

CRP 9-0701

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 9-0701(Swisse Calverv)

The complaint

1. A complaint was made that an advertisement for Swisse Calverv, published in the May 2001 issue of Good Medicine magazine, contained an expired approval number NFA 10370 98/30
2. In response, the sponsor claimed that this advertisement had been the subject of a similar complaint and referred the Panel to an earlier letter (3 July 2001) in which the sponsor submitted that it was unaware that a new approval number was required when changes to already approved existing copy were made. The sponsor also submitted that after an earlier complaint about an advertisement for Swisse Calverv (8-0601), it had made a commitment to refrain from using this advertisement in future, and that Complaint 9-0701 (the current complaint) refers to an advertisement published before this date.

Panel consideration

3. The advertisement of complaint 9-0701 is different from the advertisement which was the subject of Complaint 8-0601.
4. The advertisement carries the approval number NFA 10370-98/30. The number NFA 10370-98/03 was issued on 1 July 1998. 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.
5. The advertisement published on May 2001 thus contains an expired approval number.
6. The Panel finds the complaint justified.
7. However, the content of the advertisement published in Good Medicine magazine in May 2001 is different from the copy of the advertisement that was approved in 1998.
8. The Panel finds that the published advertisement carried an expired approval number purporting to be the approval number for that copy, but which appears to have been issued for a different advertisement.
9. 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.

10. Accordingly, 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.

Sanctions

11. 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 Good Medicine.

12. 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 August 2001.

For the Panel

Dr Derek Weir
Chairman