

## COMPLAINTS RESOLUTION PANEL DETERMINATION

### Complaint 6-0601 (Swisse Ultivite)

#### The complaint

1. A complaint was made that an advertisement for Swisse Ultivite published in the 16 April 2001 issue of New Weekly ('the advertisement') contained no approval number.
2. In response, the sponsor said this was an approved advertisement, the approval number had been omitted, and that all reprints of this advertisement will have the approval number incorporated.
3. The sponsor provided a copy of text that included 3 separate approval numbers, each of which was shown adjacent to some of the text which appeared in the advertisement. The approval number CHC 30891-01/04 appeared adjacent to the text which appeared as heading text in the advertisement; the approval number CHC 30792-01/04 appeared adjacent to text appearing beneath the product pack shot in the advertisement; and the approval number CHC 31107-01/06 appeared adjacent to text which appeared in the body of the advertisement. The advertisement contained additional text which did not appear in the material provided by the sponsor.
4. The Advertising Services Manager advised the Panel that the advertisement had not been submitted for approval. Two other advertisements using the same heading as the advertisement had received conditional approval only. The advertisement differed from those for which conditional approval had been given and contained text that had not been approved.

#### Panel consideration

5. 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).
6. The Panel finds the advertisement did not display an approval number as the advertisement was not an approved advertisement, in breach of s.42C(2) and hence clause 4.1.1(a) of the Code.
7. The Panel finds the complaint justified.

### Sanctions

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 from further publication; and
- (b) to arrange for publication in the earliest possible issue of New Weekly a retraction in the form and in the terms of the attachment to this decision; and
- (c) 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 New Weekly.

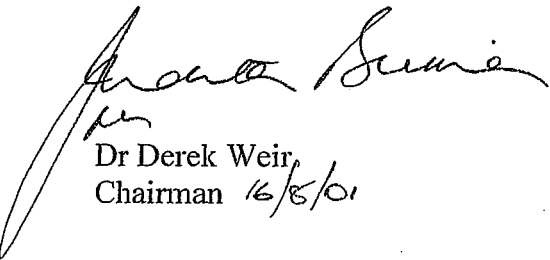
The sponsor's attention is drawn to the provisions of subregulations 42ZCAI(3) and (4) which permit the Panel to make recommendations to the Secretary in the event of non-compliance with this request, including a recommendation that the listing of the goods be cancelled.

### Matter not specified in the complaint

- 9. The Panel is satisfied that the advertisement to which the complaint relates contains matter that is not mentioned in the complaint, which may contravene the Therapeutic Goods Advertising Code. The Panel has decided to deal with the matter under subregulation 42ZCAH(1). Accordingly, the Panel hereby notifies the sponsor of this decision.
- 11. Pursuant to subregulation 42ZCAH(3)(a), the Panel noted that five pharmacy logos had been used in the unapproved advertisement and considered that this may imply professional endorsement in breach of Clause 4.4.1(b) of the Therapeutic Goods Advertising Code.
- 12. Pursuant to subregulation 42ZCAH(3)(b), the sponsor is invited to send written submissions to the Panel, together with any supporting documents, by Wednesday 12 September 2001.

Dated 27<sup>th</sup> August 2001.

For the Panel

  
Dr Derek Weir,  
Chairman 16/8/01

## **Attachment**

**Form of retraction** (no other material of the sponsor to be published on the same page)

### **RETRACTION**

**An advertisement for "Swisse Ultivite" published earlier this year in New Weekly should not have been published.**

**The advertisement had not been approved before publication, as required by the Therapeutic Goods Act 1989.**

**A complaint about the advertisement not being approved was recently upheld by the Complaints Resolution Panel, which determined that:-**

- **the advertisement was published without first obtaining approval.**

**The Panel requested the advertiser, Swisse Natural Health Care Pty Ltd, to publish this retraction.**

## **Format**

**Size:** half-page

**Font:** Heading

Type: Times New Roman

Size: 24 point

Case: Upper

Bold

Text

Type: Times New Roman

Size: 14

Case: Sentence

Bold

**Text Box:** double - 3 pt