



Advocate for the Consumer, Cosmetic,
Hygiene and Specialty Products Industry

Regulatory Reform Section
Therapeutic Goods Administration
PO Box 100
WODEN ACT 2606

Email: advertising@tga.gov.au

Dear Sirs

ACCORD Australasia is pleased to provide the following submission in response to the TGA's Consultation Paper on reforms to the regulation of therapeutic goods advertising.

ACCORD Australasia is the peak national industry association representing the manufacturers and marketers of formulated consumer, cosmetic, hygiene and specialty products, their raw material suppliers, and service providers. ACCORD Members market fast-moving consumer and commercial goods primarily in Australia and New Zealand.

Our industry's products play a vital role in:

- keeping our households, workplaces, schools and institutions clean, hygienic and comfortable;
- personal hygiene, grooming and beauty treatments to help us look and feel our best;
- specialised uses that assist production and manufacturing to keep the wheels of commerce and industry turning; and
- maintaining the hygienic and sanitary conditions essential for our food and hospitality industries and our hospitals, medical institutions and public places.

These benefits are essential to safe, healthy living and maintaining the quality lifestyle we all too often take for granted.

Our industry has more than 50 manufacturing operations throughout Australia and member companies include large global consumer product manufacturers as well as small dynamic Australian-owned businesses. A list of ACCORD member companies is provided at *Attachment 1*.

ACCORD has a significant interest in this issue and has consistently raised the need for reform to consumer advertising of therapeutic goods consistent with consumer advertising requirements for all consumer goods as required under the *Trade Practice Act 1974* (TPA).

ACCORD's approach to regulatory efficiency

ACCORD supports the Australian Government's approach to regulatory best practice and recommends that the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies (COAG Principles) should be rigorously applied in the consideration of any regulatory response to a perceived market failure. The COAG Principles state that the aim of any national standards setting process should be to achieve ***minimum necessary standards***, taking into account economic, environmental, health and safety concerns (COAG June 2004, p1).

ACCORD supports the following as good regulatory practice principles. Regulatory solutions should:

ACCORD Australasia Limited (formerly ACSPA) ACN 117 659 168 ABN 83 205 141 267
PO Box 290 BROADWAY NSW 2007
Tel: 61 2 9281 2322 Fax: 61 2 9281 0366 Website: www.accord.asn.au

Innovative solutions for healthy living and a quality lifestyle

- be the minimum required to achieve the stated objectives;
- adopt a risk management approach to forming and administering regulation;
- minimize the impact on competition;
- be compatible with international standards and practices;
- cause no restriction to international trade;
- be developed in consultation with the groups most affected and be subject to regular review;
- be flexible, not prescriptive and be compatible with the business operating environment;
- standardize the exercise of bureaucratic discretion; and
- have a clear delineation of regulatory responsibilities and effective and transparent accountability mechanisms.

Taking into account these principles, it is clear that the current arrangements fail to meet a majority of ACCORD's best practice principles in that they are not the minimum required nor is there a clear delineation of regulatory responsibility. This is inconsistent with COAG requirements for regulatory best practice. This duplication and overlap of regulatory responsibility was also noted by the Productivity Commission as the Consultation Paper points out (p2).

Duplication of regulatory effort

The Therapeutic Goods Advertising Code 2007 contains the following clause:

- (1) All advertisements for therapeutic goods are subject to the Therapeutic Goods Act 1989 and Therapeutic Goods Regulations, the Trade Practices Act 1974 and other relevant laws. Compliance with this Code does not exempt advertisements from the application of those laws.*

ACCORD supports the best practice regulatory principle that where an Act of general provision provides adequate regulatory control, these measures should not be duplicated by legislation targeted at a specific sector or industry. As noted in the clause above, the Therapeutic Goods Advertising Code refers to two Acts and one set of Regulations. The majority of ACCORD members have always been of the view that the existing regulatory controls on advertising claims are adequately covered by the consumer protection provisions of the Trade Practices Act (TPA). This duplication in regulatory controls i.e. the TGA and TPA, does not provide the clear delineation of regulatory responsibilities or effective and transparent accountability mechanisms.

Resolution of advertising complaints

Advice regarding the complaints procedure on the TGACC website is as follows:

A person may complain in writing to the Complaints Resolution Panel about an advertisement for a designated therapeutic good or therapeutic device that is published or inserted in specified media that the person believes to be in breach of the Therapeutic Goods Advertising Code (TGAC) or the Therapeutic Goods Act 1989 or Regulations (refer Regulation 42ZCAB).

Complaints about other advertisements must be directed to the appropriate industry association, i.e. CHC for complementary medicines and ASMI for non-complementary OTC medicines.

Again – it is not clear which complaint should be directed to which body. The referencing of two industry associations again does not create a sense of independence and transparency for those companies which are not members of either of these two industry associations. For example, many ACCORD members are not members of either body and yet, are required to have a relationship with these industry associations through the pre-clearance and/or initial dispute resolution process. ACCORD members advise that the complaints handling process is unsatisfactory.

ACCORD has promoted the New Zealand Advertising Standards Authority as the appropriate self regulatory model for the management of an independent, robust and transparent complaint handling system. We believe that Australia should adopt a similar low cost system and that consumer complaints for therapeutic goods should be managed through the Advertising Standards Bureau.

Inefficiencies with current system

Members have advised that the current system of advertising pre-clearance is not an efficient system. Member comments can be characterised by the following observation:

... generally inefficient and woefully understaffed. Their processes are bureaucratic – you have to complete a form and then get issued with a ticket number. You then go into ASMI's site to check what position your ticket number is at. Sounds like queuing at the deli. But – what happens if you don't get any acknowledgement email? (i.e. No ticket number issued = ticketing machine that's broken down)? There's no one you can call, only communication is by email, and even then, there is no guaranteed response. So the process is woeful and the term 'process' is used generously. Also not transparent if there is bias against non-ASMI members.

In relation to the specific questions raised in the Consultation Paper ACCORD supports an independent complaints body. We do not support a reconstituted Complaints Resolution Panel (CRP), rather the majority of ACCORD members support a completely independent, self regulating system with no pre-clearance requirements, underpinned by the TPA. As with New Zealand, complaints would be managed through the Advertising Standards Bureau.

Therefore in relation to the scope of the CRP we do not support any broadening of its scope. We agree that many complaints brought to the CRP's attention are indeed trivial and should have been handled at an earlier stage. The failure of the system to be able to deal with trivial complaints is another indicator that the current system has failed and requires a complete overhaul – not just tinkering around the edges.

The preference for the majority of ACCORD members is for a self-regulating system as outlined above. If this self-regulatory system is not acceptable, then we would prefer that the TGA takes on full responsibility for the management of advertising arrangements for consumer advertising of therapeutic goods. What is difficult to support is the continued inefficiency and performance of the co-regulatory pre-clearance system and lack of transparent complaints resolution processes.

Should you have any questions in relation to the issues raised in our submission, the contact officer is Ms Dusanka Sabic, Regulatory Reform Director who can be contacted on 612 9281 2322 or by email dsabic@accord.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bronwyn Capanna".

Bronwyn Capanna
Executive Director

27 August 2010

Members

Consumer, Cosmetic and Personal Care

Advanced Skin Technology Pty Ltd
Alberto Culver Australia
Amway of Australia Pty Ltd
Apisant Pty Ltd
AVON Products Pty Limited
Beiersdorf Australia Ltd
BrandPoint Pty Ltd
Chanel Australia
Clorox Australia Pty Ltd
Colgate-Palmolive Pty Ltd
Combe Asia-Pacific Pty Ltd
Cosmax Prestige Brands Australia Pty Ltd
Coty Australia Pty Limited
De Lorenzo Hair & Cosmetic Research Pty Ltd
Elizabeth Arden Australia
Emeis Cosmetics Pty Ltd
Estée Lauder Australia
Frostbland Pty Ltd
GlaxoSmithKline Consumer Healthcare
Helios Health & Beauty Pty Ltd
Johnson & Johnson Pacific
Kao (Australia) Marketing Pty Ltd
Kao Brands Australia Pty Ltd
Keune Australia
Kevin Murphy Business Services P/L
Kimberly Clark Australia
KPSS Australia Pty Ltd
La Biosthetique Australia
La Prairie Group
L'Oreal Australia Pty Ltd
LVMH Perfumes and Cosmetics
Mary Kay Cosmetics Pty Ltd
Natural Australian Kulture Pty Ltd
Nutrimetics Australia
NYX Pty Ltd
Procter & Gamble Australia Pty Ltd
PZ Cussons Australia Pty Ltd
Reckitt Benckiser
Revlon Australia
Sabre Corporation Pty Ltd
Scental Pacific Pty Ltd
Shiseido (Australia) Pty Ltd
The Heat Group Pty Ltd
The Purist Company Pty Ltd
Three Six Five Pty Ltd
Trimex Pty Ltd
True Solutions International Pty Limited
Ultraceuticals
Unilever Australasia

Hygiene and Specialty Products

Albright & Wilson (Aust) Ltd
Applied Australia Pty Ltd
BP Castrol Australia Pty Ltd
Callington Haven Pty Ltd
Campbell Brothers Limited
Castle Chemicals Pty Ltd
Chemetall (Australasia) Pty Ltd
Clariant (Australia) Pty Ltd
Cleveland Cleaning Supplies Pty Ltd
Deb Australia Pty Ltd
Dominant (Australia) Pty Ltd
Ecolab Pty Limited
Huntsman Corporation Australia Pty Ltd
Jalco Group Pty Limited
Lab 6 Pty Ltd
Novozymes Australia Pty Ltd
Nowra Chemical Manufacturers Pty Ltd
Peerless JAL Pty Ltd
Recochem Inc
Rohm and Haas Australia Pty Ltd
Solvay Interox Pty Ltd
Sonitron Australasia Pty Ltd
Sopura Australia Pty Ltd
Tasman Chemicals Pty Ltd
Thor Specialties Pty Limited
True Blue Chemicals Pty Ltd
Univar Australia Pty Ltd
Whiteley Corporation Pty Ltd

Associate Members

Equipment and Packaging Suppliers

HydroNova Australia NZ Pty Ltd
Megara (Aust.) Pty Ltd
SCHÜTZ DSL (Australia) Pty Ltd

Graphic Design and Creative

Ident Pty Ltd

Legal and Business Management

FCB Lawyers
Middletons Lawyers
TressCox Lawyers

Logistics

ParcelDirect Group
Star Track Express Pty Ltd

Regulatory and Technical Consultants

Archer Emery & Associates
Competitive Advantage
Engel Hellyer & Partners Pty Ltd
Robert Forbes & Associates
Sue Akeroyd & Associates
Toxikos Pty Ltd

Specialist Laboratories and Testing

ams Laboratories
Dermatest Pty Ltd
Silliker Australia Pty Ltd

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