

Advertising Standards Authority

Therapeutic and Health Advertising

TAPS Briefing – 16th February 2017

WHO

- Advertisers / Agencies / Media
- Industry funded
- Complementary to law
- Independent Complaints Boards and Governance Chair

WHAT

- Codes and complaints process
- Consumer focus
- We support Pre-vetting (e.g. TAPS)
- Prompt decision-making key for a credible process

WHY

- Consumer trust in advertising
- Support standards over and above legal minimum
- Best defence against more regulation
- Faster, more effective to have industry buy-in

16/02/2017

Complaint 16/435

- 24 complaints
- Perpetuated racist stereotypes portraying Asian people as;
 - Unable to speak English
 - Subservient
 - Subject to bullying
 - Only interested in making sales
- 3 complaints 'Ah so' translates to 'Ah so that's how it is' was intended to be heard as 'arse hole'
- SETTLED (Ad withdrawn)
- Advertiser
 - tested the with 10 Japanese native speakers, none of whom found it offensive
 - PGR rating (CAB) (parental guidance), majority of complaints from scheduling in the news hour

Complaint 16/178 and Appeal 16/014

- Complainant – Misleading. Price of this car the same the Peugeot 4008 but Peugeot was a better deal (more features)
- ‘Not Upheld’ by Complaints Board – Advertiser had provided sufficient explanation to support the ‘best value’ claim
- ‘Upheld’ by Appeal Board
 - Use of decision as a precedent
 - Definition of ‘best value’
 - Advertiser had not substantiated the claim
- Advertiser
 - ‘Value’ is subjective
 - Lifetime of vehicle – Cost of servicing, resale value, cost of spare parts, dealer back-up & service, Euro 5 compliant engine (vs Peugeot Euro 4)

New Definition of an Advertisement

“Advertising and advertisement(s)” means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.

Medicines Act Definition: **advertisement** means any words, whether written, printed, or spoken, and any pictorial representation or design, used or appearing to be used to promote the sale of medicines or medical devices or the use of any method of treatment; and includes any trade circular, any label, and any advertisement in a trade journal; and **advertising** and **advertised** have corresponding meanings

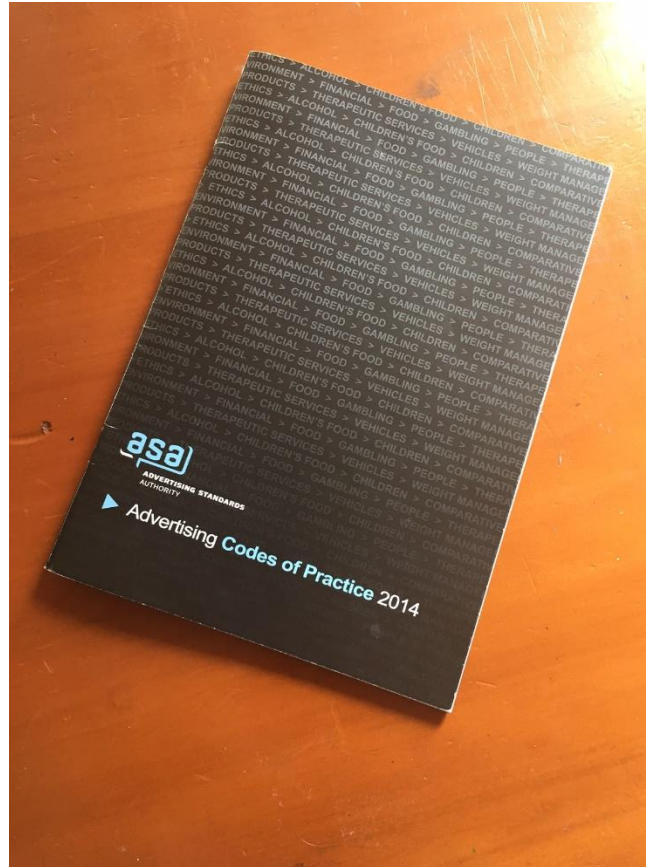
The road ahead for 2017

- The Advertising Standards Code
 - A combination of the current Ethics, Comparative, Environment, Food, People and Vehicles Codes)
 - Due QTR 3
- Children and Young People's Advertising Code
 - Extensive review during 2016
 - Replace Children and Advertising Food to Children Codes
- Alcohol, Financial, Gambling, Therapeutics & Health to remain unchanged
- 6 Codes by end 2017

The end result?

The end result?

New Booklets



Society for Science Based Healthcare

- They continue to be active

<http://sbh.nz/>

The Society for Science Based Healthcare is a group of consumer advocates, scientists, and medical professionals. We work to protect your right to make informed decisions about your healthcare.

Complaint 16/219

- 'Upheld'
- Misleading claims to;
 - Prevent and even heal major eye disorders such as cataracts, glaucoma and retinal problem
 - Prevent or even reverse vision loss
- No response from advertiser
- No substantiation to support claims therefore complaint upheld

Therapeutic and Health Advertising Code

- Effective for all advertising - 1 December 2016 (new, existing, ASCB)
- A consolidation of three existing codes
 - Therapeutic Products Advertising Code
 - Therapeutic Services Advertising Code
 - Code for Advertising of Weight Management
- May require some updating when the Natural Products Bill is passed though this is unlikely to affect the advertising rules for medicines, medical devices and methods of treatment
- Available at: <http://www.asa.co.nz/codes/codes/therapeutic-health-advertising-code/>

Therapeutic and Health Advertising Code

- Applicable to all therapeutic and health products, devices and services
- Applicable to all audiences (HCP and Consumers)
- Consistent with Industry Codes
- Consistent with legislation
- Note this statement in the introduction (to capture e.g. cosmetic products when making therapeutic claims)
 - *This Code may also apply when therapeutic or health claims are made in advertisements for other products or services not defined in this code.*

Therapeutic and Health Advertising Code

- New Format
- Guidance notes beside relevant rules
- Pdf version for printing

PRINCIPLE 2: TRUTHFUL PRESENTATION

Advertisements shall be truthful, balanced and not misleading. Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Rules

Rule 2(a)

Advertisements shall be accurate. Statements and claims shall be valid and shall be able to be substantiated. Substantiation should exist prior to a claim being made. For medicines and medical devices, therapeutic claims must be consistent with the approved indication(s) (for medicines) or the listed intended purpose (for medical devices).

Guidance notes

In addition to the [ASA Guidance Note on Responding to a Complaint about Misleading Claims](#), the following guidance is specific to advertising therapeutic products, natural health products and dietary supplements and health services. Substantiation varies for claims made in advertisements depending on what is being advertised. For example;

- I. Therapeutic claims for Medicines shall be those approved by Medsafe and thus would be consistent with the product Data Sheet, Consumer Medicine Information and / or the approved Label.
- II. Therapeutic claims for Medical Devices should be consistent with the 'Intended Purpose' noted on the WAND listing and the claims must be able to be supported by appropriate substantiation.

Medical Devices must be listed on WAND within 30 working days after the device is first imported, exported or manufactured (Note: There are some exceptions to this WAND listing requirement).

There is no independent evaluation in New Zealand of the substantiation for claims made about a medical device. The onus to have substantiation on-hand and provide it when necessary, lies with the advertiser.

Therapeutic and Health Advertising Code

- Definitions – aligned with legislation where possible
- Definition of ‘Natural Health Product and Dietary Supplement’ and ‘Health Benefit’ as close to Natural Products Bill wording as current legislation allows
- Note: in definition of a medicine;
 - A product can be a medicine in three ways;
 1. It is, or contains, a scheduled ingredient
 2. **A therapeutic claim is made on the label or in advertisements**
 3. It is a product with consent to distribute
- Read definition of Therapeutic Purpose (as per Medicines Act)
- If your product is not a medicine or medical device it could appear to be one if therapeutic claims are made in an advertisement.

Therapeutic and Health Advertising Code

- Weight
 - If you have a product or a device that is not able to make a weight loss claim in an advertisement (weight loss is a therapeutic claim) then including the product or device in an advertisement for a weight programme means you cannot claim weight loss for that programme (only weight management) – even if the programme includes guidance on diet, exercise and lifestyle changes.
 - T & H Code contains extensive Guidance Notes for **Weight Loss Programmes** – diet, exercise and lifestyle

Therapeutic and Health Advertising Code

REMEMBER:

- The Code of Ethics
- Code for People
- Comparative Code
 - These codes apply for aspects of advertising not covered in the T&HAC e.g. offensiveness, decency, violence, denigration, privacy and safety

PLACEMENT: *Caution: programmatic / automated ad serving*

E.G. Child on an adults device watching 'Pepper Pig' when a Viagra Ad is automatically 'served' **You will likely get a complaint**

Therapeutic and Health Advertising Code

PRINCIPLE 1: SOCIAL RESPONSIBILITY

Therapeutic and Health advertisements shall observe a **high standard of social responsibility** particularly as consumers often rely on such products, devices and services for their health and wellbeing.

Therapeutic and Health Advertising Code

Principle 1.

Guidelines

1(a) Mandatory information to encourage responsible prescribing, recommendation, sale and use. This information shall be set out in a way (legible / audible) that ensures it can be readily understood by the audience to whom it is directed.

- *Requirements are consistent with legislation and industry codes*
- *Name and address required for all categories. **This is new for Natural Health Products and Dietary Supplements***

‘Guidance Notes’ for **name and address of the advertiser** (Name/City – if in online NZ phone directory).

Therapeutic and Health Advertising Code

Principle 1

Guidelines

Rule 1(b) Advertisements shall not contain any claim for a product, device or service that it is;

- Safe
- Cannot cause harm
- Has no side effects
- Has no risks

Rule 1(d) Scientific language – acceptable if appropriate to the audience

Therapeutic and Health Advertising Code

PRINCIPLE 2: TRUTHFUL PRESENTATION

Advertisements shall be **truthful, balanced and not misleading**.

Advertisements shall not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust, exploit their lack of knowledge or without justifiable reason, play on fear. This includes by implication, omission, ambiguity, exaggerated or unrealistic claim or hyperbole.

Therapeutic and Health Advertising Code

Principle 2

Guidelines

2(a) Claims – accurate, valid and able to be **substantiated**

GUIDANCE NOTES:

- *Therapeutic Claims for medicines must be consistent with the approved data sheet.*
- *Therapeutic Claims for medical devices must be consistent with the listed intended purpose.*
- *Substantiation must exist prior to any claim being made (not just therapeutic claims).*

Therapeutic and Health Advertising Code

Principle 2

Guidelines

2(a) Claims – accurate, valid and able to be **substantiated**

MEDICAL DEVICES – Guidance Note

There is no independent evaluation in New Zealand of the substantiation for claims made about a medical device. The onus to have substantiation on-hand and provide it when necessary, lies with the advertiser.

Therapeutic and Health Advertising Code

Principle 2

Guidelines

2(a) Claims – accurate, valid and able to be **substantiated**

What does good substantiation look like?

High quality evidence.

- *Gold standard 'Randomised, Double-Blind, Placebo Controlled Clinical Trials*
- *Published in peer reviewed journals*
- *Results with a p value of 0.05 or less*
- **ASA considering a move to require marked up references for health and therapeutics claim substantiation**

Therapeutic and Health Advertising Code

Principle 2

Guidelines

2(c) Comparative advertising

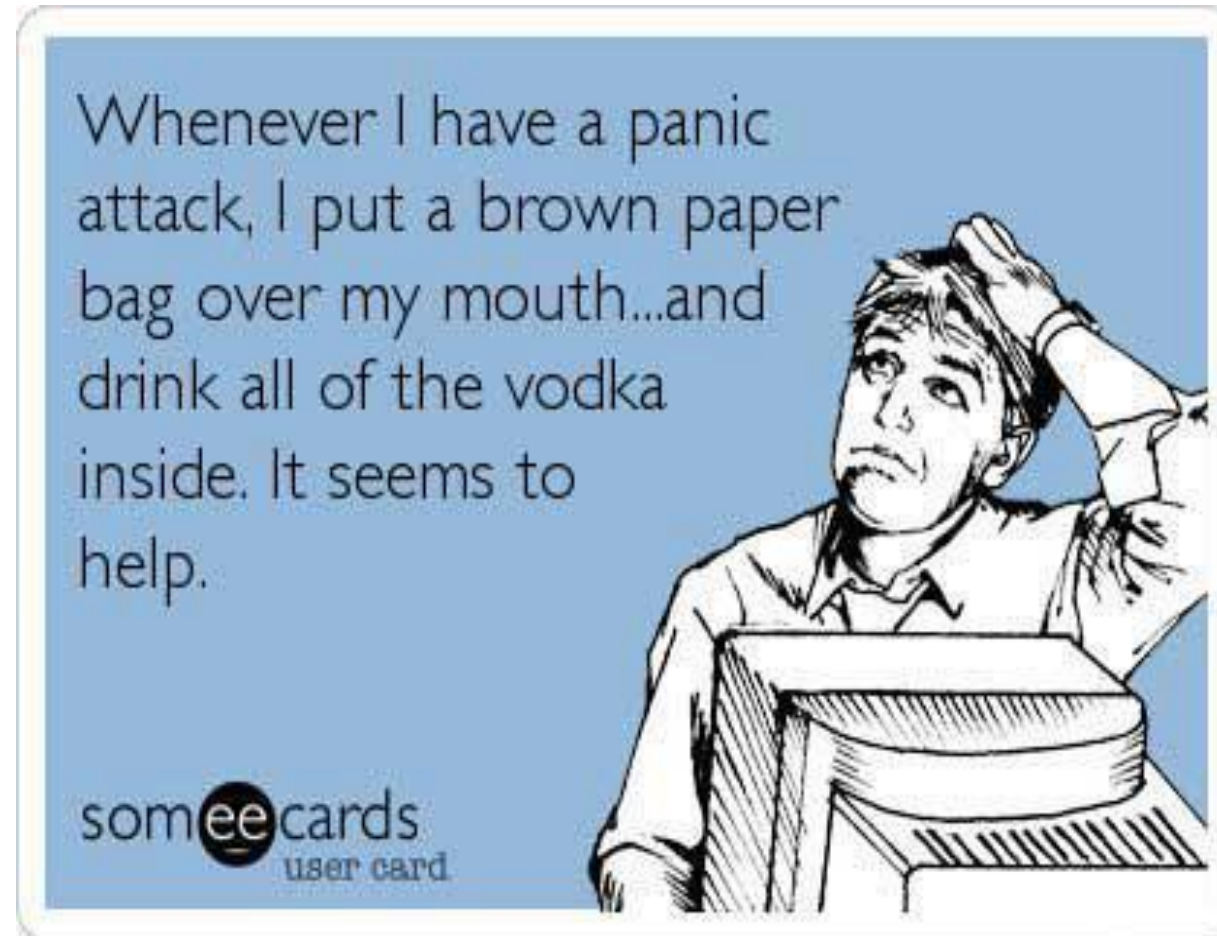
- Factual, Fair, Able to be Substantiated, Reflective of the Body of Available Evidence
- Must not discourage consumers from following HCP advice
- Compare 'like with like' – Advertisements for Natural Products and Dietary Supplements shall not include comparisons with medicines or medical devices either specifically or generally

What to do if you receive a complaint?

You could;

What to do if you receive a complaint?

You could;



What to do if you receive a complaint?

But I recommend;



Responding to a Complaint

- Read our helpful online guide <http://www.asa.co.nz/industry/how-to-respond-to-a-complaint/>
- Use the TAPS service if you haven't already – make any appropriate changes to your ad if you can (or withdraw it) to try and settle the complaint
- Talk to us
- Take the time to put together a high quality response
- **Your best defence is being prepared;**
 - Have your substantiation on-hand to address any complaints about misleading advertising
 - Consider your content, the product / service advertised and time and place the advertisement appears
 - What could a sceptic complain about?

ASA's Education and Development Manager

- General Training
- Specific Code Training
- Conferences
- There may be a fee (cost-recovery)
- Advice (but not TAPS!)
- Email claire@asa.co.nz
- Telephone 021 391 173

NEED OUR HELP?

WANT TO KEEP UP TO DATE?

- www.asa.co.nz
- asa@asa.co.nz
- Follow us 
- Stay in touch and up to date
 - <http://www.asa.co.nz/contact-us/>
 - Newsletter, Current News and 'Decisions' email

Thank You

16/02/2017