

## COMPLAINTS RESOLUTION PANEL DETERMINATION

### Complaint 13-1101 (Swisse Ultivite) Meeting held April 18, 2002

#### The complaint

1. A complaint had been made that an advertisement for Swisse Ultivite published in NW Magazine on November 19, 2001 contravened sections of the Therapeutic Goods Advertising Code. The complaint was considered at the Panel meeting held on 21 February 2002.

#### Matter not specified in the complaint

2. The Panel was satisfied that the advertisement to which the complaint related contained matter that is not mentioned in the complaint, which may contravene s42C(3) of the Act. The panel decided to deal with the matter under subregulation 42ZCAH(1). Accordingly, the Panel notified the sponsor of this decision.
3. Pursuant to subregulation 42ZCAH(3)(a), the matter not mentioned in the complaint and the possible contravention of the s42C(3) of the Act was:

Publication in mainstream media of an approved advertisement that differs from the advertisement that was approved, in that the words "You'll feel better on Swisse" were not approved to appear immediately after the words "Tired? Stressed?" but were instead approved to appear at the end of the advertisement under the Swisse logo after the words "Celebrate Life Everyday!" as a tag line only in tagline size, not as an inverted heading or advertising claim.

4. In considering this matter, the Panel is minded to have regard to the fact that the requirements of the approval were communicated to the sponsor in June, 2001; that the advertisement was published in November, 2001 and that in July 2001 the Panel stated in its determination 22-0301, involving the same product:

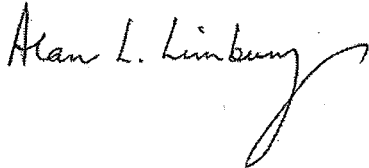
*"Having regard to the many occasions on which Swisse has been found by the Panel to have failed to obtain approval of advertisements for therapeutic goods, the Panel commends the adoption by Swisse of its "ISO 9001 Benchmark Advertising Policy" in an endeavour to ensure that its advertisements comply 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."* [emphasis added].

5. In response, Swisse Natural Health Care Pty Ltd said that:
  - Swisse has modified all Swisse advertisement to ensure that they are fully compliant until the issue is sorted out via legal and other means available; and
  - Swisse has updated the ISO Benchmark Advertising Policy to ensure that the form of advertisement published is the same as the form approved.

**Panel consideration**

6. The Panel noted the response and accepted the assurances made by Swisse and also noted that the response did not specifically address the issue of lack of approval for the advertisement which is the subject of the complaint.
7. The Panel requests Swisse Natural Health Care Pty Ltd provide evidence within 5 days that the advertisement in the form in which it had been published has been withdrawn from publication.

Dated 6 May 2002  
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 extends to the right.

Alan L Limbury  
Chairman