

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 34-0301 (Swisse Calverv)

The complaint

1. A complaint was made that an advertisement for Swisse Calverv published in the 3 March 2001 issue of Women's Weekly contained an expired approval number. In response, the sponsor said this was "an overlook on our part" and that it would ensure that the advertisement was not used again.
2. The advertisement carried the approval number NFA 10473-98/10. That number was issued on 19 October 1998 and the terms of the approval stated that it was valid for 2 years and that the copy was not to be amended in any way. The advertisement published on 3 March 2001 differed from the copy approved. A similar advertisement published in July 2000 under the same approval number was the subject of complaint 6-700.
3. It appeared to the Panel that the advertisement published may not have been an approved advertisement, in which case its publication may have been in breach of s.42C(2) of the Therapeutic Goods Act, which prohibits a person from publishing or inserting in mainstream media an advertisement that is not an approved advertisement.
4. Accordingly, before making a determination on the complaint as made, the Panel decided, pursuant to Regulation 42ZCAH, to deal with the possible breach of s. 42C(2) of the Act, being a matter not mentioned in the complaint. The Panel invited Swisse Natural Health Care Pty Ltd. to send written submissions to the Panel, together with any supporting documents, on the question whether publication of the advertisement constitutes a breach of s.42C(2) of the Therapeutic Goods Act and hence clause 4.1.1(a) of the Therapeutic Goods Advertising Code.
5. In response to the Panel's request, the sponsor submitted that this was one of very few shortfalls on its part, considering the number of advertisements in which it invests; insofar as the published advertisement did not comply with the approved copy, any changes would have been as a result of action by the publisher or requests by the TGA, CHC or the Panel

Panel consideration

6. Section 42C of the Therapeutic Goods Act makes it a criminal offence to publish or insert in mainstream media
 - an advertisement that is not an approved advertisement (subsection 2);
 - an approved advertisement that differs from the advertisement that was approved - except as provided in Regulation 5C(2)(b),(d),(e) or (f) - (subsection 3) and
 - an approved advertisement with an approval number that has expired.
7. Accordingly, unless changes to an approved advertisement fall within those paragraphs of Reg 5C (2) (relating to price, a reproduction of the goods without a therapeutic claim, place and time of sale and identity of the seller), a fresh approval is required.

8. Because the advertisement was not an approved advertisement, the complaint that it contained an expired approval number is unjustified.
9. The Panel finds the advertisement was not an approved advertisement, in breach of s.42C(2) and hence clause 4.1.1(a) of the Code. The complaint is justified in this respect.

Sanctions

10. The Panel requests Swisse Natural Health Care Pty Ltd, in accordance with subregulation 42ZCAI(1) of the Therapeutic Goods Regulations:

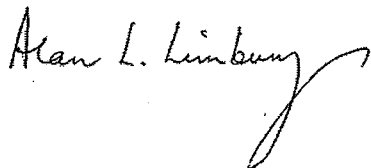
- (a) to withdraw the advertisement from further publication; and

- (b) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance, such as copies of instructions to advertising agents or to the publisher of Women's Weekly.

11. The sponsor's attention is drawn to the provisions of subregulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request, including a recommendation that the listing of the goods be cancelled.

Dated July 2001.

For the Panel



Alan L Limbury
Chairman