

CRP 12-0802

COMPLAINTS RESOLUTION PANEL DETERMINATION

Complaint 12-0802 Swisse Multivitamins 6 November 2002

The complaint

1. On 28 August 2002, the Complaints Resolution Panel received a complaint about an advertisement for Swisse Mens and Women's Ultivite multivitamins published in the Sydney Sunday Telegraph on 28 July 2002. In its determination of 30 September 2002 the Panel found justified the complaint that the advertisement (which had been approved) had been published without its approval number. The Panel dismissed as unjustified other aspects of the complaint.
2. The advertisement was entitled "*Take the Swisse Multivitamin Test and be your own health judge*". Under a caption which included the words "*...it's time you were armed with the knowledge to tell the difference between a great multivitamin and an average one. Here are the facts:*" the advertisement featured a comparative table, which purported to list the ingredients found in Swisse Ultivite and their quantities and the ingredients and their average quantities in 11 other multivitamins on the market. The advertisement invited the reader not to be misled by the advertising and terminology used to promote other multivitamins, but rather to do a comparison of the formulae and judge for themselves. It included the words "*...a lack of detailed knowledge may be delivering you fewer benefits and more boastful claims. So always compare the formulas and be the judge.... Don't be misled...*".
3. The Panel raised for consideration under subregulations 42ZCAH(1) and (3)(a), whether the advertisement is in breach of clause 4.1.2(c) of the Code in making the comparison between the quantity of the ingredients in Swisse Ultivite and what are claimed to be the average quantities of the ingredients of 11 multivitamin products. It invited the sponsor, Swisse Natural Healthcare, to send written submissions to the Panel, together with any supporting documents, and evidence in support of the comparison made in the advertisement, including identification of the 11 products to which Swisse Ultivite was compared and a complete list of their ingredients and their quantities.
4. The sponsor's initial response to the Panel's request was for its Managing Director, Mr. Michall Saba, by letter dated 14 October, 2002, to send to the Panel a copy of the conditionally approved "copy" of the advertisement and associated correspondence, which he described as "*include[ing] identification of the 11 products in which Swisse Ultivite was compared to [sic], together with a complete list of their ingredients and their quantities*". That material did not identify the products with which Swisse Ultivite was compared, nor did it contain a complete list of their ingredients or quantities.
5. The sponsor next provided an "*updated version of the actual chart...used for the advertisement*" ("the updated chart"). After the Panel's Executive Officer pointed out that any version produced after the advertisement had been published would not be relevant,

the sponsor provided the chart which had been used at the time of approval of the advertisement ("the chart"), which had been located by CHC.

Panel consideration

6. Having examined the chart and the advertisement, The Panel finds the advertisement to be misleading, in breach of clause 4.1.2(c) of the Code, for the following reasons:

- (i) the chart (on which the advertisement is said to have been based) compares 10 products with Swisse Ultivite, not 11 as stated in the advertisement;
- (ii) the list of ingredients omits many that are contained in one or more of the 10 products but not in Swisse Ultivite. It therefore fails to disclose relevant ingredients necessary for a reader to be able to form a proper judgment. The list does not present "*the facts*";
- (iii) the approach of averaging produces an unrealistic and meaningless profile of "The Average Multivitamin" which makes informed judgment and comparison of products by the reader impossible.
- (iv) the method of averaging of ingredients and their quantities is inconsistent and inappropriate. For example, under the general footnote "*The average value of 11 [sic] of the most common brands available on the market*", sub-footnote 1 explains that "*5 products had betacarotene...so their values are averaged*". The value of 5.9mg presented in the advertisement in relation to betacarotene represents the sum of the betacarotene values on the chart for the 5 products that contain betacarotene, divided by 5. Readers of that footnote would reasonably conclude that this method has been adopted throughout in similar circumstances. However, the average values actually adopted in the advertisement for other ingredients in similar circumstances were the sum of all values of the ingredient, plus the value stated for Swisse Ultivite, divided by 11, even though, as in the case of betacarotene, the ingredient may be present in only a few of the 10 products with which Swisse Ultivite is being compared;
- (v) the inclusion of the value stated for Swisse Ultivite in the calculation of the average values of the other products is inappropriate, since that is the product with which the comparison is supposed to be made.

Sanctions

7. Having found the complaint justified, the Panel requests Swisse Natural Health Care Pty. Ltd., in accordance with subregulation 42ZCAI(1) of the Therapeutic Goods Regulations:

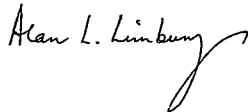
- (a) to withdraw the advertisement from further publication;
- (b) to publish in the next available edition of the Sydney Sunday Telegraph a retraction in the form and in accordance with the conditions set out in the Attachment to this determination; and

(c) within 14 days of being notified of this request, to provide evidence to the Panel of its compliance.

8. 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 recommendations that the approval of the advertisement be revoked, that an order be made under Regulation 7 and that the listing of the goods be cancelled.

Dated 12 November, 2002

For the Panel



Alan L Limbury
Chairman

Attachment

Form of retraction (no other material emanating from Swisse Natural Health Care Pty Ltd to be published on the same page)

RETRACTION OF MISLEADING ADVERTISEMENT FOR SWISSE ULTIVITE MULTIVITAMINS

An advertisement for Swisse Men's and Women's Ultivite multivitamins published in the 28 July 2002 issue of the Sydney Sunday Telegraph has been found by the Complaints Resolution Panel to have made a misleading comparison between the Swisse products and other multivitamins on the market, in breach of the Therapeutic Goods Advertising Code.

The advertisement invited readers to be their own health judge by comparing the formulas of Swisse products and of "the average multivitamin". The advertisement presented as "the facts" a list of Swisse ingredients opposite a list of what were said to be average quantities of ingredients of other multivitamins. The Panel found this misleading because the list did not mention many ingredients present in some of the other multivitamins that are not present in the Swisse products.

The Panel also found that averaging produced an unrealistic and meaningless profile of "the average multivitamin" which made informed judgment and comparison by the reader impossible. Also that the methods of averaging used were inconsistent and inappropriate.

The Panel has requested Swisse Natural Health Care Pty Ltd to publish this retraction and to withdraw the advertisement from further publication.

Format

Location

Sydney Sunday Telegraph

Colour

Size

Full page

Font:

Heading

Type: Exactly the same size and style as the heading in the advertisement

Text

Type: Times New Roman

Size: 36

Case: Sentence

Bold

Text box

Double – 3 pt

Text black, box in colour