

CRP 22-0301

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 22-0301 (Swisse Ultivite)

The complaint

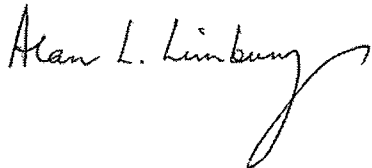
1. A complaint was made that an advertisement for Swisse Ultivite published in New Weekly on 12 February 2001 contained no approval number. The advertisement was headed "A Swisse Health Promotion", depicted the men's and women's versions of the product and quoted the Managing Director of the sponsor, Swisse Natural Health Care Pty Ltd, Mr. Michael Saba.
2. The sponsor said it was unaware the advertisement was going to be published in the said issue of NW; there was another ad in the same issue which did have an approval number; it had spoken to NW and been assured that all future ads will be forwarded to Swisse for final approval prior to printing; and that Swisse has introduced the "Swisse ISO 9001 Benchmark Advertising Policy", which states that all advertisements must be first approved by Swisse "to ensure that they comply with TGA requirements...".
3. Information was obtained from NW to the effect that two advertisements (not for the same product) had been booked in the same issue (one paid and one unpaid); that ACP Publishing Pty Ltd produces the art work for Swisse on a regular basis; that it is normal practice to have the artwork signed off before printing but in this instance ACP have no written confirmation from Swisse that the art work was approved. It was not stated whether the bookings had been made by or on behalf of Swisse.

Panel consideration

4. Where publishers of mainstream media make arrangements with sponsors to provide "free" advertisements, the question arises whether the arrangement nevertheless involves valuable consideration passing from the sponsor to the advertiser. If so, approval must be obtained by the sponsor: Reg 5C(1). Where a sponsor agrees to place a paid advertisement in exchange for a publisher's agreement to provide a "free" advertisement - sometimes called an advertorial - the Panel will find the sponsor to have provided valuable consideration for the publication of the "free" advertisement and will regard the sponsor as the person apparently responsible for it.
5. In this case the Panel is not satisfied on the material before it that Swisse provided valuable consideration for the advertisement. Accordingly the complaint is not justified.

6. Having regard to the many occasions on which Swisse has been found by the Panel to have failed to obtain approval of advertisements for therapeutic goods, the Panel commends the adoption by Swisse of its "ISO 9001 Benchmark Advertising Policy" in an endeavour to ensure that its advertisements comply with the Regulatory requirements. The Panel notes however that the Policy makes no mention of the requirements for Swisse itself to obtain approval of its advertisements before publication; to ensure the approval number appears in the advertisement and to ensure that the form of advertisement as published is the same as the form approved. This is not a responsibility that can be delegated by Swisse to the publisher.

Dated July 2001
For the Panel

A handwritten signature in black ink, reading "Alan L. Limbury". The signature is written in a cursive style with a long, sweeping tail that loops back under the name.

Alan L Limbury
Chairman