

# COMPLAINTS RESOLUTION PANEL

Integrity in Healthcare Advertising

CRP 3-0801

## COMPLAINTS RESOLUTION PANEL DETERMINATION

### Complaint 3-0801 (Swisse Ultivite billboard)

Meeting 18 October, 2001

#### The complaint

1. A complaint was made that an advertisement for Swisse Ultivite products appearing on billboards in June and July 2001 contravened
  - section 4.4.1(b) of the Therapeutic Goods Advertising Code because the words "formulated by a professor" imply endorsement by a health-care professional and
  - sections 4.1.1 (b) and 4.1.2(a) of the Code because the expression "you'll feel better on Swisse" arouses unwarranted and unlikely expectations.
2. The sponsor, Swisse Natural Health Care Pty Ltd, attached a copy of the billboard and what it described as "the approved CHC copy for the above" and added:

*"please inform the anonymous party that they should be proud of this fantastic constructive criticism of any company, because this will assist all to maintain the benchmark standards and integrity in everything that we do in this fantastic industry of ours. Either way, please forward them our appreciation for their feedback".*

#### Panel consideration

3. The copy of the billboard provided by the sponsor contained the approval number CHC 20538-99/08. The approved CHC copy submitted to the Panel by the sponsor contained a different approval number. The Panel obtained from the CHC Advertising Services Manager a copy of the advertisement accorded approval number CHC 20538-99/08. This revealed that the

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advertisement published on the billboards did not correspond with the advertisement approved by CHC. In particular, the expression "you'll feel better on Swisse!" was not approved. This was changed in the approved version to read "you could feel better on Swisse!" and this change was expressly drawn to the attention of the sponsor by facsimile from the Advertising Services Manager dated 16 August 1999. Despite this, the sponsor failed to ensure that the advertisement published (almost two years later) did not differ from the advertisement that was approved. The Panel notes that this was in contravention of section 42C(3) of the Therapeutic Goods Act.

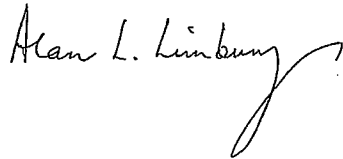
4. The statement "you'll feel better on Swisse!" in the context of the advertisement, in which it appears to answer the questions posed immediately above it "Tired? Stressed? ", is a claim that the product is unfailing, contrary to section 4.1.2(g) of the Code, and is thus likely to arouse unwarranted and unrealistic expectations of product effectiveness, contrary to section 4.1.2(a) of the Code. This aspect of the complaint is justified. The Panel regards this as a serious breach of the Code because, had the terms of the approval been the complied with, the advertisement would not have been likely to arouse unrealistic expectations.
5. Likewise, the Panel finds that, in the context of the questions "Tired? Stressed?", the statement "Formulated by a Professor" is likely to be taken by consumers to be a recommendation by a health care professional, in breach of section 4.4.1(b) of the Code.
6. The Panel therefore finds the complaint justified.

### **Sanctions**

7. The Panel notes that the approval for this advertisement has now expired and that, accordingly, any further publication, in the absence of a fresh approval, would contravene section 42C of the Therapeutic Goods Act.
8. 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 by removing it from every billboard on which it may currently be displayed; and
  - (b) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance.
9. 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. Should the sponsor fail to comply with this request, the Panel is minded to recommend that the Secretary order the sponsor to publish a retraction or correction on billboards.

Dated     October, 2001.

For the Panel

A handwritten signature in cursive script that reads "Alan L. Limbury". The signature is fluid and extends to the right with a long, sweeping tail.

Alan L Limbury  
Chairman