

COMPLAINTS RESOLUTION PANEL

Complaint 8-399 "Footcare"

Individual-v- Swisse H Bio-Juven ("H Bio-Juven")

The Complaint

- 1 The Panel received a complaint concerning an advertisement published in the Sunday Telegraph on 28 February 1999 headed "New relief for tinea and dry, cracked heels".
- 2 The complainant alleged that the advertisement was in breach of a number of provisions of the Therapeutic Goods Advertising Code ("Code") and the Therapeutic Goods Regulations under the Therapeutic Goods Act 1989 (Cth). In particular, the advertisement did not carry an approval number, in breach of regulation 5D of the Therapeutic Goods Regulations.
- 3 The advertisement is an advertorial which makes a number of claims about H Bio -Juven Plantolin Foot Care Antifungal Gel. The advertisement contains quotes from representatives of H Bio -Juven and at the bottom a list of stockists.
- 4 In response to the complaint, H Bio -Juven said that the material was controlled by the editors of the Sunday Telegraph and the company only provided the editors with a press release, the rest was left to the editor's discretion. H Bio -Juven also said that the paid advertisement was the half page of stockists only.
- 5 The Sunday Telegraph confirmed that the advertisement was a paid advertisement set entirely from material submitted by H Bio -Juven and that the Sunday Telegraph did not write the editorial on behalf of H Bio -Juven.

Panel Consideration

- 6 Since the advertisement had not been approved under the Therapeutic Goods Regulations and was published by H Bio -Juven in the Sunday Telegraph, the Panel found a breach of regulation 5D(1) of the Therapeutic Goods Regulations.
- 7 The Panel also considered that there were a number of statements in the advertisement which were in breach of the Therapeutic Goods Advertising Code ("Code") and the Therapeutic Goods Regulations under the Therapeutic Goods Act 1989(Cth). These included the statements which are dealt with below.
- 8 The Panel is of the view that the advertisement is designed to arouse unwarranted expectations of product effectiveness through its text, in breach of clause 3.1.2 of the Code. This effect is caused by statements such as:

"my feet were completely repaired within one week..."

"...healed skin problems faster than anything else on the market. It showed to be even more effective than some prescription drugs"

"...the outcome astounded scientists..."

"...No other natural plant extract possessed the potent medicinal properties combining both rapid skin renewal benefits as well as antifungal properties. All

of this being drug free and without the unpleasant side effects that other creams are renown for.."

"...simply the best topical treatment, prescription or otherwise, currently available. No other product even comes close..."

- 9 The Panel is of the view that the advertisement is in breach of clause 7.8 of the Code because it contains claims of exaggerated rapidity in action. These claims arise from the overall tone of the advertisement and the following statements:

"my feet were completely repaired within one week..."

"...healed skin problems faster than anything else on the market. It showed to be even more effective than some prescription drugs"

"...the outcome astounded scientists..."

- 10 The Panel is also of the view that the following statements amount to a claim that the product is more efficacious or more safe because it occurs naturally, in breach of clause 7.9 of the Code:

"...No other natural plant extract possessed the potent medicinal properties combining both rapid skin renewal benefits as well as antifungal properties. All of this being drug free and without the unpleasant side effects that other creams are renown for..."

"...a natural herbal extract called Plantolin, healed skin problems faster than anything else on the market. It showed to be even more effective than some prescription drugs."

- 11 The Panel is of the view that the advertisement also breaches clause 7.11 of the Code by making a claim that the product will effect regeneration of part of the human body. This claim comes from the statement:

"Independent clinical tests show that H Bio-Juven Plantolin can help prevent scarring and preserve youthful skin longer due to its ability to regenerate and renewal skin cells."

- 12 The advertisement contains the following statements:

"...the peeling stopped and my feet were completely repaired within one week" Said Bob Bailin, a pharmacist and user.."

"...simply the best topical treatment, prescription or otherwise, currently available. No other product even comes close," Said Mathew Green a leading pharmacist who's seen the remarkable results achieved by ... on hundreds of his patients"...."

- 13 The Panel is of the view that as a result of these statements, the advertisement contains an implication that:
- (a) the product is recommended by health professionals including pharmacists, in breach of clause 8.1 of the Code;
 - (b) the person conveying the therapeutic claims, namely, both Bob Bailin and Mathew Green, are pharmacists, in breach of clause 8.3 of the Code.

Sanctions

- 14 H Bio -Juven is required to immediately withdraw the advertisement from publication and to notify the Panel in writing that this has occurred within fourteen (14) days of being advised of this determination.

Dated 27 April 1999

For the Panel

L. Oddie
Carolyn Oddie
Alternate Chairperson