

CRP 9-499

## COMPLAINTS RESOLUTION PANEL

### Complaint 9-499 (Arthrelief)

#### The complaint

1. A member of the public complained that an advertisement for H Bio-Juven Arthrelief published on page 173 of the Sunday Telegraph dated 28 March 1999 contained no preclearance approval in alleged breach of clause 11 of the Therapeutic Goods Advertising Code ("TGAC"). It was further claimed the advertisement breached TGAC clauses 3.1.1, 3.1.2, 4, 7.8, 7.11 and 8 and that a reference to "Dr Eva" at the foot of the page was misleading and deceptive, since the person was not entitled to that title.
2. In a response dated 28 April 1999, Mr Michael Saba, Managing Director of Swisse Natural Health Care Pty Ltd stated the material of which complaint was made was contained in an article, the contents of which were up to the editor, and that his company's advertisement occupied the bottom half of the page, listing stockists for the products. Mr Saba invited the Panel Secretary to contact the publisher for further details or confirmation. He conceded that Ms Ewa Kierskowska is not entitled to be called "Dr" in Australia and said once this was discovered, advertisements were promptly corrected. No response to the substance of the complaints was made.

#### Panel consideration

3. At the date of publication of the advertisement, the current version of the TGAC incorporated amendments to 3 February 1999. There was no clause 11.
4. The material occupies a full page of the newspaper. The word "Advertisement" appears above the headline at the top of the page. Accordingly, the whole of the page appears to be an advertisement for the product in question. By letter dated 1 June 1999 to the Panel Secretary, the publisher of the Sunday Telegraph confirmed that the full page advertisement was a paid advertisement and that all copy was supplied by the client. The Panel therefore finds that the whole page was a paid advertisement.
5. The product is listed on the Australian Register of Therapeutic Goods. Accordingly, publication of the advertisement in mainstream media without prior approval was a breach by Swisse Natural Health Care Pty Ltd of Therapeutic Goods Regulation 5D(1) (since replaced by section 42C(2) of the Therapeutic Goods Act) and the failure to include the approval number followed from the failure to obtain approval for the advertisement.

6. TGAC clause 4 prohibits any reference in an advertisement for therapeutic goods to arthritis, other than:-
  - (i) the temporary relief of pain;
  - (ii) may help reduce joint inflammation;
  - (iii) may help reduce joint swelling; or
  - (iv) may help increase joint mobility.
7. The Panel finds the prohibition in TGAC clause 4 to have been breached by the headline *"Amazing arthritis relief"* and such statements as *"potent anti-inflammatory properties that penetrate to reduce inflammation and promote healing"*; *"ability to relieve the symptoms of arthritis and increase mobility within the first few days of use, and in some cases after the first application"*; *"penetrate the deeper tissue to reduce inflammation and swelling"* and *"proven more effective than some prescription drugs....patients are amazed by the results. Relief was almost instantaneous and resulted in increased mobility and [illegible]"*.
8. The Panel finds the above statements also amount to breaches of TGAC clauses 3.1.1 (making unverifiable claims); 3.1.2 (raising unwarranted expectations); and 7.8 (exaggerated rapidity in action).
9. The advertisement also mentions the product Skin Balm as having *"impressed the medical field for its ability to heal eczema and psoriasis"*, in breach of the specific prohibitions in TGAC clause 4. The advertisement also claims that H Bio-Juven Plantolin has *"an ability to regenerate and renew skin"*, in breach of TGAC clause 7.11.
10. Accordingly the Panel finds the complaint justified.

### Sanctions

11. Pursuant to Therapeutic Goods Regulation 9AC(2) the Panel requests Swisse Natural Health Care Pty Ltd ACN 004 926 005 to
  - (i) withdraw the advertisement from publication in mainstream media; and
  - (ii) publish a retraction in accordance with the next paragraph

and within 14 days of receipt of this request to notify the Panel that it has complied with the request and to provide evidence of compliance.
12. The retraction is to be published as a 2-column by 8cm announcement in the Sunday Telegraph, within a black border and containing only the text set out in attachment "A" hereto. It is also to be published by way of letter, in the terms set out in attachment "B" hereto, from Swisse Health Care Pty Ltd to each of the stockists mentioned in the advertisement.
13. The attention of that company is drawn to Regulation 9AC(3) and (4).

1 June 1999

For the Panel

*Alan L. Limbury*  
 Alan L Limbury  
 Chairperson

**Attachment 1**

**RETRACTION**

**A full page advertisement for H Bio-Juven Plantolin Arthrelief in the Sunday Telegraph of 28 March 1999 had not been approved for publication as required under the Therapeutic Goods Regulations and breached several provisions of the Therapeutic Goods Advertising Code.**

**The Complaints Resolution Panel established by the Commonwealth Government upheld a complaint by a member of the public that the advertisement made unverifiable claims for arthritis relief, raised unwarranted expectations, exaggerated rapidity in action and contained prohibited representations and a prohibited professional recommendation.**

**At the request of the Panel, the advertisement has been withdrawn from mainstream media and this retraction has been published by Swisse Health Care Pty Ltd, the supplier of H Bio-Juven Plantolin products.**

**Attachment 2**

**[Letterhead of Swisse Natural Health Care Pty Ltd]**

**[Name and address of stockist]**

**[Date]**

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**The Complaints Resolution Panel established by the Commonwealth Government upheld a complaint by a member of the public that the advertisement made unverifiable claims for arthritis relief, raised unwarranted expectations, exaggerated rapidity in action and contained prohibited representations and a prohibited professional recommendation.**

**At the request of the Panel, the advertisement has been withdrawn from mainstream media and this retraction has been published by Swisse Health Care Pty Ltd, the supplier of H Bio-Juven Plantolin products.**

**Please remove any copy of the advertisement from display to customers.**

**[Signature of authorised person]**