 (the CAP Code). For advice on the rules for TV or radio commercials, contact Clearcast www.clearcast.co.uk for TV ads or 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 and 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 and objective claims

These might constitute satisfactory proof for uncontroversial/established claims:

- 2.1 A 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 the Committee on Medical Aspects (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.

July 1998
Revised: March 2003

L'Oreal

Ad

A TV and press ad for L'Oreal Telescopic mascara featured the actress Penelope Cruz.

a. The TV ad showed the actress standing on an apartment terrace next to a telescope that pointed towards the night sky. While the camera featured a close-up of her eyelashes, she said "So separated. So long. Imagine, lashes that could reach for the stars." The voiceover said "New telescopic mascara from L'Oreal Paris. Its secret? The high-precision flexible brush. It separates the lashes with precision for intensity lash by lash. The flexible brush lengthens your lashes for telescopic length". The camera featured various close-ups of the actress wearing the product and showed images demonstrating the flexible motion of the brush. On-screen text appeared at different stages of the ad: "High-precision"; "Flexible brush"; "Separation lash by lash" and "Up to 60% longer". The actress said "For out of this world lashes. Astronomical ... Take your lashes to telescopic lengths ..."

b. The press ad read "In a flash of a stroke ... up to 60% longer lashes and definition lash by lash. NEW TELESCOPIC MASCARA. Innovation: High-Precision Flexible Brush. Telescopic length: The flat surfaces stretch the formula towards infinity. Definition lash by lash: The brush edges separate the lashes with precision. Because you're worth it."

Issue

The complainant, who believed the actress was wearing false eyelashes, challenged whether the TV and press ads were misleading because she thought they exaggerated the lash length that could be achieved by using the product.

The CAP Code 3.1, 3.4, 7.1

BCAP TV Advertising Code 5.1

Response

L'Oreal (UK) Ltd (L'Oreal) said the claim "up to 60% longer lashes" in ads (a) and (b) was supported by scientific and consumer data. They submitted a dossier containing the product formula, a laboratory report on the lengthening properties of the product and the results of a consumer "Concept and Use" test.

L'Oreal explained that the tips of lashes were so fine that they were almost invisible to the naked eye and that mascara made the tips more visible,

thereby giving a lengthening effect. They said their Telescopic mascara worked by separating, thickening at the roots and lengthening lashes from root to tip. L'Oreal said the results of the studies they submitted supported the claim "up to 60%" longer.

L'Oreal added that the lash length visual improvement demonstration in ad (a) corresponded to a length increase of 60% and submitted a letter from the L'Oreal Group Project Manager in support.

L'Oreal told the ASA that Penelope Cruz was wearing a few individual false lashes inserted into her natural lashes to fill in the gaps in her natural lashes for a consistent standard of lashes. They sent a signed affidavit from Penelope Cruz and from the make-up artist in support of that. They explained that Telescopic mascara was then applied over the lashes. L'Oreal argued that many women wore false lashes as part of their beauty routine and reiterated that up to 60% longer lashes could be achieved by using the mascara, irrespective of whether lashes were real or artificial.

The Broadcast Advertising Clearance Centre (BACC) said they had been content with the evidence and claims that L'Oreal submitted prior to script approval. They said they had received a written assurance that the demonstration sequence in the ad was a genuine visual representation of the lash result that could be achieved by using the mascara. The BACC told us they believed the TV ad did not exaggerate the lash-length that could be achieved by using the product and therefore was not misleading.

Assessment

Upheld

The ASA considered the evidence sent by L'Oreal to support the claim "up to 60% longer lashes". We noted from the lengthening study that 75% of subjects had a 60% increase or more in the visible length of their lashes when measured using digital imagery. We noted Penelope Cruz had had individual false eyelashes added to her natural lashes and noted L'Oreal's belief that up to 60% longer lashes could be achieved irrespective of whether lashes were real or artificial.

We acknowledged that the claim was intended to refer to the perceived increase in lash length, rather than an actual extension in the length of lashes, because lash tips were more visible after the application of mascara and that made lashes appear longer. We were satisfied that the image analysis test provided by L'Oreal showed the appearance of the length of the lashes had increased up to 60% and noted the consumer evaluations showed most people perceived a lengthening effect.

We were concerned that L'Oreal had, only at a very late stage in the

investigation, appreciated the importance of telling us that Penelope Cruz was wearing individual false lashes and not, as they had earlier implied, a false set of eyelashes.

We were also concerned that the ads did not make clear that lashes would "appear" up to 60% longer and considered that some consumers could interpret the claim to refer to an actual extension in the length of lashes that could be achieved by using the mascara. Furthermore, while Penelope Cruz may not have been wearing a full set of false eyelashes, the images of her wearing individual false lashes in the press and TV ad and the lash lengthening visual in the TV ad nevertheless exaggerated the effect that could be achieved by using the mascara on natural lashes. We concluded that, in the absence of a disclaimer stating that Penelope Cruz was wearing some individual false lashes added to her natural lashes, and because the ad did not make clear that the claim referred to an increase in the "appearance" of lash length, the ads could mislead.

The TV ad breached CAP Broadcast (TV) Advertising Standards Code rule 5.1 (Misleading advertising).

The press ad breached CAP Code clauses 3.4 (Accuracy and perception) and 7.1 (Truthfulness) but did not breach clause 3.1 (Substantiation).

Action

We told L'Oreal to include a disclaimer in future ads featuring models wearing false eyelashes, irrespective of whether those lashes were individually inserted to bring lashes to a consistent standard or whether they were a full set of false lashes. We also told them to ensure future ads made clear that the "up to 60%" claim referred to the appearance of the lashes, not to an actual extension in the length of lashes that could be achieved by using the mascara.

We also told L'Oreal to take greater care in future to provide us promptly with accurate information.

Rimmel

Ad

Magazine and TV ads for Rimmel mascara.

a. The magazine ad featured Kate Moss, was headlined "NEW MAGNIF'EYES MASCARA" and claimed "Traffic stopping lashes BREAKTHROUGH EYE MAGNIFIER BRUSH 70% MORE VERTICAL LASHES Outstanding lash lift".

b. The TV ad also featured Kate Moss and claimed "New from Rimmel London - Magnif'eyes mascara, the unique vertical life brush, for 70% more lash lift that holds. Traffic stopping lash alert. Get the London look. New Magnif'eyes mascara from Rimmel London".

Issue

1. The complainants, who believed Kate Moss was wearing false eyelashes in both ads, challenged whether the ads exaggerated the effects of mascara.
2. The ASA challenged whether Rimmel could substantiate their claim that the mascara provided 70% more lash lift.

The CAP Code 3.1; 7.1

Response

1. J Walter Thompson Ltd (JWT) maintained that Kate Moss was not wearing false eyelashes on the shoot, but did not send documentary evidence in support of this. They said the lashes were cleaned up and enhanced in post-production.

2. Rimmel International Ltd (Rimmel) submitted a report which contained consumer research and laboratory tests. They said they had developed existing brush technology by creating a mascara brush that provided greater lash lift. They said they had tested the claim of 70% more lash lift on ten female panellists. They provided a table showing comparative measurements taken using digital imagery that recorded the difference in eyelash height before and after the product was applied. They sent a sample before and after shot and a diagram of how the comparative measurements were taken. They said the results showed the average recorded increase in lash lift from root to tip was 74.7%.

The Broadcast Advertising Clearance Centre (BACC) said they were satisfied that the demonstration sequences were an accurate reflection of the

capabilities of the product and supported the claims made in the TV ad. They said they had asked for assurance at script stage that the representation of the product in the ad would accurately support the claims made.

Assessment

1. Upheld

The ASA was concerned that Rimmel had failed to provide evidence that confirmed Kate Moss was not wearing false lashes. We were also concerned that JWT said they had retouched the lashes in post-production, but had not provided data that clarified the extent to which that had altered the appearance of the lashes. Because we had not received documentary evidence that Kate Moss was not wearing false lashes in the ads we concluded that the images of the eye lashes in the press and TV ads may have exaggerated the benefits of the product, and were likely to mislead consumers.

On this point the TV ad breached CAP (Broadcast) TV Advertising Standards Code rules 5.1 (Misleading advertising) and 5.2.1 (Evidence).

The magazine ad breached CAP Code clauses 7.1 (Truthfulness) and 3.1 (Substantiation).

2. Upheld

The ASA acknowledged the evidence submitted by Rimmel to support their claims "70% more vertical lashes" in the press ad and "70% more lash lift" in the TV ad. We noted that the measurements used in the test were taken from digital images of the eye before and after the mascara was applied, and were not taken from the actual lashes themselves. We considered that some consumers could interpret the claim to refer to an increase in actual lash length, rather than the length of the lashes as it appeared in the digital images. Because the claim "70% more lash lift" referred to an increase in the appearance of the lash length, and not an actual increase, we concluded that the ad could mislead.

On this point the TV ad breached CAP (Broadcast) TV Advertising Standards Code rule 5.1 (Misleading advertising).

The magazine ad breached CAP Code clause 3.1 (Substantiation).

Action

We told Rimmel not to repeat the ad in its present form. We advised them to include a disclaimer in future ads where post-production techniques had been used to increase the effects of a product, or where false lashes had been used.

