

Compliance Report

Slimming Survey 2005



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Published September 2005

1 Summary

A week of overindulgence at Christmas spurs many people into resolving to lose weight in the new year. With that in mind, the Compliance team surveyed a sample of advertising in January to discover the compliance rate of slimming advertising with the British Code of Advertising, Sales Promotion and Direct Marketing (the CAP Code).

All slimming advertisements that appeared in a sample of women's magazines and the regional press during January 2005 were assessed under the CAP Code's specific rules about the advertising of slimming products and services.

Excluding duplicates, 24 of 48 advertisements were found to breach the CAP Code, giving a compliance rate of 50%¹. The Compliance team was concerned by the result.

Where a breach was found, the Compliance team told the advertiser to ensure all future advertisements complied fully with the CAP Code and recommended it use the CAP Copy Advice team in future. None of the advertisements found to breach the Code were the subject of complaints to the ASA.

Most advertisements that breached the Code appeared in the regional press (88% of breaches). Of those advertisements that appeared in the regional press 21 of 36 (excluding duplicates) breached the Code, a breach rate of 58%. Of those advertisements that appeared in magazines 3 of 12 (excluding duplicates) breached the Code, a breach rate of 25%.

The Compliance team was concerned at the high breach rate and will continue to monitor the slimming sector to ensure an improvement in the compliance rate. The team urges publishers to ensure that advertisements for slimming products comply with the Code.

¹ Including duplicates, 26 of 55 advertisements were found to breach the CAP Code; a compliance rate of 53%.

2 Introduction

2.1 Background

The Advertising Standards Authority (ASA) is the independent body that endorses and administers the CAP Code, which applies to the content of non-broadcast marketing communications. It is responsible for ensuring that the self-regulatory system works in the public interest and achieves that by investigating complaints, identifying and resolving problems by research and by promoting and enforcing high standards by ensuring that everyone who commissions, prepares and publishes marketing communications observes the CAP Code. On 1 November 2004, the ASA assumed powers for regulating TV and radio advertisements under contract from the communications regulator, Ofcom.

The Committee of Advertising Practice (CAP) is the body that created and revises the CAP Code. It represents advertisers, promoters and direct marketers, their agencies, the media and trade and professional organisations in the advertising, sales promotion and direct marketing industries. CAP provides a pre-publication copy advice service and co-ordinates the activities of its members to achieve the highest degree of compliance with the CAP Code.

The Compliance team works to ensure that marketing communications comply with the CAP Code and with ASA decisions. The team follows-up ASA adjudications, monitors marketing communications and takes immediate action to ensure marketing communications that breach the Code are removed from the media. One of the team's objectives is to create a level-playing field for marketers and it ensures that by communicating decisions that have sector-wide ramifications. The Compliance team conducts surveys to assess compliance rates in certain industries, sectors or media; those surveys help to identify marketing trends and to anticipate subjects of concern that need to be addressed by the ASA and CAP.

2.2 Code Rules

The 11th edition of the CAP Code came into force on 4 March 2003. The purpose of the Code is to maintain, in the best and most flexible way possible, the integrity of marketing communications in the interests of both the consumer and the trade. All advertisements should be legal, decent, honest and truthful. They should be prepared with a sense of responsibility to consumers and society and be in line with the accepted principles of fair competition.

The Code is made up of general rules, sales promotion rules and direct marketing rules. Specific rules cover sectors such as alcohol, motoring, slimming, health and beauty products and therapies and financial products.

The main requirements of the general rules are:

Legal

Marketers have primary responsibility for ensuring that their marketing communications are legal. Marketing communications should comply with the law and should not incite anyone to break it.

Decent

Marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency.

Honest

Marketers should not exploit the credulity, lack of knowledge or inexperience of consumers.

Truthful

No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

2.3 Survey Objectives

The purpose of the survey was to:

- assess compliance rates for advertisements for slimming products and services in a sample of women's magazines and the regional press;
- identify potential problems and resolve them;
- contact the advertiser responsible for advertisements that seemed to break the Code and obtain an assurance that future advertisements would comply fully with the Code's requirements and
- act as a deterrent to bad practice and an encouragement to good practice.

3 Methodology

3.1 Method

The Compliance team monitored all slimming advertisements in a sample of women's magazines and regional newspapers published in January 2005. January was considered to be a month in which many advertisements for slimming products and services were likely to appear.

Where a breach of the Code was identified, the Compliance team wrote to the advertiser and asked for a written assurance that the advertisement would be withdrawn or amended. The advertiser was asked to send an assurance to that effect. Publishers were informed of the name of the advertiser and the nature of the problem and were asked to ensure the advertisement was amended in line with the Code before it appeared again. Written assurances were received from all the advertisers contacted.

3.2 Newspapers and Magazines Examined in the Survey

The Compliance team surveyed these 52 regional newspapers:

- Abergavenny Chronicle
- Adscene (Maidstone)
- Andover Advertiser
- Barry & District News
- Basingstoke Gazette
- Bexhill-On-Sea Observer
- Bolton Evening News
- Birmingham Post
- Blackpool Gazette
- Bristol Evening Post
- Cambridge Evening News
- Cornish Guardian (Bodmin & District) (Newquay)
- Cumberland News
- Dinnington and Maltby Guardian
- The Doncaster Star
- Dorset Echo
- East Anglian Daily Times
- Edinburgh Evening News
- Evening Echo (Southend, Basildon & Castlepoint)
- Evening Herald (Plymouth)
- Evening Leader (Chester, Flintshire, Wrexham)

- Express and Echo (Exeter)
- Folkstone Herald
- Galloway News
- Glasgow South & Eastwood Extra
- Gloucestershire Echo (Cheltenham)
- Evening Courier (Halifax)
- Huddersfield Daily Examiner
- Inverness Courier
- Isle of Wight County Press
- Irish News (Belfast)
- The Journal (Newcastle Upon Tyne)
- Lincoln Target
- Linlithgow Advertiser
- Liverpool Daily Post
- Luton & Dunstable Herald & Post
- Newry Democrat
- Norwich Evening News
- The Orcadian
- Paisley Daily Express
- Press and Journal (North Scotland)
- Plymouth Independent
- Raleigh & Eastwood Times
- The Romsey Advertiser
- Selby Times
- Solihull Times
- Wales on Sunday
- Western Morning News
- Wigan Evening Post
- Wolverhampton Chronicle
- Yeovil Express
- Yorkshire Post

And these magazines:

- Bella
- Best
- Candis
- Company
- Cosmopolitan
- Diva
- Elle
- Family Circle

- Glamour
- Good Housekeeping
- Heat
- Hello!
- House Beautiful
- InStyle
- The Lady
- Lighter Life
- Marie Claire
- Natural Health & Wellbeing
- Now
- OK!
- Prima
- Red
- Slimming
- Slimming World
- Take a Break
- Vogue
- Weight Watchers
- WI Home and Country
- Woman's Own
- Zest

National newspapers and magazines for men and girls under 18 were not included.

3.3 Categorisation

The Compliance team considered only advertisements for slimming products and services. It did not consider advertisements for low fat foods because consumption of such foods cannot be guaranteed to result in weight loss. It did, however, include advertisements for low fat foods advertised by weight loss manufacturers (i.e. Weightwatchers) for consumption during the advertisers' weight loss programmes and with weight loss as their dominant message.

Each of the advertisements identified as falling within the remit of the survey was categorised by advertiser, newspaper or magazine and product or brand. Each of the products was categorised as:

- Pill
- Weight loss programme
- Hypnotherapy
- Injection/Surgical procedure
- Application (i.e. cream or body wrap)
- Exercise machine
- Gym
- Own Brand Low Fat Food
- Beauty Salon

4 Findings

4.1 Compliance Rate

The survey sought to establish the proportion of advertisements in January 2005 for slimming products and services that complied with the Code.

In total, the Compliance team considered 55 advertisements, a lower number than anticipated. Of the total, nine were duplicates leaving 48 original advertisements.

Of the 48 advertisements examined, 24 (50%) breached the Code.

4.2 Compliance by Newspaper and Magazine

The team noted that most breaches (81% of advertisements including duplicates and 88% excluding duplicates) appeared in advertisements published in the regional press.

Including duplicates:

	Magazines	Newspapers
Total no of Ads	19	36
Breach	5	21
No breach	13	16
% in breach	26%	58%

Excluding duplicates:

	Magazines	Newspapers
Total no of Ads	12	36
Breach	3	21
No breach	9	16
% in breach	25%	58%

The team was concerned by the high number of breaches in the regional press. It contacted the newspapers that published the advertisements and asked them to ensure that future advertisements by the advertisers in question complied with the CAP Code. It sent copies of relevant CAP Help Notes (see Appendix 7.2) giving details of the type of claims that required substantiation, what

substantiation was needed and which products should not be advertised to the public.

Fig. 1 Compliance by newspaper (including duplicates)

	Breaches
Newry Democrat	4
The Herald & Post - Luton and Dunstable	2
The Extra – Glasgow South	2
The Solihull Times	2
Wales on Sunday	2
Edinburgh Evening News	1
Paisley Daily Express	1
Rayleigh & Eastwood Times	1
Selby Times	1
Southend Echo	1
The Gazette - Blackpool	1
The Irish News	1
Wigan Evening Post	1
Wolverhampton Chronicle	1
Total	21

Fig. 2 Compliance by Magazine (including duplicates)

	Breaches
Natural Health & Wellbeing	2
Slimming	2
Zest	1
Total	5

Compliance by Product

The team placed products into nine categories: Pills and Ingestibles, Weight Loss Programmes, Gyms, Own Brand Low Fat Foods, Hypnotherapy, Beauty Salons, Injections or Surgical Procedures, Topical applications and Exercise Machines.

It noted most breaches were for slimming pills and ingestibles. See table overleaf:

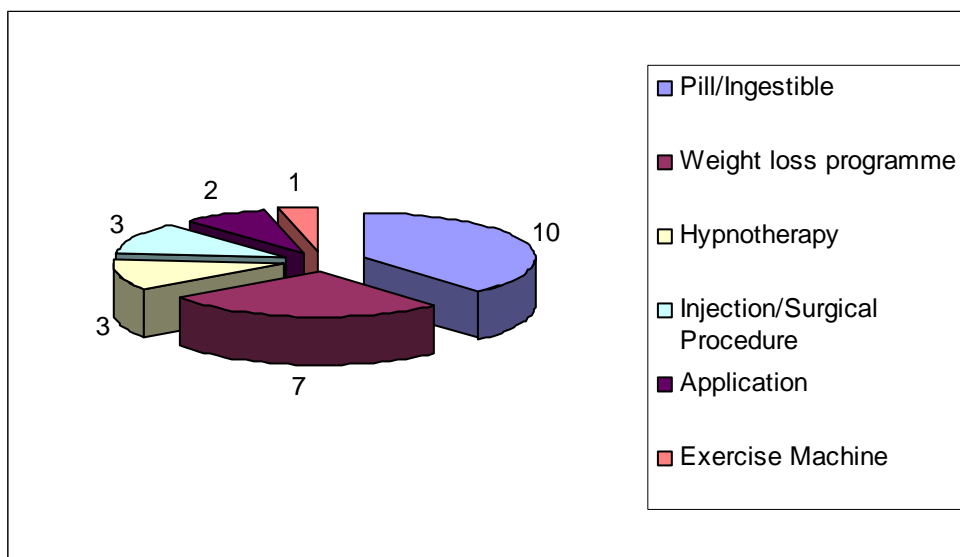
Advertisements for those products frequently claimed that the products could help the consumer lose weight by speeding up the metabolism, suppressing the appetite and, in some cases, helping the body to process fat.

Products that are capable of such effects are likely to be classed as medicinal by the Medicines and Healthcare products Regulatory Agency (MHRA) and should not be sold to the public without the necessary marketing authorisation. The advertisements were in breach of clauses 50.11 and 50.12.

50.11 Medicines must have a marketing authorisation from the MHRA before they are marketed and any claims made for products must conform with the authorisation. Medicinal claims should not be made for unauthorised products. Marketing communications should refer to the MHRA, the authorisation or the EC only if required to do so by the MHRA.

50.12 Prescription-only medicines may not be advertised to the public. Health-related claims in marketing communications addressed only to the medical, dental, veterinary and allied professions are exempt from the Code.

Fig. 3 Breaches by product category (including duplicates)



The team also noted a significant number of breaches in the advertising of weight loss programmes. In those advertisements that breached the Code, advertisers commonly claimed that consumers could lose more than the recommended 2lbs per week. They were caught by clauses 51.9 and 51.10.

51.9 Marketing communications should not contain claims that people can lose precise amounts of weight within a stated period or that weight or fat can be lost from specific parts of the body.

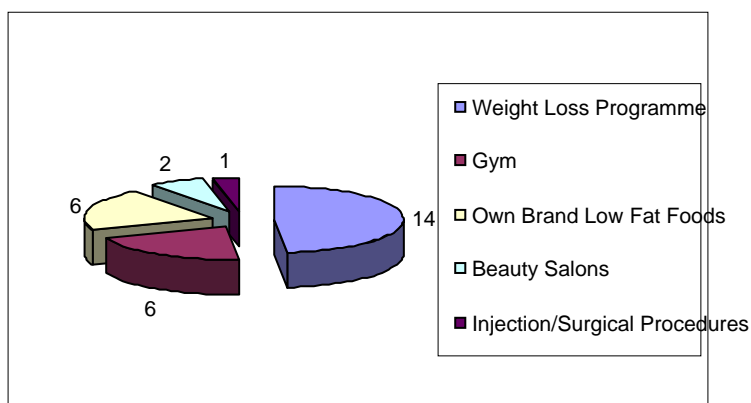
51.10 Claims that individuals have lost exact amounts of weight should be compatible with good medical and nutritional practice, should state the period involved and should not be based on unrepresentative experiences. For those who are normally overweight, a rate of weight loss greater than 2 lbs (just under 1 kg) per week is unlikely to be compatible with good medical and nutritional practice. For those who are obese, a rate of weight loss greater than 2 lbs per week in the early stages of dieting may be compatible with good medical and nutritional practice.

Advertisements marketing exercise machines also breached those two clauses by making excessive weight loss claims.

Hypnotherapists fell foul of the Code by claiming that hypnotherapy could help people lose weight, a claim for which neither the ASA nor CAP has seen adequate evidence. Such advertisements may claim to help control weight because it has been proven and it places more emphasis on a consumer's willpower. Other advertisers breached the Code by claiming applications such as gels and body wraps could have a slimming effect. No topically applied product has been proven to aid weight loss.

It should be noted that weight loss programmes formed the bulk of slimming advertisements and most of those (14 of 21 including duplicates) did not breach the Code. See Fig 4 below:

Fig. 4 Non-breaches by Product Category (including duplicates)



4.6 CAP Ad Alerts issued during the Survey period

No Ad Alerts for slimming products or services were issued during January 2005.

4.7 Complaints

During the survey period, the ASA did not adjudicate on any slimming advertisements published in women's magazines or the regional press but did adjudicate on an advertisement that appeared in a national press supplement. The advertisement by Dr Irena Eris, stated "Lirene DERMOPROGRAM 4-stop Anti-Cellulite Program" and claimed "A revolutionary, scientific breakthrough for controlling unsightly cellulite and eliminating inches."



The ASA ruled that, because the advertisers could not prove the efficacy of the product, the advertisement was misleading. See Appendix for the full adjudication.

5 Conclusion

Excluding duplicates, half of all advertisements for slimming products and services placed in women's magazines and the regional press breached the Code.

That is a low level of compliance. As stated earlier, the Compliance team received written assurances from the advertisers whose advertisements breached the Code that they would not place the advertisements again. The team recommended the advertisers consult the CAP Copy Advice team if they had any doubts about the Code's requirements when devising their future advertising. The team wrote to the publications surveyed informing them of the breaches of the Code and asking them to ensure that the slimming advertisements identified as breaching the Code were not placed in that form again.

The team will continue to routinely monitor women's magazines and the regional press. We hope that the action taken during this survey will correct the problem of non-compliance. If the team finds that a low level of compliance remains it will consider taking other action.

One option is for the team to issue an Ad Alert to the media asking them not to accept advertisements for slimming products or services are not accepted without consulting the Copy Advice team.

6 Pre-publication advice

Seeking advice from the CAP Copy Advice team is the best way to ensure that marketing communications do not break the Code and advertisers and the media are urged to do so. The advice is free and confidential from competitors; it is the best way to avoid problems with the ASA. The team can draw on ASA research and previous ASA adjudications and is experienced at advising on the likely reaction of both the public and competitors. Consult the team on 020 7492 2100 (telephone), 020 7242 3696 (fax) or on copyadvice@cap.org.uk. The team responds to almost all written enquiries within 24 hours.

Also, advertisers, their agencies and the media can stay the right side of the line by using AdviceOnline, an up-to-date database of advice that links users to relevant Code clauses, Help Notes and past ASA decisions. CAP encourages users to subscribe to Update@CAP, its free quarterly e-mail newsletter containing news stories, compliance studies and reports on high profile and landmark ASA rulings. Both services are free and available on www.cap.org.uk.

7 Appendix

7.1 CAP Code clauses referred to in the Survey

General

- 3.1 Before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. Relevant evidence should be sent without delay if requested by the ASA or CAP. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication. The full name and geographical business address of marketers should be provided without delay if requested by the ASA or CAP.
- 7.1 No marketing communication should mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

Health & Beauty Products and Therapies

- 50.1 Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Where relevant, the rules will also relate to claims for products for animals. Substantiation will be assessed by the ASA on the basis of the available scientific knowledge.

Weight Control

- 51.1 A weight reduction regime in which the intake of energy is lower than its output is the most common self-treatment for achieving weight reduction. Any claims made for the effectiveness or action of a weight reduction method or product should be backed if appropriate by rigorous trials on people; testimonials that are not supported by trials do not constitute substantiation.
- 51.2 Obesity in adults is defined by a Body Mass Index (BMI) of more than 30 kg/m². Obesity is frequently associated with medical conditions and treatments for it should not be advertised to the public unless they are to be used under suitably qualified supervision.
- 51.3 Marketing communications for any weight reduction regime or establishment should neither be directed at, nor contain anything that will appeal particularly to, people who are under 18 or those in whom weight

reduction would produce a potentially harmful body weight (BMI of less than 18.5 kg/m²). Marketing communications should not suggest that it is desirable to be underweight.

- 51.4 Marketers must show that weight reduction is achieved by loss of body fat before claims are made for a weight reduction aid or regimen. Combining a diet with an unproven weight reduction method does not justify making weight reduction claims for that method.
- 51.5 Marketers should be able to show that their diet plans are nutritionally well-balanced (except for producing a deficit of energy) and this should be assessed in relation to the kind of person who would be using them.
- 51.6 Vitamins and minerals do not contribute to weight reduction but may be offered to slimmers as a safeguard against any shortfall when dieting.
- 51.7 Marketers promoting Very Low Calorie Diets and other diets that fall below 800 calories a day should do so only for short term use and should encourage users to take medical advice before embarking on them. Marketers should also have regard to the voluntary code of practice in the COMA report "The Use of Very Low Energy Diets" (1987).
- 51.8 Marketing communications for diet aids should make clear how they work. Prominence must be given to the role of the diet and marketing communications should not give the impression that dieters cannot fail or can eat as much as they like and still lose weight.
- 51.9 Marketing communications should not contain claims that people can lose precise amounts of weight within a stated period or that weight or fat can be lost from specific parts of the body.
- 51.10 Claims that individuals have lost exact amounts of weight should be compatible with good medical and nutritional practice, should state the period involved and should not be based on unrepresentative experiences. For those who are normally overweight, a rate of weight loss greater than 2 lbs (just under 1 kg) per week is unlikely to be compatible with good medical and nutritional practice. For those who are obese, a rate of weight loss greater than 2 lbs per week in the early stages of dieting may be compatible with good medical and nutritional practice.
- 51.11 Resistance and aerobic exercise can improve muscular condition and tone; this can improve body shape and posture. Marketers should be able to substantiate any claims that such methods used alone or in

conjunction with a diet plan can lead to weight or inch reduction. Marketing communications for intensive exercise programmes should encourage users to check with a doctor before starting.

51.12 Short-term loss of girth may be achieved by wearing a tight-fitting garment. This should not be portrayed as permanent, nor should it be confused with weight or fat reduction.

7.2 Help Notes

Committee of Advertising Practice (Non-broadcast)

Slimming Guidelines for the Press

General Points

A slimming regime in which the intake of energy is lower than its output is the main self-treatment for achieving weight loss.

Advertisers should hold scientific evidence to support all their claims. Testimonials alone are not sufficient to prove that a slimming product or method works.

Advertisements for unproven weight loss products should not include any direct or implied efficacy claims. If the name of the product implies efficacy (e.g. 'Fat Buster', 'Sleep and Slim') a disclaimer must be added stating that the product has not been proved to aid weight loss.

Advertisements for diet aids (e.g. *Herbalife – a meal replacement product*) should make clear how they work and prominence should be given to the role of the diet.

Advertisers should not give the impression that, by following their advertised method, dieters cannot fail.

These guidelines do not cover exercise machines. Please contact the Copy Advice team if you are unsure about acceptable claims for these products.

Cellulite treatments

Advertisers cannot claim that a treatment can specifically target "cellulite".

We have seen no evidence to show that creams, electrical "stimulation" devices or pills can reduce, or reduce the appearance of, "cellulite".

Advertisements for treatment involving *ENDERMOLOGIE* can claim that it may 'Temporarily Reduce the Appearance of Cellulite'. Claims that the treatment can smooth away, reduce, eliminate or remove "cellulite" are, however, unacceptable.

Unacceptable claims

Claims that products can, for example, *boost metabolism, inhibit dietary fat absorption, melt fat, soak up fat, break down fat, suppress appetite, block fat etc*, are almost always unproven and are likely to break the Code.

CAP has seen no evidence that products containing the following can assist in weight loss;

Aminopyline, Citrus Aurantia, Chitosan, Chromium Picolinate, CLA, Garcinia Cambogia, Guarana Extract, L-Carnitine, Lecithin, Ribose.

Prescription-only slimming products should not be advertised to the general public.

Advertisers should not give the impression that, by following their method or using their product, dieters can eat as much as they want and still lose weight.

Combining a diet with an unproven weight loss method does not justify making slimming claims for the method.

Obesity (BMI > 30) is recognised as a serious medical condition that requires medical intervention. Its treatment should therefore not be advertised unless it is carried out under qualified medical supervision. Advertisements should also not feature people who were/are obese and should not target obese people.

What is an acceptable amount of weight that can be lost in a given time?

In line with the Code, Department of Health guidelines, testimonials and other claims in advertisements for proven products should not normally claim ***more than 2lbs/week weight loss.***

Claims that individuals have lost exact amounts of weight should be compatible with good medical and nutritional practice and should give details of the time period involved.

General claims that precise amounts of weight can be lost within a stated period or that weight can be lost from specific parts of the body are not allowed.

Committee of Advertising Practice
(Non-broadcast)

Help Note on Substantiation for Health, Beauty and Slimming Claims

CAP Help Notes offer guidance for non-broadcast marketing communications under the British Code of Advertising, Sales Promotions and Direct Marketing. References to CAP and the ASA are to CAP (Non-broadcast) and the ASA (Non-broadcast) council. For advice on the rules for TV and radio commercials, contact the BACC www.bacc.org.uk (for TV ads) and the RACC www.racc.co.uk (for radio ads).

Background

These guidelines, drawn up by the Copy Advice team, are intended to help marketers, agencies and media interpret the rules in the British Code of Advertising, Sales Promotion and Direct Marketing as far as they relate to the subject discussed. They are based on past ASA cases and neither constitute new rules nor bind the ASA Council in the event of a complaint about a marketing communication that follows them.

The Code states:

“Medical and scientific claims made about beauty and health-related products should be backed by evidence, where appropriate consisting of trials conducted on people. Substantiation will be assessed by the ASA on the basis of available scientific knowledge” (**Clause 50.1**);

“Any claims made for the effectiveness or action of a weight reduction method or product should be backed where appropriate by rigorous trials on people...” (**Clause 51.1**);

“The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication” (**Clause 3.1**); and

“If there is a significant division of informed opinion about any claims made in a marketing communication they should not be portrayed as universally agreed” (**Clause 3.2**).

Three types of health, beauty and slimming claims are made for products (or services): sensory or impressionistic subjective claims; uncontroversial or established objective claims; and “new” objective claims.

1. Sensory/impressionistic subjective claims

Claims that cannot be proved objectively, such as “no other shower gel leaves you feeling fresher”, might be understood to be opinion or might only require satisfactory consumer research to back them up.

2. Uncontroversial/established objective claims

These might constitute satisfactory proof for uncontroversial/established claims:

2.1A clear and concise account of the physiological effect of a product on the intended subjects, perhaps supported by an expert opinion (provided this reflects general scientific opinion, i.e. is accepted, or likely to be accepted, by most relevant experts);

2.2 Information contained in authoritative reports, reputable guidelines or other published material that represents or reflects general scientific opinion. For example, in relation to health and slimming claims, reports published by COMA, the Food Advisory Committee, CODEX, and the Scientific Committee for Foods; and in relation to beauty claims, reports published by the Journal of the Society of Cosmetic Chemists, the British Journal of Dermatology and the Journal of Investigative Dermatology.

3. “New” objective claims

For “new” or “breakthrough” claims, sound data, relevant to the claim made, should be collated to form a body of evidence. The “totality” of this evidence is important; marketers should not ignore sound data that does not support the “new” claim. There are now generally recognised ways of collating existing data (where it is not immediately available) by conducting a systematic review of all available scientific evidence and evaluating it for its relevance (e.g. by using standardised data extraction procedures and electronic databases).

3.1 evidence for health and slimming claims

A body of evidence might consist of one or more of these categories (though read 3.3 and 3.4 as well):

- 3.1.1 experimental human studies in which an “intervention” group (or groups) of human subjects uses the product under examination and a “control” group uses a control, with neither subjects (single-blind) nor researchers taking the measurements (double-blind) knowing which subjects are in which group (sometimes referred to as clinical studies or placebo-controlled trials);
- 3.1.2 observational human studies in which a group or groups of people are studied in their environment (sometimes called epidemiological studies);
- 3.1.3 an appropriate expert’s extrapolation of relevant findings from seemingly irrelevant human studies (e.g. where a product’s proven effect on ill people provides the basis of proving the proposed effect on those healthy people that the marketers wish to target);
- 3.1.4 studies without human subjects (e.g. biochemical, cellular or animal studies);
- 3.1.5 before and after studies with little or no control;
- 3.1.6 self-assessment studies (to support objective statements that can be ascertained only by consumer observation);
- 3.1.7 published and unpublished literature (perhaps supporting the rationale behind a claim);
- 3.1.8 anecdotal evidence such as testimonials and endorsements.

3.2evidence for beauty claims

A body of evidence might consist of one or more of these categories (though read 3.3 and 3.4 as well):

- 3.2.1 experimental human studies;
- 3.2.2 within-subject comparisons of treated and untreated sites;
- 3.2.3 studies without human subjects;
- 3.2.4 before and after studies with little or no control;
- 3.2.5 self-assessment studies;

3.2.6 published and unpublished literature;

3.2.7 anecdotal evidence.

3.3 quality of data

The body of evidence should normally include at least one adequately controlled experimental human study but an adequately controlled observational human study might be sufficient in some circumstances. To consider acceptable a body of evidence that does not include at least one adequately controlled experimental human study, the ASA's or CAP's experts will usually need to be convinced of the soundness of the data provided and the futility or impracticality of commissioning an experimental human study. Before and after studies with little or no control, studies without human subjects, self-assessment studies, published and unpublished literature and anecdotal evidence are unlikely to be considered acceptable as sole support for a "new" claim relating to physiological action in humans (though in vitro studies may provide sole support for inherent activity, e.g. anti-oxidant action).

Sound individual studies should:

3.3.1 follow a recognised methodology (see 3.1.1) that controls both for the "placebo" effect and for other factors unconnected with the proposed action of the product (e.g. effects brought about by the way in which a medical device is used or a cream is applied). The most reliable method of allocating subjects to different groups in experimental human studies is by random allocation ("randomised" studies). Reliability can also normally be gained by incorporating a "cross-over" element (the subjects in the two groups swap with each other after a sufficient period in their respective groups and with a sufficient period of "rest" in between). Similarly, some designs for observational human studies are more reliable than others; for example, studies that are planned in advance and undertaken prospectively are less likely to be biased than studies carried out retrospectively. The validity of data, however, depends not only on the protocol of the study but also on how well the study was designed, carried out and analysed;

3.3.2 be large enough to demonstrate the proposed effect. A desirable size for a study can be assessed using standard statistical formulae (though meta-analysis, the pooling of results from several studies, might allow valid conclusions to be drawn from two or more small studies);

- 3.3.3 normally be carried out on a representative cross-section of a population similar to that of the UK or on a representative sample of the sector of the population at which the product is targeted (though see 3.1.3);
- 3.3.4 involve the intervention group consuming, applying or using a reasonable and, as far as possible, quantified amount of the product at a reasonable frequency (this should reflect the normal usage proposed for the product);
- 3.3.5 where appropriate, be of sufficient duration to ensure that any beneficial effect is maintained over a reasonable period of time and is not a short-term response to which the body or mind adjusts. A follow up period might also be needed depending on the nature of the effect studied;
- 3.3.6 where appropriate, take into account confounding factors (e.g. smoking) and other relevant variables;
- 3.3.7 produce statistically, and physiologically, significant results by tests selected before the studies began;

3.4 credibility of data

If studies have not been published in reputable, peer-reviewed journals (and indeed studies often have not), an objective review should be carried out by a suitably qualified individual possessing relevant expertise before the data is submitted to the ASA or CAP.

3.5 submitting data

Where possible, the body of evidence should be provided in a clearly set out indexed dossier. This might include:

- 3.5.1 the “new” or “breakthrough” claims to be supported;
- 3.5.2 the composition of the product and an explanation of how it works;
- 3.5.3 precise details of who might benefit and why;
- 3.5.4 the quantity of product consumed, applied or used and its frequency of use;
- 3.5.5 the preferred experimental human studies (ideally, with greater emphasis given to those that have been published or subjected to assessment by a

suitably qualified expert). If several studies are provided to back up several claims, it should be clear which study supports which claim;

3.5.6 data supporting the experimental human studies (e.g. observational, cellular, animal and self-assessment studies);

3.5.7 anecdotal evidence.

Matters of opinion

Marketers who do not hold satisfactory evidence of the purported qualities of their product can ask the CAP Copy Advice team for help in devising an acceptable marketing platform. This might involve the marketers giving their opinion on the desirability of their product, though they must clearly be expressing their opinion and not stating fact. Claims that go beyond subjective opinions are subject to the Code' rules on substantiation.

Division of opinion

If informed opinion about the acceptability of a “new” claim is divided, the claim should not be portrayed as universally agreed. Such a claim might be acceptable if prefixed by “some experts believe...”, or similar. To confirm that a division of informed opinion exists, documentary evidence, perhaps in the form of published articles, conference minutes, studies or published correspondence, should be provided. This should show that the acceptability of the “new” claim is under debate, with a reasonable number of suitably qualified, competent experts believing it to have been adequately supported.

Guidance

Information about recognised methodology for studies to support health and slimming claims can be sought from those medical journals that review papers for publication. Marketers wishing to support beauty claims may wish to consult the European Cosmetic, Toiletry and Perfumery Association (COLIPA) Guidelines for the Evaluation of the Efficacy of Cosmetic Products. Please note that the COLIPA Guidelines endorse the use of some tests, most notably the consumer self-assessment test, that are unlikely to be considered by the ASA's or CAP's experts as satisfactory sole supporting data for proving “new” claims.

Advice on specific marketing communications is available from the Copy Advice team by telephone on 020 7492 2100, by fax on 020 7404 3404 or by email on copyadvice@cap.org.uk. The CAP website at www.cap.org.uk contains a full list of Help Notes as well as access to the AdviceOnline database, which has links through to relevant Code rules and ASA adjudications.

7.3 Upheld Complaint against Dr Irena Eris

CASE NUMBER	: A05-00122/KD
ADVERTISER	: Dr. Irena Eris Armii Krajowej Str.12 05.500 Piaseczno Poland
MEDIUM	: National press
PUBLIC COMPLAINT	: Staffordshire

COMPLAINT:

Objection to a national press advertisement that was headlined "Lirene DERMOPROGRAM 4-step Anti-Cellulite Program". Text stated "A revolutionary, scientific breakthrough for controlling unsightly cellulite and eliminating inches. This new, 4-step Anti-cellulite Program is formulated with active ingredients including green coffee, caffeine, theophylline, L-Carnitine and esculin to speed the removal of fats (lipolysis) and reduce fluid accumulation. Restores the natural resilience and suppleness, giving skin a firmer smoother appearance". The Boots logo was shown, in the lower left corner, with the text "An affordable solution from £5.95 Available in selected Boots stores". The complainant challenged the efficacy of the product for removing, reducing, or reducing the appearance of, cellulite.

(Ed 11: 3.1; 6.1; 7.1; 50.1)

ADJUDICATION: Complaint upheld

The advertisers explained that their products, which included a serum, a gel-cream, a shower gel and a peeling massage, had been tested at their research centre under the supervision of a dermatologist, and also by a specialist, independent research laboratory. The advertisers submitted reports of their six-week trial and the independent research laboratory's four-week trial.

The Authority noted the advertisers believed the products reduced the appearance of cellulite and believed the results of both studies showed improved skin hydration, elasticity and smoothness of cellulitic areas. It noted, however, neither of the two studies had a control group or had been designed to prove that the products' effect was particular to cellulite or cellulitic skin. The Authority considered that consumers were likely to interpret claims such as "4-step Anti-Cellulite Program"; "controlling

unsightly cellulite and eliminating inches" and "speed the removal of fats (lipolysis) and reduce fluid accumulation" to imply the products targeted cellulite specifically and had an effect on cellulite that was independent of the massage accompanying their application. The Authority was particularly concerned by the use of the term "lipolysis", because it considered that consumers would understand it to be synonymous with the breakdown of cellulite. Because the advertisers had not proved the products' efficacy for removing, reducing, or reducing the appearance of cellulite as opposed to improving the appearance or texture of the skin that covered cellulosic areas, the Authority concluded that the advertisement was misleading. It told the advertisers to revise their approach to future advertisements and told them to consult the CAP Copy Advice team for advice on suitable claims for the products before advertising again.

Advertising Standards Authority

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