

# Compliance Report

## **Health and Beauty Products and Therapies Advertisements Survey 2009**

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## 1 Summary

The ASA is the UK self-regulatory body for maintaining standards in advertising. It does this by administering the mandatory Advertising Codes and by actively monitoring compliance with them.

The ASA has undertaken this survey to determine the compliance rate of ads<sup>1</sup> in the health and beauty sector with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code) and with the BCAP TV Advertising Standards Code and the BCAP Radio Advertising Standards Code (the BCAP Codes).

The Compliance team assessed broadcast and non-broadcast ads for health and beauty products and therapies that appeared in a broad mix of media between 1 and 7 February 2009. Of the 451 ads assessed, we considered 4.9% breached the Codes, a compliance rate of 95.1%. The result is an encouraging improvement on the findings of the last Health and Beauty Survey, carried out in 2006, which recorded a compliance rate of 90.5%.

396 of the 451 ads appeared in non-broadcast media (newspapers and magazines, the Internet, circulars, direct mailings and posters) and 51 appeared in broadcast media (TV and radio). We have not included in the results duplicates of ads that we found more than once in the survey. Of the 396 non-broadcast ads assessed, we considered 5.5% breached the CAP Code, a compliance rate of 94.5%. In our view, none of the 13 television ads breached the BCAP TV Code and none of the 11 radio ads breached the BCAP Radio Code.

This is the first Health and Beauty Survey to include online ads. Of the 451 ads reviewed, 76 were online ads (16.8%) and of those, we considered 7 (9.2%) breached the CAP Code. While the number of breaches in that medium appears high, it is worth pointing out that 3 of the 7 breaches were against ads in the same campaign for one product. As the advertisers had already been contacted by the CAP Compliance team and subsequently amended their ads, no action was necessary.

The survey targeted what the Compliance team considered to be obvious breaches of the CAP and BCAP Codes. In this survey, those breaches were identified in non-broadcast media only. In the case of an obvious breach, the Compliance team contacted the advertiser, asked for an assurance that future advertising would comply fully with the CAP Code and advised it to consult the CAP Copy Advice team in future.

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<sup>1</sup> 'Ads' is used informally to cover types of marketing communications covered by the BCAP Codes and the CAP Code.

The Compliance team will continue to monitor ads for health and beauty products and therapies and work with marketers, agencies, media owners, Clearcast and the Radio Advertising Clearance Centre (RACC) (the pre-clearance bodies for broadcast TV and radio ads respectively) to ensure ads adhere to the CAP and BCAP Codes.

The results of the survey are encouraging. They demonstrate that the sector is taking seriously the concerns of consumers who have made ads for health and beauty products and therapies the fifth most complained about sector to the ASA. However, there is still room for improvement and the compliance team will continue to monitor ads in this sector.

## 2 Introduction

### 2.1 Background

The Advertising Standards Authority (ASA) is the UK's independent regulator responsible for ensuring that advertisements, wherever they may appear, are legal, decent, honest and truthful. The ASA enforces the mandatory Advertising Codes and actively monitors compliance to provide protection for consumers and a level playing field for advertisers. It achieves this by investigating complaints about ads, proactively identifying and resolving breaches of the Codes, using research to inform its decisions and by promoting and enforcing high standards in ads generally.

The UK Advertising Codes are written by two industry bodies and set standards for the content, scheduling and placement of advertisements.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. Its members include trade and professional bodies representing advertisers, agencies, media owners and the sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code. CAP's Broadcast Committee (BCAP) is contracted by the communications industry regulator, Ofcom, to write and promote compliance with the Codes that govern TV and radio ads. BCAP comprises major broadcasters licensed by Ofcom and trade bodies representing, advertisers, agencies and satellite and cable broadcasters.

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

#### The Health and Beauty Advertising Sector

Advertisers in this area are expected to comply with the general advertising rules and the requirement to hold evidence to prove all the claims that are made in their advertisements. However, specific rules on the advertising of health and beauty products also exist in the Advertising Codes.

Health and beauty specific rules include:

- All claims, especially medical and scientific claims, should be backed up by evidence, and where appropriate, should be in the form of trials conducted on people.
- Ads should not discourage essential treatment. No advice or offer of treatment should be given on serious or prolonged conditions unless it is to be conducted under the supervision of a doctor or other suitably qualified health professional. Accurate and responsible general information about such conditions may be offered.
- Marketers inviting consumers to diagnose their own minor ailments should not make claims that might lead to a mistaken diagnosis.

If an advertiser claims a product will have a physiological or psychological effect on the user they need to hold detailed evidence to back up those claims. Statements that are merely a matter of opinion or claims that relate to a superficial effect are often acceptable, for example:

#### Skin creams

- √ Reduce the appearance of fine lines and wrinkles; moisturise; plump; temporarily lift and firm skin; look younger.
- x Permanently reduce fine lines and wrinkles; permanently lift or firm skin; sculpt the body; reduce cellulite; references to Botox (a prescription only medicine and therefore illegal to advertise to consumers).

#### Slimming

- √ Supplies vitamins/minerals while dieting; proven, balanced diet plans in which weight loss is no more than 2lb/1kg per week.
- x Melt, burn, soak up, absorb, block or provide immunity to fat; boost metabolism; suppress appetite; pictures/descriptions of obese people; medicinal properties.

#### Hair

- √ Look healthier or shinier; protect against damage.
- x Repair; re-grow; stimulate blood supply; unblock follicles; stop hair loss.

#### Medical conditions

Advertisers need to tread carefully when claiming to treat serious medical conditions. Often products contain ingredients that have strong physiological effects. There is a risk people can harm themselves by self-diagnosing or self-medicating. If a product is classed as medicinal, marketers need to obtain a marketing authorisation from the Medicines and Healthcare products Regulatory Agency (MHRA) before selling that product in the UK.

## **2.2 CAP and BCAP Rules**

The purpose of the Codes 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 industry. All ads 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 Codes contain rules that govern ads on television channels licensed by Ofcom; the BCAP Radio Code contains rules that govern ads on radio stations licensed by Ofcom and the CAP Code contains rules that govern ads in non-broadcast media.

The CAP Code and the BCAP Codes contain sections on health and beauty products and therapies, including weight control and weight loss products and therapies.

Appendices 7.1, 7.2 and 7.3 state the relevant Code rules for broadcast and non-broadcast media.

## **2.3 Survey Objectives**

The purpose of the survey is to:

- Assess compliance rates for ads making claims for health and beauty products and therapies in newspapers, consumer magazines, online, direct mailings, circulars and posters and on TV and radio;
- Identify breaches of the CAP and BCAP Codes;
- Contact advertisers responsible for ads that we considered are in breach of a Code and obtain an assurance that ads would comply fully with the relevant Code in future;
- Act as a deterrent to bad practice and an encouragement to good practice.

## **3 Methodology**

### **3.1 Sample Method**

The Compliance team used Billetts Media Monitoring, an online provider of ad monitoring in the UK, to identify the ads for assessment. The sampling period ran from 1 February 2009 to 7 February 2009 and the media that were examined included newspapers, magazines, posters, cinema ads, direct mailings, and circulars

### **3.3 Determining Code Breaches**

The Compliance team identified those ads that, it considered, constituted clear Code breaches and recorded those ads as unacceptable. We contacted the advertisers to highlight the problematic claims and requested written assurances that ads would be amended or withdrawn. As a result of that process, the Compliance team recorded 22 ads containing Code breaches.

## 4 Findings

### 4.1 Compliance Rate

The Compliance team considered 451 ads in total, of which, it considered, 22 breached a Code; a compliance rate of 95.1%.

### 4.2 Compliance Rate by Media Type

Media	No. of ads	No. of breaches	Compliance rate of media
Press	296	14	95.3%
Direct Mail	8	0	100%
Internet	76	7	90.8%
Television	40	0	100%
Radio	11	0	100%
Circulars	6	1	83.4%
Posters	14	0	100%
<b>Total</b>	<b>451</b>	<b>22</b>	<b>95.1%</b>

Most of the breaches were in press and internet ads (over three quarters of the ads scrutinised fell into those media groups); the press compliance rate was 95.3% and the Internet compliance rate 90.8%. We did not identify any breaches in TV or radio ads although we acknowledge that the sample size for radio was small.

### 4.3 Breaches identified by the Compliance team

#### 4.3.1 Press Breaches

- Two ads for an erectile dysfunction treatment made an unacceptable reference to 'nasal delivery'. We understood from an ASA investigation against the poster format of the ad that the medicine was available by prescription only and the advertisers did not hold a marketing authorisation for any medicines prescribed as part of their treatment programmes. By referring to "nasal delivery", the ads indirectly advertised to the public an unlicensed prescription medicine and were therefore found to be in breach of the Codes. Because the Compliance team had already requested and sought an assurance that the advertisers would not repeat this approach, no further action was necessary. Breach CAP Code Clause 50.11

- An ad for a beauty salon made unacceptable claims about colonic therapy for which, to date, neither the ASA nor CAP has seen robust scientific evidence. An assurance of future compliance with the Code was requested and received. Breach CAP of Code clause 50.3
- An ad for a blemish control kit was considered to be unacceptable because it made medicinal claims and the advertisers had not obtained a marketing authorisation from the MHRA. Because the Compliance team had already identified the ad as problematic during its monitoring checks, and an assurance of compliance with the Code had already been requested and received, no further action was necessary. Breach of CAP Code clause 50.11
- An ad for a bamboo nappy claimed that the nappy was “ecofriendly” without explaining the meaning of that term. The Compliance team considered the ad was unacceptable because that claim should not be used without qualification unless marketers can provide convincing evidence that their product will cause no environmental damage when taking into account the full life-cycle of the product. An assurance of future compliance with the Codes was requested and received. Breach of CAP Code clause 49.2
- Two ads for a hypnotherapist were considered to be unacceptable because they made no mention of the role of willpower. An assurance of future compliance with the Codes was requested and received. Breach of CAP Code clause 50.8.
- An ad for a clinic offering cosmetic procedures was considered to be unacceptable because it made claims for Thermage, Smartlipo and Fraxel treatments that should be advertised on an availability-only platform because the ASA and CAP have not, to date, seen convincing evidence of their efficacy. An assurance of future compliance was requested and received. Breach of CAP Code clause 50.1
- An ad for a skin supplement made claims for those pills that went further than ASA and CAP’s accepted position based on the evidence previously seen for orally ingested pills. An assurance of future compliance was requested and received. Breach of CAP Code clause 50.1.
- An ad for a company offering private medical scans did not include information about the risk from exposure to radiation as requested during a previous ASA investigation. An assurance of future compliance with the Codes was requested and received. Breach of CAP Code clause 7.1

- An ad for a cosmetic serum was problematic because it attributed the performance of the product to a particular ingredient, not to the serum as a whole. An assurance of future compliance with the Codes was requested and received. Breach of CAP Code clause 50.1
- An ad for vitamin supplements made unacceptable claims for Glucosamine and Gingko Biloba. An assurance of future compliance with the Codes was requested and received. Breach of CAP Code clauses 50.20 and 50.21
- Two ads for a weight loss programme did not indicate a time period over which the claimed weight loss was achieved. Because the advertisers had given an assurance to the ASA during the course of an investigation that they would ensure future ads were amended, no further action was necessary. Breach of CAP Code clause 51.10

#### **4.3.2 TV breaches**

None

#### **4.3.3 Radio Breaches**

None

#### **4.3.4 Circular Breaches**

- An ad for adjustable chairs and beds claimed the products were “medically proven to help reduce aches and pains” and did not make clear, as previously requested, that the positional relief offered was temporary. The circular breached CAP Code clause 50.1.

#### **4.3.5 Internet breaches**

- An online banner ad for a dental surgery offered Botox injections, which is a prescription-only medicine and therefore illegal to advertise. An assurance of future compliance with the Codes was requested and received. The ad breached CAP Code clause 50.12.
- Three ads for a face cream made efficacy claims that would require a high level of supportive evidence. Because the advertisers had already given the Compliance team an assurance that the claims would not be repeated, no further action was necessary. The ads breached CAP Code clauses 50.1 and 50.25.
- An online banner ad for a slimming product included unsubstantiated efficacy claims, including “clinically proven fat binder”, “100% natural”,

“100% organic”, “clinically proven to promote long term weight loss”, “Clinically proven to help you lose body fat”. An assurance of future compliance with the Codes was requested and received. The ad breached CAP Code clauses 50.1, 50.3, 50.8, 51.1, 51.2, and 51.8.

- An online ad for a mascara did not include a disclaimer that the model featured was wearing lash inserts. An assurance of future compliance with the Codes was requested and received. The ad breached CAP Code clause 7.1.
- An online banner ad for Transform Medical Group claimed the advertisers were “No1”. Because the advertisers had already given the ASA an assurance, following a formal investigation, that future ads would make clear that that claim was based on turnover alone, no further action was necessary (the adjudication is attached at Appendix 7.5). The ad breached CAP Code 3.1 and 19.1.

#### **4.3.6 Poster breaches**

None

#### **4.3.7 Direct Mailing breaches**

None

#### **4.4 ASA Investigations and Complaints**

Between 1 and 7 February 2009, the ASA published two adjudications relating to ads for health and beauty products and therapies:

- A direct mailing, by Wellform Ltd, for a slimming tablet, Slimsall, claimed the product was “100% natural”, “100% Safe”, “100% Active”, “100% Immediate”, “100% Effective” and “100% Long-lasting”, it featured before and after photos and measurement charts and featured testimonials and weight-loss claims. In the absence of any response from the advertisers or evidence to substantiate the claims made in the ad, the ASA considered that the claims had not been proven. It also noted that it had not seen evidence that the product held a marketing authorization and concluded that the ad was misleading and irresponsible, and made unauthorised medicinal claims.
- A direct mailing by Intramed Ltd, for an “organic silica gel”, called Artrosilium made various efficacy claims and claimed that the product could be used to treat serious medical conditions such as arthritis, prostate problems and Alzheimer’s disease. Three complainants

challenged whether IntraMed could substantiate the efficacy claims for Artrosilium, including that the product could be used to treat serious medical conditions; arthritis, prostate problems and Alzheimer's disease. The ASA concluded that the ad was irresponsible, made unproven, unacceptable and unauthorised medicinal claims and was likely to mislead.

The adjudications are attached at Appendix 7.5

During the sample period of 1 February to 7 February, the ASA received 70 complaints about 28 ads making claims for Health and Beauty Products and Therapies. Of those, three resulted in formal investigations:

- The ASA upheld a 22 point complaint about a direct mailing for a food supplement that made several unsubstantiated efficacy claims (the adjudication, published on 3 June 2009, is attached at Appendix 7.5);
- At the time of writing, the other two investigations had not yet been adjudicated on.

An ASA investigation, relating to Transform Medical Group's use of the term "Britain's No1", was published in May 2009. The same claim featured in an internet ad included in the survey sample. That adjudication is attached at Appendix 7.5. The ASA also investigated and upheld a complaint about a regional press ad (included in the survey sample) for the SureSlim weight-loss system. That adjudication was published in March 2009 and is also attached at Appendix 7.5.

## 5 Conclusions

The compliance rate of 95.1% was an encouraging result as it represents an improvement in the compliance of health & beauty ads since the 2006 survey (90.5%). The 2009 survey found full compliance amongst broadcast and radio ads.

This was the first survey to include online ads, which accounted for 16.8% of the total sample (76 out of 451 ads). Of those 76 online ads we considered 7 (9.2%) breached the CAP Code.

The full compliance rate for broadcast ads is testament to the good work of the copy clearance centres and the advertisers who followed the advice provided. The 2006 survey similarly found no breaches amongst the broadcast ads included in the survey sample.

The breach rate amongst non-broadcast ads could be ascribed to the fact that they are typically published without the same level of pre-publication scrutiny as broadcast ads. The compliance rate of 94.5% within this media category suggests advertisers are by and large communicating responsibly and within the CAP Code's requirements. However, there is still room for improvement.

The Compliance team contacted the advertisers whose ads breached the CAP Code and sought an assurance that they would not publish the same ads again. It received that assurance from all 22 advertisers.

The team will continue to monitor ads for health and beauty products and therapies across all media to ensure compliance with the Codes continues to improve.

## 6 Pre-publication advice and Pre-Clearance

The self-regulatory system places great emphasis on preventing breaches. CAP supports the industry's commitment and boosts compliance by providing pre-publication guidance to practitioners. CAP CopyAdvice is an essential service for advertisers, agencies and media owners who want to check how their prospective non-broadcast ads or multi-media concepts measure up against the CAP Code. We urge advertisers and agencies to make CopyAdvice an early part of their creative process to avoid potentially costly mistakes later and get campaigns right the first time.

For bespoke advice by phone or e-mail, practitioners can contact the team of specialist advisors who deal with more than 8,000 enquiries annually. Call the team on 020 7492 2100 or send concepts or artwork to [advice@cap.org.uk](mailto:advice@cap.org.uk).

For round-the-clock, convenient access to all the available help and guidance on the advertising Code under one roof, practitioners can visit the dedicated website – [www.copyadvice.org.uk](http://www.copyadvice.org.uk). Registered users can view features such as an extensive searchable database of advice that is updated following landmark ASA decisions, Help Notes, case studies, frequently asked questions and helpful checklists.

CAP also encourages practitioners to sign up to its regular e-newsletters, *Insight and Update@CAP*, as they provide a convenient and timely reminder of the need-to-know and developments affecting advertising regulation. Sign up to both of these newsletters at [www.copyadvice.org.uk](http://www.copyadvice.org.uk).

For TV or radio pre-clearance advice, advertisers are urged to consult Clearcast ([www.clearcast.co.uk](http://www.clearcast.co.uk)) for TV ads or the RACC ([www.racc.co.uk](http://www.racc.co.uk)) for radio ads. Ensuring that broadcast ads comply with the BCAP TV Codes or the BCAP Radio Code is a licence requirement of TV and radio channels licensed by Ofcom.

## 7 Appendices

### The CAP and BCAP Codes

Relevant code clauses from the Television, Radio and Non-broadcast Advertising Codes:

#### 1 CAP Code

##### Substantiation

- 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.
  
- 50.2 Marketers inviting consumers to diagnose their own minor ailments should not make claims that might lead to a mistaken diagnosis.
  
- 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 (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.
  
- 50.4 Consumers should not be encouraged to use products to excess and marketers should hold proof before suggesting their products or therapies are guaranteed to work, absolutely safe or without side-effects.

- 50.5 Marketing communications should not suggest that any product is safe or effective merely because it is 'natural' or that it is generally safer because it omits an ingredient in common use.
- 50.6 Marketers offering individual treatments, particularly those that are physically invasive, may be asked by the media and the ASA to provide full details together with information about those who will supervise and administer them. Where appropriate, practitioners should have relevant and recognised qualifications. Marketers should encourage consumers to take independent medical advice before committing themselves to significant treatments, including those that are physically invasive.
- 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.
- 50.8 Marketers should hold proof before claiming or implying that minor addictions and bad habits can be treated without effort from those suffering.
- 50.9 Marketers should not use unfamiliar scientific words for common conditions.

## Medicines

- 50.10 The Medicines Act 1968 and its regulations, as well as regulations implementing European Community Directive 92/28/EEC, govern the advertising and promotion of medicines and the conditions of ill health that they can be offered to treat. Guidance on the legislation is available from the Medicines Control Agency (MCA).
- 50.11 Medicines must have a marketing authorisation from the MCA before they are marketed and any claims made for products must conform with the authorisation. Medicinal claims should not be made for unauthorised products. Marketing communications should refer to the MCA, the authorisation or the EC only if required to do so by the MCA.
- 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.

- 50.13 Marketing communications should include the name of the product, an indication of what it is for, text such as 'Always read the label' and the common name of the active ingredient if there is only one. There should be no suggestion that any medicine is either a food or a cosmetic.
- 50.14 Marketers must not use fear or anxiety to promote medicines or recovery from illness and should not suggest that using or avoiding a product can affect normal good health.
- 50.15 Illustrations of the effect or action of any product should be accurate.
- 50.16 Marketing communications for medicines should not be addressed to children.
- 50.17 Marketers should not use health professionals or celebrities to endorse medicines. Health claims in marketing communications for food products must not refer to the recommendation of an individual health professional.
- 50.18 Marketing communications for any medicine should not claim that its effects are as good as or better than those of another identifiable product.
- 50.19 Homeopathic medicinal products must be registered in the UK. Any product information given in the marketing communication should be confined to what appears on the label. Marketing communications should include a warning to consult a doctor if symptoms persist. Marketing communications for unauthorised products should not make any medicinal or therapeutic claims or refer to any ailment.

#### Vitamins, minerals and other food supplements

- 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.
- 50.21 A well-balanced diet should provide the vitamins and minerals needed each day by a normal, healthy individual. Marketers must not state or imply that a balanced or varied diet cannot provide enough nutrients in general and should not encourage anyone to swap a healthy diet for

supplementation. Marketing communications must not imply vitamin or mineral supplements can be used to prevent or treat illness. Marketers may offer vitamin and mineral supplements to certain groups as a safeguard to help maintain good health but they must not, unless the claims are authorised by the European Commission, imply that they can be used to elevate mood or enhance normal performance. Claims about higher vitamin or mineral intake for a specific function are permitted if authorised by the European Commission. Without well-established proof, no marketing communication should suggest that there is a widespread vitamin or mineral deficiency.

50.22 People who are potentially at risk of deficiency may be safeguarded by vitamin and mineral supplementation. If the claim made for a vitamin or mineral supplement is relevant only to a group that is at risk of inadequate intake, marketing communications must state clearly the group likely to benefit from the supplement. Indicative groups include:

- a) people who eat nutritionally inadequate meals
- b) the elderly
- c) children and adolescents
- d) convalescents
- e) athletes in training or others who are physically very active
- f) women of child-bearing age
- g) lactating and pregnant women
- h) people on restricted food or energy diets
- i) people with Asian ancestry from the Indian sub-continent
- j) people who smoke.

50.23 Serious vitamin and mineral depletion caused by illness should be diagnosed and treated by a doctor. Self-medication should not be promoted on the basis that it will influence the speed or extent of recovery.

## Cosmetics

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.

## Hair and scalp

50.26 Marketers should be able to provide scientific evidence, where appropriate in the form of trials conducted on people, for any claim that their product or therapy can prevent baldness or slow it down, arrest or reverse hair loss, stimulate or improve hair growth, nourish hair roots, strengthen the hair or improve its health as distinct from its appearance.

## General

50.27 Marketers should not falsely claim that a product is able to cure illness, dysfunction or malformations. This clause has been included to reflect the Consumer Protection from Unfair Trading Regulations 2008. This clause applies to marketing communications that appear after 24 June 2008.

## Weight Control

51.1 A weight reduction regime in which the intake of energy is lower than its output is the most common self-treatment for achieving weight reduction. Any claims made for the effectiveness or action of a weight reduction method or product should be backed if appropriate by rigorous trials on people; testimonials that are not supported by trials do not constitute substantiation.

51.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m<sup>2</sup>. Obesity is frequently associated with medical conditions and treatments for it should not be advertised to the public unless they are to be used under suitably qualified supervision.

51.3 Marketing communications for any weight reduction regime or establishment should neither be directed at, nor contain anything that will appeal particularly to, people who are under 18 or those in whom weight reduction would produce a potentially harmful body weight (BMI of less than 18.5 kg/m<sup>2</sup>). Marketing communications should not suggest that it is desirable to be underweight.

51.4 Marketers must show that weight reduction is achieved by loss of body fat before claims are made for a weight reduction aid or regimen. Combining a diet with an unproven weight reduction method does not justify making weight reduction claims for that method.

- 51.5 Marketers should be able to show that their diet plans are nutritionally well-balanced (except for producing a deficit of energy) and this should be assessed in relation to the kind of person who would be using them.
- 51.6 Vitamins and minerals do not contribute to weight reduction but may be offered to slimmers as a safeguard against any shortfall when dieting.
- 51.7 Marketers promoting Very Low Calorie Diets and other diets that fall below 800 calories a day should do so only for short term use and should encourage users to take medical advice before embarking on them. Marketers should also have regard to the voluntary code of practice in the COMA report "The Use of Very Low Energy Diets" (1987).
- 51.8 Marketing communications for diet aids should make clear how they work. Prominence must be given to the role of the diet and marketing communications should not give the impression that dieters cannot fail or can eat as much as they like and still lose weight.
- 51.9 Marketing communications should not contain claims that people can lose precise amounts of weight within a stated period or that weight or fat can be lost from specific parts of the body.
- 51.10 Claims for food products that refer to a rate or amount of weight loss are not permitted. Claims made for other products that individuals have lost exact amounts of weight should be compatible with good medical and nutritional practice, should state the period involved and should not be based on unrepresentative experiences. For those who are normally overweight, a rate of weight loss greater than 2 lbs (just under 1 kg) per week is unlikely to be compatible with good medical and nutritional practice. For those who are obese, a rate of weight loss greater than 2 lbs per week in the early stages of dieting may be compatible with good medical and nutritional practice.
- 51.11 Resistance and aerobic exercise can improve muscular condition and tone; this can improve body shape and posture. Marketers should be able to substantiate any claims that such methods used alone or in conjunction with a diet plan can lead to weight or inch reduction. Marketing communications for intensive exercise programmes should encourage users to check with a doctor before starting.

51.12 Short-term loss of girth may be achieved by wearing a tight-fitting garment. This should not be portrayed as permanent, nor should it be confused with weight or fat reduction.

## 2 BCAP Radio Code

### 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.

Because of the introduction of new or changed products, the diverse licensing requirements of the Medicines Act 1968 and changes in medical opinion on particular issues, this Rule cannot provide a complete conspectus of required standards in relation to health claims or the advertising of particular products or classes of medicines and treatments. The general principles governing the advertising of medicines, treatments and health claims (including veterinary products and services) are set out below.

#### 4.1 Legal Responsibility

Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, Regulations made under it and any conditions contained in the current marketing authorisation.

#### 4.2 Advertisers, Treatments, Products, Services and Claims

Advertisers in this category, and/or the treatments, products and services they offer and all claims made for them, require very close scrutiny. Whenever a proper assessment of such claims can only be made by an appropriate independent qualified expert, whether medical or other health specialist, such advice must be sought before seeking clearance.

#### 4.3 EC Council Directive 92/28/EEC

The Directive concerns 'The Advertising of Medicinal Products for Human Use' and has been implemented in the UK by The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994. The ASA is obliged to consider complaints about alleged breaches of Regulation 9 of The Medicines (Advertising) Regulations 1994 and take appropriate action if necessary. The BCAP Executive may raise and investigate challenges regarding possible breaches identified through monitoring. The requirements of Regulation 9 are incorporated in this part of the Code. Directive

2001/82/EC as amended deals with veterinary medicinal products and its provisions have been implemented in the Veterinary Medicines Regulations 2005, which contain requirements for the advertising of such products.

#### 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.

#### 4.7 Unacceptable References

Advertisements must not suggest that a product is special or different because it has been granted a marketing authorisation or contain any reference to the European Commission or the MHRA (unless the MHRA requires such a reference).

No advertisement for a medicinal product may suggest that health can be enhanced by taking the medicinal product, or suggest that health could be affected by not taking the medicinal product.

#### 4.8 Medicines and Children

Advertisements for medicinal products and treatments must not be directed exclusively or principally at children (for this purpose, those aged below 16 years).

#### 4.9 Conditions Requiring Medical Advice

Advertisements must not offer any product or service for conditions for which qualified medical advice should be sought, or give the impression that a medical consultation or surgical operation is unnecessary (this excludes advertisements for spectacles, contact lenses and hearing aids), in particular by offering a diagnosis or by suggesting treatment by post, fax, telephone or email.

#### 4.10 Services or Clinics Offering Advice and/or Treatments in Medical or Personal Welfare or other Health Matters

Advertisers will only be acceptable if they can provide suitable bona fides, such as evidence of relevant professional expertise or qualifications, or accreditation to a recognised professional body. Advertising must also comply with the rules of relevant professional bodies. Advertisers may be asked to show that clinics are registered with the Local Health Authority, and/or may be referred to the RACC's medical consultant, or other advisors as required by the ASA or the BCAP Executive as a result of monitoring.

Advertisers must show that they have meaningful bona fides, for example that they belong to a body which has systems for dealing with complaints and for taking disciplinary action; that registration is based on minimum standards for training and qualifications, that there are systems in place for regular review of members skills and competencies, and that they have suitable professional indemnity insurance covering all services provided.

#### 4.11 Advice by Correspondence

Advertising for services offering one-to-one advice by correspondence (including telephone, post, email and fax) on medical/health matters will only be acceptable where:

- i such advice is given by suitably qualified health professionals acting in accordance with their relevant professional Codes of conduct; and
- ii those professional Codes are recognised by the ASA and BCAP.

No advertisement may contain any offer to prescribe or treat by correspondence. This Rule does not preclude advertising containing offers to distribute general information on health-related matters, such as leaflets or information packs.

#### 4.12 Unacceptable Impressions of Professional Support and Advice

The following are not acceptable:

- a) presentations by doctors, nurses, midwives, dentists, pharmaceutical chemists, veterinary surgeons, etc. which give the impression of professional advice or recommendation;
- b) statements which give the impression of professional advice or recommendation by people who feature in the advertisements and who are presented as being qualified to do so;
- c) references to approval of, or preference for, a product or its ingredients or their use by the professions listed at (a).

#### 4.13 Homeopathic Medicinal Products

Advertisements for homeopathic medicines are acceptable, subject to all relevant requirements of EC Council Directive 2001/83/EC (as amended by 2004/27/EC)

on homeopathic medicinal products implemented in the UK by the Medicines (Advertising) Regulations 1994 (as amended).

In particular:

a) advertisements are only acceptable for products which have been registered in the UK;

b) product information must be confined to that which appears in Schedule 5 of the Medicines (Advertising) Regulations 1994. Advertisements may not, therefore, include medicinal or therapeutic claims or refer to a particular ailment;

c) advertisements must include 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.

#### 4.15 Cure

Unless otherwise allowed by its marketing authorisation, words or phrases that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable. (Words such as 'help' or 'relieve' should be used).

#### 4.16 Tonic

Unless otherwise allowed by its marketing authorisation, the word 'tonic' is not acceptable in advertisements for products making health claims.

#### 4.17 Unacceptable Descriptions

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

#### 4.18 Self-Diagnosis

Advertisements for medicinal products must not contain any material which could, by description or detailed representation of a case history, lead to erroneous self-diagnosis.

#### 4.19 Guarantee of Efficacy

Advertisements for medicinal products must not claim or imply that the effects of taking the product are guaranteed.

#### 4.20 Side Effects

Advertisements for medicinal products must not suggest that the effects of taking the product are unaccompanied by side effects. (It is acceptable to highlight the usual absence of a specific side effect, eg. 'no drowsiness').

#### 4.21 'Natural' Products

Advertisements for medicinal products must not suggest that the safety or efficacy of the product is due to the fact that it is natural.

#### 4.22 Claims of Recovery

Advertisements for medicinal products must not refer to claims of recovery in improper, alarming or misleading terms.

#### 4.23 Appeals to Fear or Exploitation of Credulity

a) No advertisement may cause those who hear it unwarranted anxiety if they are suffering or may suffer (if they do not respond to the advertiser's offer) from any disease or condition of ill health.

b) Advertisements must not falsely suggest that any product is necessary for the maintenance of health or the retention of physical or mental capacities (whether by people in general or by particular groups) or that health could be affected by not taking the product.

#### 4.24 Encouragement of Excess

Advertisements must not imply or encourage indiscriminate, unnecessary or excessive use of any medicinal product or treatment.

#### 4.25 Exaggeration

Advertisements must not make any exaggerated claims, in particular through the selection of testimonials or other evidence unrepresentative of a product's effectiveness, or by claiming that it possesses some special property or quality which cannot be substantiated.

#### 4.26 Comparisons

Advertisements for medicinal products or treatments must not suggest that the effects of taking the product are better than, or equivalent to, those of another identified or identifiable medicinal product or treatment.

#### 4.27 Analgesics

A 'tension headache' is a recognised medical condition and analgesics may be advertised for the relief of pain associated with it. However, no simple or compound analgesic may be advertised for the direct relief of tension or stress. In such advertisements there must be no references to depression.

#### 4.28 Sales Promotions

Advertising for medicinal products which need a marketing authorisation must not contain references to sales promotions (including competitions, premium offers and samples).

#### 4.29 Jingles

Jingles may be used but must not incorporate any medical/health claim.

Previous: Religion, Faith and Related Systems of Belief

Next: Sanitary Protection Products

CAP (Broadcast)

Find out more.

#### 5 Sanitary Protection Products

These include sanitary towels and tampons, and incontinence pads for both children and adults.

- a) Central copy clearance is required;
- b) Particular care must be taken over scheduling (see Section 2, Rule 8 Scheduling);
- c) Detailed descriptions of the product or its use or application must avoid anything which might offend or embarrass listeners (see also Section 2, Rule 9 Good Taste, Decency and Offence to Public Feeling);
- d) Particular discretion is required when communicating a product's suitability to specific listeners. Advertising treatments, including voiceover gender, must take account of the age and gender of those to whom advertisements are addressed (see also Section 2, Rule 9 Good Taste, Decency and Offence to Public Feeling);
- e) Copy must not contain anything likely to embarrass or undermine a person's confidence in her/his own personal hygiene standards.
- f) No implication of, or appeal to, sexual or social insecurity is acceptable;
- g) References to sexual relationships should be avoided.

#### 13 Slimming Products, Treatments and Establishments

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. BCAP encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with

Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at <http://www.food.gov.uk>

a) Advertisements for slimming products, treatments and establishments must be submitted for central copy clearance. They must comply where applicable with Section 3, Rule 4 Medicines, Treatments and Health and Rule 12 Food and Beverages above, and with criteria set down by the Proprietary Association of Great Britain (PAGB) and the Association of British Pharmaceutical Industries (ABPI);

b) Advertisements for establishments offering slimming treatments are acceptable only if such treatments are based on dietary control. Licensees must have obtained acceptable independent medical advice that the treatments are likely to be effective and will not lead to harm and satisfied themselves that any claims can be substantiated. Any financial and other contractual conditions must be made available in writing to customers prior to commitment;

c) Licensees must obtain suitably qualified independent medical advice on the safety and efficacy of the slimming aid being offered. Specifically, licensees must be satisfied that:

i there is reputable scientific evidence for any claims;

ii clinics and other establishments or services offering medically supervised treatment are run in accordance with the General Medical Council guidelines on Good Medical Practice;

d) Promises or predictions of specific weight loss are not acceptable for any slimming aid. Where specific amounts of weight are claimed to have been lost by individuals the period over which the loss was achieved must be stated. The amount of weight lost and the period over which it was lost should be compatible with generally accepted good medical and dietary practice and not unrepresentative of the capabilities of the product or service offered;

e) Advertisements for low-calorie foods and drinks, if presented as, or as part of, slimming regimes or if using a slimming or weight control theme, must make it clear that the product only assists weight loss as part of a calorie/energy controlled diet;

f) Advertisements for specially formulated products intended for use in energy restricted diets which, when used as instructed by the manufacturer, replace the whole of the total daily diet or one or more meals of the daily diet, must comply with the 'Foods Intended for Use in Energy Restricted Diets For Weight Reduction Regulations 1997', specifically:

i such foods may not be offered under any name other than 'total diet replacement for weight control' or 'meal replacement for weight control';

ii advertisements for such foods may not refer to the rate or amount of weight loss that may result from use of the product, or to a reduction in the sense of hunger or an increase in the sense of satiety.

g) For the purposes of this Rule, Very Low Calorie Diets (VLCDs) are those where daily kilo-calorie intake falls below 800. They must comply with existing provisions under the Food Safety Act 1990 and any relevant regulations made under it, including those on advertising. The following conditions apply to any advertisement for such products:

i the advertisement must include a clear injunction to consult your doctor before embarking on the diet;

ii the diet must be positioned as a short-term measure only;

iii testimonials or specific case histories may not be used;

iv independent medical advice must be sought on whether the proposed advertisement complies with the recommendations of the government COMA Report No. 31, The Use of Very Low Calorie Diets in Obesity.

h) With the exception of clinics and other establishments/services offering treatment under medical supervision (see Section 3, Rule 4.10), advertisements for slimming aids must not be directed at the obese or use testimonials or case histories referring to subjects who were or appeared to be obese before using the product or service advertised.

For the purpose of this Rule, 'obese' means a Body Mass Index of 30 or above. Body Mass Index is calculated by dividing weight in kilograms by the square of height in metres.

j) Advertisements for slimming aids of any kind must not suggest or imply that to be underweight is acceptable or desirable. Where testimonials or case histories are used, they must not refer to subjects who are or appear to be underweight.

For the purpose of this Rule, 'underweight' means with a Body Mass Index below 20.

k) Advertisements for slimming aids of any kind must not be addressed to people under 18, use creative treatments likely to be of particular appeal to them or feature any personality whose example people under 18 are likely to follow or who has a particular appeal to people under 18. Such advertisements must not be broadcast in the breaks in or immediately adjacent to programming principally directed at, or likely to be of particular appeal to, listeners below the age of 18.

This Rule does not apply to advertisements for calorie/energy-reduced foods and drinks, provided these are not presented as, or as part of, slimming regimes and provided the advertisements do not use the theme of slimming or weight control.

### 3 BCAP Television Code

## **SECTION 8: MEDICINES, TREATMENTS, HEALTH CLAIMS AND NUTRITION**

### Background:

The rules in this section are designed to ensure that advertising for medicines and other treatments receive the necessary high level of scrutiny. This section also covers claims relating to the nutritional, therapeutic or prophylactic effects of products, including food, toiletries and cosmetics. Independent expert advice will usually be needed in assessing advertising which is subject to this Section. (See 8.1.1 below.)

### Medical Advisory Panel

Clearcast retains a panel of eminent consultants to advise it on health and medical aspects of advertising. Members are appointed after consultation with the leading medical professional bodies. Licensees may also consult the panel but will be responsible for the costs involved. Licensees should initially contact Clearcast if they wish to make use of this facility. The ASA and BCAP may seek a further medical opinion if there is a significant challenge to an advertisement that has been accepted by a licensee on the advice of a member of the panel.

On 1 July 2007, a new and important regulation governing nutrition and health claims for foods came into force. The regulation is complex and mandatory. BCAP encourages broadcasters to take advice on the effect of the regulation and to consult the Food Standards Agency's Guidance to Compliance with Regulation (EC) 1924/2006 on Nutrition and Health Claims on Foods, which is available at <http://www.food.gov.uk>.

## **8.1 GENERAL**

### 8.1.1 Assessment of claims

Licensees must seek appropriate independent medical advice where this is necessary for a proper assessment of claims

### 8.1.2 Impressions of professional advice and support

The following are not acceptable in advertisements for products or treatments within the remit of Section 8:

- (a) presentations of doctors, dentists, veterinary surgeons, pharmaceutical chemists, nurses, midwives etc, which give the impression of professional

advice or recommendations

(b) statements giving the impression of professional advice or recommendation by people who are presented, whether directly or by implication, as being qualified to give such advice or recommendation

Note to 8.1.2(b):

In ambiguous cases, it may be necessary to make clear that the presenter is not a professionally qualified person.

(c) references to approval, recommendation of, or preference for, any relevant product or its ingredients or their use by the professions referred to in (a) above

### 8.1.3 Medical or health advice given remotely

(a) Licensees may only accept advertising for services offering remote personalised advice on medical or health matters where all staff who provide such advice are subject to regulation by a statutory or recognised medical or health professional body

(b) Services that offer to prescribe or treat remotely may not be advertised

Notes to 8.1.3:

(1) 'Remotely' includes by phone, post, internet, email and fax.

(2) This does not prevent advertising offering general information on health matters.

(3) The ASA and BCAP maintains a list of the statutory and professional bodies covered by this rule and will consider proposals for amendments or additions to the list.

### 8.1.4 Encouragement of excess

No advertisement may encourage indiscriminate, unnecessary or excessive use of products within the remit of Section 8

### 8.1.5 Tonic

Unless authorised by its product licence, the word 'tonic' is not acceptable in advertisements for products making health claims. Claims must not suggest that a product has tonic properties

Note:

This does not prevent the use of the word 'tonic' in the description 'Indian tonic water' or 'quinine tonic water'.

## **8.2 MEDICINAL PRODUCTS AND TREATMENTS**

Notes:

(1) With the introduction of new or changed products, the diverse licensing requirements of the Medicines Act 1968 and changes in medical opinion on particular issues, this Code cannot provide a complete guide to required standards in relation to health claims or to the advertising of particular products or classes of medicines and treatments. The general principles governing the advertising of medicines, treatments and health claims are set out below. These also apply, where relevant, to veterinary products and services.

(2) EC Council Directive 92/28/EEC (codified under Title VIII of Directive 2001/83/EC)

The Directive concerns 'The Advertising of Medicinal Products for Human Use' and has been implemented in the UK by The Medicines (Advertising) Regulations 1994 and The Medicines (Monitoring of Advertising) Regulations 1994 (both as amended). The ASA is under an obligation to consider complaints about breaches of Regulation 9 of the Advertising Regulations, and these have been incorporated in the rules below.

(3) Medicines Act 1968

Advertisements for products subject to licensing under the Medicines Act 1968 must comply with the requirements of the Act, Regulations made under it and any conditions contained in the current marketing authorisation.

(4) Directive 2001/82/EC as amended deals with veterinary medicinal products and its provisions have been implemented in the Veterinary Medicines Regulations 2005, which contain requirements for the advertising of such products.

### **8.2.1 Unacceptable products and services**

Advertisements for the following are not acceptable:

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

(b) products for the treatment of alcohol and substance misuse or dependence

Note to 8.2.1(b):

An exception is made for smoking deterrents.

(c) hypnosis-based procedures (including techniques commonly referred to as hypnotherapy), psychiatry, psychology, psychoanalysis and psychotherapy

Note to 8.2.1(c):

An exception is made for clinics and institutions and certain types of publications, where these have been approved by BCAP after consulting its medical advisors.

(d) services that offer to prescribe or treat remotely (see 8.1.3(b))

Teleshopping for the following is not acceptable:

(e) medicinal products for humans that are subject to a marketing authorisation within the meaning of Directive 2001/83/EC as amended by Directive 2004/27/EC and on the General Sale List (GSL), available as a pharmacy medicine (P) or as a prescription-only medicine (POM)

(f) veterinary medicinal products that are subject to a marketing authorisation within the meaning of Directive 2001/82/EC as amended by Directive 2004/28/EC and are available as an authorised veterinary medicine on the General Sales List (AVMGSL), a non-food animal medicine from a veterinarian, pharmacist or suitably qualified person or as a prescription-only medicine from a veterinarian (POM-V) or from a veterinarian, pharmacist or suitably qualified person (POM-VPS)

(g) medical treatments for humans or animals

## 8.2.2 Homeopathic medicinal products

(a) Only homeopathic medicinal products which are registered in the UK may be advertised

(b) The only information which may be included is that which is allowed to appear on product labelling. Advertisements may not, therefore, include medicinal or therapeutic claims or refer to a particular ailment

Note to 8.2.2:

This rule incorporates the requirements of EC Directive 2001/83/EC (as amended by EC Directive 2004/27/EC) on Medicinal Products for Human Use.

### 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).

### 8.2.4 Mandatory information

Advertisements for medicinal products must include the following information:

- (a) the name of the product
- (b) the name of the active ingredient, if it contains only one
- (c) the indication (ie what the product is for)
- (d) wording such as 'always read the label' or 'always read the leaflet' as appropriate

### 8.2.5 Unacceptable references

- (a) Advertisements must not suggest that a product is special or different because it has been granted a marketing authorisation. Nor may they contain any reference to the European Commission or the Medicines and Healthcare products Regulatory Agency (MHRA) unless the MHRA requires it
- (b) No advertisement may suggest that a medicinal product is a food, cosmetic or other consumer product
- (c) Advertisements for medicinal products must not offer to donate money to charity. (See 11.3.6(f))

### 8.2.6 Conditions requiring medical attention

No advertisement may give the impression that a medical consultation or surgical operation is not necessary for conditions for which qualified medical advice should be sought (either instead of self-treatment or prior to it), in particular by offering a diagnosis or by suggesting treatment by post, fax or telephone.

Note: This does not prevent advertising for spectacles and contact lenses.

### 8.2.7 Self diagnosis

No advertisement for a medicinal product may contain any description or case history which could lead to a wrong self-diagnosis

### 8.2.8 Guarantee of efficacy

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

Note: This does not prevent the offering of refunds, providing that there is no suggestion that efficacy is guaranteed.

### 8.2.9 Cure

Unless allowed by a marketing authorisation, words, phrases or illustrations that claim or imply the cure of any ailment, illness, disease or addiction, as distinct from the relief of its symptoms, are unacceptable

### 8.2.10 Claims of recovery

No advertisement for a medicinal product may refer in improper, alarming or misleading terms to claims of recovery

### 8.2.11 Appeals to fear and exploitation of credulity

(a) Advertisements must not, without good reason, make viewers anxious that they may be suffering from disease or ill-health or might do so if they do not respond to the advertising

(b) No advertisement may falsely suggest that any product is necessary for the maintenance of physical or mental health, whether by people in general or by particular groups, or that health could be enhanced by taking the product or affected by not taking the product

### 8.2.12 Side effects

No advertisement for a medicinal product may suggest that it has no side effects

Note: It is acceptable to refer to the likely absence of a specific side effect eg 'unlikely to cause drowsiness'.

### 8.2.13 Comparisons

No advertisement for a medicinal product may suggest that its effects are better than, or equivalent to, those of another identifiable medicinal product or treatment

### 8.2.14 'Natural' products

No advertisement for a medicinal product may suggest that its safety or efficacy are due to it being 'natural'

### 8.2.15 Medicines and children

No advertisement for a medicinal product or treatment may be directed at people under the age of 16

Note: See also Section 7 for additional rules about advertising for products or services likely to interest children and BCAP's Rules on the Scheduling of Advertising for scheduling restrictions.

### 8.2.16 Unacceptable images

No advertisement for a medicinal product may use in improper, alarming or misleading terms images of changes in the human body caused by disease, injury or a medicinal product

### 8.2.17 Celebrity testimonials and presentations

No advertisement for a medicinal product or treatment may include a testimonial by a person well known in public life, sport, entertainment etc, or be presented by such a person

### 8.2.18 Analgesics

A 'tension headache' is a recognised medical condition and analgesics may be advertised for the relief of pain associated with this condition. However, no simple or compound analgesic may be advertised for the direct relief of tension. There must be no references to depression

### 8.2.19 Smoking deterrents

Advertisements for smoking deterrents:

(a) must make clear that the indispensable factor in giving up smoking is will-power and that the products are no more than an aid to breaking the habit

(b) must not claim that smoking is made safer whilst the habit is being reduced

Note to 8.2.19:

Advertisements for smoking deterrents must be approved by Clearcast's Medical Advisory Panel who will only give clearance to products that appear to offer genuine assistance in giving up smoking.

## 8.3 FOOD AND DIETARY SUPPLEMENTS

NOTE: This present version of the rules on Food and Dietary Supplements applies to advertisements transmitted from 1 July 2007 onwards. Read the rules that applied to advertisements transmitted before that date [PDF document].

Notes:

(1) The rules in 8.3 must be read in conjunction with the relevant legislation including the Food Labelling Regulations 1996 (as amended) and especially Schedule 6. They apply to all advertising for food products. If an advertisement is targeted at children, Section 7 of this Code also applies. For HFSS product advertisements scheduled in and around programmes of particular appeal to children, please see the BCAP Rules on the Scheduling of Television Advertisements.

(2) Public health policy increasingly emphasises good dietary behaviour and an active lifestyle as a means of promoting health. Commercial product advertising cannot reasonably be expected to perform the same role as education and public information in promoting a varied and balanced diet but should not undermine progress towards national dietary improvement by misleading or confusing consumers or by setting bad examples, particularly to children. Advertisements for food should not suggest that an inactive or sedentary lifestyle is preferable to physical activity.

(3) The spirit, as well as the letter, of the rules in this section applies to all advertisements that promote, directly or indirectly, a food or soft drink product.

### 8.3.1 Accuracy in food advertising

(a) Nutrition claims (e.g. “full of the goodness of vitamin C”) or health claims (e.g. “aids a healthy digestion”) must be supported by sound scientific evidence. Advertising must not give a misleading impression of the nutritional or health benefits of the product as a whole and factual nutrition statements should not imply a nutritional or health claim that cannot be supported. Ambiguous wording that could be understood as a nutritional claim must be avoided. For example, “goodness” should not be used as a synonym for “wholesomeness” and, if a claim relates to taste, that should be made clear, e.g. “It tastes good”, not “It is good”. The scientific meaning of the word “energy”, i.e. calorific value, should not be confused with its colloquial meaning of physical vigour

(b) Nutritional claims and health claims should relate to benefits that are significant and relevant to groups likely to be strongly interested in the advertisement. Claims should be presented clearly and without exaggeration

(c) No nutritional or health claim may be used in HFSS product advertisements targeted directly at pre-school or primary school children

Notes:

(1) Advertisements targeted directly at pre-school or primary school children are advertisements that directly target pre-school or primary school children through their content as opposed to their scheduling. For rules on the scheduling of HFSS product advertisements, please see the BCAP Rules on the Scheduling of Television Advertisements.

(d) The fact that a food product is a good source of certain nutrients does not justify generalised claims of a wider nutritional benefit

Notes:

(1) Claims of nutritional or health benefits should be considered in the context of a balanced diet or lifestyle or both. For the avoidance of doubt, HFSS product advertisements may make nutritional or health claims in accordance with 8.3.1.

(2) A wide range of guidelines that offers best-practice advice for nutritional claims and healthy eating is available. For example, The Food Standards Agency’s Guidelines for the Use of Certain Nutrition Claims in Food Labelling and Advertising include a recommendation to avoid “% fat free” claims (issued November 1999). Appropriate consideration and uniform application of such guidelines is needed from the relevant pre-clearance and adjudicatory bodies.

### 8.3.2 Excessive consumption

Advertisements must not encourage or condone excessive consumption of any food

Notes:

(1) Interpretation of this rule should be by reference to generally accepted nutritional advice. It would clearly not be inconsistent with shots of someone enjoying a chocolate bar; it would, however, preclude someone being shown eating whole boxes of chocolates in one sitting.

(2) Portion sizes or quantities of food shown should be suitable for the occasion and the people portrayed, especially if children are involved. Advertisements should not suggest that a portion intended for more than one person is to be consumed by a single individual or an adult's portion, by a small child.

(3) If they feature large pack sizes or promotional offers, e.g. "3 for the price of 2", advertisements should not encourage people to eat more than they otherwise would.

(4) The notion of excessive consumption relates to the frequency of consumption as well as the amount consumed.

### 8.3.3 Comparisons and good dietary practice

Advertisements must not disparage good dietary practice. Comparisons between products must not discourage the selection of options such as fresh fruit and vegetables, which accepted dietary opinion recommends should form a greater part of the average diet.

Notes:

(1) Advertisements should not seem to contradict or ignore good dietary practice.

(2) To reflect generally accepted good dietary practice, a reasonable variety of other foods should be shown if the advertised product is presented as part of a meal.

(3) Food products not intended as substitutes for meals should not be presented as such.

### 8.3.4 Oral health

Advertisements must not encourage or condone damaging oral health care practices

Note: For instance, advertisements must not encourage frequent consumption

throughout the day, particularly of potentially cariogenic products such as those containing sugar. This rule has children's dental health particularly in mind.

#### 8.3.5 Dietary supplements

(a) Advertisements must not suggest that it is necessary or therapeutic for the average person to augment their diet or that dietary supplements can enhance normal good physical or mental condition

(b) Advertisements must clearly establish those groups of people likely to benefit

(c) from a particular form of supplement

Note to 8.3.5(b):

Only certain groups are likely to benefit from particular vitamin or mineral supplements. They might include people on a restricted dietary regimen, those eating unsupplemented, low-energy diets, women of child-bearing age (particularly if they are planning to have a baby, are pregnant or lactating), growing children and some individuals over 50.

#### 8.4 SLIMMING REGIMES & WEIGHT CONTROL PRODUCTS

##### 8.4.1 People under 18

Advertisements for products or services which are subject to 8.4 must not:

(a) be addressed to people under 18

(b) use creative treatments likely to appeal particularly to people under 18

(c) feature any personality who has a particular appeal to those under 18, or whose example they are likely to follow

Note to 8.4.1:

Please refer to Section 7 for additional rules about products or services likely to be of interest to children and to BCAP's Rules on the Scheduling of Advertising for scheduling restrictions. (The latter, however, do not apply to advertisements for calorie/energy-reduced foods and drinks, provided they are not presented as part of a slimming regime and provided the advertisements do not use the theme of slimming or weight control.)

#### 8.4.2 Requirement for medical advice

Licensees must obtain suitably qualified independent medical advice on the safety and efficacy of products or services which are subject to 8.4. This advice must take into account:

(a) whether there is reputable scientific evidence to support any claims

(b) whether clinics and other establishments offering medically supervised treatment are run in accordance with General Medical Council guidelines

Note to 8.4.2:

This rule applies to slimming aids (including exercise products that make weight-loss or slimming claims), clinics and other establishments, diets, medicines etc.

#### 8.4.3 Predictions of weight loss

Advertisements must not promise or predict specific weight loss for products or services in this category. Advertisements which refer to specific amounts of weight that have been lost by individuals must also state the period over which that loss was achieved. The rate and amount of weight loss must be compatible with accepted good medical and dietary practice and must be representative of the capabilities of the product or service

#### 8.4.4 Low-calorie foods

In the following circumstances, advertisements for low-calorie foods and drinks must make it clear that the products only assist weight loss as part of a calorie/energy controlled diet:

(a) if the products are presented as part of a slimming regime or

(b) if the advertising uses a slimming or weight control theme

#### 8.4.5 Obesity

Advertisements for products and services in this category, other than those for clinics and other establishments offering treatment under medical supervision, must not be directed at the obese or use testimonials or case histories referring to subjects who were or appeared to be obese before using the product or service advertised

Note: Obese, for the purposes of this rule, means a Body Mass Index of 30 or above.

#### 8.4.6 Underweight

Advertisements for products and services in this category must not suggest that to be underweight is acceptable or desirable. Where testimonials or case histories are used, they must not refer to subjects who are or appear to be underweight

Notes:

(1) Underweight, for the purposes of this rule, means a Body Mass Index of below 20.

(2) Licensees should also be aware that The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 may apply to some products. Where products do fall within the remit of the regulations, a number of provisions apply including:

(a) such foods may not be offered under any name other than

- 'total diet replacement for weight control' or

- 'meal replacement for weight control',

(b) advertisements for such foods may not refer to the rate or amount of weight loss that may result from the use of the product, or to a reduction in the sense of hunger or an increase in the sense of satiety.

(3) Advertisements for Very Low Calorie Diets, those where daily kilo-calorie intake falls below 800, must also comply with the following conditions:

(a) they must advise users to 'consult your doctor' before embarking on the diet

(b) they must position the diet as a short-term measure only

(c) they must not use testimonials or specific case histories.

(4) In addition, licensees must seek independent medical advice on whether the proposed advertisement complies with the recommendations of the Government COMA Report No. 31, The Use of Very Low Calorie Diets.

#### 4 Media Examined in the Survey

Billetts Media Monitoring captured ads for assessment from these newspapers:

Financial Times	Daily Mail	Express
Daily Record Scottish Edition	Daily Sport	Daily Star
Daily Mirror	Racing Post	The Sun
The Daily Telegraph	Guardian	The Independent
The Times	Mail on Sunday	Sunday Express
Daily Star Sunday	News of the World	People
Sunday Mail Scottish Edition	Sunday Mirror	Sunday Mirror Belfast Edition
Sunday Post	The Independent on Sunday	The Observer
The Sunday Telegraph	The Sunday Times	City A.M.
Evening Standard	London Lite	Metro-London
Standard Lite	thelondonpaper	Scotsman
Nottingham Evening Post	Yorkshire Evening Post	Manchester Evening News
Liverpool Echo		

And from over 300 magazines including:

BBC Music Magazine	Classic Rock	Empire
Kerrang	Mojo	Q
The Face	Time Out	Total Film
BBC Good Food Magazine	Decanter	Delicious
Olive	BBC Wildlife	The National Trust Magazine
Amateur Gardening	BBC Gardeners' World	BBC Good Homes
Country Living	Good Housekeeping	Homes & Gardens
House Beautiful	Ideal Home	Living Etc
Arena	Bizarre	Esquire
FHM	Front	GQ
Loaded	Maxim	Men's Health
Stuff for Men	Nuts	Zoo Weekly
Asda Magazine	Boots Health & Beauty	Sainsbury's Magazine
Somerfield Magazine	Tesco Magazine	Waitrose Food Illustrated
Your M&S Magazine	All About Soap	Radio Times
TV Choice	What's On TV	Company
Cosmopolitan	Dazed & Confused	Easy Living
Elle	Eve	Family Circle
Glamour	Hair	Harpers & Queen

InStyle	Marie Claire	New Woman
Prima	Red	She
Tatler	Top Santé Health & Beauty	Vanity Fair
Vogue	Yours	Zest
Bella	Best	Chat
Close	Grazia	Heat
Hello	Inside Soap	More
Now	OK!	Pick Me Up
Reveal	Take a Break	Woman
Woman's Own	Woman's Weekly	

And from over 550 websites including:

upmystreet.co.uk	viewlondon.co.uk	handbag.co.uk
ivillage.co.uk	empireonline.co.uk	gq-magazine.co.uk
vogue.co.uk	mirror.co.uk	dailyrecord.co.uk
people.co.uk	sundaymirror.co.uk	skymovies.com
lottery.co.uk	shopperuk.com	pricerunner.com
blueyonder.co.uk	propertiestoday.co.uk	supanet.com
virginmedia.com	skysports.com	closerdiets.com
orange.co.uk	tiscali.co.uk	guardian.co.uk
orange.co.uk	arsenal.com	myoffers.co.uk
channel4.co.uk	findarticles.com	gmtv.com
thetimes.co.uk	itv.com	sundaymail.co.uk
thesun.co.uk	city-visitor.com	allinlondon.co.uk
scotsman.com	onthebox.com	style.com
independent.co.uk	belfasttelegraph.co.uk	aol.com
glamourmagazine.co.uk	myvillage.com	asos.com
babyworld.co.uk	countryliving.co.uk	getlippy.com
hellomagazine.com	uk.horoscopes.yahoo.net	arsenal.com
redirect.co.uk	gardeners-world.com	manutd.com
oddschecker.com	taste.co.uk	amazon.co.uk
baa.com	bargainholiday.com	ebookers.co.uk
lastminute.com	lonelyplanet.com	tesco.net
countrylife.co.uk	insuresupermarket.com	moneyexpert.com

And from these TV stations:

ABC1	Anglia TV	Animal Planet
At the Races	Border ITV	Bravo
Carlton ITV	Central ITV	CH4
Dave	Discovery	E4
Eurosport	Extreme Sports	Film 4
Five	Five Life	Five US

Five USA	Fiver	Flaunt
Grampian ITV	Granada +	Granada ITV
Hallmark	HTV ITV	ITV 2
ITV 3	ITV 4	Kiss TV
Meridian ITV	More4	MTV
Paramount	Q	Reality TV
Sci-Fi Channel	Scottish ITV	Sky News
SKY SPORTS 1	SKY SPORTS 3	SKY1
SW England TV	The Box	TMF
Tyne Tees ITV	UK Gold	UK Living
UTV ITV	Virgin 1	Watch
Yesterday	Yorkshire ITV	Zone Reality

And from these radio stations:

Absolute AM	Absolute FM	Beat 106
BRMB	Capital Gold	Capital Radio
Century 105.4 FM	Classic FM	Clyde 1 102.5
Clyde 2 1152 AM	Cool FM	Essex FM
Galaxy Birmingham	Galaxy Manchester	Galaxy Scotland
Galaxy South Coast	Galaxy Yorkshire	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 1
Radio City	Radio Wave 96.5	Real Radio FM
Real Radio Scotland	Smooth FM	TalkSPORT
Virgin AM	Virgin FM	XFM Scotland

## 5 ASA Adjudications

IntraMed Ltd  
St Lukes House  
London Road  
Copford  
CO6 1BJ

Media: Direct mail  
Sector: Health and beauty

Number of complaints: 3

### Ad

A direct mailing, for an "organic silica gel" called Artrosilium, consisted of a letter, a document entitled "Networking Newsletter for Users of Artrosilium", another document entitled "The natural remedy for the relief of arthritis by Dr Anton Robinson" and a coupon to obtain a free sample of Artrosilium.

The letter claimed "Guaranteed Arthritis Relief ... This amazing organic gel has proved incredibly effective at relieving arthritis pain and actually reversing its crippling effects ... Artrosilium isn't just for treating arthritis; many of our customers use it to treat other conditions including: Eczema Psoriasis Verrucas Various skin Irritations Haemorrhoids Prostate problems ...".

The "Networking Newsletter for Users of Artrosilium" claimed " ... One of my doctor friends recently confided in me, 'most of my patients complain of pains due to arthritis. None of the medications at our disposal are really satisfying. If we could find a real solution, 80% of our problems would be solved!' ... it's true that the degeneration of cartilage and the joints is a serious problem ... Is Artrosilium a solution? Many of the users think so ... ". It included several testimonials from people who had used Artrosilium to relieve their arthritis, haemorrhoids, tendinitis and tennis elbow and as an alternative to knee surgery. One testimonial stated " ... my arthritis had completely disappeared in 2 or 3 applications ...". Another stated " ... I thought that an operation on my knee was inevitable, but since I've been using Artrosilium, there's no longer any question of surgery". The newsletter also gave "Examples of applications of Artrosilium" to help "Pains, inflammations", "Skin problems, burns, sunburns", "Sinus, nasal congestion", "Prostate" and "Rashes, canker sores".

The document entitled "The natural remedy for the relief of arthritis by Dr Anton Robinson" stated " ... A doctor will usually prescribe painkillers or an anti-inflammatory medication ... While such medicines do provide relief, they are often accompanied by complications due to their side effects: digestive problems, osteoporosis, infection and even osteonecrosis. This creates a paradoxical situation: you have to take more medication to treat the side effects of the medication you're already taking! ... Why do some people suffer from high blood

pressure? Simply because their veins and arteries become less elastic as they age. A study of 72 persons over the age of 61 showed that arteries affected by atherosclerosis contained 14 times less silicon than healthy arteries ... You may find the following reports interesting, even though they are based on empirical observation and are not backed up by scientific proof ... Many types of skin problems can be treated successfully with organic silica, including boils, abscesses, haemorrhoids, eczema, burns, insect bites and minor cuts and wounds. A researcher named Carlisle, working at UCLA, discovered a perfect correlation between a lack of silicon and aluminium deposits in the brain which, as you may know, is suspected of being a primary cause of Alzheimer's disease. As for mouth care, silica strengthens gums and makes an effective treatment for disorders like aphtha (thrush) and other types of mouth sores. A friend of mine even used daily applications of organic silica to treat his prostate ... In my opinion, this is one of the most promising scientific discoveries of our century ...". It included several testimonials from people who had used Artrosilium to relieve their knee, arm and lower back pain and rheumatism. It also stated that the "organic silica gel" could be used to make wrinkles gradually disappear, to "restore your nails' youthful appearance" and to "stop hair loss".

#### Issue

1. Three complainants challenged whether IntraMed could substantiate the efficacy claims for Artrosilium, including that the product could be used to treat serious medical conditions; arthritis, prostate problems and Alzheimer's disease.

The ASA challenged whether:

2. the ad made medicinal claims for an unauthorised product;
3. the ad was irresponsible, because it might discourage recipients from seeking suitably qualified medical advice for serious medical conditions;
4. the testimonials were genuine and could be supported with independent evidence of their accuracy and
5. the ad misleadingly implied that the product was guaranteed to work.

#### Response

IntraMed asserted that the ad did not contain efficacy or medicinal claims but merely reported customer experiences. They said they always let consumers know if customers had good experiences with the product.

They confirmed that Artrosilium was not a licensed medicine but argued that it was natural and contained no dangerous or banned substances. They also said the benefits of silicon were well documented, and the product was manufactured to high standards and according to EU guidelines.

## Assessment

1, 2, 3, 4 & 5. Upheld

The ASA noted the CAP Compliance team had also contacted IntraMed who had provided an assurance to them that the mailing would not be sent out again in its current form. We also noted IntraMed had told the Compliance team they would contact the CAP Copy Advice team for help in preparing advertising.

Nevertheless, we noted IntraMed had been subject to four previous ASA adjudications where the complaints were upheld in the past year, and were concerned that they had consistently been unable to demonstrate that they held evidence to support their advertised claims. In this case, they had sent no evidence to show the product was able to treat any conditions at all and had not shown the testimonials were genuine. We reminded IntraMed that testimonials alone did not constitute substantiation and the opinions expressed in them must be supported, where necessary, with independent evidence of their accuracy. Furthermore, we considered some of the claims in the mailing, for example "Guaranteed Arthritis Relief" and "Examples of applications of Artrosilium ... Prostate" were likely to be interpreted as efficacy or medicinal claims, not customer opinion, and reminded them they should not make medicinal claims for an unauthorised product and efficacy claims should be backed by evidence. We noted a number of claims implied the product was guaranteed to work but had not seen substantiation to support those claims.

We were also concerned that the text " ... One of my doctor friends recently confided in me, ... None of the medications at our disposal are really satisfying ... A doctor will usually prescribe painkillers or an anti-inflammatory medication ... While such medicines do provide relief, they are often accompanied by complications due to their side effects: digestive problems, osteoporosis, infection and even osteonecrosis. This creates a paradoxical situation: you have to take more medication to treat the side effects of the medication you're already taking! ..." might discourage recipients from seeking suitably qualified advice for serious medical conditions. We concluded that the ad was irresponsible, made unproven and unacceptable claims and was likely to mislead.

The ad breached CAP Code clauses 2.2. (Social responsibility), 3.1 (Substantiation), 7.1 (Truthfulness), 14.1 and 14.3 (Testimonials and endorsements), 50.1, 50.3 and 50.4 (Health & beauty products and therapies - General) and 50.11 (Health & beauty products and therapies - Medicines).

## Action

The ad must not appear again in its current form. We welcomed IntraMed's assurance that the mailing would not be repeated and told them to seek advice from the CAP Copy Advice team before advertising again.

Wellform Ltd  
Box 134  
Jersey  
JE4 9QY

Media: Direct mail  
Sector: Health and beauty

Number of complaints: 1

#### Ad

A direct mailing for a slimming tablet had the headline "Making International headlines, 'A Revolutionary New Slimming Product'. Take 1 Tablet of SLIMSALL and Automatically Lose 2lbs. One a day burns off at least 14lbs in a week". Bullet-pointed text underneath stated "Without... Miserable Diets; Stress Whilst Losing Weight; Special Exercises. You will... Become thin in record time; See daily results that are 100% verifiable; Get the body of a supermodel". Boxed text underneath stated "100% Natural; 100% Safe; 100% Active; 100% Immediate; 100% Effective; 100% Long-lasting effect. Guaranteed to work in 24 hours or it costs you nothing". Text on the right-hand side of the ad stated "JUST 1 Slimsall tablet = a loss of 2lbs on the scales".

Further text inside the mailing had the headline "Recommended For All Those Who Have Given up with their Metabolism & Dieting. Get ready now for the most significant weight control development in decades". Text next to an image of a graph depicting the potential and actual rate of weight loss over two days stated "One of the most successful series of laboratory tests ever, has been carried out on a new slimming product, designed to tackle obesity, was carried out in three countries (Italy, Germany and France) under the supervision of Germany's Dr Bernard Williams. Over a period of 6 years and many increasingly successful trials the results of combined tests of 447 people (319 women & 128 men, aged between 26 and 53) became available. Each of the 447 participants received the exact number of tablets to lose the number of pounds to reach their target weight. Every morning all the participants came to the testing centre to be weighed using the same scales in order to monitor individual progress". The mailing then summarised the results of the study. Boxed text above images of parts of the body being measured stated "Real Measurable Results from Just Day 1. Flattens your stomach; Thins and tones your thighs; Reduces heavy, flabby arms; Shrinks your bottom". Further boxed text stated "THE TEST WAS AN UNPRECEDENTED SUCCESS. Slimsall is the first slimming product to make you lose the exact number of pounds you want: not a pound less. This is because a single tablet corresponds to a 2 pound loss in a very short time. Natural fast and easy. Take this simple action once a day to make you lose all your surplus weight. It's easy ... one tablet with a glass of water, before your main meal ... that's all!". The mailing went on to state "Take just one tablet of Slimsall

every other day, first thing in the morning, to benefit from non-stop around the clock active slimming agents. Through the stimulation of both lipolysis and thermogenesis, the disintegration of fat molecules, the regulation of your appetite, the stimulation of waste elimination, diminishing body sugar and fat absorption and general toning up of your body, you are guaranteed 2lbs daily weight loss. Slimsall will help prevent weight gain and activate the weight elimination process. Slimsall will stimulate and strengthen your metabolism in order to burn fat, calories and to lose excess weight and keep it off for months and years". Below were two boxes. The first featured an image of a woman with arrows pointing to parts of her body. Text stated "You will lose weight from these areas: Neck, Nape; Shoulders; Stomach; Waist; Tummy; Hips; Thighs; Knees; Ankles. Lose 5lbs in a weekend, 10lbs in 2 weeks and 20lbs in 20 days with Slimsall". The second box had the headline "LABORATORY TEST supervised by Dr Bernard Williams" and featured before and after pictures and weight-loss measurements for two women who had taken the product over a 21 day period. Both sets of pictures and measurements had the text "CERTIFIED! by Dr Bernard Williams. The test was carried out following the standard protocol using 'Double Blind' control methods". Text next to the pictures stated "Mrs J. W. (aged 46) lost 27.1lbs and inches from her body in just 13 days with the Slimsall Treatment ... Mrs C.J. (aged 38) lost 34lbs and inches from her body in just 17 days with the Slimsall Treatment".

The back of the mailing featured two testimonials, including before and after photos, from two customers. The first testimonial, from Erica Perrone, stated "To get the job I needed I had to lose 2st: As soon as I entered the office I immediately felt there was a problem ... I was told 'you seem to be exactly the type of person we are looking for but we're really looking for a slim woman!' I had just 6 weeks to lose the weight or lose the job. I tablet per day and 3st 2lbs disappeared: When I got back home I remembered the treatment that a neighbour had taken which had helped her to lose 2st. What I'm about to tell you will undoubtedly surprise you but I lost 3st 2lbs in 6 weeks! The amazing feeling was that my body was transforming everyday. You feel the fat melting away, your stomach tightens, your skin tissue firms up and tones. It's almost as if you are wearing an ever shrinking wet suit! 6 weeks later I got the job and I never forget the intense joy I felt at that point. My life completely changed from that day on. Inside every overweight woman is an [sic] beautiful one waiting to get out. The staring that used to upset me in the past is now a genuine source of pleasure and I want to thank Slimsall from the bottom of my heart". The second testimonial, from Ellen Robedo, stated "I was so demoralised with my continuing weight gain I never wanted to leave the house. I couldn't even do things like housework so life was really getting to me. Luckily for me I came across Slimsall and at such a low point decided why not I can't feel any worse!! Just 4 weeks later and over 64lbs has simply disappeared! Thank you for my new gift of life!".

A leaflet inside the mailing, from Dr Bernard Williams, stated "SLIMSALL. Mankinds [sic] Battle Against Unhealthy, Unwanted Fat Has Finally Been Won. I,

Dr Bernard Williams, guarantee you will lose 5lbs in one weekend or you pay nothing ... Have you ever noticed that some people go through life eating whatever they want (often more than 5,000 calories per day), without ever gaining an ounce? Yet others who are always dieting can't manage to lose any weight at all, no matter what they try? ... Following eleven years of in-depth research, tests and thousands of clinical observations, I arrived at the following conclusions: Individuals who can eat anything they want, and as much as they want, without ever getting fat possess metabolisms which burn up all of the calories they consume. People who get fat, despite their normal (or even strict) diets, have metabolisms which simply fail to trigger their bodies to burn enough calories". The leaflet went on to give an example to illustrate that principle. Further text on the back of the leaflet stated "My key discovery: Fortunately my years of research has resulted in my being able to identify and isolate the necessary natural ingredients required to re-trigger the brain so you too can now have the metabolism of those lucky naturally thin people whose metabolisms allow them to eat anything without putting on lbs and lbs. What's most important is that once the trigger mechanism has corrected faulty metabolisms, my studies have shown the effects last a minimum of 2 years and an average of over 3. I should add at this stage that complete reversal of a faulty trigger typically takes between one and three months with factors of age, period of excess weight and amount of excess weight being the controlling elements. The great news is that it has never taken longer than three months in worst cases to wholly correct the trigger mechanism. To accelerate weight loss 'Slimsall' also contains a special 'powerful inhibitor' with prolonged action on the gastric fluid in your intestine. This deactivated enzyme is prevented from hydrolysing the fat contained in food, ensuring over 60% of the fat contained in food passes through the digestive system without being digested. These dual-action ingredients have are [sic] synergistically combined in Slimsall, the production quality of which I monitor to ensure it contains the correct grade and quantity of ingredients as formulated some six years ago. Not only does Slimsall restore the trigger mechanism, it has in all my tests revealed a minimum weight loss of 2lbs each time one of these tablets is taken just once daily. Because results are so consistent and fast, I do not recommend taking more than 1 tablet daily ... Now it is up to you, I suggest you decide right now, don't wait until later (later may never come) to try Slimsall, after all you have my 100% cast iron guarantee of satisfaction ... PS - Slimsall goes to work immediately on your body. You will start losing weight within 24 hours, It works day and night, even while you are asleep. You will lose weight constantly, and at a steady pace, without even thinking about it".

#### Issue

The complainant challenged whether:

1. the claims that taking one tablet a day would make a person automatically lose 2lbs, and that a person could lose 14lbs in one week, were misleading and could be substantiated;

2. the claims that the product was "100% Natural", "100% Safe", "100% Active", "100% Immediate", "100% Effective" and "100% Long-lasting" were misleading and could be substantiated;

3. the claim "Through the stimulation of both lipolysis and thermogenesis, the disintegration of fat molecules, the regulation of your appetite, the stimulation of waste elimination, diminishing your body sugar and fat absorption and the general toning up of your body, you are guaranteed 2lbs daily weight loss" was misleading and could be substantiated, and

4. the claim "Slimsall will stimulate and strengthen your metabolism in order to burn fat, calories and to lose excess weight and keep it off for months and years" was misleading and could be substantiated.

The ASA challenged whether:

5. the before and after photos and measurement charts used in the mailing were genuine and could be substantiated;

6. the testimonials featured on the back of the brochure were genuine;

7. the model used on the front of the mailing was over 18 years of age;

8. the results of the laboratory tests and trials referred to in the leaflet were genuine and could be substantiated;

9. the rate of claimed weight loss was compatible with good medical and nutritional practice;

10. the claim made by Dr Bernard Williams that "My studies have shown that the effects last a minimum of 2 years and an average of over 3" were misleading and could be substantiated;

11. the claim made by Dr Bernard Williams that "Slimsall also contains a 'powerful inhibitor; with prolonged action on the gastric fluid in your intestine. This deactivated enzyme is prevented from hydrolysing the fat contained in food, ensuring over 60% of the fat contained in food passes through the digestive system without being digested", was misleading and could be substantiated, and

12. the claims relating to the metabolic effects of the product were medicinal claims and required the product to hold a marketing authorisation.

Response

Wellform Ltd did not respond to the ASA's enquiries.

## Assessment

### Upheld

The ASA was concerned by Wellform's lack of response and apparent disregard for the Code, which was a breach of CAP Code clause 2.6 (Non-response). We reminded them of their responsibility to respond promptly to our enquiries and told them to do so in future.

In the absence of any response or evidence to substantiate the claims made in the ad, we considered that the claims had not been proven. We also noted that we had not seen evidence that the product held a marketing authorisation. We therefore concluded that the ad was misleading and irresponsible, and made unauthorised medicinal claims.

Investigated under CAP Code clauses 2.2 (Principles), 2.6 (Non-response), 3.1 (Substantiation), 6.1 (Honesty), 7.1 and 7.2 (Truthfulness), 14.1 and 14.3 (Testimonials and endorsements), 17.1 (Guarantees), 50.1, 50.4 and 50.5 (Health and beauty products and therapies), 50.11 (Medicines), 51.1, 51.3, 51.4, 51.8, 51.9 and 51.10 (Weight control).

### Action

The ad must not appear again in its current form. We urged Wellform Ltd to seek guidance from the CAP Copy Advice team before advertising again and asked CAP to inform its members of the problem with Wellform Ltd.

BioGenetics Europe Ltd  
1 Carre Four de Rive  
1207 Geneva  
Switzerland

Media:  
Sector:

Direct mail  
Health and beauty

Number of complaints: 1

#### Ad

A direct mailing from Biogenetics Europe Ltd was headed "US MEDICINE Announcing Miraculous New Discoveries in Anti-Ageing! Would You Pay Just £5 for a Trial Supply of THE MOST IMPORTANT MEDICAL DISCOVERY OF THE PAST 40 YEARS?".

Further text stated "Dear Friend in the UK, A trial supply of a new wonder formula featuring 2 Nobel Prize-Winning discoveries...and the prestigious Natural Science award from the President of The United States...is about to be sent to everyone in the UK over 45 years of age...who registers within the next 30 days! ... never in all my years of medical experience have I seen one single formula that can make such a dramatic change in your health, your appearance, your energy level and your ability to perform, (or even outperform) in every aspect of your life - JUST AS YOU DID 15 TO 20 YEARS AGO! A WONDROUS CO-ENZYME, THAT MEDICAL SCIENCE REPORTS, HAS BEEN SHOWN TO NOT ONLY SLOW DOWN THE AGEING PROCESS - BUT CAN ACTUALLY REVERSE IT!"

The mailing included a number of efficacy claims for the product Ubitol, a food supplement, and its derivative Ubiquinone. Boxed text stated "The Statements in this issue have not been evaluated by the Food and Drug Administration. The product mentioned is not intended to diagnose, treat, cure or prevent disease".

Text continued "... if you respond within the next 30 days, you are entitled to receive a trial 10-day supply ... for only £5.00. Then only if you are completely satisfied that UBITOL is by far the most significant new medical advance in not just stopping, but actually reversing the ageing process, every second month at just the right time, you'll continue to receive a fresh 60-day supply, not for the regular £32.50 price, but for only 66p per day (including p&p), billed conveniently to your credit or debit card every month. To ensure uninterrupted service, your first 30-day shipment comes conveniently with your trial supply. And you can cancel at anytime by simply calling our customer service department on the FREE phone number ... If you don't agree that not in decades have you felt so vibrant, so full of energy, so raring to go and just plain YOUNGER AND FULL OF LIFE, then simply return the empty packaging within 365 days for a FULL REFUND of the product price ...". A document entitled "NO-RISK RESERVATION COUPON" included a tick box and text that stated "ONE 15-Day Trial Supply of UBITOL - only £5.00 ... (£2.99 p&p for all of the above) ...".

Under the heading "UBITOL MADE THOSE DRAMATIC CHANGES IN THEIR LIVES ... AND IT CAN DO THE SAME FOR YOU!" were testimonials from 10 people identified as Forest Wistman, Diane Diastasio, Elizabeth Pollock, Michael Rankin, Derrick Bergman, Mrs Jody Ingram, Daniel Hall, Ms Jay Donlan, Mae Nicholson and Bill Walker. The testimonials included claims such as "I wouldn't be alive today without UBITOL", "overcome crippling illnesses such as heart attack and stroke" and "Ubitol helped to relieve sickness, pain and terrible side effects associated with chemotherapy".

#### Issue

1. The complainant challenged whether the mailing, and particularly the headline claim "Would You Pay Just £5 for a Trial Supply ...?", was misleading, because he found that he would be charged a further £2.99 for post and packing plus £19.80 for an additional initial supply and thereafter £19.80 recurring monthly.

The ASA challenged whether the following efficacy claims were misleading and could be substantiated:

2. "sufferers of arthritis and bursitis have been able to throw away their prescription drugs and live full, active lives without a moment of pain, aches or swelling!";
3. "bed-ridden heart patients, after taking UBIQUINONE for just a single month, were able to bound up flights of stairs, walk for hours, even jog for a full mile or two without once gasping for breath!";
4. "people with prescription glasses were able to take them off for the first time in years and actually read the smallest print in a telephone directory!";
5. "Disappearance of lines and wrinkles, plus age-spots";
6. "Overcoming baldness and/or gray hair";
7. "Regaining 20-20 eyesight and perfect hearing up to age 90";
8. "Healthy gums and your own teeth for the rest of your life!";
9. "Reversing loss of body firmness ... Forget implants, liposuction and "lifts", UBIQUINONE acts like a plastic surgeon in a gelcap";
10. "Stopping weak bladder control in women and prostate condition in men";
11. "Unlocking stiff, swollen joints";
12. "Revitalising tired, aching feet, falling arches and leg cramps";

13. "Reversing loss of memory and concentration";
14. "Increase sexual performance, endurance and frequency to as much as 5 to 7 times a week even for couples in their 60's, 70's and 80's";
15. "has made men and women of all ages, from 45 to 90 FEEL - ACT - PERFORM and even LOOK 15 to 20 years younger!";
16. "Enhances immunity - increases resistance to colds, flu's [sic] and age related diseases such as Alzheimer's, Parkinson's, strokes and heart disease" and
17. "Every ageing condition like arthritis, bursitis, backaches, headaches, fatigue, etc. start to disappear in just days - as your entire body enters a second springtime of youth! ...".

The ASA also challenged whether the mailing:

18. made medicinal claims for an unlicensed product;
19. implied the product, a food supplement, could be used to prevent or treat illness, elevate mood or enhance normal performance;
20. discouraged essential treatment

and, in addition, whether:

21. signed and dated proof was held for the use of the testimonials and
22. claims made in the testimonials were supported by evidence.

Response

Biogenetics Europe Ltd (Biogenetics) did not respond to the ASA's enquiries.

Assessment

Upheld

The ASA was concerned by Biogenetics' lack of response and apparent disregard for the Code, which was a breach of CAP Code clause 2.6 (Non-response). We reminded them of their obligations under the Code and told them to respond promptly in future.

1. Upheld

The ASA noted the order form enclosed with the mailing clarified that, in addition to £5 for a trial supply of Ubitol, £2.99 postage and packing (p&p) was payable and, furthermore, acceptance of the trial supply was conditional upon the

acceptance of a subscription to receive a 60-day supply every other month, charged at 19.80 monthly to a credit or debit card, with the first 30-day supply shipped with the trial pack and paid for up front.

We understood that the terms of the offer were such that it was possible to cancel the subscription at any time or return any unwanted product or empty packaging for a full refund. We considered, regardless, that readers were likely to infer from the headline claim "Would You Pay Just £5 for a Trial Supply ..." that they could take advantage of the trial offer without further cost or obligation. Because that was not the case, we concluded that the headline claim was misleading.

On this point, the mailing breached CAP Code clause 7.1 (Truthfulness).

#### 2-17. Upheld

No evidence was produced to demonstrate that any of the efficacy claims were valid or that Ubitol was efficacious in any way. We noted the mailing included a number of new or breakthrough claims and stated "Miraculous New Discoveries in Anti-Ageing!", "THE MOST IMPORTANT MEDICAL DISCOVERY OF THE PAST 40 YEARS?", "a new wonder formula" and "A WONDROUS CO-ENZYME". We considered that a robust body of evidence, consisting of clinical trials conducted on people, would be required to substantiate such claims. In the absence of such substantiation, we concluded that the claims had not been verified and were, therefore, likely to mislead.

On points 2-17, the mailing breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 50.1 and 50.7 (Health and beauty products and therapies - general) and 50.20 (Vitamins, minerals and other food supplements).

#### 18. Upheld

We noted the mailing included the statement "The product mentioned is not intended to diagnose, treat, cure or prevent disease". We considered, however, that it also included claims for the product Ubitol to prevent or cure serious medical conditions, such as arthritis and Alzheimer's disease; those claims were, therefore, medicinal. We were not shown any marketing authorisation for Ubitol and, therefore, concluded that the mailing had made medicinal claims for an unlicensed product.

On this point, the mailing breached CAP Code clause 50.11 (Medicines).

#### 19. Upheld

We considered that a well-balanced diet provided all the vitamins and minerals needed each day for healthy individuals and, although marketers could offer supplements to certain groups as a safeguard to help to maintain good health, they should not imply supplements could be used to prevent or treat illness, elevate mood or enhance normal performance.

We noted the mailing was not addressed to any particular group. We noted a number of claims such as "Every ageing condition like arthritis, bursitis, backaches, headaches, fatigue, etc. start to disappear in just days ..." implied Ubitol could prevent or treat illness. We noted claims such as "... if you want to actually reverse the ageing process so that your body looks, feels and performs like you are 15 to 20 years younger, in as little as 30 days ..." and "... It's like your body's level of energy, performance and organ vitality suddenly grows a whole generation younger, starting in as little as 30 days! ..." implied Ubitol could elevate mood and enhance a healthy individual's normal performance.

On this point, the mailing breached CAP Code clause 50.21 (Vitamins, minerals and other food supplements).

#### 20. Upheld

We noted the mailing made reference to arthritis, age-related macular degeneration and prostate problems, which we considered were serious medical conditions for which suitably qualified medical advice should be sought. We considered that, by making reference to and offering a treatment for those conditions, the ad could discourage readers from seeking essential treatment for serious medical conditions.

On this point, the mailing breached CAP Code clause 50.3 (Health and beauty products and therapies - general).

#### 21 & 22. Upheld

We considered that the testimonial claim "overcome crippling illnesses such as heart attack and stroke" was a breakthrough claim which required a robust body of evidence, consisting of clinical trials conducted on people, in order to substantiate it. As Biogenetics did not supply any evidence to demonstrate that they held signed and dated proof for the testimonials or that the claims they contained were supported by evidence, we concluded that they were unsubstantiated and misleading.

On these points, the mailing breached CAP Code clauses 3.1 (Substantiation), 7.1 (Truthfulness), 14.1 and 14.3 (Testimonials and endorsements) and 50.1 (Health and beauty products and therapies - general).

#### Action

The mailing must not appear again in its current form. We asked CAP to inform its members of the problem with Biogenetics.

AMI Clinic Ltd  
1st Floor  
Evergreen House  
2-4 King Street  
Twickenham  
TW1 3RZ

Media: Poster  
Sector: Health and beauty  
Agency: First Choice Media

**Number of complaints:** 521

### **Background**

The posters were withdrawn at the request of the ASA pending the outcome of the investigation.

### **Ad**

A poster for AMI Clinic Ltd (AMI) stated in large, prominent lettering "WANT LONGER LASTING SEX?" The word "SEX" appeared in very large lettering. Smaller text stated "NASAL DELIVERY TECHNOLOGY CALL THE DOCTORS AT ADVANCED MEDICAL INSTITUTE".

### **Issue**

1. 521 complainants believed the poster was offensive and, therefore, unsuitable for display in public locations, which included near schools and in areas with a high Jewish population, where it could be seen by children and
2. The ASA challenged whether the poster advertised an unlicensed medicine.

### **Response**

1. AMI explained that the marketing campaign sought to address serious men's health issues while removing the stigma and taboo associated with seeking help for them. Independent research confirmed that only 11% of men with a sexual dysfunction sought medical advice. AMI pointed out that, in addition, only a small number of those who did take the first step were willing to follow up and obtain treatment. They said research had shown that, in many cases, men were too embarrassed to talk to a doctor or visit a pharmacy despite widespread publicity of these conditions since the launch of Viagra. They believed sometimes bold, arresting statements were the only way of successfully engaging men and promoting the availability of treatment and removing the perceived embarrassment or shame associated with seeking it. They said they never intended to cause offence, but given the nature of their business, it was inevitable that some people would be embarrassed or offended by the directness of AMI's campaign. They pointed out, however, that they had complied with the request of the ASA and withdrawn all posters, without prejudice, pending the outcome of the investigation.

AMI said, in their view, there was nothing irresponsible in talking about sexual problems in an open manner and pointed out that frank discussions on people's

sexual problems had been present in the media for decades. They said it appeared, from the number of people who participated in open debates on the subject on the radio, for example, that there was a clear need for members of the public to address their sexual problems.

They pointed out that press advertising, which featured the text "... do you want longer lasting sex", had been approved by the Committee of Advertising Practice (CAP) Copy Advice team and that merely enlarging the word "SEX" on a poster, which was appropriate for the different medium and wholly relevant to AMI's treatment of sexual problems, did not make them irresponsible towards consumers or wider society. They believed 21st Century Britain was more than able to cope with the content of the campaign without serious or widespread offence being caused. Although they recognised a number of complaints had been received, they believed in the wider context of reality TV programmes, 'lads mags', online content, the commonality of graphic simulated sex on prime-time TV and film and factual shows such as Channel 4's "Embarrassing Illnesses/Bodies", we were living in a more liberal and tolerant age than, for example, ten years ago.

They pointed out that a recent high profile poster campaign for the 2008 film "Sex and the City" emblazoned the word "SEX" in very large lettering all over the UK and posters for the film "Sex Drive", used the imagery of a speed dial as a prone man's erect penis and included the text "COMING SOON". AMI said their poster highlighted a serious medical condition and was significantly less obtrusive in their opinion than other posters. They further believed the word 'sex', in itself, could and should not cause offence to any great degree.

AMI said, in their opinion, the number of complaints was relatively small in the context of the number of people who could have seen the poster. They believed any unintentional offence that had been caused was not serious or widespread: the poster included no swearing, innuendo, inappropriate or suggestive imagery or nudity.

AMI believed the poster could not have caused serious offence or harm through placement near a school or in an area with a high Jewish population. Although it could prompt children to ask questions, they believed most children learnt about sex through sources other than a poster, for example, magazines. They pointed out that it was a publicised Government plan that children as young as five years of age would be given sex education. In addition, they believed there was nothing in the poster that was likely to offend the Jewish community in particular: Jewish Law permitted sex within the context of marriage and nothing in the poster campaign suggested, promoted, encouraged or implied anything against that view. AMI also pointed out that they were understanding of religious sensitivities but that sexual problems were not excluded from any specific religion and there was no reason why any part of the community should be ignored or treated differently for reasons of ethnicity or religion.

2. AMI said the generally accepted definition of a medicine was "any drug or remedy that treats or prevents or alleviates the symptoms of disease, illness or pain". They believed they had not promoted or advertised a medicine or referred to any medication, attributes or functions of any medicines, but rather had advertised a delivery system relating to treatment. They said the poster clearly stated that AMI owned nasal delivery technology and added that the CAP Code did not state that the advertising (or indirect advertising) of a delivery method for a medicine was prohibited.

Furthermore, AMI said they provided a medical service offering treatment programs to the public. They said the phrase 'Want longer lasting sex?' did not relate to a medicine but the treatment programs provided. They said any medicine the treatment incorporated was prescribed by UK-registered doctors and provided by a pharmacy as part of the program. They explained that they did not hold a marketing authorisation from the Medicines and Healthcare products Regulatory Agency (MHRA) for any medicines because none was needed for their particular treatments; they were not advertising medicines.

AMI believed there was an important and vital difference between medical service advertising and advertising medicines. They said in some cases, the treatment of male sexual problems involved only counselling or counselling could be provided free to patients for whom medicine was also necessary and a fully-qualified Managing Health and Social Care (MHSC) Psychosexual Therapist & Counsellor who specialised in sexual dysfunction was a member of AMI's full-time staff.

## **Assessment**

### **1. Upheld**

The ASA noted AMI's argument that the poster delivered their message in a blunt and direct manner, which included the word "SEX" in large lettering, but incorporated no swearing, suggestive imagery or nudity. We also noted, however, a number of people who had seen the posters had felt that the language used was offensive and inappropriate for general public display.

We understood that many people also considered the posters' bright colours and very large text, including the word "SEX" to attract attention, was unsubtle and crass. We also understood that the word "SEX", in itself, had caused concern in many cases and, in the context of "WANT LONGER LASTING SEX?", which related directly to sexual intercourse, had also caused embarrassment amongst some parents or guardians who had been quizzed about its meaning. A number of complainants pointed out to us that the sheer size and prominence of the message made it impossible to avoid, which they found very uncomfortable.

We recognised that the sensitive nature of the message AMI wanted to deliver about their product and the treatment programmes they offered could be intrusive

to some readers under any circumstances. We also noted the poster contained nothing explicit, and considered that the word 'sex' in itself was not problematic necessarily. We considered, however, that the style and tone of this ad, with direct reference to sexual intercourse through the phrase 'Want longer lasting sex?', was presented in too stark and prominent a manner, and as a result were concerned that it had caused both serious and widespread offence.

In view of this, we concluded that the poster was unsuitable for public display.

On this point, the poster breached CAP Code clauses 2.2 (Responsible advertising) and 5.1 (Decency).

## 2. Upheld

We noted AMI's argument that the poster did not promote or advertise a medicine, but instead advertised the way in which the medicine would be administered to patients: through nasal delivery technology.

We noted their argument that the phrase "WANT LONGER LASTING SEX?" related to their treatment programs and, whilst we recognised that AMI also offered counselling services, we considered that by including this phrase and making reference to nasal delivery, AMI had indirectly advertised the medicine itself.

We noted that the medicine was available by prescription only and that AMI did not hold a marketing authorisation for any medicines prescribed as part of their treatment programs. We therefore concluded that the poster had indirectly advertised an unlicensed medicine, which was available only on prescription, to the public.

On this point, the poster breached CAP Code clause 50.11 (Medicines).

### **Action**

The poster must not appear again in its current form. References to 'nasal delivery' must be removed. Other phrases which could be interpreted as referring to medicines must not be used.

Transform Medical Group (CS) Ltd  
Abbey Pines  
192 Altrincham Road  
Manchester  
M22 4RZ

Media: Magazine  
Sector: Health and beauty  
Agency: Pravda Advertising

Number of complaints: 1

#### Ad

A magazine ad, for Transform Medical Group, featured the claim "Britain's number one cosmetic surgery group". Text at the bottom of the ad said "BREAST SURGERY FAT REMOVAL FACIAL SURGERY COSMETIC DENTISTRY WEIGHT LOSS SURGERY NON-SURGICAL TREATMENTS HAIR LOSS TREATMENTS MALE COSMETIC SURGERY".

#### Issue

The Harley Medical Group (HMG) challenged whether the claim "Britain's number one cosmetic surgery group" was misleading and could be substantiated.

#### Response

Transform Medical Group (TMG) said they offered both surgical and non-surgical procedures, which were marketed under the Transform brand and the TransformEnhance brand, respectively. They said the ad referred solely to their cosmetic surgery business and HMG did not appear to distinguish between surgical and non-surgical procedures in their advertising. TMG said three independent market research companies named Transform as either "the largest provider" or the "market leader" for cosmetic surgery in the UK.

TMG said turnover of their surgical business for 2008, as yet unaudited, was £35 million and was greater than that of HMG's combined non-surgical and surgical businesses, which was £30.6 million for the financial year 2008. They obtained information on HMG's turnover from accounts filed at Companies House.

TMG also provided the ASA with the number of surgical procedures they had carried out during the financial year 2008 but asked that those details be kept confidential. They confirmed however that the figures did not include follow-up procedures to present as true a picture as possible of unit sales. They explained that, because corresponding information about HMG was not in the public domain, they were unable to provide us with comparative data.

TMG nevertheless pointed out that, since the turnover of their surgical business was greater than HMG's combined surgical and non-surgical turnover and since HMG were typically more expensive, they believed it followed that HMG must have carried out fewer procedures. TMG pointed to an earlier ASA adjudication which had rejected this argument because higher turnover did not necessarily

equate to carrying out more procedures: one surgical group could carry out more of the lower-priced procedures which could lead to carrying out more surgical procedures in general, whilst having a lower turnover. TMG argued, however, that breast procedures made up 70% of their surgical procedures and were typically less expensive than other procedures compared to HMG, who stated in a press release in October 2008, that breast enlargement procedures made up 30% of all their procedures. Therefore TMG's split of procedures was more inclined towards the less expensive procedures and, since their procedures were cheaper and they had a greater turnover than HMG, they could therefore conclude that they carried out a greater number of procedures.

## Assessment

### Upheld

The ASA noted TMG's argument that the ad promoted only their cosmetic surgery business and we noted it referred to a number of surgical procedures such as breast surgery and weight loss surgery. We noted however the ad also mentioned non-surgical procedures and hair loss treatments. We therefore considered that readers were unlikely to infer that the ad promoted only the surgical side of the business and would infer that it promoted the availability of TMG's procedures in general, both surgical and non-surgical.

We considered that readers would expect the claim "Britain's number one cosmetic surgery group" to mean that TMG had a higher turnover and performed more procedures, both surgical and non-surgical, than its competitors. We noted TMG had provided turnover figures which showed that their surgical business turnover alone was greater than HMG's surgical and non-surgical businesses combined.

We noted TMG's argument that, on account of their turnover being higher, their procedures typically being cheaper and the popularity of their cheaper procedures, they could draw the conclusion that they performed a greater number of surgical procedures. We considered, however, that to substantiate the claim, "Britain's number one cosmetic surgery group", TMG needed to be able to produce robust comparative evidence showing that they carried out more surgical and non-surgical procedures than HMG. HMG and TMG told us the total number of surgical procedures they had carried out in the financial year 2008, each wished that information to be kept confidential, but neither submitted supporting, documentary evidence of those figures. We were therefore unable to establish which company had carried out the most surgical and non-surgical procedures.

We considered that, to claim "Britain's number one cosmetic surgery group", TMG would need to be able to continue to check the veracity of the claim. We understood that would not be possible if the information about the number of procedures performed by their competitors was not in the public domain.

We considered that, as we had not seen robust comparative data to show that TMG performed more surgical and non-surgical procedures than HMG, the claim was unsubstantiated and could mislead.

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

#### Action

The ad must not appear again in its current form. We told TMG to qualify the claim "Britain's number one cosmetic surgery group" to make clear that it was based on turnover only.

The New Lifestyle Company Ltd t/a  
Sureslim Wellness Clinic  
Focus House, 1st Floor  
23/25 Bell Street  
Reigate  
Surrey  
RH2 7AD

Media:  
Sector:

Regional press  
Health and beauty

Number of complaints: 1

#### Ad

A regional press ad for SureSlim was headlined "We lost our weight with SureSlim, it really works!". The ad showed four people with captions next to them that stated "I lost 4 stone", "I lost over 10 stone" and "I lost 5 stone". Further text stated "Your SureSlim eating plan includes: Personalised programs for rapid and permanent weightloss Tailored to your food preferences and lifestyle using normal everyday foods One to one support all the way Comprehensive blood tests Doctor's analysis and nutritional advice. Change you life today!" Text at the bottom of the page stated "SureSlim WELLNESS CLINIC The scientific approach to weight and wellness".

#### Issue

A consultant for Slimming World challenged whether the ad should state the period over which the weight loss claims had been achieved.

#### Response

The New Lifestyle Company Ltd (SureSlim) acknowledged that the ads should state the period over which the weight was lost and provided their assurance that they would amend ads accordingly in the future.

#### Assessment

##### Upheld

The ASA welcomed SureSlim's willingness to amend the ad. Because the ad did not state the period over which the weight loss claims were achieved, we concluded it was misleading.

The ad breached CAP Code clauses (7.1 Truthfulness) and 51.10 (Weight control).

#### Action

The ad must not appear again in its current form.